

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HC/LAM/2007/0007

In the matter of The Hall, 10 Meadows Close, Portishead, Bristol, BS20 8BU

And in the matter of an application under Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager and an application for an order under Section 20C of the Landlord and Tenant Act 1985 (as amended)

Between:

**Mr. David M Weston**

**Applicant**

**Down Hall Management  
Company Limited**

**Respondent**

Date of application: 12 December 2007

Members of the Tribunal: Mr. J G Orme (lawyer chairman)

Mr. M Ayres FRICS (valuer member)

Mr. M R Jenkinson (lay member)

Date of decision: 19 May 2010

**Decision of the Leasehold Valuation Tribunal**

For the reasons set out below, pursuant to regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, the Tribunal dismisses the application dated 12 December 2007 made by Mr. David M Weston for the appointment, pursuant to Section 24 of the Landlord and Tenant Act 1987, of a manager to manage the premises known as The Hall, 10 Meadows Close, Portishead, Bristol BS20 8BU on the grounds that the application is vexatious or otherwise an abuse of the process of the Tribunal. For the same reasons the Tribunal dismisses the application for an order under Section 20C of the Landlord and Tenant Act 1985.

## Reasons

### Background

1. By an application dated 12 December 2007 ("the 2007 application"), the Applicant, Mr. David Weston, applied under Section 24 of the Landlord and Tenant Act 1987 to the Tribunal for the appointment of a manager to manage premises known as The Hall, 10 Meadows Close, Portishead, Bristol ("the Property"). The grounds for the 2007 application are set out in an attachment to the 2007 application amounting to 13 pages. It is not necessary to set out the grounds in detail but they allege that the Respondent, Down Hall Management Company Limited, acted in breach of its obligations under the terms of the Applicant's lease by failing to carry out necessary works of maintenance, repair and cleaning and by failing to maintain proper service charge accounts. The Applicant also alleges that it would be just and convenient to appoint a manager in all the circumstances of the case. The 2007 application included an application for an order in respect of costs under Section 20C of the Landlord and Tenant Act 1985.
2. The Property is a Victorian mansion house which was converted into 6 residential flats in the 1980's. The Respondent is now the freehold owner of the Property and it is responsible for insurance of the Property and maintenance and repair of the common parts. It is entitled to recover its expenditure from the leasehold owners of the 6 flats by virtue of the service charge provisions in the leases of the flats. The Applicant is the leasehold owner of flat 1.
3. A pre-trial review was held on 26 February 2008 at which provisional directions were made. Those provisional directions were amended following representations by the Applicant. The resulting directions are set out in 2 orders dated 3 and 20 March 2008. The directions included a direction for the Applicant to send to the Tribunal and the Respondent a written statement of case by 5 May 2008.
4. By letter dated 1 May 2008 the Applicant applied for an extension of time for submitting his statement case. By letter dated 4 July 2008 the Applicant asked the Tribunal to stay the proceedings until 18 July 2008. No direction was made by the Tribunal extending the time for submitting a statement of case. No statement of case has been submitted by the Applicant.
5. No further steps were taken in connection with the 2007 application during the period from July 2008 to February 2010. During that period the parties were engaged in other proceedings before the Leasehold Valuation Tribunal and the Bristol County Court.

6. On 12 February 2010 the Tribunal issued further directions in which it notified the parties that it intended to proceed to determine the 2007 application and that a hearing would be held for that purpose on about 12 May 2010. The directions provided for the parties to submit written witness statements and bundles of documentary evidence.
7. By letter dated 24 February 2010 the Respondent asked the Tribunal to dismiss the 2007 application under regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2099) ("the Regulations") on the basis that the 2007 application was frivolous or vexatious or otherwise an abuse of the process of the Tribunal.
8. On 1 March 2010 the Tribunal issued further directions suspending the previous directions made by the Tribunal and stating that it would convene a hearing to determine the Respondent's application to dismiss. The directions provided for the Respondent to submit written representations in support of its application within 14 days and for the Applicant to submit written representations in reply within 14 days thereafter.
9. On 1 March 2010 the Tribunal wrote to the Applicant informing him that the Respondent had applied for the 2007 application to be dismissed on the grounds that it was frivolous or vexatious or otherwise an abuse of the process of the Tribunal. Enclosed with the letter were copies of the Respondent's application and the further directions. The Tribunal asked the Applicant to provide by 8 March a list of the dates on which he would not be available for a hearing during the week commencing 10 May.
10. By letter dated 5 March 2010 the Applicant acknowledged receipt of the Tribunal's letter and said that he would not be able to provide a response until 12 March as he would be away. The Tribunal has not received any further correspondence from the Applicant.
11. By letter dated 12 March 2010 the Tribunal notified the Applicant that a hearing would be held to determine the Respondent's application on Thursday 13 May 2010 at 10:30am in conference room 2 at Whitefriars, Lewin's Mead, Bristol BS1 2NT.
12. By letter dated 12 March 2010 the Respondent filed its written representations with the Tribunal and confirmed that it had sent a copy to the Applicant. No written representations relating to the Respondent's application have been received from the Applicant.

