



**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/OOML/LVM/2010/0002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 29(4) OF THE LANDLORD & TENANT
ACT 1987**

Address: 113 Roundhill Crescent, Brighton, East Sussex, BN2 3GP

First Applicant: Ms Helen Moylan- Jones

Second Applicant: Mrs Jer Overhill

First Respondent: Mr Peter Herbert Fowlds

Second Respondent: Petrian Ltd (Flats 1, 3 and 4)

Application: 31 March 2010

Determination: 15 July 2010

Appearances: Not applicable

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr J N Cleverton FRICS

DECISION

Introduction

1. This is an application made by the Applicants under section 24(9) of the Landlord and Tenant Act (as amended) ("the Act") to vary an order previously made by the Tribunal under this section.
2. The order in question is dated 29 April 2008 and appointed the Second Applicant, Mrs Jer Overhill of Peter Overhill Associates, as the Manager and Receiver of the property known as 113 Roundhill Crescent, Brighton, East Sussex, BN2 3GP for a period of two years commencing on 1 May 2008 ("the management order"). Paragraph 12 of the management order provided that it would remain in force until 30 April 2010 unless revoked or varied by further Order of the Tribunal and gave the parties permission to apply or further directions, variation or revocation of the order.
3. By an application received by the Tribunal on 31 March 2010, the Applicants applied to vary the management order by seeking to have Mrs Overhill's appointment extended by a further two years.
4. On 29 April 2010 the Tribunal issued Directions in this matter. The Directions provided, *inter alia*, that the Second Applicant, Mrs Overhill, provide a written report including her written consent to continue to act as the LVT appointed manager. The Directions also provided that either the First and/or Second Respondent indicate whether they consented to or opposed the application and, in the latter case, to set out the basis on which they did say in a written statement of case.
5. On 8 May 2010, the First Respondent wrote to the Tribunal purporting to make an application to have the management order set aside on the basis that he was no longer involved in the management of the property, which had now been taken over by a Mrs G. Wilson of Trulley Brooks Services. On 13 July 2010, the Tribunal received a further letter from the First Respondent dated 8 July 2010 in which he stated that he owned and 75% of the flats in the

building as well as the freehold interest and he asserted that it was unfair that he should continue to be denied the management of his investment. Enclosed with that letter was a letter from Mrs G. Wilson indicating that she would be prepared to manage the property on the First Respondent's behalf and thereafter set out her qualifications and management experience. The Tribunal also received a letter from Mrs Overhill dated 10 May 2010 in which she agreed to continue to act as the Manager of the property. In the letter she also commented briefly on what tasks she had carried out during her tenure.

Decision

6. The Tribunal's determination to place on 15 July 2010. The Tribunal did not inspect the property and there was no hearing. The Tribunal's determination was based solely on the documentary evidence filed by the parties.

7. The test to be applied by the Tribunal in this instance is set out in section 24(9A) of the Act which provides:

"The [tribunal] shall not vary or discharge and order under subsection (9) on [the application of any relevant person] unless it is satisfied-

- (a) that the variation or discharge of the order will not result in a reoccurrence 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"*

8. The Tribunal, firstly, considered the "application" made by the First Respondent in his letter dated 8 May 2010 to have the management order set aside. The Tribunal did not consider that this purported application had been validly made and, therefore, the Tribunal did not have jurisdiction to consider it. In the event that the First Respondent seeks to have the management order either varied or discharged, he will have to complete the appropriate Tribunal application form. Any such application will have to be properly supported with evidence as to why the management order should be discharged.

9. On the somewhat limited documentary evidence before the Tribunal, it concluded, on balance, that the management order should be varied by

extending the term of Mrs Overhill's appointment as the LVT Manager and Receiver by a further two years. The Tribunal was satisfied that the tests set out in section 24(9A)(a) and (b) of the Act were variously met for the following reasons: :

- (a) Mrs Overhill had consented to her reappointment for a further two years.
- (b) There was no evidence before the Tribunal of mismanagement on the part of Mrs Overhill during her appointment.
- (c) There was no evidence before the Tribunal of any complaints of Mrs Overhill's management of the property by any of the tenants or, indeed, by either of the Respondents.
- (d) Mrs Overhill was already familiar with the property and the extension of her appointment would result in the continuity of the management, which would undoubtedly benefit the tenants.
- (e) The Tribunal could not be certain that, by not reappointing Mrs Overhill, the circumstances that gave rise to the making of the management order would not reoccur. It accepted the evidence of Mrs Overhill that the problems previously experienced, when the First Respondent managed the property, were likely to reoccur given his residence outside the UK.
- (f) There was no evidence before the Tribunal that the appointment of Mrs Overhill was unfair to the First Respondent or prejudiced his investment in the property.

10. Having regard to the above reasons, the Tribunal concluded that in the circumstances it was just a convenient that the management order be varied extending the appointment of Mrs Overhill as the Tribunal's Manager and Receiver of the property for a further two years. Her reappointment shall

commence on 1 May 2010 and end on the 30 April 2012. Save for this variation, Mrs Overhill's reappointment shall continue on the same terms as the management order.

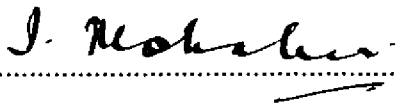
Costs

11. The Applicants had also made an application under section 20C of the Landlord and Tenant Act 1985 (as amended) for an order that the Respondents be prevented from recovering all or any "relevant costs" they had incurred in responding to this application. Given that the application has entirely succeeded and to the extent that the Respondents may have incurred such costs, the Tribunal does make an order preventing either of the Respondents from recovering any relevant costs in relation to these proceedings.

12. By a letter dated 14 July 2010, the First Applicant's solicitors made an application for costs pursuant to paragraph 10 Schedule 12 of the Commonhold and Leasehold Reform Act 2002. The basis for making this application was that the First Respondent's letter dated 8 July 2010 was filed out of time. This was in breach of the Tribunal's Directions and that their client was prejudiced by not having sufficient time to comment on his letter. It was submitted that, by his conduct, the First Respondent had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with these proceedings.

13. The Tribunal does not grant this application for costs. Whilst it is accepted that the First Respondent's letter of 8 July 2010 had been filed out of time, the prejudice, if any, to the First Applicant was minimal. The Tribunal did not consider that this conduct satisfied the requirements of paragraph 10 Schedule 12 and, accordingly, it made no order for costs.

Dated the 16 day of July 2010

CHAIRMAN.....
Mr I Mohabir LLB (Hons)