

Ref: LON/00AE/LBC/2006/0015

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DETERMINATION

RE APPLICATION UNDER SECTION 168(4) OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Premises: **49 Rose Bates Drive, Kingsbury, London NW9 9QY**

Applicant: Laing Homes Limited [Landlord/Lessor]

Representative Peverel OM Limited [Manager]

Respondent: Mrs Sudhaben Pau [Tenant/Lessee]

Representative The Radia Partnership Solicitors

Meeting: 17 May 2006

Tribunal: Professor J T Farrand QC LLD FCIArb Solicitor

1. The originating Application, dated 3 February 2006, made by the Manager on behalf of the Landlord pursuant to s.168(4) of the 2002 Act sought a declaration that breaches of covenants in the Respondent's lease had occurred.
2. The Applicant's supporting Statement particularised the breaches as follows:
 - a No notification of transfer and mortgage has been given nor the appropriate fee paid in accordance with clause 28 of the Eighth Schedule of the Lease.
 - b No certificate of consent to register under paragraph 8 of the Lease has been applied for. Further payments have accrued to the account since the purported date of the transfer and these are set out on the attached statement and marked "RJS4".
3. In the light of the circumstances indicated in the Application and at the request of the Manager, it was considered that this matter should be dealt with on the basis of written representations with shortened periods of notice. Directions were issued, dated 22 March 2006 and amended on 6 April 2006, explaining the issues and implications.
4. The Lease, to which the Manager was a party, had been granted by the Landlord on 2 June 2003 to Anish Patel, Hasmukh Umedbhai Patel and Manish Patel.
5. Clause/para.28 of the Eighth Schedule to the Lease does contain a covenant by the Lessee within one month "to give or procure to be given to the Manager notice in writing of such dealing" (which included any transfer or mortgage) "with a certified copy of the instrument effecting such dealing" and to pay a reasonable fee.
6. However, para./Clause 8 of the Lease does not contain any covenant by the Lessee but is an application for entry of a restriction, in effect, as to compliance with the covenant as to notice of transfers etc on the register of title.
7. The Lease does also contain Lessee's covenants as to payment of rent and of service charges: para.s 1 and 2 of the

Eighth Schedule. This is relevant to the statement of payments due referred to as marked 'RJS4'.

8. By letter dated 10 May 2006, Messrs Abbott Cresswell, the solicitors acting for the Patels, wrote to the Manager that:

“Completion of the sale of this property to Mrs Sudhaben Pau whose solicitors are The Radia Partnership at 595 Kenton Road Kenton HA3 9RT DX 47516 Kenton reference SKR was completed on Friday 7 May 2004.

Messrs Radia & Co will doubtless be in touch with you in connection with the Notices of Assignment etc.

We are anxious to tidy up the service charge account and to ensure that our clients liability is paid. Could we ask you to please fax through to us or send at the earliest opportunity a statement of the account as at present so that we may discharge our clients liability.

May we hear from you as soon as conveniently possible please.”

9. The only letter produced from The Radia Partnership, dated 20 April 2006, informed the Manager that Mrs Pau was purchasing the Property and requested confirmation that “upon us serving you with a Notice of Transfer” a certificate would be provided. The Manager’s reply, dated 23 April 2006, stated that the fee would be £55. Subsequently, letters from the Manager to the The Radia Partnership have, apparently, received no response.
10. On the basis of the information supplied, the Tribunal is sufficiently satisfied that there has been a breach of covenant constituted by the failure to provide the Manager with a certified copy of the transfer to Mrs Pau plus the stated fee of £55. Accordingly, the Tribunal now determines, for the purposes of s.168 of the 2002 Act, that this breach of the covenant contained in para.28 of the Eighth Schedule to the Lease now vested in the Respondent has occurred.
11. The Tribunal is not sufficiently satisfied that any other breaches of covenant have occurred for the following reasons. The Tribunal considers that the letter to the Manager from the Patels’ solicitors can be regarded as notice in writing of the transfer itself within the covenant, notwithstanding the references in correspondence to a formal notice. The Tribunal has no information establishing the

existence of any mortgage. Nor does the Tribunal have any documentary evidence in the way of demands, accounts and invoices enabling it to be satisfied that any liability exists on the part of Mrs Pau or her predecessors for non-payment of rent or service charges. In particular, it is noted that the statement marked 'RJS4' indicates a balance of £499.87 as payable as at 20 March 2006 and that the letter of 10 May 2006 from the Patels' solicitors requested a statement of account from the Manager to enable the discharge of any outstanding liability. Finally, as noted in para.6 above, Clause 8 of the Lease does not amount to a covenant capable of breach.

CHAIRMAN

Julian Fawcett

DATE

18 May 2006