#### **The law**

13. Regulation 11 of the Regulations provides as follows:

(1) Subject to paragraph (2), where -

*(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of 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 an abuse of the process of the tribunal,*  
*the tribunal may dismiss the application, in whole or in part.*  
*(2) Before dismissing an application under paragraph (1) the tribunal shall give notice to the applicant in accordance with paragraph (3).*  
*(3) Any notice under paragraph (2) shall state -*  
*(a) that the tribunal is minded to dismiss the application;*  
*(b) the grounds on which it is minded to dismiss the application;*  
*(c) the date (being not less than 21 days after the date that the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.*  
*(4) An application may not be dismissed unless -*  
*(a) the applicant makes no request to the tribunal before the date mentioned in paragraph (3) (c); or*  
*(b) where the applicant make such a request, the tribunal has heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application.*

## **The Hearing**

14. A hearing was held on 13 May 2010 at Whitefriars, Lewin's Mead, Bristol. The Respondent was represented by Mr. Peter Brown who has been appointed as assistant secretary of the Respondent. He was accompanied by Mrs. Toni Turner, a director of Trafalgar Property Services (SW) Limited ("Trafalgar"), the managing agents employed by the Respondent.
15. The Applicant did not appear at the hearing and was not represented. The Tribunal satisfied itself that proper notice of the hearing had been given to the Applicant in accordance with regulation 14(2) and (3) of the Regulations and determined to proceed with the hearing in the absence of the Applicant in accordance with regulation 14(8) of the Regulations.

## **The Evidence and Representations**

16. As already stated, the Applicant has submitted no representations in response to the Respondent's application.
17. Mr Brown informed the Tribunal that he was authorised to represent the Respondent company in connection with the application. He said that he had been appointed as assistant secretary of the company at its annual general meeting on 17 July 2008. He produced a copy of the minutes of the meeting confirming his appointment. He produced a copy of a letter dated 1 October 2008 confirming his appointment as assistant secretary for the period up to

and including the AGM to be held in 2009. That letter was signed by 4 directors of the company and a member of the company. Mr Brown said that he had been re-elected as assistant secretary at the annual general meeting held on 24 September 2009 and that he was authorised to act on behalf of the Respondent in connection with this application.

18. The Respondent submitted a written statement of case dated 12 March 2010. It is not necessary to set out those representations in detail in this document. They will be summarised together with a summary of the further submissions made by Mr Brown and Mrs Turner at the hearing.

19. Mr Brown explained that until April 2005, the Applicant had dealt with the day-to-day management of the Property and, in return, he did not have to contribute towards the service charge. The Respondent had decided at an extra-ordinary general meeting to dispose of the Applicant's services and to appoint Compass Property Services ("CPS") to manage the Property on its behalf. The Applicant resigned as a director on 1 April 2005. On 25 May 2005 the Applicant applied for the appointment of a manager under Section 24 of the Landlord and Tenant Act 1987. That application was considered by a differently constituted tribunal under case reference CHI/00HC/LAM/2005/0005 ("the 2005 application") and the tribunal issued its decision on 18 October 2005. It dismissed the 2005 application. The Respondent says that the grounds of the 2007 application are similar to the grounds set out in the 2005 application and that the 2007 application is a repetition of the 2005 application.

20. The Respondent relied on the fact that the Applicant had failed to submit a statement of case in support of the 2007 application notwithstanding the directions issued by the Tribunal and that he had shown no intention of doing so despite applying for an extension of time. Mr Brown said that the Respondent had heard nothing from the Applicant in relation to the 2007 application since it had written to the Tribunal on 22 July 2008. Mrs Turner said that she had attempted to contact the Applicant about current management of the Property without success.

21. The Respondent submitted that the Applicant had waged an unrelenting and repetitious crusade against the Respondent and the other five lessees at the Property over a period of 5 years since 2005. The Respondent provided a schedule giving details of 16 separate applications or claims made to the tribunal or the County Court since 2005. Mr Brown accepted that the County Court claims had been issued by the Respondent as it was seeking payment of outstanding service charges. He also accepted that the majority of the applications and claims related to service charges. However, he said that all of the applications and claims had resulted in rulings against the Applicant

and that the cost of those proceedings was completely disproportionate to the amounts in dispute. Furthermore, Mr Brown said that the Applicant had asked for the service charge accounts to be audited. The accounts for 2005 to 2008 had been audited at a cost of £3000. It would cost about £2000 to have the 2009 accounts audited and it would be necessary to go through the consultation procedures before incurring that expense. Mrs Turner said that she had written to the Applicant asking whether he wished to proceed with the audit and had given him until the end of May to respond. Mr Brown said that the Tribunal had to look at the 2007 application as part of a bigger picture which involved those 16 cases and other actions by the Applicant.

