UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges – no appearance by landlord in LVT proceedings – whether proceedings properly served on the landlord or his agent – Upper Tribunal's powers where no proper service – landlord well aware of proceedings – service on a party outside the UK dispensed with – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN **TOBICON LIMITED** **Appellant**

and

RHIANNON COLLINSON AND OTHERS **Respondents**

Re: Block of flats at Sycamore House,
175 Merton Road,
London SW19 1EE

Before: Her Honour Judge Alice Robinson

Sitting at: 45 Bedford Square, London WC1B 3DN
on 22 November 2012

Adam Swirsky instructed by Davies & Partners for the Appellant
Ms Rhiannon Collinson in person and for the other Respondents

The following cases are referred to in this decision:

Nelson v Clearsprings (Management) Limited [2007] 2 All ER 407, CA
Al-Tobashi v Aung (1994) The Times, 10 March

DECISION

Introduction

1. This is an appeal from a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel ("LVT") dated 9 May 2011 whereby the LVT held that the service charges paid for the years 2005, 2006, 2007, 2008, 2009 and 2010 were not validly claimed and ordered that the Appellant and managing agents should pass to Sycamore House (Merton) RTM Company Limited the sum of £9,400 pursuant to s.94 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

2. The First Respondent is the leasehold owner of Flat 11, Sycamore House, 175 Merton Road, London SW19 1EE, a block of 14 flats over 5 floors ("the Flats"). The other Respondents are the leasehold owners of other flats and Sycamore House (Merton) RTM Company Limited ("the RTM Company") is a company formed for the purpose of acquiring the right to manage the flats pursuant to Part 2 of the 2002 Act. The RTM company acquired the right to manage on 9 November 2010. I shall refer to the Respondents collectively as the Tenants.

3. The Appellant was the freehold owner of the Flats until 18 January 2011.

4. The Tenants applied to the LVT pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to their liability to pay service charges for the years 2005, 2006, 2007, 2008, 2009 and 2010. The Tenants asserted that they were not liable to pay any service charges for those years by virtue of a number of failures by the Appellant:

> (1) Failure to provide an address for service in England and Wales as required by s.48 of the Landlord and Tenant Act 1987;
>
> (2) Failure to include a summary notice of rights and obligations in relation to service charges with service charge demands contrary to s.21B of the 1985 Act;
>
> (3) Failure to notify the Tenants within 18 months that relevant costs had been incurred pursuant to s.20B of the 1985 Act.

All three sets of provisions provide that a leaseholder may withhold payment of service charges unless the statutory requirements are complied with.

5. Neither the Appellant nor any other Respondent appeared at the LVT hearing. The LVT accepted the Tenants evidence as to the above failures and decided that none of the service charges in the relevant years had been validly claimed. In addition, service charges which had been paid had not all been spent and the managing agents had failed to pass over to the RTM Company those sums. Accordingly the LVT made an order that £9,400 unexpended service charges be paid to the RTM Company.

6. In consequence of the LVT's decision on 11 July 2011 the First Respondent and others obtained orders by default from the Wandsworth County Court for repayment by the Appellant of service charges in the sum of £149,509.26 each. Those orders came to the attention of the Appellant which took steps to have them set aside.

7. On 1 August 2011 the Appellant applied to the LVT for permission to appeal on a number of grounds including that it had not been served with notice of the proceedings and had no knowledge of them. After considering correspondence and the chronology of the proceedings the LVT refused permission to appeal. The application for permission to appeal was renewed and was granted by the then President of the Upper Tribunal (Lands Chamber) Mr George Bartlett QC on 20 December 2011. In the order Mr Bartlett limited permission to the question of notice observing that the Appellant should have the opportunity to call evidence as to whether it had been served with notice of the proceedings. If the Appellant is successful the case should be remitted to the LVT for rehearing. If the Appellant is unsuccessful it should not be permitted to raise matters it could have raised before the LVT.

Evidence

8. At the hearing on 22 November 2012 I heard evidence on oath from Andreas Isenchmid, a director of the Appellant, who had also made a witness statement dated 17 February 2012. The Tenants relied upon a witness statement dated 17 February 2012 from Roger Southam, a Chartered Surveyor and CEO of Chainbow Limited. I was informed by Ms Collinson that the Tenants did not have the resources to pay for Mr Southam to attend the hearing. However, his evidence consisted largely of producing correspondence as to which there was no dispute.

