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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00BD/LAM/2013/0034

Property : George House, Victoria Place,
Richmond, TW9 1RU

Applicant : Mr Martin Baker

Representative : In person

Respondents : (1) Harvestvine Limited
(2) Stackplace Limited

Representative : Rodgers & Burton solicitors for the
first respondent
Mr N Selmes for the second
respondent

Type of Application : Appointment of manager

Tribunal Members : Mr L Rahman (Barrister)
Mr Barlow JP FRICS
Mr Miller BSc

**Date and venue of
Hearing** : 6th November 2014, 10 Alfred
Place, London WC1E 7LR

Date of Decision : 17.11.2014

DECISION

Decisions of the tribunal

- (1) The tribunal consented to the applicants decision at the hearing to withdraw his application.
- (2) The tribunal does not order the respondents to refund any tribunal fees paid by the applicant.
- (3) The tribunal makes an order for costs under paragraph 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 requiring the applicant to pay the costs incurred by the first respondent in having to attend the hearing on 6th November 2014, assessed at £800 plus vat, and to be paid within 28 days from the date of this decision.

The application

1. The applicant sought an order appointing Mr Liam O'Sullivan of G H Property Management Services Ltd as a manager under section 24 of the Landlord and Act 1987 ("the Act").

The background

2. The application was made to the tribunal on 2nd December 2013, a case management conference took place on 16th January 2014, and the matter was listed for a substantive hearing on 20th June 2014. Unfortunately, the matter could not proceed on the hearing day as the applicants proposed new manager notified the tribunal the day before the hearing that he had to go into hospital for a medical procedure and would be incapacitated until mid July 2014. The tribunal was also told by the first respondent that it had decided to sell its interest in the relevant property. It intended to sell the property at auction on 9th September 2014. The tribunal observed that the new owner would be likely to appoint its own manager and it may well be at that point that the applicant may prefer to withdraw the application, at least to give any new manager the opportunity to prove themselves. In the circumstances, there was a lengthy adjournment to 3rd November 2014.
3. In a letter dated 15th September 2014 the first respondent informed the tribunal and the applicant that it had sold its interest in the property. In two further letters dated 16th September 2014 the first respondent confirmed the property was sold on 11th September to the second respondent, likely completion was to be in 4 weeks, and provided the second respondent and its legal representatives' address. In a letter dated 10th October 2014 the first respondent confirmed the sale had been completed and that it no longer had any interest in the relevant

property, therefore, there was no point in it continuing in these proceedings.

4. In a letter dated 17th October 2014, the first respondent wrote to the applicant to agree to it being removed from these proceedings and to avoid any unnecessary attendance. The applicant responded in a letter dated 21st October 2014, stating he wanted the first respondent to remain a respondent in these proceedings so that he could recover his fees and costs from the first respondent. At the same time, in a letter dated 21st October 2014, the second respondents legal representatives stated the second respondent was liaising with the applicant regarding the change of management agent and it confirmed it had no objections to the applicants application, in that it consented to the applicants proposed new manager. In the circumstances, the tribunal wrote to the applicant on 22nd October 2014 and asked that the applicant confirm whether he would like to withdraw his application, given that the new manager agreed with the applicant and therefore there was nothing for the tribunal to determine.
5. The first respondent wrote to the tribunal in a letter dated 27th October 2014 requesting that it be removed from these proceedings as it was no longer the owner of the relevant property. The first respondent also wrote to the applicant on 28th October 2014 stating the applicants insistence on the first respondent remaining as a respondent, so that the applicant may recover costs, was unreasonable. It warned the applicant that the tribunal had power to award costs for unreasonable conduct and that if it were required to attend a hearing, it would seek to recover any unnecessary attendance, which it estimated would be in the order of £800 plus vat. It stated the applicant would only be able to get his costs if he was able to prove his case. The first responded stated that it had never admitted the case pursued by the applicant and reminded the applicant that he was required to present his proposed manager, which he was unable to at the previous hearing, and had failed in that aspect of his application.
6. The applicant responded in a letter dated 29th October 2014. He stated "it is highly likely that the original proposed manager (Mr Liam O'Sullivan) will NOT be the manager I propose at the hearing on 6 November. I currently have no plans to withdraw my application and expect the hearing to go ahead as scheduled". The applicant went on to state that it was highly unusual that the first respondent had disposed of its interest in the property during a tribunal case. The applicant stated he had no choice but to make his application due to the first respondents unwillingness to fulfil its obligations as a landlord. The applicant stated that there was the matter of the potential for him to recover the £315 application fee and the £190 hearing fee, therefore, he did not agree that the first respondent should be removed as a respondent from the proceedings.

7. The tribunal wrote to the parties in a letter dated 31st October 2014 stating that all matters should be dealt with at the hearing on 6th November 2014. The tribunal reminded the applicant that the proposed manager must attend the hearing.