22. The Applicant appealed against judgements entered in respect of two of the County Court claims. The Respondent filed a copy of the judgement of David Blunt QC sitting as a recorder in which he dismissed the Applicant's appeals. That judgement runs to 61 pages and considers in detail the 25 separate issues raised by the Applicant. Mr Brown said that the Applicant's submissions in relation to the appeal amounted to 751 pages. He said that the judgement dismissed all the grounds of appeal and awarded costs in favour of the Respondent. Mr Brown accepted that the issues related to payment of interim service charge rather than issues of management of the Property.
23. The Respondent submitted that the Applicant's actions were making it difficult for the Respondent to manage the Property in a proper manner because its income and management effort were focused on dealing with the Applicant rather than managing the Property. Furthermore, the Applicant's actions were making the flats at the Property difficult to sell.
24. At paragraph 6 of its representations, the Respondent sets out the efforts which it has made to engage in dialogue with the Applicant in an attempt to resolve their differences. In particular, the Respondent had appreciated that there was a clash of personalities between the Applicant and Mr Spokes of CPS. As a result, the Respondent had resolved at its AGM in 2009 to terminate the employment of CPS. It had invited the Applicant to nominate a replacement managing agent but he had failed to respond. The Respondent had then appointed Trafalgar as its managing agent and that appointment had taken effect from 1 November 2009.
25. Mr Brown said that, at present, the total service charge income for the Respondent is £4800 per year. Mrs Turner said that the Applicant presently owes about £3000 for service charges due since June 2008. Mr Brown said that, due to the Applicant's actions and non-cooperation, the Respondent has no money and is struggling to pay for insurance for the Property and vital repairs. He said that the Respondent is unable to do routine maintenance work and he accepted that the Property would fall into disrepair. He said that

all of the lessees apart from the Applicant had agreed to the appointment of Trafalgar as managing agents. As far as he was aware, no complaints had been received about the management of the Property from any of the other lessees.

26. The Respondent submitted that when considering the meaning of "vexatious" the Tribunal should consider the criteria applied by the Information Commissioner in deciding whether a request is vexatious. The Tribunal put the Oxford English dictionary definition of "vexatious" to Mr Brown and he had no objection to that definition.

### Conclusions

27. The Oxford English dictionary defines "frivolous" as "Of little weight, value or importance; paltry, trumpery; not worthy of serious attention; having no reasonable ground or purpose. In pleading; manifestly insufficient or futile." It defines "vexatious" as "causing, tending or disposed to cause, vexation." Later it says "of legal actions: instituted without sufficient grounds for the purpose of causing trouble or annoyance to the defendant." The Tribunal adopts those definitions.

28. The Tribunal has been able to read the decision of the earlier tribunal in the 2005 application. Although it is clear that the grounds set out in the 2007 application are not precisely the same as the grounds set out in the 2005 application, there is a similarity in the grounds of the 2 applications. The Tribunal notes the findings of the earlier tribunal that "*Upon inspection the Property presented as being in a good state of repair. The obligations in the lease appeared to have been observed and performed.*" The Tribunal notes that the earlier tribunal refused to appoint a manager having heard all the evidence presented by the Applicant.

29. The Tribunal takes note of the fact that the Applicant has still not submitted a statement of case setting out his evidence in support of the 2007 application despite directions from the Tribunal requiring him to have done so by 5 May 2008. The Tribunal is conscious of the fact that nothing happened in the 2007 application from July 2008 to February 2010 and that the Applicant may not have been minded to proceed during that period. However, he has known of the Respondent's application to dismiss since 1 March 2010 and still there is no indication from him that he intends to proceed with the 2007 application by presenting a statement of case.

30. Furthermore, notwithstanding the fact that he has received notification of the hearing of the Respondent's application to dismiss, the Applicant has not appeared before the Tribunal to argue that the case should not be dismissed nor has he given any indication as to his intention.

31. The fact that there have been numerous other cases relating to disputes about service charge is not a direct indication that the 2007 application is, on its own, vexatious. However, looking at the whole context of the proceedings between the Applicant and the Respondent, it is clear that since 2005 there has been and there continues to be an attempt by the Applicant to challenge the Respondent's ability to manage the Property and to resist payment of his share of the service charge. The Tribunal considers that it is entitled to look at the 2007 application in the overall context of the relationship between the parties. Looking at the schedule of proceedings produced by the Respondent it is clear that the majority of the proceedings relate to disputes about service charge rather than the management of the Property but they build a picture of a continuing dispute between the parties. The Tribunal notes that this has all happened since the Applicant was removed as manager by the Respondent and since he resigned as a director. An example of the continuing attempts to frustrate the management of the Property by the Respondent is the Applicant's insistence that the Respondent has the accounts audited under Companies Act legislation at great expense to the Respondent.
32. The Property is a small property consisting of 6 flats. It is important to retain a sense of proportion. In the absence of clear evidence that the Respondent is failing in its duties, it should be entitled to carry out its function of managing the Property in the interests of the leaseholders in a cost effective manner. It appears to the Tribunal that the Applicant is attempting to frustrate that endeavour without putting forward any clear evidence as to the Respondent's shortcomings, if any.
33. Taking into account all of the factors listed at paragraphs 28 to 32, the Tribunal concludes that the 2007 application, whilst not falling within the definition of frivolous, falls clearly within the definition of vexatious which is set out above or it is otherwise an abuse of the process of the Tribunal. For that reason the Tribunal has determined to dismiss the 2007 application.



Mr. J G Orme

Chairman

19 May 2010