

RESIDENTIAL PROPERTY TRIBUNAL

Property : 34 Sutton Road,
Watford WD17 2QF

Applicant : Watford Borough Council

Respondent : Monique Parrish

Case number : CAM/26UK/HY1/2006/0002

Application : Authorisation for Interim Empty
Dwelling Management Order
(Section 134 Housing Act 2004 ("the Act"))

Application date : 19th December 2006

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS MCI Arb

DECISION

1. The Applicant Watford Borough Council is **not** authorised to make an interim Empty Dwelling Management Order

Reasons

Introduction

2. This is an application by Watford Borough Council to authorise it to make an interim Empty Dwelling Management Order ("EDMO") which is a new jurisdiction created by the Act. In this regard, the Act's purpose is to enable local housing authorities, with the consent of the owner, to enter a dwelling, to undertake work to it to enable it to be let on the open market and then to actually let it.
3. In the event that the housing authority is unable to obtain the owner's consent, the authority can go on to make a final EDMO without the further involvement of this Tribunal. This enables the authority to achieve the same purpose but without such consent. In view of the draconian nature of a final EDMO, it is therefore necessary for a thorough investigation at this stage even though it is 'only' an interim order which is proposed.
4. Following receipt of the application, the Tribunal made various Orders and invited the only other known interested person, namely Halifax Building Society (now HBOS) to join as a party if it so wished. It did not respond.

5. All parties were told that the Tribunal considered that, on the face of it, this matter could be dealt with by way of a paper determination i.e. without a formal oral hearing. At the same time the requisite 14 days' written notice of the Tribunal's intention to proceed in this way was given, and the parties were also given clear written notice that any one of them could, at any time prior to a decision being made, insist on an oral hearing.
6. The 14 days notice has expired and no party has asked for an oral hearing.
7. The Tribunal has been concerned that the respondent owner, Monique Parrish, has not taken part in these proceedings. However, it is satisfied that all possible efforts have been made by the applicant to trace her and that it is likely, on the balance of probabilities, that she is aware of these proceedings and has chosen not to take part. As will be seen, her sister, Josephine Hoskins, has written to the Tribunal.

The Facts

8. As the respondent owner has chosen not to dispute any of the facts set out by the applicant, the Tribunal finds that the facts are as follows. It has had the benefit of a full application form endorsed with a statement of truth from the Private Sector Housing Officer, Graham Everett, copies of letters written to the respondent and an unsigned statement from Rita Dorothy Taylor who lives at the adjoining property, 36 Sutton Road.
9. The respondent moved into the property in about 1995 with her daughter. At the beginning of 2003, Ms. Taylor became aware that Ms. Parrish and her daughter were no longer living at the property although they had not said that they were moving out.
10. Since then, Ms. Taylor has noticed that on about 10 to 12 occasions someone has visited the property and has stayed for 1 or 2 nights. On 2 of these occasions, she saw the respondent Monique Parrish but saw no-one on the other occasions. She just heard movement next door and saw curtains being changed or an open window.
11. Watford Borough Council says that it has been monitoring the property for 3½ years prior to its application. Neither it nor the Halifax Building Society has had any other address for the Respondent. It has written 11 letters, 4 of them referring to the Empty Dwelling Management Order regime. It has employed tracing agents to try to find Ms. Parrish but without success.
12. There is no evidence to suggest that any of the mortgage instalments or the council tax is unpaid.
13. The applicant authority wrote to the Tribunal on the 29th January 2007 to say that it had identified a local resident who would pass on any information to Ms. Parrish because he has an e-mail address and a mobile telephone number for her. This person said that he would make Ms. Parrish aware of the Tribunal proceedings and documentation.

14. On the 30th January 2007, the Tribunal received a fax'd letter from Josephine Hoskins who said that she was a teacher and is Ms. Parrish's sister. She gave all her contact details and explained the following:-
- (a) That she had discovered the Tribunal's identity when she was visiting the property and had gone through the post
 - (b) That about 3 years ago, her sister's daughter had fallen from a 4th floor balcony in Antibes, France. She had survived but with serious injuries and had been in and out of hospital in Nice
 - (c) That Monique Parrish had been over there since the accident looking after her daughter and is "staying at the moment with our elderly mother in Sussex". She has not been able to work and was under great stress. In Ms. Hoskins' words "she seems to be going through a mental breakdown".
 - (d) That Ms. Parrish "has struggled to maintain her financial responsibilities"
 - (e) That Ms. Parrish had been made aware of this application and was upset by it.
 - (f) That she had gone to see Mr. Everett on the 29th January to explain matters to him.
 - (g) That Ms. Parrish wants to return to the property when her daughter "is ready to return home" but in the meantime the family agree that it would be better to let the property and she would be returning to England during the Easter holiday to organise this.
 - (h) She sought an adjournment
15. Upon receipt of this letter a copy was immediately sent to the applicant who acknowledged that Ms. Hoskins had been to see their Mr. Everett.

