

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

re: 48 South Terrace, Littlehampton, West Sussex ("the Premises")

Case Number CHI/45U/MNR/2003/0002

BETWEEN:

BRYGROVE LIMITED
Applicant

and

Mr Peter D. King FRICS

Respondent (Receiver/Manager)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. THE APPLICATIONS

A. Under Section 24(1) Landlord and Tenant Act 1987 for the Appointment of a Manager. The

Applicant proposed "any manager who is independent. Mr King is one of the Lessees"

B Under Section 24(9) Landlord & Tenant Act 1987 for an Order to vary or discharge an order appointing a Manager

2. THE STATUTORY PROVISIONS

A summary of the relevant parts of Section 24 are set out below:

S. 24 (1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies-

(a) such functions in connection with the management of the premises ,or

(b) such functions of a receiver,

or both, as the tribunal thinks fit

S. 24 (4) An order under this section may make provision with respect to-

(a)such matters relating to the exercise by the manager of his functions under the order, and

(b)such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

S. 24(5) Without prejudice to the generality of subsection (4), an order under this section may provide-

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager

(b)for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment

(c)for remuneration to be paid to the manager by the landlord, or by all the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d)for the manager's functions to be exercisable by him (subject to subsection(9)) either during a specified period or without limit of time

S. 24(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal

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

S.24(9A) The tribunal shall not vary or discharge an order under subsection (9) on a landlord's application unless it is satisfied-

(a) 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

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

S. 24(11) References in this section to the management of any premises include references to the repair, maintenance or insurance of those premises.

3. THE PAST HISTORY OF THE MATTER

The Respondent Mr King had been appointed by the Tribunal by Order dated 12th February 2003. Prior to that there had been other Managers appointed who had all, for various reasons, not continued with their appointment. The current Manager had been in control only for some months and he had been trying to obtain some up to date service charge accounts from the previous Manager.

4. THE GROUNDS FOR THE APPLICATION

In support of the Application the Tribunal had received one letter from the Applicants dated 10th June 2003. This was signed by S. Sheehan who claimed to be a Director of the Companies Brygrove Limited and Laganpoint Limited, who were the Freeholders. The letter made various representations some of which were not strictly relevant to the applications, but the main complaint was that Mr King was one of the Lessees, and that Mr King had in the past refused to co-operate with the previous Manager Mr Lee. The letter inferred that Mr King should not be the Manager as he was not independent. No evidence was produced in support of the applications. No specific allegations of improper behaviour or documentary or oral evidence was produced by the Applicant.

5. Mr KING's EVIDENCE

Mr King had written a letter to the Tribunal dated 1st September opposing the Applications saying they were invalid and they failed to give any valid grounds for making the applications. He explained why he had failed to pay the unreasonable demands made by the previous Manager Mr Lee. He maintained that he was the best person to continue to act as Manager as he had an interest in the property. In contrast he had received no co-operation from Mrs Hyam acting for the freeholders Laganpoint Limited. Promises to vary the Leases owned by Brygrove limited and Laganpoint Limited had not been performed. He had engaged the services of Hobdens Property Management who dealt with the day to day management on his behalf. He was not a Director or shareholder of that firm. He produced copies of letters he had written to Mrs Hyam and to the previous Managers supporting his letter.

6. HEARING

A Hearing was held at Worthing Town Hall on 4th September. Mr King attended accompanied by Mr Clive Griffin, another Lessee. Mr Griffin supported Mr King's opposition to both Applications.

Neither Mr Sheehan nor anyone else from the Freeholders or any other Lessee attended the Hearing.

7. CONSIDERATION

The Tribunal then reminded themselves of the statutory requirements set out above. They reviewed the evidence from both sides. The Applicant had failed to attend the Hearing and had failed to be represented or produce any persuasive evidence in support of the Applications.

They reviewed the one letter they had received from the Applicant. It seemed to the Tribunal that there was no reason why Mr King, who had been appointed as Manager at the Hearing of the previous Application without any opposition from the Applicant, should not remain as the Manager.

In the opinion of the Tribunal the fact that he was also a Lessee was not in itself fatal to his ability to manage the Building. It accepted Mr King's evidence that he was the person best suited to remain as the Manager. He is a Fellow of the Royal Institution of Chartered Surveyors and is an experienced Chartered Surveyor. His expertise was clearly beneficial to good management of the Building and there was possibly a saving in time and expense. The Tribunal concluded that Mr King was sufficiently independent and was subject to the control of an independent Tribunal. He had employed Hobdens as the day to day Managing Agents and they carry out the normal activities of management. There have been no complaints about this arrangement from any other Lessee.

In respect of the Application to appoint a new Manager, the Applicant had failed to support that Application by attending the Hearing and producing an alternative named Applicant in support of that Application.

8. DECISION

In all the circumstances the Tribunal had no difficulty in deciding to dismiss both applications for the reasons stated above.

Dated 4th September 003



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J.B. Tarling MCMI
(Chairman)