CHI/00HN/LAM/2005/0009

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL AS TO THE VALIDITY OF THE TENANTS' APPLICATIONS AND UNDER REGULATION 11 OF THE LEASEHOLD VALUATION TRIBUNALS PROCEDURE (ENGLAND) REGULATIONS 2003

Landlord and Tenant Act 1985, section 27A and
Landlord and Tenant Act 1987, section 24

Property: The Ambassador, 11 Warren Road, Bournemouth BH4 8EZ

Applicants: Mr R A Pickard (leaseholder, Flat 204)
Miss H Bennett (leaseholder, Flat 205) and
Mr J J Docherty (leaseholder, Flat 104

Respondent: Beyaz Limited (landlord)

Date of preliminary hearing: 23 February 2006

Appearances:

for the applicants:

Mr J Bowen and Mr A Barratt of LPMA Limited
The applicants

for the respondent:

Mr D Graeme (director, Beyaz Limited)

Members of the leasehold valuation tribunal:

Lady Wilson
Mrs J McGrandle BSc (Est Man) MRICS MRTPI
Mr O N Miller BSc

Date of the tribunal's decision: 27 February 2006

Background

1. The Ambassador, 11 Warren Road Bournemouth is a former hotel which has been converted into six flats. The applicants each hold one flat on a long lease granted by the head leaseholder, Beyaz Limited. The freeholder is Mr David Graeme, who is the sole director of and owns 99 of the 100 issued shares of Beyaz Limited, his father owning the other share. Mr Graeme lives in one of the flats in the building and the flat which he occupies is the registered office of Beyaz Limited. The three flats in the building not held by the applicants are held by Mr Graeme on long leases. Mr Graeme and/or Beyaz Limited trade as Facility Services, an unincorporated body which acts, or has until recently acted, as the landlord's managing agent. In this decision the applicants will be referred to as "the tenants" and Beyaz Limited as "the landlord".

2. The tenants have, in circumstances outlined below, issued the following applications:

i. under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") to appoint a manager; this application is dated 6 August 2005 and will be called "application 1";

ii. under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") to obtain a determination as to the tenants' liability to pay service charges, the application being dated 25 August 2005 ("application 2");

iii. under section 24 of the 1987 Act dated 18 November 2005 ("application 3"); and

iv. under section 27A of the 1985 Act dated 18 November 2005 ("application 4").

3. The landlord has issued an application dated 26 November 2005 under section 27A of the 1985 Act ("application 5") against Miss Bennett, one of the tenants, the validity of which is not in dispute.

4. The property is within the area covered by the leasehold valuation tribunal for the Southern Rent Assessment Panel. However, because the person whom the tenants then proposed for appointment was a member of the Southern Panel, it was considered, rightly in our view, that it would be inappropriate for a tribunal comprising members of the Southern Panel to deal with the applications, which were accordingly transferred to the Eastern Panel. They then proposed a different manager, unconnected with any Panel, and the matter was returned to the Southern Panel. At a pre-trial review on 24 January 2006 before a member of the Southern Panel, Mr Graeme, appearing for the landlord, objected to the matter being determined by a tribunal comprising members of the Southern Panel because the firm of chartered surveyors of whom the previously proposed manager was a member had formerly acted as managing agent, and it was decided that in order to avoid any possible perceived bias the matter should be heard by a tribunal drawn from members of the London Panel. However, unknown to the member hearing the pre-trial review, the previously proposed manager, who remains a member of the Southern Panel, has recently also joined the London Panel.

5. Accordingly the parties were asked by the case officer before the hearing, and by the tribunal at the commencement of the preliminary hearing in Poole on 23 February 2006, whether they had any objection to the tribunal as presently constituted holding the present preliminary hearing and such future hearings as may be necessary. The parties confirmed, both to the case officer before, and to the tribunal at, the preliminary hearing, that they had no objections. For our part, we are satisfied from the information given to us by the parties that no conflict of interest or actual or perceived bias arises, and that there is no reason why we should not determine the applications.