9. In his witness statement Mr Isenchmid said that the Appellant is a company registered in Jersey with its registered office at Overseas Management Company ("OMC"), although the Appellant's business is administered from Zurich. He gave a number of addresses for OMC in paragraph 3:

> "The current address of [OMC] is First Floor, 17 The Esplanade, St Helier, Jersey JE2 3QA, Channel Islands. [OMC]'s address in late 2010 was PO Box 740, 31 Broad Street, St Helier, Jersey JN4 82P, Channel Islands."

10. He said that the LVT proceedings only came to his attention after the orders were made by Wandsworth County Court. Those orders were addressed to the Appellant "c/o Garrick House, 27a High Street, Wimbledon Village, London SW19 5BY". This was the address of Bells Southfields Limited ("BS"), a company which had in the past provided services to the Appellant. Further, that address had been notified to another leaseholder of the Flats (not one of the applicants to the LVT) as the address for service of the Appellant in the UK (in a letter dated 16 April 2010 from McEwen Parkinson to the lessee of flat 6 of the Flats). Paragraph 6 of Mr Isenchmid's witness statement says:

> "I understand from Mr Roger Taylor (a director of Bells Southfields Limited) that on receipt of the Court Orders he forwarded them to Tobicon's solicitors, McEwen Parkinson. McEwen Parkinson then immediately notified me of the existence of the Court Orders and I asked them to investigate the basis on which the Court orders had been made and represent Tobicon as necessary."

11. Mr Isenchmid goes on to refer to the steps the Appellant then took and to correspondence from Mr Southam in which he stated that all papers were served at the address notified for service in the letter referred to above dated 16 April 2010 and in addition papers were served on the St Hellier address for the Appellant. Mr Isenchmid states that "Knowing the professional services offered by Mr Taylor and [OMC] I am in no doubt that they would have forwarded to me any documentation received by them."

12. Mr Isenchmid goes on to state that BS were considering taking over the management of the Flats but were not in fact appointed by the Appellant owing to BS's unwillingness to get involved as a result of a lack of co-operation from the former managing agents Coughlan Evans ("CE"). CE ceased to act as the Appellants agents in about December 2009 which was communicated to the Tenants by Mr Taylor at a meeting in December 2009 when BS were considering accepting the role of managing agents. In view of the letter dated 16 April 2010 from McEwan Parkinson giving BS's address for service of any notices on the Appellant it should have been apparent to the Tenants that CE had ceased to be the Appellant's agents well before the LVT application.

13. In his oral evidence Mr Isenchmid confirmed the truth of the contents of his witness statement and said that the Appellant was now registered in the British Virgin Islands. When asked to confirm that in late 2010 the Appellant's address was in Jersey he was unable to say without looking at his witness statement. He said that any mail served on OMC would have been forward to the Appellant in Zurich. He agreed that landlord and tenant notices had been served in May 2010 giving the Appellant's address as 18 The Esplanade in St Hellier but that had never been the correct address, it was 17 The Esplanade. When they need someone to act for the Appellant in the UK they instruct Tim Parkinson, a solicitor. They use different surveyors for different properties. When asked which surveyor the Appellant used for the Flats he stated he did not know and would need to consult his records.

14. In relation to the letter dated 16 April 2010 Mr Isenchmid stated that he had instructed his solicitor to give BS's address for service and it was the address the Appellant uses for day to day matters when it relates to properties.

15. He was asked about another letter from the Appellant's solicitor McEwan Parkinson dated 10 January 2011 which states:

> "RE: Flats 5 8 & 11 Sycamore House 175 Merton Road, London SW19 JEE
>
> We act for Bells Southfield Limited have passed to us a copy of your letter of 13th December 2010. We are instructed that Bells Southfields Limited are not and never have been the Managing Agents of the Flats at Sycamore House to which this Application relates. In the circumstances they should not be joined to these proceedings. Please confirm that their name will be removed from the record."

The top of the letter has a reference:

> "*Our Ref: TP/GR/Tobicon*"

Mr Isenchmid said that he had never seen the letter before and could not comment on it.

