



Tarquin Management Ltd <tarquin.management@gmail.com>

Re: [DPS:4I:ERDE001/001:A] RE: Refusal of access for valuation under LRHUDA

1 message

Tarquin Management <tarquin.management@gmail.com>

9 January 2023 at 15:06

To: Jason Kallis <JKallis@meralibeedle.com>, JAG <john@galani.com>, Dominic Galvin <dgalvin@c-sr.com>, Karolina <karolina@galani.com>, Bahadır Erdem <bahadirerdem@erdemhukuk.com>, Pinar Erdem <pinarerdem@erdemhukuk.com>, Sibel Erdem <sibelerdem@erdemhukuk.com>

Jason et al.,

I just noticed this answer to your email of 19 and 22 December sitting in my draft folder. I thought I had sent it. I forward it now before turning to your latest emails, which I have not read yet.

Original response from before Xmas:

Good morning Jason.

Thank you for your email finally at least accepting the need to allow access for the purpose of valuation and recognising that development value needs to be discussed between the parties. It took 3 months and 1 week since we first provided the outline of how we would calculate development value.

If I can summarise your position on granting access for inspection and for valuation by reference to the full chronology of events, it would appear to be as follows, correct me if I have misunderstood or misrepresent any part of the moving target:

Inspection with structural engineer for the purpose of drafting contract specifications

1. Between 30 January 2021 and about May 2021 we made repeated requests to John directly, then to Son then to you ffact. The firm chosen is already known to your clients as they acted for all leaseholders in the past in obtaining substantial compensation from no.53 for damage and disruption resulting from the extended refurbishment of the property.
2. No reply was ever received to any of those requests for access, thereby preventing any inspection from taking place, in breach of the terms of the lease. This, in turn, prevented tendering the contract and carrying out the refurbishment. To this day no reason or justification has ever been offered for the refusal at that stage. Requests for an explanation have been ignored in the same way as the requests for access. Nothing has ever been said, then or now.
3. In July 2021, your clients did allow an inspection with a structural engineer recommended by you, whom we found unprofessional in many fundamenrtal respects, not worth enumerating here. Suffice to mention that the report he prepare for Flat 3, of the 2 items he chose to limit his review to, one was "inconclusive" because he did not bother to get the necessary evidence or carry out a proper inspection in the first place.
4. After waiting for almost two months, despite repeated reminders and chasers he had not provided anything at all about the roof: not a fee proposal, let alone any advice on the work he would recommend for the roof or anything else substantial or procedural. We regard this as unprofessional and, combined with conduct of the investigation of Flat 3, concluded we would not want to instruct him in any circumstances. Nothing said recently has altered that decision.
5. Starting from early August 2022, we renewed the same requests for access with our preferred firm, Checkel Dalton Associates, but your clients just refused to provide availability or allow access, first demanding explanations and details that had already been provided or were totally irrelevant and not something he was entitled to demand, a common characteristic of many, possibly most of John's demand, right down to the name of the person attending with me, in case random strangers with ill interntions turned up at the door, then demanding that I should not attend as he was concerned for what I would do (?) apparently, later seeking to put off the inspection by months in any event, due to "lack of availability" and finally flatly refusing access. At all times in a deliberate breach of the landlord's unqualified right to inspect, which does not envisage a discretion to refuse, let alone based on the feeble excuses your clients have purported to rely on over time.#
6. That breach is ongoing since January 2021 and prevents us completely from discharging our repair and maintenance obligations under the leases.
7. **Your current position seems to be that your client will not grant access because they want to wait till the enfranchisement runs its course, however long that will take.** They seem to proceed on the basis that everything necessary to complete the purchase can be determined in a few months and still convinced it will be at a price close to their offer. By now you must realise that this will take much longer to resolve on any view, probably most or this year and possibly well into 2024. As yet, no notion that this will be a complex dispute and that the price payable could be much higher seems to figure in their intrnsigent stance and ongoing breach.

8. For the avoidance of doubt, the leaseholder of Flat 5, and any other leaseholder who supports or encourages the breach will be held liable in damages for any loss or damage flowing from the refusal of access and the effect it has, preventing us from refurbishing the roof altogether. They will be held liable in terms of increased costs we will face due to inflation, starting from April 2021, when we initially planned to start the refurbishment, until such time as the refurbishment finally starts, whoever the landlord might be at the time. Additionally we will hold them liable to the additional cost of temporary emergency repairs to the roof in the same period, currently standing at £700 and for any further damage to any part of the building that would have been prevented had the refurb gone ahead as planned.

