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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/43UD/LVM/2012/0002

REASONS

Application : Sections 24(9) and 24(9A) of the Landlord and Tenant Act 1987 (“the 1987 Act”)

Applicant/LVT-Appointed-Manager : Mr Gareth Brown

Respondent/Freeholder : Purewish Limited

Respondent/Leaseholders : Ms J R Smith (Basement Flat), Mr G Prassinos (Flat 1), Mr K Makela (Flat 2), Mr F U Aziz (Flat 3), Mr N and Mrs U Aziz (Flat 4), and Ms E Haddon (Flat 5)

Respondent/RTM-Manager : Fiona House RTM Company Limited

Building : Fiona House, 67 York Road, Guildford, Surrey, GU1 4DG

Flats : the flats in the Building

Date of Application : undated, but accompanied by a letter dated 24 April 2012

Date of Directions : 4 May 2012

Date of hearing : considered by the Tribunal without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with the directions given by the Tribunal

Members of the Tribunal : Mr P R Boardman MA LLB (Chairman), and Mr M J Greenleaves

Date of Tribunal’s Reasons : 13 August 2012

Introduction

1. This application is for the discharge of :
 - a. the order of an LVT dated 11 June 2003, which found that the relationship between the parties had broken down irretrievably, and appointed Mr Faulkner as manager and receiver of the Building, as varied by
 - b. the order of an LVT dated 9 September 2011, which appointed the Applicant/LVT-Appointed-Manager in place of Mr Faulkner as manager of the Building
2. The grounds of the application, contained in the application itself, and in a letter and statement of case from the Applicant/LVT-Appointed-Manager dated 11 June 2012, were that :
 - a. the Respondent/Leaseholders had collectively served a notice dated 21 June 2011 under the Commonhold and Leasehold Reform Act 2002 stating that the Respondent/RTM-

- Manager claimed the right to manage the Building
- b. the Respondent/RTM-Manager had taken control on 28 October 2011
 - c. the Applicant/LVT-Appointed-Manager had closed the books and had had accounts prepared up to 6 February 2012, and had sent a closing statement to the Respondent/Leaseholders

Letter from the Respondent/Freeholder 14 May 2012

3. The Respondent/Freeholder stated that:
 - a. the Respondent/Freeholder had no objection to the Applicant/LVT-Appointed-Manager being discharged from his duties as manager, on condition that all outstanding amounts payable to the Respondent/Freeholder by Mr Faulkner and the Applicant/LVT-Appointed-Manager pursuant to the order of the LVT dated 11 June 2003 were paid
 - b. the Respondent/Freeholder had not received any money from Mr Faulkner or the Applicant/LVT-Appointed-Manager, although the Respondent/Freeholder understood that Mr Faulkner and the Applicant/LVT-Appointed-Manager had received money from the Respondent/Leaseholders
 - c. the outstanding amounts owing to the Respondent/Freeholder for service charge were :

Flat 1	£4071.81
Flat 2	£2391.19
Flat 5	£2613.00
Total	£9076.00
 - d. since 2003 not one of the original lessees remained a lessee

The law

4. The material parts of section 24 of the 1987 Act are as follows

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(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; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, [the tribunal] may by order direct that the entry shall be cancelled.

[(9A)[the tribunal] shall not vary or discharge an 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 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]

Tribunal's decision and reasons


5. The Tribunal, having considered all the evidence and submissions before it, makes the following findings :

- a. the Tribunal accepts the evidence of the Applicant/LVT-Appointed-Manager, which has not been challenged by the Respondent/Freeholder or the Respondent/Leaseholders, that:
 - the Respondent/Leaseholders are all members of the Respondent/RTM-Manager
 - the Respondent/RTM-Manager took control of the Building on 28 October 2011
 - the Applicant/LVT-Appointed-Manager has prepared service charge accounts up to 6 February 2012
- b. the discharge of the order dated 11 June 2003, as varied by the order dated 9 September 2010, will not result in a recurrence of the circumstances which led to the order being made, because the Respondent/Leaseholders are all members of the Respondent/RTM-Manager, and the Respondent/RTM-Manager is now managing the Building
- c. the question of whether any money is owed by Mr Faulkner or the Applicant/LVT-Appointed-Manager, or both, to the Respondent/Freeholder, is not a matter for the Tribunal, but for a court, and is accordingly not a matter to which discharge of the order should be conditional
- d. it is just and convenient in all the circumstances of the case to discharge the order with effect from 6 February 2012, being the date up to which the Applicant/LVT-Appointed-Manager has prepared service charge accounts

Discharge of the order of the LVT dated 11 June 2003, as varied by the order dated 9 September 2010

6. The Tribunal accordingly discharges the order with effect from 6 February 2012
7. If the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the Tribunal directs that the entry shall be cancelled

Dated 13 August 2012



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P R Boardman
(Chairman)

A Member of the Tribunal appointed by the Lord Chancellor