6. At the preliminary hearing the tenants were present and were represented by Mr Bowen and Mr Barratt of LPMA Limited, a "professional legal, property and mortgage administration service". Mr Graeme represented the landlord.

7. Two issues arose for determination. The first was whether the tenants' applications or any of them are invalid. The second was whether, if any or all of the tenants' applications are held to be valid, they should be dismissed under regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as frivolous, vexatious or an abuse of process.

Issue 1: the validity of the tenants' applications

7. Application 1 was preceded by a preliminary notice in the form of a letter dated 25 April 2005 signed by Mr Barratt of LPMA and addressed to Mr Graeme. The letter indicated that the tenants proposed to ask for a manager to be appointed but stated, incorrectly, that the notice was given under section 22 of the Housing Act (instead of section 22 of the 1987 Act). Both applications 1 and 2 were issued naming Mr Graeme, Beyaz Limited and Facility Services as joint respondents. For applications 1 and 2 the tenants paid the appropriate application fee due in accordance with the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 ("the Fees Regulations") to the Office of the Deputy Prime Minister.

8. It appears that a view was taken within the Southern Panel that applications 1 and 2 might be invalid because Mr Graeme had been named as a respondent. The tenants maintained, and still maintain, that the applications were valid but, as a precaution, LPMA sent a further preliminary notice on the tenants' behalf dated 7 October 2005, this time addressed to Beyaz Limited and referring correctly to section 22 of the 1987 Act. Applications 3 and 4 were issued on 18 November 2005. No further application fee was asked for or paid.

9. In these circumstances Mr Graeme, for the landlord, contended that none of the tenants' applications was valid. He relied on written submissions which he had submitted before the hearing, supplemented by his oral submissions.

10. His grounds for contending that the applications were invalid may be summarised as follows:

i. Application 1 was invalid because it was not preceded by a valid section 22 notice, the notice given being addressed to the wrong recipient and by reference to the wrong Act. He said that the failure to notify the landlord was fatal to the validity of the notice and referred to the well known case of *Salomon v A Salomon* & Company Limited [1897] AC 22 as authority for the proposition that the landlord is a separate entity in law.

ii. Applications 1 and 2 were invalid because he personally had been named as one of the respondents, which was wrong in principle because he was not the landlord. He agreed that, through him, the landlord had received the applications.

iii. Applications 3 and 4 were invalid because no application fee had been paid in respect of them, and it was inappropriate that the fee paid in respect of applications 1 and 2, which, he maintained, were either invalid or had been withdrawn or dismissed, should be applied to applications 3 and 4.

iv. The landlord had not received copies of at least some of the correspondence between the Southern Panel and the applicants. For example it had not received a letter from the Panel dated 11 November 2005 asking the tenants to submit fresh applications to which LPMA Limited had replied on 18 November 2005.

v. Applications 3 and 4 were incomplete because they did not state whether a fee was enclosed.

vi. The landlord had not been supplied with the copy leases which the "check list" which forms part of applications under section 27A of the 1985 Act requires to be forwarded to the tribunal before the application is processed.

11. For the tenants, Mr Bowen acknowledged that the reference to the Housing Act in the section 22 notice which preceded application 1 was an error, but said that it did not affect the validity of the notice. He also acknowledged that it might have been more appropriate to address the notice to Beyaz Limited rather than to Mr Graeme, although, he said, there was no prejudice to anyone because Mr Graeme was the sole director and majority shareholder of Beyaz Limited and lived at its registered office. In any event, he said, by section 24(7) of the 1987 Act, the tribunal had a discretion to make an order under section 24 notwithstanding that the notice failed to comply with the appropriate regulations. He said that applications 1 and 2 were perfectly valid in that they named Beyaz Limited as a respondent, and the tenants had indicated that they were prepared to proceed only against Beyaz Limited. He said that the tenants were unconcerned about whether applications 1 and 2 or applications 3 and 4 were the applications which should proceed. He did not consider that a failure to complete the box on the form relating to fees could possibly be material to the validity of an application, nor could failure to supply copy leases to the landlord, who already possessed them in any event. Any failure by the Panel to copy relevant correspondence to a party was not fatal to the validity of the applications and could be corrected.