We trust that correctly sets out your clients' position on inspection for tendering the contract, but please correct any inaccuracies. We trust our position is clear. In any event, we also reserve the right to seek a mandatory injunction against your client to enforce our right to inspect an move on with the refurbishment.

Right of access for the purpose of valuation under LRHUDA

Starting with the basic chronology:

- 12 August 2022: Notice of enfranchisement served by post
- 14 September 2022: we wrote to you, amongst other things, with the outline of our development value calculations and additional information relating to the development and their relative likelihood. We also informed you that the cellars were income producing assets rented out to third parties over the last 30 years and that some were currently rented. We asked you to set out your position in relation to development value and the income the cellars produce. You never replied and it now seems clear you took absolutely no steps to address those points with your valuer in the intervening 3 months.
- 12 October 2022: We once again asked you to set out your position on development value and income from the cellars. You declined the request and simply stated you would wait for our counter notice,
- 16 October 2022: Counter notice served. You still did not and to date have not provided any views whatsoever on development value or rental income from the cellars. Nor have you ever made any attempt to negotiate, whether on value or anything else. In the two months and half since service of that notice you appear to have taken no steps whatsoever in relation to any of the matters relevant to valuation or legal questions surrounding the issue of title or other terms of a sale contract. In fact, you have not even set out what your legal position is in relation to any of the matters in dispute, other than a laconic "it does not work", whatever you reference may be to: adverse possession? Flying freehold? Use of the cellars? Release of easements/covenants? Rental income? Development value? Something else?
- 19 October 2022: We ask again for your and your valuer's views on the issues raised. None have been provided.
- 27 October 2022: We make it clear that I would handle market value negotiations to start with and will hand over to our valuer when we got to technical calculations. We asked that your valuer get in touch with me or for you to provide their details so we could get a dialogue and negotiations underway in relation to value. You did neither. You may find it unusual that I should handle this myself, you may never have seen it done this way. That does not change how we will handle valuation. I have negotiated far more complex commercial lease valuations with Cadogan and Grosvenor without the need for a surveyor to front them, this is a fairly straightforward affair on that front. Please do not embarrass yourself by telling us how we should handle the dispute or how other parties normally handle them.
- 31 October 2022: again we invite you to put us in touch with your surveyor to get negotiations underway. Again you refuse to do so. You instead ask us to explain the development we envisage as possible before you will refer to your valuer, ignoring you already had the information.
- 8 November 2022: we set out the position again, nothing comes back of substance on valuation.
- 20 November 2022: we serve notice under LRHUDA to gain access for the purpose of valuation. You never even acknowledged the notice and just ignored it. You later wrote to the Tribunal indicating, unless we misunderstood you, that this valuation inspection "was not needed". Nothing until now, when you give the second and third week in January as peremptory dates.
- 30 November 2022: We pose the question of whether your clients would go ahead if it turned out that the market value of the freehold was a six figure sum. We have reason to believe that they would not, though you have never confirmed either way. We see it as a very real risk that we embark on this litigation, end up with a valuation much closer to our offer than yours and, having wasted all legal costs, your clients turn around and decide not to go ahead with the purchase after all. Have you even discussed the possibility with your clients? There certainly is no sign that you have.

The chronology is characterised by the complete lack of any action on your part and refusal to engage in any meaningful discussions or negotiations on price, on any legal point surrounding title and any other terms of an eventual sale contract.

Nothing at all until the moment we inform you of family circumstances that will take me out of the country and require much of my time over the next few weeks, most likely to the end of January. Your response, after months of inaction, is a sudden urgency in getting access to the property for valuation purposes, something that could have been done at any time from 14 September. Suddenly, when you discover I have limited availability becomes the window of time you choose to progress matters "with or without my cooperation", no less. One is tempted to say the sudden shift in attitude and unwillingness to accommodate unexpected circumstances is opportunistic in nature. It might not be, but,

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with all due respect, that is certainly how it comes across on the back of months just sitting on your hands and not addressing any questions posed by us.

Be that as it may, the earliest time we can offer supervise access is toward the end of the second week in February and most times thereafter, assuming Russell allows you in the flat, which is far from clear.

Regards,

Mario Angiolini
for and on behalf of Tarquin Management Ltd