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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION24 OF THE LANDLORD AND TENANT ACT 1987

Case Reference:	LON/00AD/LAM/2012/0004
Premises:	FROBISHER ROAD, COOK SQUARE, COLUMBUS SQUARE, MARINERS WALK, ERITH, KENT DA8 2PQ
Applicants:	MR AND MRS R.J. SMITH
Respondent:	MARINERS WALK MANAGEMENT COMPANY LIMITED
Representative:	WALLACE LLP (SOLICITORS)
Date of Application	26th January 2012
Date of Tribunal directions	8th February 2012
Date of Paper Determination by Tribunal	19th March 2012
Leasehold Valuation Tribunal:	Mr S. Shaw LLB (Hons) MCI Arb Mr T. Sennett FCIEH
Date of Decision:	27th March 2012

DECISION

Introduction

1. This case involves an application by Mr and Mrs R.J. Smith ("the Applicants") in respect of the property known as Frobisher Road, Cook Square, Columbus Square, Mariner's Walk, Erith DA8 2PQ ("the property"). The property as so described in the application, is apparently a development comprising 31 separate blocks of flats in which there are a total of 272 separate residential units. It appears, according to the Respondent's case (reference will be made to the Respondent shortly) that the Applicants are owners, albeit not residents, of nine of those 272 flats. The Respondent to the application is Mariner's Walk Management Company Limited ("the Respondent"), which as its name suggests, is the management company with management obligations under the terms of the various leases governing the units on this development. Unfortunately, at the time of this Decision, the Tribunal does not have before it a copy of a sample lease, but it appears that the lease is in tripartite form in the sense that there are three parties, that is to say the leaseholder, the management company and the freehold owner. The freehold owner of the development, as understood by the Tribunal and as so named in the application, is Sinclair Gardens Investments (Kensington) Limited. It appears from correspondence with the Tribunal, that the freehold landlord has very limited obligations in respect of the leasehold owners, that obligation being restricted in the main to arranging for the insurance at the property. The obligations in respect of services and repairs generally are with the Respondent, namely Mariner's Walk Management Company Limited.

2. The description of the building in the application is that of purpose-built, two and three storey blocks of flats (31 in total) comprising 244 flats in total, together with surrounding grounds and 166 houses also with surrounding grounds. The Respondent therefore contends that there are 272 flats whereas the Applicants indicate that there are 244 flats, but nothing turns on this for present purposes.

3. Directions were given by the Tribunal in respect of this application on 8 February 2012. As indicated in the title of this decision, the application is made under Section 24 of the Landlord & Tenant Act 1987 and is for the appointment of a manager. The Applicants indicate in their application that they are dissatisfied with the management of the property and allege that the landlord" (as the Respondent is described) has failed to comply with the approved code of practice, and also they allege against the management company (the Respondent) that there have been breaches of obligations to the leaseholders under the terms of the lease, and reference is made to complaints in respect of accounting practice. These allegations have been somewhat expanded in the Statement of Case prepared by the Applicants, pursuant to the directions given by the Tribunal.

4. The nature of the application therefore is that the management functions of the Respondent should be taken over by a manager to be appointed by the Tribunal, and a particular manager has been proposed by the Applicants in the context of their application.

As indicated above, the Tribunal gave directions in respect of this matter on 8 February 2012. One of the requirements in making an application of this kind is that a notice has to be served, by virtue of Section 22 of the Act, on the landlord and any person other than the landlord by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy. There is no issue in this case that the Applicants failed to serve a Section 22 Notice on either the landlord (that is to say Sinclair Gardens Investments (Kensington) Limited) or the Respondent, which is the named management company in the lease. The directions given were to the effect that the parties should prepare Statements of Case setting out their respective positions in respect of a possible dispensation by the Tribunal (to be dealt with as a preliminary issue) of the need to serve such a notice. Both parties have indicated their agreement that the determination of this preliminary issue should be dealt with on the basis of written representations and without the need for the parties to attend for an oral hearing. Those representations have been supplied to the Tribunal and the Respondent has prepared a Statement of Case, supported by a previous decision of the Tribunal; that Statement of Case is dated 23 February 2012.

The Applicants have also prepared some written representations dated 20 February and 15 March 2012, and have appended to those representations an expanded version of their case, which lists some very considerable number of alleged breaches on the part of the Respondent. It is proposed, in brief, to summarise the respective positions of both parties and then to give the Tribunal's finding.

Respondent's case

7. The Respondent refers to Section 22(3) of the Act which is the provision that gives the Tribunal some power in certain circumstances to dispense with the need for a Section 22 notice. The provision is to the following effect:

   > *"(3) A leasehold valuation tribunal may, (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section [on a person] in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the Tribunal may, when doing so, direct that such other notices are served or such other steps are taken, as it thinks fit."*

8. The Respondent makes the point that there is plainly no difficulty, or there would have been no difficulty, in locating the Respondent in this case, and there is nothing in the written representations prepared by the Applicants (to which reference will be made below) to indicate that there has been any such difficulty or that there has been any problem in terms of urgency.

9. The Respondent makes reference to a previous decision of the Tribunal in a case involving a property known as *9, Sol-Y-Vista (Case Reference CHI/21UC/LSC/2006/0052)*. In that case it was observed that the provision to dispense with the requirement of service of a notice under Section 22(1) *"....is plainly intended to cover situations such as missing landlords or where urgent works are required and the situation is such that it is not practicable to serve notice."*

10. In short, the Respondent contends that no tenable reason is put forward on behalf of the Applicants to support any suggestion that it was not reasonably

practicable to serve notice in this case, nor that there was any particular urgency (indeed the point is made that a number of the complaints are historic). In all the circumstances, therefore it is contended by the Respondent that there is no reason or ambit for the Tribunal to dispense with the service of a notice in this case.