The hearing

8. The applicant appeared in person. He was accompanied by Mr B Robins and Mr J Allaway from "2ManageProperty.co.uk". The first respondent was represented by Mr D Moore (solicitor). Mr D Parry, a director of the first respondent, also appeared. The second respondent was represented by Mr N Selmes, the second respondents sole director.
9. Immediately prior to the hearing the applicant handed in further documents, namely, a cover letter and general background information concerning "2ManageProperty.co.uk", his proposed new manager instead of Mr Liam O'Sullivan of G H Property Management Services Ltd. The applicant stated he had realised since the early part of September 2014 that he would not be using his previous proposed manager. He realised on Monday 3rd November that he wanted to use "2ManageProperty.co.uk" and it was finalised only yesterday.
10. The first respondent stated it was in a difficult position as it did not want to object to the new proposed managing agent as it no longer had any interest in the relevant property. However, if the applicant wished to recover his fees from the first respondent then he would have to succeed with his application and would need to prove his case, which included consideration of the new proposed managers. The first respondent stated it had raised questions about whether the previous proposed manager was suitable. It did not know much about the new proposed managing agent, having only been informed about them at the hearing, and it would therefore need time to be able to make enquiries and consider their suitability.
11. The second respondent stated it did not oppose the new proposed managers.
12. The applicant objected to the stance taken by the first respondent on the basis that it had no interest in the property therefore why should it need an adjournment to consider the new proposed managers, it had nothing to do with them. When asked by the tribunal why the applicant had asked that the first respondents attend the hearing, he stated he did not ask that they attend. When asked by the tribunal what the applicant wanted the tribunal to do, now that he had got the chance to have new managers, the applicant stated that the new proposed managers could not be appointed by him / the second respondent as the level of fees charged by the proposed new managing agents were not payable under the terms of the lease (confirmed by the proposed new managing agents and the second respondent). The tribunal told the

applicant that if he / the second respondent wished to vary the terms of the lease then a separate application had to be made, which involved a specific process that had to be followed. The applicant stated in response that he wished to recover the fees that he had paid from the first respondent and he wanted the tribunal to vary the terms of the lease so that the new proposed managing agent could be appointed.

13. At this stage the tribunal had a short adjournment to consider the issues raised and to allow the parties an opportunity to discuss the matters and for the applicant to consider his position and discuss matters with his proposed new managing agent.
14. The parties came back in after 20 minutes and confirmed they were not able to agree on any matters. The applicant stated that he did not wish to withdraw his application and wished to proceed with the matter.
15. The tribunal considered whether the applicant should be allowed to rely upon the new evidence submitted at the hearing. The tribunal noted the applicant had known since early September 2014 that his previous proposed manager would not be used. He only realised on Monday 3rd November and had made a definite decision only yesterday that he intended to propose "2ManageProperty.co.uk". Yet he stated in his letter dated 29th October 2014 that he wished to proceed with the hearing as scheduled on 6th November 2014 instead of requesting an adjournment. On the applicants own evidence, the proposed new managers could not be appointed under the existing terms of the lease and the tribunal cannot vary the terms of the lease as suggested by the applicant. Finally, the first respondent had attended today hoping to go ahead with the hearing as requested by the applicant in his letter. If the applicant were allowed to rely upon new evidence then the tribunal would not have any alternative but to adjourn the matter to allow the first respondent the opportunity to consider the new proposed managers. The tribunal found this would not be proportionate to the anticipated costs to the parties or the resources of the tribunal given that the applicant had already achieved what he had wanted, namely, a change in management. For the reasons given and having considered the overriding objective to deal with cases fairly and justly, the tribunal determined the applicant would not be allowed to rely upon the new proposed managing agents.
16. At this point the applicant stated he wished to have a short adjournment to discuss matters with "2ManageProperty.co.uk". After a 10 minute break the applicant returned and stated that given the second respondent was prepared to appoint "2ManageProperty.co.uk" he would like to withdraw his application.
17. Accordingly, under paragraph 22(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal consented to the withdrawal.

Refund of fees and costs

18. The applicant made an application for a refund of the fees that had been paid in respect of the application and hearing. Having heard the submissions from the parties the tribunal does not order the respondents to refund any fees paid by the applicant. The first respondent had always disputed the allegations made by the applicant. The applicant was ultimately unable to prove his case and chose to withdraw his application at the hearing once he realised he was going to have difficulties in succeeding with his application.
19. The first respondent applied for an order for costs at the hearing. It accepts the proceedings and application prior to the hearing on 6th November 2014 were not unreasonable. However, it states it was unreasonable to be unnecessarily brought to the hearing on 6th November 2014. The applicant was twice told by the tribunal to consider withdrawing his application but failed to do so. The first respondent had written to the applicant stating it had no further interest in the property and did not wish to be a party to the proceedings or have to attend any further hearing yet the applicant requested that it attend. The first respondent had no alternative but to attend as the applicant had stated in his correspondence that he wished to proceed with his application and have adverse findings made against the first respondent so that he could recover his fees and costs.
20. The first respondent wanted the applicant to pay for its costs of having to attend the hearing. Mr Moore stated his hourly rate was £275 plus vat, as per the rate used at the County Courts for a "grade A" fee earner. Travel from the office to the hearing and back was 2 hours and he had spent 2 hours at the hearing. Therefore, his costs totalled £1,320.00 inclusive of vat. In answer to questions from the tribunal Mr Moore accepted this matter did not involve any complex point of law and did not involve any complex factual matters other than the large number of allegations made by the applicant. Mr Moore stated he had attended the hearing assuming there to be no evidence of any proposed managers by the applicant and that he would have been able to successfully argue that the application be dismissed.
21. The applicant stated in response that the first respondent had referred to a figure of £800 plus vat for today's hearing costs in its earlier letter yet it was now asking for more. He did not accept that his behaviour was unreasonable as the new proposed managers were only sorted out today. He did not previously ask for an adjournment as he was unwilling to have a further adjournment.
22. The tribunal noted that it may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings (paragraph 13(1)(b) The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013). The word "unreasonable" is

