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REF LON 00BE/LSC/2009/0424

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTIONS 27A, 20ZA AND 20C AND IN THE MATTER OF THE
LANDLORD AND TENANT ACT 1987 SECTIONS 24 AND 35

AND IN THE MATTER OF Pacific Wharf Blocks A and B 165
Rotherhithe Street London SE16 5QF

Applicant

Richard Freeman

Respondent

(1) Pacific Wharf (London) RTM
Co Limited
(2) Erskine Estates and
Properties Limited

The Tribunal

Mr P Leighton LLB (Hons)
Mr A J Andrew

Hearing Date

21st April 2010

Oral Decision

21st April 2010

Date of Final Decision

21st April 2010

DECISION ON DISMISSAL APPLICATION

- 1 This matter comes before the Tribunal on an application by the Respondents Pacific Wharf (London) RTM Company Ltd and Erskine Estates and Properties Limited against Mr Freeman to dismiss his applications before the tribunal under sections 27A of the Landlord and Tenant Act 1985 and under Part IV of the Landlord and Tenant Act 1987 in respect of claims for the determination of service charges and a claim for the variation of leases in the block known as Pacific Wharf 165 Rotherhithe Street London E15.
- 2 Mr Freeman was the director of the RTM company and a leaseholder of Flat 602 in the block He remained a director until 22 May 2009 when he resigned following a dispute with the other directors. He sought re-election to the board but by September 2009 he had failed to secure re-election and has since played no active part in the running of the RTM company. His resignation was registered at Companies House and the other five directors continued in the management of the company
- 3 In July 2009 Mr Freeman commenced a series of proceedings against the RTM company and the landlord both for a determination of his liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") , for an appointment of a manager under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") , an application for dispensation under section 20 ZA of the 1985 Act and an application to vary the leases under Part IV section 37 of the 1987 Act
- 4 As at the date of today's application Mr Freeman has stated that he withdraws the application for a manager under section 24 of the 1987 Act, the application under section 20 Z A of the 985 Act and his claim for restriction of costs under section 20 C of the 1985 Act

- 5 The two matters which remain outstanding and are live issues between the parties are his claim for a determination of service charges under section 27A and his application to vary his own lease which he now puts under section 35 of the 1987 Act rather than as previously under section 37. This section relates solely to his own lease whereas that section 37 applies to all the leases on the estate and requires a majority of leaseholders to consent to the application.
- 6 The history of this matter is that following the issue of proceedings a pre trial review was held on 11 August 2009 when Mr Andrew gave various directions for the conduct of this matter which involved among other things the Applicant to serve his statement of case by 26 August 2009. He failed to comply with the order and the Tribunal understands that some discussions took place between Mr Freeman and the RTM company directors during September and October 2009 with a view to settling his claims
- 7 However for whatever reason those negotiations failed as the board was not willing to agree to the proposals.
- 8 Mr Freeman informed the RTM company, however, that he would withdraw his applications and the matter was due to come before the Tribunal on 18 November 2009 at which point Mrs Burton as Chair of the Tribunal was asked to dismiss the matter by the respondents on the ground that the Applicant intended to withdraw.
- 9 The Respondents having been informed that Mr Freeman wished to withdraw his applications and having other matters to attend to on that day did not attend the hearing at the hearing before Mrs Burton. Mr Freeman then changed his mind and requested that the proceedings continue as a result of which Mrs Burton gave further directions for the matter to proceed that involved access to be given by the RTM company office by 27 November 2009 for the purpose of obtaining certain information and more particularly for the Applicant to file his

statement of case, which had previously been due by the 26th August 2009, by 21 December 2009

- 10 That date came and went and no statement of case appeared. Apparently there were further discussions between Mr Freeman and the RTM company the effect of which is unclear to the Tribunal. However, the RTM company having received the directions made in its absence sought to bring the matter back before the Tribunal which they did on 10 February 2010.
- 11 On that occasion the matter again came before Mr Andrew who gave yet further directions superseding those given by Mrs Burton and the effect of which was that Mr Freeman was to provide a statement of case by 5 March 2010 and the hearing date for the proceedings was due to be listed on 17 May 2010. Those directions remain in force.
- 12 Mr Freeman states that he did not receive a copy of the directions or indeed a letter inviting him to the pre-trial review on 10th February 2010. It is clear however from a document which he himself produced at page 17 of the bundle put in by him that he received a copy of an an e-mail sent to Mr Hough of the RTM company from the Tribunal and copied to Mr Freeman specified in the following terms: "A reply will be in tomorrow's post in short it has been decided to conduct a further pre trial review by 10 February 2010 in order to effectively review this case and decide what should be done"
- 13 In the view of the Tribunal that e-mail was clear and it clearly put the Applicant on notice that a further hearing would take place on 10th February and that in all likelihood further directions would be given. He appears to have taken no steps to familiarise himself with the date or time of the hearing which could easily have been ascertained if necessary by a telephone call to the Tribunal. He then states that he did not receive the notice containing the directions which were made by Mr Andrew on 10 February which were sent to his address and which were received by the RTM company.. There is some suggestion

from Mr Freeman that there has been interference with his post which has resulted in his not receiving the relevant documents

