

THE SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD
VALUATION TRIBUNAL

CASE NOS : CHI/00HC/LVL/2005/0002 – Variation of Lease
CHI/00HC/LAM/2005/0005 – Appointment of Manager

IN THE MATTERS OF THE HALL, 10 MEADOWS CLOSE,
PORTISHEAD, BRISTOL

BETWEEN :

<u>(Case 0002)</u>	THE LESSEES C/O MR R STRIBLEY	<u>Applicant</u>
	-and-	
	MR WESTON	<u>Respondent</u>
	-and-	
<u>(Case 0005)</u>	MR WESTON	<u>Applicant</u>
	-and-	
	THE LESSEES C/O MR R STRIBLEY	<u>Respondent</u>

PRELIMINARY

The Tribunal were asked to deal with two applications. An application dated 25th May 2005 for "The Appointment of a Manager," pursuant to Section 24 of the Landlord and Tenant Act 1987, Case Number 0005. The second application, Case Number 0002, an application by the Lessees seeking a variation of the lease to enable the management company "to engage managing agents and to charge all expenses, fees and costs therewith to the management fund". The application related to a property known as; The Hall, 10 Meadows Close, Portishead, Bristol.

As a preliminary issue it should be explained that the application 0002 was only partially heard on 12th September 2005 and it was not concluded. That case has been adjourned for a final hearing on 25 October 2005. These grounds and reasons relate to the application 0005, "The Appointment of a Manager".

The Applicant and Respondents, by virtue of their individual leases are all members of, Down Hall Management Company Limited. The company is responsible for the maintenance of the "Reserved Property", or "Common Parts", detailed in the Head Lease dated 16th June 1987. The Tribunal were not provided with a copy of the Head Lease however they were provided with a Under Lease dated 2nd July 1987 made between:

1. "The Company"; Down Hall Property Management Company Limited.
2. "The Builder": Flamevault Limited.
3. "The Leasee": Viviane Pauline Ball of, Flat 5, The Hall, 10 Meadows Close, Portishead, Bristol. This refers to, "The Reserved Property", in the "Second Schedule". This Under Lease also sets out the covenants in the "Fifth Schedule", to be observed by the Lessees, and, in the "Sixth Schedule", the covenants and obligations imposed upon and to be performed by the company.

A Pre Trial Review was held on 18th June 2005 Directions were issued. Arrangements were made for the Tribunal to inspect the property on 12th September 2005 and immediately after the inspection for the matter to be heard. The Directions were dated 26th July 2005.

INSPECTION

Upon inspection it was found as follows:

The property comprises of the central two-storey section of a Victorian mansion house converted into six residential flats in the late 1980's. Attached to the north eastern side of the building is a wing known as "The Coach House" (Unit 7) on the plan provided and attached to the south western side is a property known as "The Bungalow" (Unit 8).

The property occupies an elevated sloping site with sea views to the rear in a north westerly direction and has an in-out tarmacadam communal driveway leading down from Meadows Close to a parking area with six designated spaces for the residential flats. Between Meadows Close and the parking area is a sloping communal front garden area.

To the rear north western side of the Hall is a narrow and wide strip of land referred to as "the blue strip of land" in the documentation and supported by a 1.5 metre high brickwork retaining wall to the rear of No's 34 & 36 Denny View.

The building is constructed of solid sandstone walling under a pitched roof covered with clay pantiles.

HEARING AND EVIDENCE

Following the inspection the Tribunal proceeded to hear evidence. The Applicant had set out the issues he considered relevant to his case in his notice of application and appended documents.

The Applicant's concerns were that the Respondents did not have the abilities or commitments to properly run DHMCL and observe the company's obligations and covenants contained in the "Sixth Schedule" of the Lease. The Applicant presented evidence to support his concerns regarding the observance of the obligations under the Lease and also compliance with requirements under the Companies Act 1985.

The Applicant proposed that if his application under Section 24 of the Landlord and Tenant Act was successful Mr Barnaby Coleman should be appointed Manager on behalf of the Tribunal. The Applicant provided substantial documentation to support this appointment and also provided detailed costings for the services of Mr Coleman.

The Tribunal then heard evidence from Mr Ray Stribley who had been appointed by the Respondents to present their case. The Respondents argued that they were capable and committed to carrying out the responsibilities imposed upon the company. The Respondents proposed to use the services of Mr Spokes of Compass Property Services to assist them in meeting their obligations. The Respondents provided cost analysis of the charges that would be incurred for the use of the services of this company.

The Tribunal had the benefit of reading all of the documents filed in the proceedings prior to the hearing on 12th September 2005.

THE LAW

Section 24 of the Landlord and Tenant Act 1987 provides that:

S 24 appointment of manager by the court.