12. Mr Bowen said that the payment of fees was a matter between the tenants and the Office of the Deputy Prime Minister and did not affect the validity of the applications. In any event, he said, the appropriate fee had been paid and it was proper and in accordance with Fees Regulations that only one fee should be paid for all the tenants' applications.

13. In reply, Mr Graeme said that LPMA held themselves out to be professionals in the field and should not be given the same latitude to make errors as might be appropriate for litigants in person. He said that by causing applications to be made against the wrong respondent LPMA were guilty of an offence under section 1 of the Malicious Communications Act 1988 and of harassment under section 1 of the Protection from Harassment Act 1997.

Decision on Issue 1

13. We are quite satisfied that there are valid applications, both under the 1985 Act and the 1987 Act, before the tribunal. With due respect to whoever it was who suggested to the tenants that applications 3 and 4 should be issued, we consider that applications 1 and 2 were valid in that they named the correct respondent, amongst others. In any event we see no reason why an application made against the wrong respondent in a situation such as the present, where the correct respondent has full knowledge of it through its director, should not be allowed to proceed after any necessary amendment. It should be remembered that the leasehold valuation tribunal is intended to be a low-cost, relatively informal, tribunal, accessible to litigants in person, and in our view it is inappropriate to adopt too legalistic an approach to matters of this kind, although, of course, justice must be done and the relevant parties must be made aware of the proceedings at an early stage. It sometimes happens, for example, that tenants mistakenly commence proceedings against managing agents rather than the landlord because their previous dealings have been with the managing agent. In such circumstances the managing agent generally agrees to act on the landlord's behalf and/or, if necessary, the landlord is substituted as a respondent. In our view such a commonsense approach is appropriate to applications under the 1985 and 1987 Acts.

14. Similarly, the failure to address the correct landlord or to refer to the correct statute in the section 22 notice dated 25 April 2005 are, in our view, in the present circumstances minor errors which misled no-one and which could, if necessary, have been waived under section 24(7) of the 1987 Act at the hearing of the application.

15. We also are in no doubt that the payment of fees is a matter between the payer and the Office of the Deputy Prime Minister and does not go to the validity of the applications. Moreover, the fees for multiple applications are aggregated by virtue of regulation 3(5) of the Fees Regulations, and there would appear to be no irregularity in applying to applications 3 and

4 the fees paid for applications 1 and 2.

16. Similarly there can be no doubt that any failure to complete the "check-list" in the applications does not affect their validity, nor does any failure to supply the landlord with leases which it already, presumably, has and which, if necessary, it can be supplied with as part of the pre-trial disclosure.

17. Clearly, correspondence passing between the tribunal and a party to proceedings should be copied to other parties. If that has not happened in the present case the omission must be remedied, but it does not appear that the landlord has suffered any prejudice in this regard and any such failure does not affect the validity of any applications.

18. In these circumstances we are satisfied that all four of the tenants' applications were valid, but, for clarity and good order, we direct that applications 3 and 4 should proceed and that applications 1 and 2 either have been, or are to be treated as having been, withdrawn.

Issue 2; dismissal under Regulation 11

19. Regulation 11(1) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the Procedure Regulations") provides that an application may be dismissed where:

> *(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of the process of the tribunal; or*
> *(b) the respondent to an application makes a request to the tribunal to dismiss an application as frivolous or vexatious or otherwise a abuse of process of the tribunal*

Sub-paragraph 11(2) requires written notice of such possible dismissal to have been given to the

applicant by the tribunal, but Mr Bowen for the tenants agreed that the landlord's request to dismiss the applications under regulation 11 should proceed although written notice of it had not been given to the tenants in accordance with the regulation.

20. In support of the landlord's request to dismiss the applications, in the event that they were held to be valid, Mr Graeme for the landlord repeated the submissions which he had made in relation to Issue 1 and added:

i. that it was an abuse of process to seek to appoint a manager under section 24 of the 1987 Act when the landlord had already appointed a new managing agent unconnected with itself; and

ii. that the application under section 27A was frivolous if it contained, as, he said, the present one did, assertions which were false.