The Law

16. The only relevant law at the moment is contained in Sections 133, 134 and Schedule 7 to the Act and in the Regulations which were brought into effect at the same time as the Act in April 2006.
17. Section 133 states that a local housing authority may make an interim EDMO in respect of a dwelling which is wholly unoccupied, which is not owned by a public sector body and after it has obtained authority from this Tribunal.
18. Before making an application for such authority, it must "*make reasonable efforts*" to find out what the owner is intending to do to "*secure that the dwelling is occupied*" and to notify the owner of its intentions to make such an application (Section 133(3)).
19. The applicant must also take into account the rights of the owner and the interests of the wider community when deciding whether to apply for authorisation.
20. It must then satisfy itself that none of the prescribed exceptions applies. These are set out in **The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006** ("the Regulations"). Of particular relevance to this application is the provision that no order should be made where the property is unoccupied because the proprietor:-
- (a) *is temporarily resident elsewhere or*

(b) *is absent from the dwelling for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness.....*

21. The Tribunal must take into account the interests of the community and the effect that the order will have on the rights of the owner or any third party. It must then satisfy itself of the following matters (Section 134(2):-

- (a) *that the dwelling has been wholly unoccupied for at least 6 months or such longer period as may be prescribed*
- (b) *that there is no reasonable prospect that the dwelling will become occupied in the near future*
- (c) *that, if an interim order is made, there is a reasonable prospect that the dwelling will become occupied*
- (d) *that the authority have (sic) complied with section 133(3) and*
- (e) *that any prescribed requirements have been complied with*

22. If the Tribunal gives authority for the making of an interim EDMO, it may also make an order requiring the applicant to pay "to any third party specified in the order an amount of compensation in respect of any interference in consequence of the of the order with the rights of the third party"

23. Finally, the Regulations also set out what detailed information has to be provided to the Tribunal to satisfy it that it has complied with Section 133(3) i.e. the efforts to find the owner, tell her what the applicant intends to do and what advice has been given to the owner.

Representations of the Parties

24. The applicant has provided detailed representations with its application and statements. In response to the intervention of Ms. Hoskins, it says that when she came to see Mr. Everett, she acknowledged that her sister "is burying her head in the sand and that if (she) pushed Monique Parrish too hard over this (she) might be excluded from involvement".
25. Further, they say that the Tribunal should require more evidence than one letter from a third party; that a 4 year absence is more than 'temporarily resident elsewhere'; that Monique Parrish should be required to demonstrate to what extent her absence is for the purpose stated rather than any other purpose and that there are certain practical obstacles in the way of Ms. Hoskins being able to achieve what she wants to achieve i.e. her residence in Canada, work commitments etc.
26. They do not say that they want an adjournment but want the issues 'tested'.

Conclusions

27. This Tribunal finds that the applicant has made every possible effort to trace the respondent owner, to ascertain what steps she was taking to secure the occupation of the property and to keep her informed of its intentions and, in particular, its intention to make this application. Thus it finds that Section 133(3) and the provisions of the Regulations have been complied with.

28. It also finds that on the balance of probabilities, the respondent owner has been temporarily living in France to care for her injured daughter and is temporarily staying with her mother in Sussex at the moment. Further, that there is now a real prospect of the property becoming occupied in the near future due to the efforts of Ms. Parrish's sister. The Tribunal considers that Ms. Parrish has now received the various communications sent to her at the property by both the applicant and this Tribunal.
29. The Tribunal finds that the property has been empty for at least 3½ years. It also finds that the respondent and her family want the property to be let between now and the time when Ms. Parrish returns to this country with her daughter. Corroboration of this comes from the fact that Ms. Parrish appears to be in financial difficulties and the rent received will greatly assist her. It does indeed appear that the owner has 'buried her head in the sand' so to speak, but she now has the assistance of her sister.
30. Whether Ms. Parrish is temporarily resident in France is debatable. The Tribunal agrees with the applicant that 3½ or 4 years absence is stretching the term 'temporarily' to its extremes. However, the Tribunal does not have to make a decision on this issue in view of its finding that there is a real prospect of the property becoming occupied in the near future and that Ms. Parrish is caring for her daughter because of her 'disability' arising from her accident. Thus, it finds that this case falls within the exceptions in the Regulations.
31. What must be made clear is that none of the information given to the Tribunal by Ms. Hoskins was known to Watford Borough Council when it made its application. In view of the period over which the property has been empty and the expressed concerns of Ms. Taylor of 36 Sutton Road, they were perfectly justified in making this application.
32. Furthermore, if it should transpire that the information given by Ms. Hoskins is not correct and that the property is not let within a reasonable time, no doubt a further application will be made for the necessary authority to be given for an interim EDMO to be made.
33. Finally, the Tribunal considers that it is undesirable to just adjourn this case.



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Bruce Edgington
Chair
23rd February 2007