- (1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies –
 - (a) Such functions in connection with the management of the premises, or
 - (b) Such functions of a receiver,

Or both, as the court thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) Where the court is satisfied –

- (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of any obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
- (ii) That it is just and convenient to make the order in all the circumstances of the case; or

(ab) Where the court is satisfied—

- (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) Where the tribunal is satisfied—

- (i) That unreasonable variable administration charges have been made, or are proposed or likely to be made, and
- (ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) Where the court is satisfied –

- (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and
- (ii) that it is just and convenient to make the order in all the ; circumstances of the case
- (b) Where the court is satisfied that other circumstances exist which make it just and convenient for the order to be made.

FINDINGS

Upon inspection the property presented as being in a good state of repair. The obligations in The Lease appeared to have been observed and performed. External re-decoration had been carried out. No major items of disrepair were apparent.

The subject property was of a type that would always have an ongoing Schedule of work. No obvious or significant disrepair was apparent upon inspection. Major works had recently been completed. Bargeboards, which had been rotten had been replaced with new plastic boards. Roof works including re-clipping of tiles on verges had been carried out. Drainage problems had been reduced by the introduction of a gully at the front of the property. There are plans to continue with drainage work at the front of the property and roof works at the rear of the property. Some external decoration had been completed.

The Tribunal did observe some minor outside repair works were needed and these would form part of the ongoing maintenance repair

schedule. These included rot to the base of the external doorframe. The front doors to flats 1 and 2 were in need of repair. At ground level in the South West corner the subject property was affected by work which had been carried out on the adjoining property. A raised patio area on the adjoining property which had been raised too high in relation to the internal floor levels of the subject property. One air vent had been partially covered by these works.

The rear concrete pathway had pulled away from the building slightly and a few of the Conifers at the rear which were growing on the "blue land" could pose possible root damage in future years. There was no evidence of major or significant recent mismanagement or maladministration.

The Tribunal noted from the paper work two areas of concern had arisen which could have had a significant impact upon the management of the property in future years. First Zurich insurance company had, as a result of concerns at the rear of the property, withdrawn insurance cover for subsidence. Secondly there was a significant breakdown of negotiations / communications with the owners of the neighbouring properties at the rear of the hall. This had the potential for causing considerable problems with regard to access for future maintenance repair works.

The history of these two issues was fully detailed in the case papers. The Tribunal felt it was significant that these problems had arisen and were proving difficult to resolve whilst the Applicant was a Director of the Company and responsible for negotiations with both the insurance company and the owners of the neighbouring two bungalows at the rear of The Hall concerning "the blue land". The papers showed that after the Applicant resigned as a Director on 1st April 2005 he gave up the responsibility for dealing with these negotiations. Following the Applicant's resignation both issues were swiftly resolved.

The Tribunal heard evidence of the costs of the current arrangements negotiated by the Respondent's and Compass Property run by Mr

Spokes. The Tribunal also had costings provided by the Applicant for his proposed manager Mr Barnaby Coleman. The Tribunal felt that costs were a significant issue in this case. There are only six lessees and each has to bear their equal share of all service charges / management costs. The Tribunal felt that the appointment of Mr Coleman would result in significant additional expenses for all lessees.

Finally, no evidence was found in the papers or in oral evidence to suggest that there were any concerns under the Company's Act 1985 as represented by the Applicant in his original notice.

DECISION

As a result of it's findings set out above, the Tribunal refuses the Application to appoint a manager.

APPLICANT'S REQUEST FOR ADJOURNMENT

The Applicant at the conclusion of the evidence requested an adjournment to file further papers. By a letter to the Tribunal offices dated 6th September 2005 he had requested a delay in delivering documents in response to Direction 8 of the Pre Trial Review and postponement of the hearing for case LAM/0005, the "Appointment of a manager". The Tribunal had read that letter and the documents in support of it. The Tribunal were of the view that the Directions for disclosure were made with the agreement of all parties at the Pre Trial Review on 18th June 2005, the Applicant was aware of all relevant issues at that time and of his own holiday commitments.

The Respondent's were entitled as any party in proceedings, to a fair and public hearing within a reasonable time. Both parties had agreed to the matter proceeding on "Fast Track". The Tribunal took the view that if the Applicant had failed to observe the Directions given the matter could only be adjourned if there was good reason. The

Tribunal were not of the view that the Applicant had put forward good reason. The Tribunal also noted Direction 13 of the Pre Trial Review which stated:

“Non compliance with the Tribunal’s Directions may result in prejudice to a parties case. In particular failure to provide evidence as directed may result in the Tribunal deciding to debar the defaulter from relying on such evidence at the hearing”.

The Tribunal were satisfied that the Applicant had been given the opportunity to present his case and that it was right and fair for the matter to proceed on 12th September 2005.

Signed.....*S. Cogan*
(Chairman)

Dated.....*18/10/05*