21. For the tenants, Mr Bowen said that the applications were neither frivolous, vexatious, nor an abuse of the process of the tribunal but dealt with matters of real concern to the tenants.

Decision on Issue 2

22. We are in no doubt that these applications should not be dismissed under regulation 11. Even if, which is not at this stage established, the applications or documents filed in support of them contain errors, or the tenants' cases are weak on the merits, that does not mean that they should be dismissed at a preliminary stage under regulation 11. It is not necessary in this decision to consider at length the test to be applied in applications under regulation 11. It is sufficient to say that applications which are "frivolous" are those which are *de minimis*, ie those where the time and effort involved in asking for a determination is wholly disproportionate to the benefit which may be gained. In relation to "vexatious" and "abuse of process", regard

should be had to the judgment of Lord Bingham C J, as he then was, in *Attorney-General v Barker* [2000] 1FLR, which concerned an application under section 42 of the Supreme Court Act 1981. Lord Bingham said, at 764C:

> *"'Vexatious' is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgement that it has little or no basis in law (or at least no discernible basis); that, whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant."*

And:

> *"[A vexatious proceeding] involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process".*

23. It cannot be said in the present case that the applications are either frivolous, vexatious or an abuse of process. The words of the regulation set a very low test which the landlord's request to dismiss does not begin to meet. The question of whether the tenants' grounds for complaint can be substantiated can only properly be determined at a hearing where the parties' evidence can be tested by cross-examination.

24. Accordingly, applications 3 and 4 may proceed to a hearing, and directions for the further conduct of the proceedings will be issued separately.

CHAIRMAN.....

DATE.....

CHI/00HN/LAM/2005/0009
CHI/00HN/LIS/2005/0059

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

ORDER OF THE LONDON LEASEHOLD VALUATION TRIBUNAL

Property: **The Ambassador, 11 Warren Road, Bournemouth BH4 8EZ**

Landlord and Tenant Act 1985, section 27A and Landlord and Tenant Act 1987, section 24

Applicants: Mr R A Pickard (leaseholder, Flat 204)
Miss H Bennett (leaseholder, Flat 205) and
Mr J J Docherty (leaseholder, Flat 104)

Respondent: Beyaz Limited (landlord)

Landlord and Tenant Act 1985, section 27A

Applicant: Beyaz Limited

Respondent: Miss H Bennett

Date of hearing: 12 January 2007

Appearances: Mr J Bowen and Mr A Barratt, LPMA Limited, for the tenants

Mr D Graeme for the landlord

Members of the leasehold valuation tribunal:

Lady Wilson
Mrs J McGrandle BSc (Est Man) MRICS MRTPI
Mr O N Miller BSc

Having heard Mr Bown and Mr Barratt on behalf of the applicant tenants and Mr Graeme on behalf of the landlord, and further to the tribunal's order dated 9 July 2006 ("the Order"), and having been informed that Mr Andrew Taylor has not yet commenced to manage the building, and upon the parties' representatives having agreed that the applicant tenants will within 28 days of today's date forward to the respondent landlord:

> **i. a draft deed of revocation of the deed of variation for which provision is made in clause 1 of the recital to the Order and**
> **ii. the draft deed of variation for which provision is made in clause 2 of the recital to the Order**

and that the landlord will respond to the said draft deeds within 28 days of receipt

and that the said deeds will be completed as soon as possible thereafter

IT IS ORDERED THAT:

1. Clause 13 of the recital to the Order is hereby rectified to read as follows:

> **That neither the landlord nor Mr Graeme will seek to object to any works which the manager may decide are required to bring any appliance fitted in a flat or any part of a flat up to the standard required by current regulations.**

2. The manager's appointment will take effect on 12 January 2007 and will subsist for a period of two years thereafter or until further order in the interim.

CHAIRMAN.....

12 January 2007