- 14 As a result he has not provided the statement of case by 5th March 2010 as directed by Mr Andrew and the Respondents have applied to the Tribunal to dismiss this matter under regulation 11 of the Leasehold Valuation Tribunal Procedure (England) Regulations 2003 on the grounds that this is an abuse of the process on the grounds of persistent and inexcusable failure to comply with directions given by the Tribunal for the proper conduct of the application.
- 15 The Tribunal has considered the implications of dismissing this matter and recognises that even if dismissed the Applicant is entitled to start again on payment of a further fee and submission of a fresh application form. The respondents state that they have no confidence that the Applicant can comply with the directions so that the hearing, which is scheduled for 17th of May can proceed. The Tribunal agrees that in the time available it would be impossible for the date of 17th May to be retained. Consequently the tribunal has to consider what is the most just and equitable course in the circumstances for the disposal of this matter.
- 16 In the course of the discussion it became clear that Mr Freeman who states that he has prepared a statement of case in draft amounting to some 60 pages is primarily concerned with the question of his remuneration during the period that he was a director of the RTM company. The Tribunal indicated in argument to Mr Freeman that the matters concerning his remuneration were not within the Tribunal's jurisdiction and that those matters would have to be pursued in court if not agreed.
- 17 That leaves therefore the question as to whether or not the issue of the application to vary the lease and the remainder of the claim relating to the service charges should be allowed to proceed. Mr Freeman says that he can put in his statement of case within seven days and the

hearing can proceed on 17th May. The Tribunal is not persuaded that he would be able to do so having failed for so long to do so in the past, and it still leaves the question of how long the Respondents would need to reply to it what the issues would develop in terms of the discovery of documents preparation bundle and the tribunal considers that the hearing date of 17th May could not reasonably be preserved in those circumstances

18 The Tribunal therefore in considering what is the most just and equitable course finds as a fact that Mr Freeman has failed on at least two if not three occasions to comply with the directions of the Tribunal. The Tribunal is not satisfied that the explanations, which he has given offer a sufficient reason for non-compliance and therefore there is prima facie evidence that this is an abuse of the process of the Tribunal.

19 The Tribunal is always reluctant to prevent a litigant developing his case but it is noted in particular in relation to the application to vary the lease that the Applicant has given very little by way of particulars and has not produced a draft variation so that that aspect of the case is not really in a position to proceed and the RTM company says that they are already in the process of reviewing the leases together with the solicitors for Erskine Estates

20 Further it is important that the Tribunal is seen to be applying its own procedures. Failure to do so would render the sanctions contained in those procedures ineffective to secure the proper administration of justice. .

21 In the circumstances the Tribunal considers that the just and equitable course to be adopted in this case is to dismiss this application. Mr Freeman has already indicated that he has a number of pressing matters which are taking up his time at the moment including proceedings in court and questions relating to the physical condition of his premises and other matters and that he has effectively not been

able to devote the time to these proceedings that were justified and necessary to bring this matter on for hearing within a reasonable period. Therefore the Tribunal in dismissing the application I am recognises that Mr Freeman will have time in which to marshal his thoughts and if so advised can start a further application limited to those matters which relate to his service charge and if he seeks also a variation in connection with the lease to provide draft clauses which he seeks to vary.

- 22 Therefore the Tribunal directs that the applications be dismissed and that if Mr Freeman commences a fresh application before the Tribunal that he must attach to that application a detailed statement of case setting out the grounds on which he relies for challenging service charges and the reasons in support. Unless those conditions are complied with the application will not be allowed to proceed.
- 23 In those circumstances the Tribunal would then be in a position to move this matter forward quickly for a determination. At the moment nine months have expired since the issue of these applications and the proceedings have not yet reached that point. Accordingly the Tribunal feels justified in dismissing the application today. It is not asked to make any order as to costs under Schedule 12 Paragraph 10 of the 2002 Act and it does not therefore do so.

Chairman Peter Leighton

Date 21st April 2010

