



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

**HMCTS code
(audio, video,
paper)**

P:PAPERREMOTE

Case reference : **CAM/00KF/OLR/2021/0022**

Property : **Flat 2, Mont Dol, 58 Chalkwell Ave,
Westcliff-on-Sea, Essex SSo 8NN**

Applicant : **Gail Patricia King**

Representative : **Harold King**

Respondents : **Deborah Burwood, Edward Beale,
Gillian Donovan Buck, Gail King**

Representative : **In person**

Type of application : **Application for permission to appeal**

**Tribunal
member(s)** : **Tribunal Judge S Evans
Mrs M Hardman FRICS IRRV (Hons)**

**Date and venue of
hearing** : **16 September 2021, by video**

**Date of original
decision** : **18 October 2021**

**Date of this
decision** : **30 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision. The form of remote decision is P: PAPERREMOTE. A face-to-face hearing was not held because this is an application for permission to appeal. The documents before the Tribunal are contained in the original bundle, a Statement Requesting the Right to Appeal, an email dated 15 February 2021, a letter dated 11 December 2020 and a letter dated 26 February 2021.

DECISION

- 1. The Tribunal determines that it will not conduct a review pursuant to rules 53 and 55 of the First-tier Tribunal (Property Chamber) Rules 2013 because it is not satisfied that a ground of appeal is likely to be successful.**
- 2. The Tribunal further determines that permission to appeal be refused, as there are no reasonable prospects of success and no other reason why an appeal should be heard.**
- 3. The Tribunal refuses the application for a stay on its decision dated 18 October 2021, for the same reasons.**
- 4. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.**
- 5. The Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: lands@hmcts.gsi.gov.uk .**

REASONS

- 1. By email dated 20 October 2021 the Tribunal sent its substantive decision to the parties, dated 18 October 2021. On 12 November 2021 the Tribunal received an application for permission to appeal from Mr Beale and (it is inferred) Ms Burwood only.**

2. As to any ground of appeal on the basis of jurisdiction, the Respondents failed to comply with the directions to provide submissions on that issue: see decision, paragraphs 12(1) and 13. It was clarified at the hearing on 16 September 2021 that no point on jurisdiction was being taken by the Respondents (see decision, paragraphs 15, 16 and 30). No positive argument is now advanced that the Tribunal does not possess jurisdiction.
3. As to the inability to take part effectively in the hearing because Mr Beale and Ms Burwood were unable to clearly hear the proceedings by telephone, the decision records that they were able to give their submissions with no difficulty (decision, paragraph 25). At no point did Mr Beale or Ms Burwood, when connected by telephone, intimate any difficulty with hearing any other party or the Tribunal.
4. As to the argument now advanced that there was an implied trust existing between owners dating back to 1997, no argument in such legal terms was set out at the hearing, and the legal foundation for such an argument is not set out in the grounds of appeal. The Tribunal found as a fact (decision, paragraphs 37-39) that there was no agreement between the current parties, and the freeholders had been different legal persons over the years. None of the documents in the bundle (including pages 98-105, 108-121, 126, and 131) contain evidence of an implied trust or agreement.
5. The application was not defended on the grounds that any one of the leases was invalid and would have an impact on valuation. If this argument was to be advanced, it should have been advanced by way of expert evidence as to premium payable. It is important to reflect that Tribunal proceedings are adversarial and not inquisitorial. Both parties are required to advance their cases based on evidence. The Respondents failed to adduce any expert evidence of their own, and do not seek to do so now. The Respondents' opinions on valuation are not expert evidence.
6. Mr Beale and Ms Burwood seek to rely on new documentary evidence, attached to their grounds of appeal. Any new documentary evidence may be refused on appeal on the grounds that such evidence could have been adduced at the hearing but was not, that there is no good reason why it was not, and that it would not have a material effect on the decision. No explanation has been given for the late admission of documents, but in any event the Tribunal does not consider that they would have a material impact on its decision.
7. No decision has been made by the Tribunal about costs, other than reimbursement of the application and hearing fees (paragraph 50).

Judge: _____
S J Evans

Date:
30/11/21