not defined but it was held in *Ridehalgh v Horsefield* [1994] 3 All ER 848 "*Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioners judgment, but it is not unreasonable.*"

23. The tribunal noted the applicant had been told at the last adjourned hearing the new owner would be likely to appoint its own manager and it may well be at that point that the applicant may prefer to withdraw the application, at least to give any new manager the opportunity to prove themselves. In a letter dated 21st October 2014 the second respondents legal representatives stated the second respondent had no objections to the applicants application, in that it consented to the applicants proposed new manager. The tribunal wrote to the applicant on 22nd October 2014 and asked that the applicant confirm whether he would like to withdraw his application, given that the new manager agreed with the applicant and therefore there was nothing for the tribunal to determine. The applicant refused to withdraw his application, stating he expect the hearing to go ahead as scheduled as there was the potential for him to recover the £315 application fee and the £190 hearing fee.
24. The first respondent wrote to the applicant stating the applicants insistence on the first respondent remaining as a respondent was unreasonable. It warned the applicant that the tribunal had power to award costs for unreasonable conduct and that if it were required to attend a hearing, it would seek to recover any unnecessary attendance, which it estimated would be in the order of £800 plus vat. It stated the applicant would only be able to get his costs if he was able to prove his case. The first respondent reminded the applicant that it had never admitted the case pursued by the applicant and reminded the applicant that he was required to present his proposed manager, which he was unable to at the previous hearing.
25. The tribunal noted the applicant was aware of the issues involved in this case and the matters that had to be proved, as identified at the case management conference in January 2014. The applicant knew the importance of having a proposed manager and the importance of providing evidence in advance of the hearing, as identified at the case management conference. The applicant was aware by early September 2014 that his proposed manager would no longer be used. He had only arranged new managers for the tribunal to consider only days before

the hearing and knew, according to his own evidence, that they could not be appointed as managers under the terms of the lease. Yet he insisted the hearing proceeded.

26. At the hearing, when asked to present his case, the applicant stated that given the second respondent was prepared to appoint "2ManageProperty.co.uk", he would like to withdraw his application. However, the tribunal noted the second respondent had already agreed to a proposed new managing agent in principal and in any event, there was no need to insist that the first respondent attended the hearing.
27. The applicant was asked to explain why he had chosen to pursue the matter and insist the hearing proceed on 6th November, despite the indications from the tribunal that he should consider withdrawing the application and the letters from the first respondent that they are not requested to attend unnecessarily at the hearing, and yet he ultimately withdrew his application at the hearing? The applicant replied "I've nothing more to add".
28. The acid test is whether the applicants conduct permits of a reasonable explanation. The tribunal found no reasonable explanation for the applicant in proceeding with the hearing on 6th November 2014. The first respondent was unreasonably and unnecessarily made to attend the hearing. In all the circumstances, the tribunal is satisfied the applicant acted unreasonably. Accordingly, it makes an order under paragraph 13(1)(b).
29. Given the above conclusion, the tribunal went on to consider the amount payable by the applicant. Mr Moore accepts this matter did not involve any complex point of law or fact. The tribunal found that whilst the applicant had made a number of allegations, they were very simple and uncomplicated allegations. Therefore, the tribunal found it was not reasonable for the respondent to use a "grade A" fee earner. The tribunal noted the first respondent had stated in its letter to the applicant that if it were required to attend a hearing, it estimated its cost would be in the order of £800 plus vat. Mr Moore stated he had attended the hearing assuming there to be no evidence of any proposed managers by the applicant and that he would have been able to successfully argue that the application be dismissed. The tribunal noted that Mr Moore did not have to argue very much at the hearing as the applicant eventually decided to withdraw his application. The tribunal can see no reason why the first respondent should be able to recover a much higher amount than had been indicated in its letter. The tribunal therefore determines the applicant is liable to pay £800 plus vat. This must be paid to the first respondent within 28 days from the date of this decision.

Name: Mr L Rahman

Date: 17.11.14