Applicants' Case

11. The Applicants have contended in their representations that the reason that the Section 22 Notice was not served in this case is that there are 27 separate specific grounds upon which they rely for inviting the Tribunal to appoint a manager and the grounds relied upon are not really matters which it is possible for the Respondent to cure within a reasonable timeframe. The Respondent has appointed its own managing agents and it is contended against those agents by the Applicants, that there have been serious failures on their part which would not have been remedied within a period of time given in any Section 22 Notice or otherwise. The Applicants therefore in effect contend that there has been no prejudice on the part of the Respondent by the failure to serve a Section 22 Notice, and they invite the Tribunal to assist them, as lay people conducting the case themselves, by dispensing with the need for such a notice and allowing this application to proceed. They do make reference to a schedule attached to their representations dated 20 February 2012 which does indeed set out a large number of asserted breaches of obligation on the part of the Respondent. Also in representations in reply to the Respondent's representations, dated 15 March 2012, they reiterate the point that the matters of which they complain are such that there is *"no practicable way for the*

majority of items to be resolved within any given period of time". They also make the point that they would be put to significant financial hardship if they were to have to make payment in the context of a new application of a fresh application fee if dispensation is not granted.

Analysis by the Tribunal

12. The statutory requirement under Section 22 to serve a notice as a preliminary to making an application of this kind is mandatory. The statutory words are:

    "Before an application for an order under Section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section ***must*** *(subject to sub-section (3)) be served by the tenant on –*
    (i) the landlord; and
    (ii) any person other than the landlord by whom obligations relating to the management of the premises or any part of them are owed to the tenant under this tenancy."

13. The circumstances in which that mandatory obligation can be dispensed with are provided for in sub-section (3) of Section 22 and have already been referred to above. They are limited to a situation in which the Tribunal is satisfied that *"it would not be reasonably practicable to serve such a notice on the person ...".*

14. The fact that there may be significant grounds relied upon for the appointment of a manager, and that these grounds either wholly or in part are not capable of being remedied within a reasonable timeframe, is not a reason given by Parliament in sub-section 3 for dispensing with the Section 22 Notice. Indeed it is clear from a proper reading of the section that the notice is required to be served, whether or not the breaches relied upon are capable of remedy. This is because sub-section 2 of the section makes provision for the allowing of a

reasonable period of time for the taking of such steps as are possible for the purpose of remedying certain breaches *"where those matters are capable of being remedied"*. It follows from this that there is no particular exclusion from the requirement to service the notice in respect of matters which are not capable of being remedied.

15. The grounds put forward for dispensing with the notice are not consistent with the limited discretion which the Tribunal has to make such a dispensation order and for the reasons indicated, the Tribunal is not able to make such a dispensation order in this case. Accordingly the application for such an order is dismissed and the Tribunal finds in favour of the Respondent in respect of this preliminary issue.

16. Before leaving the Decision on this preliminary issue, the Tribunal would point out certain other concerns, to which the Applicants may wish to give consideration, should this matter proceed further (albeit necessarily by way of a new application). First, the application names as Applicants the present named Applicants, that is to say Mr and Mrs R.J. Smith but also makes reference to a Mr. R. Collins. However Mr Collins has not signed the application. Furthermore, Mr Collins is referred to in the written submissions, to which reference has been made, but once again, although the submissions dated 20 February 2012 appear to have been signed by or on behalf of Mr and Mrs Smith, there is no signature from Mr Collins. Accordingly, if the matter proceeds further, the position of Mr Collins should be confirmed and clarified.

17. Again, if the matter proceeds, it will be necessary for the Tribunal to have a sample lease and no such lease has as yet been supplied.

18. The final matter to which attention is drawn is that the property is generally described as mentioned in the title of this Decision. The facility to make such an application is, as has already been recited by reference to Section 22 above, afforded by Parliament to a tenant of a flat contained in "those premises". The Respondent's representations suggest that the Applicants are the owners of nine out of 272 flats on the development. It is said that there are 31 separate blocks of flats on the development. Accordingly it cannot be possible that the Applicants have properties in each of those blocks. It appears that the application is made in respect of the development in its entirety and the Applicants may wish to consider on advice whether their application can proceed in respect of all of the blocks within the development or estate. If it is the position that they wish to pursue an application of that kind, so that there is one manager for the entire development, then they may wish to consider whether all of the leaseholders who would be affected by this should have notice of their application. Furthermore, although the obligations of the named landlord (that is to say Sinclair Garden Investments (Kensington) Limited) is restricted to insurance obligations, it too may have a view upon the appointment of a manager by the Tribunal and, it may be considered, is entitled formally to have notice of the application within the provisions of the Act, as already referred to above. So far as the Tribunal is aware, no such notice has been served upon the landlord.

19. Although the Applicants are endeavouring, no doubt for good reason, to deal with this application without advice, they may wish to consider carefully whether the matter should continue to proceed without legal representation or whether it would be more sensible for them to take legal advice.

Conclusion

20. For the reasons indicated above, this preliminary issue is decided in favour of the Respondent, the application for a dispensation order is refused and it follows that the main application can proceed no further.

Legal Chairman: **S. Shaw**

Dated: **27th March 2012**