16. When asked about the changes of address of OMC Mr Isenchmid said he did not know when it changed address, then that it must have occurred in late 2010 because that is what his statement says and then that in January 2011 its address was 31 Broad Street. Finally he said that he had confused the dates and after re-reading his statement the position was that OMC's address was 31 Broad Street and it moved to 17 The Esplanade in late 2010. He was not able to explain why his solicitors were serving landlord and tenant notices in May 2010 with 18 The Esplanade as the address or similar notices in July 2010 with 17 The Esplanade as the Appellant's address.

17. The day to day administration of the Appellant's affairs is carried out by Jennifer Bruegger and any contact from managing agents about the Flats would go to her. Mr Taylor of BS advises the Appellant on property issues relating to the Flats. CE was the managing agent until shortly before the Appellants sold their freehold interest and Mr Taylor was facilitating day to day dealings with them on behalf of the Appellant. If an issue arose with a leaseholder they used Mr Taylor to deal with it rather than CE who were not very satisfactory, Mr Taylor was more responsive. If Mr Taylor needed to contact the Appellant he would contact Miss Bruegger by telephone and occasionally by email. Mr Taylor and Miss Bruegger spoke about twice a week on the phone. He was unable to think of any reason why Mr Taylor would not inform the Appellant about the LVT proceedings. Mr Isenchmid had not spoken to Miss Bruegger before giving evidence to enquire if she had any knowledge of the LVT proceedings.

18. Tim Parkinson was and is the Appellant's solicitor dealing with legal issues in the UK. He is in correspondence with the Appellant by letter about every 10 days. Mr Isenchmid was unable to think of any reason why Mr Parkinson would not inform the Appellant about the LVT proceedings.

19. Mr Southam's witness statement exhibited a considerable amount of correspondence and documents. These include a letter dated 31 December 2009 to the lessee of flat 8 from Mr Taylor stating that BS "have been instructed by the freeholders of this property to take over the management from [CE]". That was confirmed by a letter from CE to the lessee of flat 6 dated 12 January 2010 saying that "management of the above mentioned property is currently in the process of being transferred, full details of which will be forwarded to you in due course" and an email dated 26 January 2010 from Mr Taylor to another lessee saying "I can assure you that we

do have formal instructions from the freehold to take over the management of this [property].” However, a letter dated 23 April 2010 from solicitors for the lessee of flat 6 to McEwen Parkinson in response to their letter of 16 April states that their client was informed that BS were taking over the management “but they are now being informed that [CE] remains the Managing Agents.” It is not known what response was sent to this letter, if any.

20. Mr Southam referred to a notification received by the RTM Company from the Royal Mail in response to a letter sent to the Appellant in Jersey. The letter was addressed to 18 The Esplanade and was marked as received in error on 8 July 2010. There is no evidence that any service of the LVT proceedings sent to the Appellant at 17 The Esplanade were ever returned by the Royal Mail.

21. He produced the application to the LVT which names CE, BS and the Appellant as Respondents. The Appellant’s address is given as First Floor, 17 The Esplanade, St Hellier, Jersey JE2 3OA. It is to be noted that this is OMC’s address save that the postcode transposes one letter – JE2 3OA instead of JE2 3QA. Ms Collinson told me that the postcode JE2 3OA does not exist. Mr Southam states that The Esplanade address was the only one the Tenants had for the Appellant by virtue of the landlord and tenant notices served on others. The application to the LVT clearly states that one of the issues the Tenants wished to raise was the failure to provide an address for service or a summary of rights and obligations relating to service charges.

22. He states that later the 16 April letter was passed to the Tenants following which all correspondence was sent to the Wimbledon address including the Statement of Case and Bundle. Both were served separately by courier on 23rd February and 25th March 2011 respectively and neither was returned. The Statement of Case clearly says the Tenants are seeking “a full reimbursement of all service charges paid to the Respondent and their agents” and raises all three points referred to in paragraph 4 above. In a letter dated 1 August 2011 McEwen Parkinson state that they act for the Appellant. His conclusion is that the Appellant was well aware of the LVT proceedings and wilfully ignored them.

Submissions

23. Mr Swirsky who appeared on behalf of the Appellant submitted that provision is made for service of documents in LVT proceedings by regulation 23 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (SI 2003 No.2099)(“the Regulations”). These do not contain any ‘deemed service’ provisions or state what should happen in the event that a party claims not to have been served. In particular there is no provision enabling an LVT decision to be set aside for this reason. Provision is made for substituted service where a party is outside the UK but no such order had been made in this case.

