

In the Leasehold Valuation Tribunal
LON/OOAW/LVM/2006/0006

Applicants

Mr J.W Meek FRICS
Miss A Jenkins -Flat 1
Mr J Paulson -Flat 2
Mr R Burchell -Flat 3

Respondents

Xuxa Limited
Notting Hill Home Ownership Limited

Premises

Flats 1, 2, 3, 335 Portobello Road, London, W10
5SA

Tribunal

Ms E Samupfonda LLB (Hons)
Mrs J Davies
Ms S Wilby

1. This is an application under section 24 (9) of Landlord and Tenant Act 1987 (the Act) for a variation of a management order made by the leasehold valuation tribunal decision LVT/AOM/007/001/03 dated 13 May 2003. Mr Meek is the current manager of 335 Portobello Road. (the premises). Flats 1 & 2 are held by Notting Hill Home Ownership Ltd under a long lease from the landlord Xuxa Ltd granted by Mr Constantinou on 31 October 1986 for a term of 99 years from 25 March 1986, and in respect of flat 3, under a direct lease from Xuxa Ltd. The ground floor and basement at 333/335 Portobello Road are held under a 999 year lease dated 26th November 1997 by Vivian Baron Cohen Hyman.
2. 335 Portobello Road is a property which comprises three flats and part of a shop, the shop and flat 3 being also part of the adjacent 333 Portobello Road.
3. Mr Meek encountered difficulties in managing the premises following his appointment. He therefore made an application under section 24 (9) of the Act for an order to be discharged as manager. Pre trial reviews of Mr Meek's application were held on 17th January 2006, 28th February 2006 and 18 October 2006. By a letter dated 29th September 2006, Mr Meek made the present application for variation of the terms of the order.
4. The hearing of the application was held on 15th December 2006. Mr Meek, Mr Burchell and Miss Jenkins attended. The Respondents did not attend and were not represented. The Tribunal received a faxed letter dated 15 December from Mr Baron Cohen in which he outlined his dissatisfaction with Mr Meek's management of the building and requested that the manager appointed should

manage both 333 and 335 Portobello Road. Mr Meek confirmed that he sought an order to vary the order appointing him to incorporate the following:-

- a. That the shop premises at 335 Portland Road be included within the management order
 - b. That the service charge provisions be calculated on floor area basis and that a surveyor be appointed to carry out an accurate measurement of the floor area.
 - c. That the manager's fees be increased on agreement of the leaseholders.
5. Mr Meek gave a summary of the history of the case. He explained that the order appointing him did not include the shop premises. The building is falling into further disrepair as no work has been carried out since the management order was made. He blamed this on the total lack of cooperation on matters of access from 2 out of the 4 leaseholders. He said that it would be practical from a repair and maintenance point of view if the shop premises were included in the management order as he could not be sure that Mr Cohen would be willing to contribute to the cost of the roof repairs. He said that he wants to appoint an independent surveyor to re-measure the whole of the premises in order to calculate the apportionment of service charge contribution based on the floor area. An independent surveyor has been identified who is acceptable to all to carry out this work as well as carry out a survey of the building, prepare a schedule of condition, a specification of works, obtain estimates and serve the section 20 Notices as required by Landlord and Tenant Act 1985.
6. During the course of the hearing, it became apparent that there was some doubt about insurance cover on the building as no proof of payment of premium could be produced. Mr Burchell produced a cover note for the year 31 December 2005 to 30th December 2006 which purported to cover 333 and 335 Portobello Road. The applicants were unsure if the premium had been paid as no policy documents were produced. Mr Meek assured the Tribunal that he would ensure that the building is insured as he was required to do so under the terms of his appointment.
7. Mr Meek proposed an increase of his fee to £200. He also said that he wished to recover the costs that he incurred in respect preparing for hearings and attendances. Mr Burchell and Miss Jenkins agreed to the proposed increase.

8. The Law

The Tribunal's jurisdiction is set out under section 24 of the Act. The material provisions are:

Section 24 (9) "A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order under this section...."

Section 24 (9A) "The [tribunal] shall not vary or discharge an order under subsection (9) on [application of any relevant person] unless it is satisfied- that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

that it is just and convenient in all the circumstances of the case to vary or discharge the order.

Section 24 (3) "The premises in respect of which an order is made under this section may, if [the tribunal] thinks fit, be either more or less extensive than the premises specified in the application on which the order is made."

9. Determination

In determining the application we had regard to the evidence, representations both oral and written and the relevant law. In respect of the application to include the shop premises in the order, we found that it would be impractical for Mr Meek to effectively manage the building without including the shop premises. From the correspondence by Mr Cohen, it is apparent that he wants the building to be properly managed and maintained. However he has some reservations as to Mr Meek's competence. Despite this, he has indicated as follows "we are very happy to cooperate with anyone to get the building properly managed and maintained, and if it were Mr Meek, we will do our best to cooperate." The tone of his correspondence indicates that he does not oppose this application. The application before us is to vary the terms of an existing order pertaining to the management of 335 Portobello Road. We therefore do not have jurisdiction to appoint a manager or to make an order that the manager manages both 333 and 335 Portobello Road as requested in Mr Cohen's letter dated 15 December 2006.

10. With regards to the application to vary the service charge provisions in the leases, we do not have jurisdiction under section 24 of the Act to vary leases. A separate application must be made under section 35 of the Act. Furthermore, a leasehold valuation tribunal does not have jurisdiction to vary the terms of commercial leases.
11. We are not minded to increase the current level of the management fee of £150 per unit per annum as we consider that this should be done with the agreement of all the leaseholders.
12. The Tribunal expressed concern that there is some doubt as to the building insurance. It urged Mr Meek to comply with paragraph "j" of the terms of his appointment by obtaining quotations and insuring the building as necessary.

13. Decision

The order dated 13 May 2003 for the appointment of Mr Meek as manager and receiver of flats 1, 2 and 3 for 5 years with effect from 7th May 2003, be varied to include the shop premises for the remainder of the term.

Chairman



Dated

27/12/06