

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/24UJ/LVM/2007/0005

Decision of the Leasehold Valuation Tribunal on application made under Section 24
of the Landlord and Tenant Act 1987

Applicant: Christopher Beamish

First Respondent R J Phillips & others

Second Respondent W F Stone

Re: the Property Admirals Court, Quay Road, Lymington

Date of Application 23rd November 2007

Date of Inspection none

Date of Hearing 24th January 2008

Venue Lymington Town Hall

Appearances for Applicant In person

Appearances for

First Respondent Mr. Phillips

Second Respondent N Andrews, Solicitor, Coles Miller

Also attending Mr. Simpson

Members of the Leasehold Valuation Tribunal

M J Greenleaves

Lawyer Chairman

J Mills

Lay Member

Date of Decision 31st January 2008

Decision

The Tribunal, not being satisfied on the matters set out in Section 24 (9A) of the Act, with declines to discharge Christopher Beamish FRICS from his appointment as Manager of the Property known as Admirals Court, Quay Road, Lymington

Reasons

Introduction

This was an application made by Christopher Beamish (the Manager) on 23rd November 2007 under Section 24 of the Landlord and Tenant Act 1987 ("the Act") in respect of Admirals Court, Lymington (the Property) for discharge from his appointment of Manager by Order dated 11th March 2005 which by subsequent orders had been extended to 31st December 2007 and finally by Variation of Order dated 5th October 2007 without limit in time

Hearing

The hearing was attended by the parties as noted above. The Tribunal heard evidence and submissions from Mr Phillips, Mr Beamish and Mr Andrews.

Mr Beamish sought discharge from his appointment largely on the basis that he had been reluctant through 2007 to continue as Manager and only wished to continue if the fees he had proposed at the last hearing in October 2007 had been agreed. He now has no desire or intention to continue and is standing down. He said that he had achieved various things in his appointment but had failed in various objectives. He felt that if he was discharged, the residential tenants could return to the Tribunal if needed.

As regards the work he had achieved, he had shown how things should be done and this had been taken on board by the landlord; he had produced budgets, a planned maintenance programme and issued Section 20 notices. He had not met the landlord's surveyor Mr Tubbs since the last hearing. There had been discussions and the landlord had agreed some items of work, but the programme of repairs had come to a halt because of the Tribunal's decision in October.

Mr Phillips said that before this hearing he had not been aware of the Manager's case. The lessees had been concerned about a lack of maintenance. In a spirit of co-operation after the last hearing they had arranged a meeting with Mr Hilsden of DMA and Mr Tubbs and that took place on 8th October 2007. They had discussed the maintenance programme and Mr Hilsden and Mr Tubbs had inspected the property. Shortly afterwards the Tribunal decision arrived and the Manager had rung to resign with effect from 31st December and did not wish to discuss anything. The lessees had held a meeting on 11th November which, amongst other things, asked Mr Phillips to negotiate with the Manager and Mr Tubbs to get something going. On 15th November he had written to the Manager identifying 4 items to be undertaken:- the lift; a leak from a well; overdue external repairs and roof works.

He said the lessees were very frustrated about the lack of progress on maintenance and were disappointed the Manager had made this present application without trying to find a way forward. The lessees did not agree there would be no recurrence of the issues which led to the Manager's appointment in that the 2003/04 accounts had still not been received; the

conversion of the restaurant into a flat left an issue about service charge apportionment.. He said that if the Manager wished to be discharged from his appointment, he should become involved in dialogue.

In reply to the Manager Mr Phillips said the lessees could not say whether they were satisfied with the Manager's performance of his duties. They had been happy initially – they knew he was experienced in managing mixed property; the lessees felt he had the experience and staff to deal with the matter but is unwilling; they understand he is unhappy about fees. In respect of the performance of DMA, they had had meetings with Mr Hilsden and agreed matters but at the following meeting not much seemed to have been done. The problem as described to them by the Manager seemed to be inability to obtain the landlord's instructions; the lessees are very frustrated about lack of progress.

Mr Andrews said that the original application arose because relationships had broken down between the lessees and the previous managing agent; there was an issue about apportionment of service charge (which had been determined by the Tribunal); about overpaid service charges and the restaurant conversion. Since then the parties had made great strides in agreeing things; there had been no neglect in progressing the maintenance programme from the Landlord's side, there had been unexpected delay in producing accounts and they were not now expected until February 2008. He said that proposals had been made about re-apportionment of service charge relating to the converted flat, but this was a matter which had only arisen after the original appointment of the Manager. One problem had been the style of management of Mr. Walton, the previous Landlord's manager. He had now retired and Mr Tubbs would be the manager if the management were to be returned to the Landlord. He submitted it would be just and convenient to discharge the Manager because the Manager was unwilling to do the work.

In reply to the Tribunal, Mr Phillips said he was not certain about Mr Tubbs becoming manager unless it resulted from a Tribunal appointment. Mr Andrews said that Mr Tubbs would not accept appointment by the Tribunal.

In reply to the Tribunal:

Mr Phillips said they accepted the position concerning the production of the accounts for 2003/4

Mr Beamish said he had not instructed his staff to cease work on the maintenance programme. The lift repair does not depend on funding from the landlord so can be progressed. The external decoration needs a specification to be drawn up so that tenders can be sought.

Mr Andrews said there are items agreed in principle between Mr Tubbs and the Manager, but estimates are needed.

The parties agreed that the items which resulted in the appointment of the Manager were:

Lack of progress on maintenance work

Relationships between the lessees and the landlord

The failure to prepare accounts

Overpaid service charges and apportionment of service charge

Mr Walton not complying with the RICS Code of Management.