24. Where a party has not been served and a decision is taken in his absence there must be a mechanism for the decision to be set aside otherwise it would be contrary to the obligation in article 6 of the European Convention of Human Rights for parties to have a fair trial. The

absence of such a power in the Regulations means that in those circumstances the Lands Chamber must in effect exercise such a power and remit the decision for rehearing on an appeal.

25. He submitted that where proceedings have not been served in accordance with the rules and he is unaware of them the defendant may apply to set the decision aside: *Nelson v Clearsprings (Management) Limited* [2007] 2 All ER 407, CA. There is no evidence the LVT proceedings were served on the Appellant and Mr Isenchmid's evidence proves the proceedings never came to the Appellant's attention. However, he conceded that if the proceedings had not been properly served but the Appellant was aware of them the Lands Chamber was not bound to allow the appeal.

26. As to service on agents, BS had never actually been appointed as the Appellants managing agents and in any event the proceedings were not served on them as agents for the Appellant but on BS in their own right. The same was true of service on CE who were not in any event the Appellant's agent at the time of the LVT proceedings. Further, the Appellant's solicitors had not been appointed to accept service on behalf of the Appellant and in any event the proceedings had not been served on them in that capacity. There had been no good service on agents

27. Ms Collinson referred to the documents and submitted that the LVT proceedings had been served on the Appellant in Jersey and the slight error in the postcode would not have prevented delivery given the address was clearly stated. The proceedings had also come to the attention of both BS and McEwen Parkinson. It was inconceivable neither of them mentioned the proceedings to the Appellant. Therefore the proceedings had been served in Jersey and at the Wimbledon address and must have come to the Appellant's attention.

Decision

28. In the light of all the evidence I find the following facts. The LVT proceedings were never served on the Appellant at its registered address in Jersey. The address for service given in the application to the LVT was out of the UK. Regulations 23(4)(a)(iii) and 23(5) envisage that in those circumstances the LVT will make an order either dispensing with service or for substituted service not that the proceedings will be served on an address outside the UK.

29. The LVT's decision refusing permission to appeal paragraph 5 states that the LVT examined the case file. Paragraph 6, 4th bullet point states that

> "Following the leaseholders' application (which named the landlords and their two agents as respondents) the tribunal wrote to both Bells Southfield and to Coughlan Evans to inform them of the application and the date for the pre-trial review."

This does not state that the LVT served the proceedings on the Appellant at the Jersey address. If that had occurred one would have expected the LVT to say so. No order was made under regulation 23(5). It follows that the proceedings were never served directly on the Appellant by the LVT.

30. In a letter dated 22 July 2011 to the LVT Mr Southam states that "all papers and bundles were served on all relevant parties to the relevant addresses supplied." In a further letter dated 1 August 2011 to McEwen Parkinson Mr Southam states "we served all papers on the address you supplied for Tobicon in your letter of 16 April 2010… In addition papers were served on the St Hellier address for Tobicon." Mr Southam does not repeat these assertions in his witness statement. Paragraph 16 says the Appellant's Jersey address was given in the LVT application and paragraph 17 says the 16 April 2010 letter was only passed to him after the application was submitted and following receipt of that letter all correspondence relating to the LVT case was sent to the Appellant at the Wimbledon address. Paragraph 18 refers to service on the Appellant by courier at the Wimbledon address of the Statement of Case and bundle.

31. Mr Southam's witness statement does not say that the LVT application or any other document was served by the Tenants on the Appellant at its address in Jersey. That is consistent with the LVT's decision refusing permission to appeal which indicates that it was the LVT rather than the Tenants who served the application on the respondents, though not the Appellant. It follows that the proceedings i.e. the application to the LVT, were never served directly on the Appellant by the Tenants.

32. The LVT application was served on BS and CE in their own right on the grounds that they were managing agents. This is clear from the above quote from the LVT's decision refusing permission to appeal. It is also evident from the McEwen Parkinson letter to the LVT dated 10 January 2011 in which they state that BS were not the managing agents and they should not be a party to the application.

