



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Commonhold and Leasehold Reform Act 2002, section 168(4)

Ref :LON/00BK/LBC/2006/0043

Applicant: ESTMANCO (PORCHESTER TRIANGLE) LIMITED
Respondent: MS LUCY BAXTER
Premises: 18B ORSETT TERRACE, LONDON W2 6AJ
Date of hearing: 26 JULY 2006
Date of decision: 26 JULY 2006
Tribunal: Mr M.A. Martynski
Mr F. Coffey FRICS
Mrs A. Moss
Present: Mr David Nicholls (Counsel) for the Applicant
Mr Paul Davison for the Applicant
No attendance from the Respondent

Background

1. This is an application by Estmanco (Porchester Triangle) Limited for a declaration pursuant to section 168(4) Commonhold & Leasehold Reform

Act 2002 for declarations of two breaches of covenant on the part of the Respondent, Lucy Baxter.

2. Prior to the hearing Ms Jemmais Keval (the Respondent's cousin), by a letter dated 25 July 2006 made an application to adjourn the hearing set for 26 July. That application was refused. The tribunal refusing the application stated that Ms Keval could repeat her request for a postponement to the tribunal hearing the case on 26 July.
3. Ms Keval did not contact the Tribunal prior to the hearing. She was telephoned by the Tribunal's clerk on several occasions to ask if she was going to attend the hearing. The Tribunal gave Ms Kemal until 11.15am to attend. Ms Keval did not attend by that time and accordingly the Tribunal heard the application. By the time Ms Keval arrived, the Tribunal had heard the case and made its decision and the parties who had attended for the Applicant had left the building.

The evidence

4. The Applicant's evidence was given by way of;
 - (i) A statement of case signed with a statement of truth by Vanessa Walsh, the Applicant's solicitor.
 - (ii) A witness statement from Paul Davison, a Director of Dillons Estate Agents and Valuers (managing agents for the Applicant).
 - (iii) Oral evidence from Mr Davison.

5. The statement of case was clarified by evidence from Mr Davison as to the Applicant's standing in the proceedings. Mr Davison stated that the Applicant held a superior lease of 999 years from 1989 in respect of the Premises and it was accordingly the Lessor and Management Company as defined in the Respondent's lease. Mr Davison confirmed that the lease produced to the Tribunal had been supplied by the Land Registry as being the lease in its possession in respect of the Premises.

6. Mr Davison stated that his company had been the managing agents for the premises for many years pre-dating the Respondent's interest in the premises. He confirmed that the Respondent had not taken a share in the Management Company and that she had not produced to the Lessor any transfer of the lease. Indeed it was not until a search was carried out at the Land Registry that the Applicant discovered that the Respondent was the registered proprietor of the premises.

7. The tribunal was shown copies of two letters sent by the Applicant's solicitors, Rochman Landau, to the Respondent. The first was dated 8 February 2006 and stated, inter alia;

"You are also in breach of the lease. Under Paragraph 7(H), you covenanted to give notice to the Lessor within one calendar month of the assignment."

The second was dated 10 April 2006 and stated, inter alia;

"You have taken an assignment of the above property without serving notice of the transfer and without executing a stock transfer form in respect of your share in the management company."

Please note that both are breaches of your lease. While they may be easily remedied, the Lessor insists that they are remedied forthwith."

The lease

8. The relevant provisions in the lease are as follows;

"That if at any time the Lessee shall not be the holder of a share in the Management Company the Lessee will upon being requested to do so by the Management Company take a transfer of one share in the Management Company in any manner authorized by the Management Company's Articles of Association and will pay the nominal value of such share to such person as the Management Company shall direct" [clause 2(7)(F)]

"Within one calendar month after any such document or instrument as is hereinafter mentioned shall be executed or shall operate or take effect or purport to take effect to produce to the Lessor every transfer of this lease or mortgage or legal charge of this lease or the Demised Premises or any part thereof and also every probate letters of administration order of court or other instrument affecting or evidencing a devolution of title as regards the said term for the purposes of registration and for such registration to pay to the Lessor a fee of Seven Pounds (£7) or such greater sum as the Lessor may reasonably require in respect of each document or instrument so produced" [clause 2(7)(H)]

The decision of the Tribunal

9. The Tribunal was satisfied that the Applicant was the landlord of the Respondent's lease. The Tribunal was further satisfied that the lease contained the covenants recited above.
10. The lease specifically required that the Respondent take a share in the Management Company *"upon being requested to do so by the Management Company"*. The Tribunal was satisfied that the words used in