

Southern Residential Property Tribunal Service
Leasehold Valuation Tribunal

Case No.CHI/43UB/LVM/2005/0003

Application under Section 24 of the Landlord and Tenant Act 1987 for a Variation of an Order for the Appointment of a Manager dated 5 June 2003

Re: Rodwell Court, Hersham Road, Walton on Thames, Surrey
("The Property")

Between:-

Miss T Lewis and Mr D Smith
C/o Mrs L Birch

Applicants

And

Reston Ag
C/o Paton Walsh Laundry

Respondent

And

Charles Flight

Manager

DECISION OF THE TRIBUNAL

Background

1. This is an application dated 24 March 2005 under Section 24 of the Landlord and Tenant Act 1984 ("The Act") for the variation of an Order made by the Leasehold Valuation Tribunal on 5 June 2003. That Order provided for the Appointment of Mr Charles Flight, of Castle Wildish Chartered Surveyors and Managing Agents, as Manager and Receiver of the Property with effect from 24 June 2003 for a period of two years.
2. The Applicants seek a variation of that Order, to the effect that the appointment of Mr Flight as Manager be extended for a further three years. The grounds of the application are that it would be in the best interests of the leaseholders and the good management of the Property for Mr Flight to continue as Manager of the Property. The Applicants do not seek any additional variations to the Order.

3. Provisional Directions were made on 6 May 2005, including a Direction to the Respondent that if it sought to oppose the application, it should lodge a written Statement of its reasons for so doing together with documentation in support of its case by 27 May 2005. Alternatively the Respondent was directed to indicate its agreement to the application by the same date.
4. A Direction was also made that Mr Flight should notify the Tribunal and the parties in writing whether he would be prepared to accept the appointment for a further period of three years, together with confirmation that his professional indemnity insurance cover would continue to extend in appropriate fashion.
5. The Directions further provided that the matter would be dealt with, as requested by the applicants, on the basis of written representations and documents, unless there was a dispute, in which case a hearing would be required to deal with the case.

Consideration

6. The Tribunal considered the case on the papers, as the Respondent did not, in accordance with the Directions, lodge a Statement disputing the grounds of the application together with supporting documents.
7. The Tribunal noted that the applicants had the agreement of the leaseholders at the Property to make the application to the Tribunal, decided at the Annual General Meeting of the Rodwell Court Residents Association held on 28 March 2004.
8. The Tribunal also noted the contents of subsequent correspondence between the Applicant, Miss Lewis, on behalf of the Residents Association, and Paton Walsh Laundry, the Respondent's solicitors, in which the Association expressed its ongoing concern that the former managing agents had taken some time deliver the relevant management files and service charge monies, as ordered by the previous Tribunal.
9. Miss Lewis also sought written confirmation from the solicitors that the Respondent would not oppose the application. The Tribunal noted their reply dated 22 December 2004 that the Respondent was "quite content for you to retain Castle Wildish to continue to manage the property".
10. Despite this indication, Paton Walsh Laundry's letter dated 3 May 2005, to the Tribunal Office in Chichester, was more equivocal. The letter repeated that the Respondent had "no particular objection to Castle Wildish managing the property". However, it went on to comment that "it would be appropriate for the tenants to apply for the right to manage and thereby appoint their managing agent of choice directly." Therefore the Respondents opposed the application but had no objection to the case being dealt with on the papers.

11. The Tribunal noted the written confirmation from Mr Flight, dated 10 March 2005, that he was willing to continue as the Manager appointed by the Tribunal. However, Mr Flight's letter did not contain, in accordance with the Directions, written confirmation of the position regarding his professional indemnity cover.

Decision

12. The Tribunal has the power, under Section 24(9) of the Act, on the application of any person interested, to vary the Order dated 5 June 2003, whether conditionally or unconditionally.
13. The Tribunal decided that Paton Walsh Laundy's letter of 3 May 2005 disclosed no substantive or valid reason for opposing the application. There was no application before it for the right to manage, and it was entirely a matter for the leaseholders as to whether they wished to pursue this. The current application under Section 24 of the Act was for a variation of the existing Order only.
14. The Tribunal accepted the Applicants' submissions, that they were happy with the appointment of Mr Flight and wished it to continue. The Tribunal had some sympathy with the Applicants' position and was concerned to note that the previous Order had not been expeditiously complied with. The best interests of the Property and its future management were paramount.
15. The Tribunal was satisfied that Mr Flight was willing and able to continue as the Manager appointed by the Tribunal, and decided that his appointment should be extended for a further three years, as sought by the Applicants, with effect from 24 June 2005, expiring 23 June 2008. The Order of the Tribunal dated 30 June 2005 is varied accordingly.

Condition of the extended Appointment

16. However, the making of this Order is conditional upon Mr Flight supplying, by 4 July 2005, written confirmation that his professional indemnity cover will continue to extend in appropriate fashion to his extended appointment, for the extended period, as previously ordered in paragraph 6 of the Provisional Directions.

Dated 20 June 2005

Ms J A Talbot
Chairman

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ORDER UNDER SECTION 24(9) LANDLORD AND TENANT ACT 1987

1. The Tribunal orders that the Order dated 5 June 2003 appointing Charles William Flight of Castle Wildish, Chartered Surveyors and Managing Agents, as Manager and Receiver of the Property, be varied to extend the appointment with effect from 24 June 2005 for a period of three years.
2. In all other respects the Order dated 5 June 2003 remains unchanged.
3. This Order shall remain in force until 23 June 2008.
4. This Order is conditional upon Mr Flight providing written confirmation that his professional indemnity cover will continue to extend in appropriate fashion for the extended period of his appointment. This must be done by 4.00 p.m. on 4 July 2005.

Dated 20 June 2005

Ms J A Talbot
Chairman