33. I find that the proceedings therefore came to the attention of Mr Taylor and Mr Parkinson. Mr Taylor is the only person from whom any BS correspondence is sent, his email address is the only one that appears on the BS headed notepaper and Mr Isenchmid's evidence is that he is the person with whom the Appellant dealt with at BS. There is no evidence any other person has any involvement with BS. As to Mr Parkinson, the letter dated 10 January 2011 has his reference on it and his email address, and Mr Isenchmid stated that he is the Appellant's solicitor in the UK.

34. As for service on agents, regulation 23(1)(c) expressly permits service on agents. However, there is no evidence that either CS or BS were served with the LVT application as agent for the Appellant. This is not what the LVT's order refusing permission to appeal says. Further, if the letter to BS had made it clear they were being served as agent on behalf of the Appellant one would have expected the McEwen Parkinson letter of 10 January to address that issue. I find that there was no service in accordance with regulation 23(1)(c).

35. Regulation 5(1) of the 2003 Regulations states that:

> **"**On receipt of an application, other than an application made under Part 4 of the 1987 Act, the tribunal shall send a copy of the application and each of the documents accompanying it to each person named in it as a respondent."

The Regulations required that the Appellant be served with the proceedings. It follows from the findings I have made that there was no service on the Appellant in accordance with the Regulations.

36. However, that is not the end of the matter. Mr Isenchmid's evidence is that Mr Taylor was in close contact with the Appellant through Miss Bruegger, speaking to each other several times a week on the telephone. Mr Taylor acted for the Appellant on a day to day basis so far as issues relating to the Flats are concerned. Further, it is clear that Mr Parkinson was in regular contact with the Appellant and is the Appellant's solicitor dealing with legal issues on its behalf in the UK. I note he is acting for the Appellant in this appeal. The fact that when Mr Taylor was served with the LVT application he went to Mr Parkinson and Mr Parkinson wrote a letter to the LVT with the Appellant's name as the reference also indicates a close connection between all three of them.

37. I found Mr Isenchmid's evidence very unsatisfactory. He was hesitant, evasive and gave inconsistent answers, frequently saying "I can't comment on that." Despite the fact he was supposed to be giving evidence as to the Appellant's knowledge of the LVT proceedings he said he had not spoken to Miss Bruegger, the employee of the Appellant with day to day responsibility for dealing with the Flats, about the proceedings. Nor did he appear to have looked at relevant correspondence about which he was unwilling or unable to answer questions.

38. I accept Ms Collinson's submission that it is inconceivable that neither Mr Taylor nor Mr Parkinson would have informed the Appellant of the existence of the LVT proceedings. Both had seen the application to the LVT and Mr Taylor was served with the Tenants Statement of Case. It was quite clear from those documents what the Tenants case was in the LVT proceedings. I find that the Appellant was well aware of the proceedings but chose not to take any part in them and I reject Mr Isenchmid's evidence to the contrary. At best his evidence was wholly unreliable and at worst it was untruthful. He gave conflicting evidence about the address of OMC and was unable to explain why landlord and tenant notices served in May and July 2010 gave an address for service at The Esplanade when his witness statement states OMC's address in late 2010 was 31 Broad Street. He gave contradictory evidence as to when CE ceased to be managing agents, his witness statement says they ceased to be managing agents in December 2009 whereas in evidence he said they were managing agents until shortly before the Appellant sold the Flats which was January 2011. He was unable to answer questions about important correspondence and said he had never spoken to Miss Bruegger, the person with day to day responsibility for matters concerning the Flats at the Appellant company, about whether or not she was aware of the LVT proceedings. Moreover despite repeatedly stating that Mr Taylor and Mr Parkinson would have forwarded to the Appellant any documents received by them (as they did the county court orders), he was unable to explain why, if it was the case, they did not inform Miss Bruegger or him of the LVT proceedings. The only conclusion that can properly be drawn from the evidence as a whole is that Mr Taylor and Mr Parkinson informed the Appellant about the LVT proceedings and the Appellant took a deliberate decision not to take part in them

39. This is entirely consistent with the Appellant's approach generally where it is clear that the Appellant failed to take proper responsibility for the management of the Flats. As a result, management of the Flats was put in the hands of the RTM Company and the Tenants made their application to the LVT relying on failure to comply with three sets of statutory requirements as to the provision of information. The only reason the Appellant has decided belatedly to get involved is because of the county court judgments against it for very large sums of money.