In reply to the Tribunal's question as to whether the parties were satisfied these would not recur if the Manager was discharged they said:

Mr Phillips was not satisfied but was optimistic. He said the nub of the matter is the maintenance programme which will only happen if the landlord agrees; that if Mr Tubbs was allowed to manage they would be back in the original situation; that the landlord is only interested in the commercial units. Mr Phillips also said there had been no consideration since March 2007 for appointment of a different manager.

Mr Beamish had no idea whether the items would recur or not

Mr Andrews could see the situation speeding up and improving – that the majority can be progressed; that improving relationships was a day to day process; that service charge is no longer a major issue.

Consideration

The Tribunal took into account all the submissions and evidence made at the hearing.

Section 24(9)(A) of the Act provides as follows:

“The Tribunal shall not vary or discharge an order under Subsection (9)... unless it is satisfied –

That the variation or discharge of an order under Subsection (9) **will not** (Tribunal's emphasis) result in a recurrence of the circumstances which led to the order being made: and

That it is just and convenient in all the circumstances of the case to vary or discharge the order”

The Tribunal was satisfied that some progress had been made towards dealing with the issues which gave rise to the original appointment. The apportionment of the service charge between residential and commercial premises had been settled.. The conversion of the restaurant matter arose subsequent to the appointment of a manager so was not a matter for the Tribunal to take into account. However, on the evidence there seemed to be further progress to be made on other issues, such as the implementation of a maintenance programme, the production of statements of account for previous years and relationships between the landlord and lessees as the parties seemed to accept, to a greater or lesser degree, as noted at paragraph 11e above. Particularly the Tribunal noted that the Manager was unable to support his application with any significant submissions to deal with the requirement of Subsection ((A)(a) of the Act. His case is that he is not going to do the work because the fees are not adequate. That does not constitute a good ground for his application save that it might be regarded as convenient on that basis to discharge. The Subsection requires much more than that.

If the order were to be discharged, the management would revert to the landlord at a time when matters are still not agreed between landlord and lessees and there seems to be every likelihood that the pre-order situation would resume, even if one assumed that it was not still substantially continuing now.

The parties are in a difficult situation. There is an unwilling Manager appointed by the Tribunal who does not seem to be aware that he is responsible to the Tribunal for his appointment and cannot simply cease his role by giving notice to the lessees. That does not help progress matters. The lessees have not since March 2007 considered proposing another manager to take his place when they have known at least since then that there was a reluctance on Mr Beamish's part to continue. Regrettably too, little seems to have been done by those interested to resolve issues which existed in 2005 and they are left with an order which may actually not be helping. However, that unfortunately does not enable the Tribunal to discharge it as the Tribunal is not satisfied as required by Section 24(9A) of the Act

It may be that in time discharge may become possible within the constraints imposed by the Act on the Tribunal, but the Tribunal finds that that time has not yet arrived. The Tribunal sincerely hopes that the Manager will now take all steps to get to a situation where his discharge may be possible.

The Tribunal made its decisions accordingly.

(signed)

M J Greenleaves (Chairman)

A Member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

CHI/24UJ/LVM/2007/0005

Decision of the Leasehold Valuation Tribunal by the Applicant for leave to appeal a decision of the Tribunal made under Section 24 of the Landlord and Tenant Act 1987

Applicant: Christopher Beamish

First Respondent R J Phillips & others
Second Respondent W F Stone

Re: the Property Admirals Court, Quay Road, Lymington

Members of the Leasehold Valuation Tribunal

M J Greenleaves
J Mills

Lawyer Chairman
Lay Member

Date of Decision for which leave to appeal is sought 31st January 2008

Decision

The Tribunal refuses leave to appeal.

Reasons

The Applicant wishes to appeal the decision on the basis that the Tribunal did not consider at the Tribunal whether, under Section 24(9)(A) of the Landlord and Tenant Act 1987 ("the Act") whether "it is just and convenient in all the circumstances of the case to vary or discharge the order".

That Section has two parts

"The Tribunal shall not vary or discharge an order under Subsection (9)... unless it is satisfied –

that the variation or discharge of an order under Subsection (9) will not result in a recurrence of the circumstances which led to the order being made: **and**
that it is just and convenient in all the circumstances of the case to vary or discharge the order"

It will be noted that both parts of the subsection must be satisfied before the Tribunal could discharge the order so that the application would fail if either part was not substantiated.

The focus of the hearing was on the first element: whether discharge of the order " will not result in a recurrence...". It is very clearly drawn and the Tribunal was concerned to have evidence on that point. Only if that part of the subsection was satisfied would there have been need to consider the part on which the Applicant bases his application.

The Tribunal heard no evidence, from the Applicant or other parties, which could have justified the conclusion that a discharge of the order will not result in a recurrence of the circumstances which led to the order being made.

In its reasons, the Tribunal stated "*Particularly the Tribunal noted that the Manager was unable to support his application with any significant submissions to deal with the requirement of Subsection ((A)(a) of the Act. His case is that he is not going to do the work because the fees are not adequate. That does not constitute a good ground for his application save that it might be regarded as convenient on that basis to discharge. The Subsection requires much more than that.*

If the order were to be discharged, the management would revert to the landlord at a time when matters are still not agreed between landlord and lessees and there seems to be every likelihood that the pre-order situation would resume, even if one assumed that it was not still substantially continuing now."

In those circumstances there was no purpose in proceeding to the next part of the subsection.

If the Subsection had not been drawn in such a categorical way, the Tribunal might well have found it possible to come to a different conclusion, but in law, with considerable misgivings, it could not do so.

The Tribunal accordingly refuses leave to appeal but the Applicant can now seek leave from the Lands Tribunal if he wishes to do so.

Dated 11th February 2008

(signed)

M J Greenleaves (Chairman)

A Member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor