

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property : St. Mary's House, Burnham on Crouch, Essex

Applicant(s) : Mrs. A. Strudwick (2 St. Mary's House)
Mr. S. Reddihough (3)
Miss. N. Francis (4)
Mr. & Mrs. S. Diack (5)
Ms. J. Catesby (6)
Mr. W. Bewick (7)
Mr. & Mrs. R. Cumming (8)
Miss. C. Banham (9)
Mr. & Mrs. A. Chudley (57 High Street)
Mr. & Mrs. J. James (59 High Street)

Respondent(s) : (1) Grenville Wilson Developments Ltd.
(2) St. Mary's Residents Association Ltd.

Case number : CAM/22UK/LVM/2004/0002

Tribunal : Mr. Bruce Edgington, Chair
Mr. Frank James FRICS
Mr. David Jennings FRICS

DECISION OF THE TRIBUNAL WHICH MET ON THE 11th FEBRUARY 2005 TO CONSIDER AN APPLICATION TO EXTEND THE TRIBUNAL'S APPOINTMENT OF MR. J.M.R. ALTY FRICS AS MANAGER OF ST. MARY'S HOUSE, BURNHAM ON CROUCH, ESSEX

Introduction

1. The current appointment of Mr. Alty FRICS expires on the 28th February 2005. The application form states that the Applicants are applying to enfranchise by purchasing the Freehold title to St. Mary's House and they want the appointment of Mr. Alty to continue until the duration of the enfranchisement process.

2. The appointment of Mr. Alty followed a long hearing before this Tribunal in 2002 when all parties were given the opportunity to state their respective cases. Mr. J. Wilson represented the Respondent to that application and he has said that he was not given the opportunity to put his case. For reasons set out in detail in the Tribunal's decision following that hearing, it is clear that if Mr. Wilson did not put his case then that was because of the way he conducted his case.
3. Therefore the Tribunal makes the firm decision that this application will not be used to re-open issues considered by the Tribunal at that earlier hearing. This application cannot be treated as an appeal against the earlier decision.

Has the previous management regime improved?

4. If it could be established that the previous management regime had improved its abilities sufficiently to take back the management of the property, the Tribunal would probably decide not to extend the appointment.
5. However, it is absolutely clear from the voluminous paperwork submitted to this Tribunal that the position is certainly no better in that regard than the position the Tribunal was faced with in 2002. Mr. Wilson accepts that he is effectively the sole owner and operator of the Respondents and that he is ill with various medical problems. He lives a considerable distance from the property and, for whatever reason, his relationship with the tenants is just as bad as it was 3 years ago, perhaps worse.

How has the Manager performed?

6. The documentation provided makes it clear that regular meetings have been held with the tenants, accounts have been prepared and Mr. Alty has done his best to satisfy the demands of the tenants and Mr. Wilson in particular. For example it is noted that the document starting at page 3.2.2 in the bundle is a list of e-mails (1 e-mail per line) between Mr. Wilson and his companies and Mr. Alty which extends over 4½ pages.

7. It is also clear that Mr. Alty has visited the property regularly. He has not been strictly on time in, for example, paying over ground rent but, overall, the Tribunal has no hesitation in commending Mr. Alty for the work he has done. It also should be said that he clearly has the confidence of the Applicants.

The Inspection

8. The Tribunal inspected the property in the presence of some of the applicants and Mr. Alty who indicated to the members the various parts of the building which had been improved and/or repaired and/or maintained. It was found that there was a significant improvement in the general condition of the building. Unlike the Tribunal's inspection for the previous hearing, the building had the general appearance of being well maintained and decorated. The Tribunal was told that the water penetration problems with Flat 6 had been rectified.

Mr. Wilson's position

9. Mr. Wilson's first reaction to this application was to say that none of the present Tribunal members should adjudicate. He should know that the courts generally encourage continuity of judiciary. This was particularly important in this case because the Tribunal members were able to make a direct comparison between the condition of the building before Mr. Alty's appointment and its condition now.
10. On the day before the hearing in respect of this application, Mr. Wilson contacted the Tribunal office to say that he would not attend the hearing and complained that the Respondent companies would not be able to adequately represent themselves.
11. The Tribunal carefully considered this situation and took the view (a) that Mr. Wilson and the Respondent companies had been given more than adequate notice of the hearing, (b) that it was vitally important to hear the application before the expiry of Mr. Alty's present appointment, (c) that Mr. Wilson had made copious written representations which had been read in detail by the

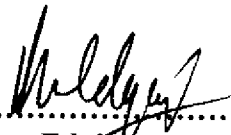
Tribunal and (d) he had provided no adequate or persuasive reasons to adjourn the case. Accordingly, the decision was made to proceed with the case.

The Decision

12. It should be made clear that the Tribunal had the full bundle of papers several days before the hearing and the papers had been considered in detail by each member of the Tribunal. They paid particular attention to each of the submissions made by the Respondents.
13. It is not necessary to go through each of the points made by the Respondents because it is perfectly obvious to any objective observer that (a) the ability of the second Respondent or, indeed, the first Respondent to manage the property has not improved since the Tribunal appointed Mr. Alty and (b) Mr. Alty has done a good job of managing the property and has the confidence of most of the tenants.
14. Accordingly the Tribunal has no hesitation in re-appointing Mr. Alty. Following discussions at the hearing, it was agreed that the appropriate length of appointment should be 2 years. Mr. Alty said that he would not seek any increase in remuneration.
15. Mr. Alty is therefore re-appointed for a period of 2 years from 1st March 2005. The terms of appointment are the same as those stipulated by the Tribunal in 2002 save for paragraphs numbered 3, 4(a) – (d) and (k).
16. The Applicants have made an application under Section 20(C) of the **Landlord and Tenant Act 1985** seeking an order that the Respondents should not be entitled to pass on any costs incurred in these proceedings to the tenants as a service charge. The Tribunal makes such an order. Indeed, the Tribunal noted that Mr. Wilson had been difficult throughout the proceedings and must have added considerably to the Applicant's costs by requiring them to undertake extensive photocopying of a huge bundle of documents. By then failing to turn up at the hearing to present the Respondents' cases, it became clear that most of this documentation was irrelevant to the Tribunal's

deliberations. Mr. Wilson should be aware that a Leasehold Valuation Tribunal now has the power to order a party to pay another party's wasted costs if they have behaved unreasonably. No such application has been made in this case.

17. By way of comment only, the Tribunal sincerely hopes that Mr. Wilson will accept this position and agree to Maisonette no.1 being brought into the external decoration plans for the building with him paying an appropriate proportion of the cost. If not, the decorative condition of the window frames will deteriorate which will be to Mr. Wilson's detriment.


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Bruce Edgington
Chair, 15 February 2005