40. What is the legal consequence of this finding? Mr Swirsky conceded that if the Appellant was aware of the proceedings then the Lands Chamber is not bound to allow the appeal and it would be difficult for the Appellant to succeed. In *Nelson v Clearsprings* the Court of Appeal examined the case law which applied before the CPR and concluded that where proceedings had not been regularly served a default judgment could be set aside as of right, paragraph 19. There was some discussion as to whether the court has any discretion or not in these circumstances and Sir Anthony Clarke MR, who gave the judgment of the court, referred to a passage from *Al-Tobashi v Aung* (1994) The Times, 10 March in which Stuart Smith LJ said

> "Whether it is entirely right to say there is no discretion in the matter or whether, as it seems to me, the Court of Appeal in *White v Weston* said that there may be a discretion but it can only be exercised one way, is I think immaterial. If it is an exercise of discretion, where there has been no service at all, the discretion can only be exercised one way…"

41. However, Sir Anthony Clarke MR went on to consider the position under the CPR and said this:

> "43. It does not, however, follow that under the CPR the defendant is entitled to have the judgment set aside as of right, ex debito justitiae, or indeed that, if there is a discretion it can only be exercised one way. It was pressed upon us that such an extreme approach is inconsistent with the overriding objective of dealing with cases justly and that, on an application to set aside a judgment, (albeit irregularly obtained) a claimant might be able to demonstrate that there would be no point in setting aside the judgment…
>
> 44. The question is whether the CPR permits such an approach. In our judgment there are procedural ways to achieve that result…
>
> 45. As already stated, r 6.9 gives the court power to dispense with service. Although, again as already stated, the authorities show that the power should only be exercised in exceptional circumstances, the circumstances just described seem to us to be capable of amounting to exceptional circumstances. Thus, it might well make sense to dispense with service and refuse to set aside the judgment…"

42. By virtue of s.175(4) of the 2002 Act, on an appeal the Lands Chamber may exercise any power which was available to the LVT. As already mentioned, regulations 23(4)(a)(iii) and 23(5)(a) of the Regulations give the LVT power to dispense with service where the party is out of the UK. Thus the Lands Chamber has the power to dispense with service of the proceedings on the Appellant and to, in effect, refuse to set aside the LVT's decision and remit the case.

43. It is right to say that the circumstances envisaged by Sir Anthony Clarke in *Nelson v Clearsprings* which he said were exceptional were that the claimant could restart the proceedings and there was no real prospect of the claim failing. In this case I have heard no evidence or submissions about the substantive merits of the Tenants application to the LVT, although I note that, apart from drawing attention to the fact that the LVT application gave an address for each respondent, the application for permission to appeal does not assert that the relevant notices were served. However, whether exceptional circumstances exist must be a question of fact in the particular case and there is no suggestion in the judgment that the example given was the only one that might apply.

44. Paragraph 43 of *Nelson v Clearsprings* refers to the overriding objective in the CPR which would apply to the exercise of a discretion to dispense with service under the rules. The overriding objective in rule 2 of The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 (SI 2010 No.2600) to deal with cases fairly and justly only applies to the exercise of powers under the rules rather than any powers on appeal. However, in my judgment it would be entirely appropriate for the Lands Chamber to apply similar principles to the exercise of any powers of the LVT on appeal pursuant to s.175(4) of the 2002 Act.

45. In my judgment, in a case such as the present the Lands Chamber has a discretion whether to allow the appeal. In this case I have found that the Appellant, although not formally served with the LVT proceedings, was well aware of them through its surveyor and solicitor in the UK and took a deliberate decision not to participate, actions which are consistent with its longstanding unwillingness to engage with management of the Flats. In my judgment those are exceptional circumstances which amply justify a decision by this tribunal to dispense with service of the LVT proceedings on the Appellant and to refuse to remit the case to the LVT. This appeal is dismissed.

46. By virtue of s.175(6) of the 2002 Act the Lands Chamber may not order either party to an appeal from the LVT to pay the other party's costs unless he has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal. A letter concerning costs accompanies this decision which will become final when any question of costs has been determined.

Dated 30 January 2013

Her Honour Judge Alice Robinson