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LON/OOAX/LVM/2009/0006

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT
1987 SECTION 24**

PROPERTY: CHARTER QUAY, GARRICKS HOUSE, RAVENS
HOUSE, STEVENS HOUSE and TAGGS HOUSE

APPLICANTS: CHARTER QUAY LIMITED

RESPONDENT: ALAN JOHN COATES

INSPECTION: N/A

HEARING: 26th April 2010

APPEARANCES:

For the Applicant: Ms Kiran Dohil
The Respondent appeared in person

DATE OF TRIBUNAL'S DECISION: 26th April 2010

TRIBUNAL

Mrs T I Rabin JP
Ms S Coughlin MCIEH
Mr O Miller BSc

CHARTER QUAY, GARRICKS HOUSE, RAVENS HOUSE, STEVENS HOUSE and TAGGS HOUSE

BACKGROUND

1. The Leasehold Valuation Tribunal had by an Order dated 3rd August 2009 ("the Order") appointed Alan John Coates as Manager and Receiver ("the Manager") of the property known as Charter Quay, Garricks House, Ravens House, Stevens House and Taggs House ("Charter Quay"). The appointment was made for a period of three years from 3rd August 2009. A copy of the Order can be found at Pages 33-39 of the Applicants' bundle. The Tribunal made a decision regarding the application on 16th June 2009 and allowed the parties 21 days to agree the form of the order, failing which the Tribunal would draft an order. No agreed order was made and the Order is that prepared by the Tribunal.
2. The Tribunal is dealing with an application by the Applicants to vary the terms of the appointment of the Manager. The application is made pursuant to Section 24 of the Landlord and Tenant Act 1987 (as amended) ("the Act").

THE TRIBUNAL'S JURISDICTION

3. The Tribunal's jurisdiction to appoint a manager is set out in Sections 21 to 24 of the Act. The power to vary an appointment is contained in Section 24 (9) which states:

A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) on Order made under this section and if the Order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002 the tribunal may by order direct that the entry shall be cancelled

4. Section 24 (9A) of the Act deals with the Tribunal's power to make a variation of an order. This provides:

The Tribunal shall not vary or discharge an order under sub-section (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 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

EVIDENCE

5. The hearing took place on 26th April 2010. The Applicants were represented by Ms Dohil of Estates and Management Ltd and the Manager

appeared in person. The Tribunal had been served with bundles by both the Applicants and the Manager, each containing submissions that the Tribunal considered prior to the hearing.

6. Ms Dohil submitted that the Tribunal had no jurisdiction to order the Manager to collect the ground rents payable by the long leaseholders of Charter Quay. This argument was based on her interpretation of Section 24 of the Act, which she submitted related to repairs, maintenance and insurance and stated that the collection of rent was not covered. She stated that the Residents' Association had not raised the question of ground rent in the initial application and the Tribunal should not have ordered it. The decision of the Tribunal was therefore unjust, inequitable and inconvenient.
7. Mr Dohil said that the Applicants were part of Estates and Management Ltd's group of companies and that they had always collected the ground rent prior to the making of the order and had not made a charge due to the relationship between themselves and the Applicants. The Applicants did not wish to pay the 10% collection fee and they also found that the rent reports provided by the Manager were not in accordance with their procedures.
8. Ms Dohil stated that there had been some correspondence between the Tribunal and the Applicants and, when the correspondence ended, the time limit for lodging appeals had expired and no appeal was made. She urged the Tribunal to vary the Order to allow the Applicants to collect rent as before.
9. Mr Coates submitted that the issues surrounding the making of the Order had been fully explored by the Tribunal during the hearing. The main aim of the Residents Association was to remove Charter Quay from control by the group including the Applicants and Estates and Management Ltd. The fee basis he had given to the Tribunal was on the understanding that the rent collection would be included in his duties. He submitted that there was legal reason or principal to change the existing arrangements. He had given a full breakdown of his fees at the earlier hearing, prior to the making of the Order. There had been attempts to agree the terms of the Order but this proved impossible.

DECISION

10. The Tribunal has appointed the Manager and his terms of engagement are set out in the Order. The Tribunal does have power to vary the order but this should only be exercised with care and in accordance with the provisions of Section 24 (9A) of the Act. It seems to the Tribunal that the only reason for seeking the variation is that the Applicants are unwilling to pay a collection fee of 10% to the Manager for collecting the ground


rents and that they did not like the format of the rent reports. The parties were given the opportunity to agree the terms of the order after the hearing, which they failed to do. Accordingly, the Tribunal drafted the Order that was issued on 3rd August 2009. The Applicants had a statutory right to appeal against the Tribunal's decision if they were unhappy with the terms. They failed to do so. Ms Dohil explained that by the time the correspondence following the hearing had ended, it was too late for the appeal to be lodged. Estates and Management Ltd appear often at this Tribunal and must be aware that they could have asked for an extension of time to lodge their appeal but chose not to do so.

11. The Tribunal can see no merit in the application for variation. The earlier Tribunal allowed a period of time for the parties to reach agreement, which they failed to do. It had considered the merits of the previous application and when the parties failed to agree, drafted an order in which they determined that it was appropriate for the Manager to be appointed Manager and Receiver with full power to collect the ground rents and make a reasonable charge not exceeding 10%. This application is nothing more than an attempt by the Applicants to re-open the issue decided against it at the previous hearing. In effect they are seeking an appeal out of time.
12. The Tribunal does not consider that it would be just and equitable for the Order to be varied and the application is accordingly dismissed.

REFUND OF FEES

13. The Applicants made an application for refund of the application and hearing fees. The Tribunal found it difficult to understand the reasons that a refund of the fees was sought. The Manager objected to the application, as this was an economic argument.
14. In view of the Tribunal's findings, no refund of fees was deemed to be appropriate and this application was also dismissed.

TRIBUNAL:



MRS T I RABIN JP

Dated: 26th April 2010