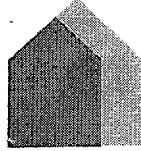


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Residential  
Property  
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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER SECTION 24 OF THE LANDLORD AND TENANT  
ACT 1987 AND SCHEDULE 12 OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

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**Reference number:** LON/00AG/LAM/2007/0012

**Property:** Flat 3, 25 Priory Road, London NW6 4NN

**Applicant:** Mr V J Amourgam

**Respondent:** Valepark Properties Ltd

**Application received:** 26 May 2005 (Section 24 of the Landlord and Tenant Act 1987) and 19 December 2007 (Schedule 12 to the Commonhold and Leasehold Reform Act 2002)

**Tribunal:** Mr A J Andrew

**Determination:** 28 March 2008

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**DECISION**

1. There is no live application before the tribunal for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").
2. I make no order for costs pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("CLARA").

**BACKGROUND**

3. There is a regrettable history of the litigation between the parties relating to the Property not only before this tribunal but also before the Lands Tribunal, the Central London County Court and the High Court. Nevertheless for the purpose of deciding the issues before me I consider

that it is appropriate to have regard only to applications made by the Applicant for the appointment of a manager under the 1987 Act.

4. From the documents produced by the parties it is apparent that in early 2003 the Applicant, together with others, applied under section 24 of the 1987 Act for the appointment of a manager and also under section 19 of the Landlord and Tenant Act 1985 for a determination as to the reasonableness of costs incurred in connection with a service charge. At a pre-trial review on 19 March 2003 the application to appoint a manager was withdrawn and directions were issued by the chairman to bring the service charge issue to a hearing.
5. On the basis of the written submissions received from both parties there is disagreement as to the reason for the withdrawal of the application to appoint a manager. The Applicant writes that the application was withdrawn after discussion with the pro bono Unit of the College of Law and that the procedural chairman was simply informed of the decision to withdraw. Mr Levy, the Respondent's solicitor suggests, in his statement, that the application was withdrawn following the chairman's observation that the applicants were not entitled to apply for the appointment of a manager because they had failed to serve a notice in accordance with section 22 of the 1987 Act.
6. By an undated application received by the Tribunal on 26 May 2005 the Applicant made a further application for the appointment of a manager under section 24 of the 1987 Act. That application was regrettably mislaid by the tribunal and its existence did not come to light until the Applicant sent a further copy of the application on 8 January 2007. On 9 February 2007 the tribunal wrote to the Applicant apologising for having lost the application. It pointed out however that the Applicant had not served a preliminary notice, enclosed a guidance booklet and suggested that he consult the Leasehold Advisory Service. It was clear from the Applicant's reply of 22 March 2007 that he had some difficulty understanding the relevant provisions of the 1987 Act. In a reply dated 29 March 2007 the tribunal suggested two courses of action: the Applicant could proceed with his application on the basis that he request the tribunal to dispense with service of a notice under section 22 of the 1987 Act or he could serve a section 22 notice and then make "*a fresh application to appoint a manager ... at the appropriate time*".
7. The Applicant confirmed that he wished to proceed with the existing application and notice was given of a pre-trial review to be held on 25 June 2007. At the Respondent's request this was postponed to 22 August 2007. At the pre-trial review the chairman decided that dispensation with a section 22 notice should be dealt with as a preliminary issue to be heard on 7 September 2007. A copy of the tribunal's decision of that date is appended to this decision. Neither party requested permission to appeal that decision to the Lands Tribunal.

8. In a letter of 18 December 2007 the Respondent applied *"to have his claim dismissed and request that the LVT exercises its discretion to award us costs to the full sum allowed namely £500"*.
9. Both parties were requested to submit any additional comments upon receipt of which a tribunal would then decide how the application should proceed. In a letter of 8 January 2008 the Respondent wrote again that it applied *"for the dismissal of the Applicant's application for the appointment of a Manager for the above mentioned property, the application having been made frivolously or vexatiously and is an abuse of process of the Tribunal"*.
10. The papers came before me on 11 February 2008 when I issued directions in respect of the cost application. In issuing those directions I observed *"it is clear that the tribunal's decision of 7 September 2007 dismissed the original section 24 application. Even if that were not the case the application would fall away as a result of that decision in that a valid section 24 application is conditional upon either the service of a section 22 notice or the tribunal's dispensation under sub-section 22(3) and neither condition is met"*.
11. I directed that the cost application could be dealt with on consideration of written representations and supporting documents and without an oral hearing and I made provision for both parties to lodge document bundles by 29 February 2008. I further directed that if either party requested an oral hearing it would be held on 25 March 2008 but in the absence of such a request the tribunal would make its determination on or shortly after that date.
12. On 14 February 2008 the Applicant wrote objecting to the words in the directions recited above. He did not agree that the original application to appoint a manager had been dismissed by the decision of 7 September 2007. He also objected to the comment that *"the application would fall away"* apparently on the grounds that it would prevent him from bringing a further application for the appointment of a manager. On 19 February 2008 the tribunal wrote to the parties informing them that the issues raised in the Applicant's letter of 14 February 2008 would be considered by the tribunal when it dealt with the outstanding cost application. This was reinforced by a letter from the President of the Tribunal dated 3 March 2008. On 13 March 2008 the tribunal confirmed that any submissions on the status of the section 24 application should be received by the tribunal by 24 March 2008.
13. For the sake of completeness I should add that on 19 March 2008 the tribunal wrote to both parties confirming *"that as neither party had asked for an oral hearing the matter regarding costs will be determined on the papers submitted by both parties"*.
14. The Respondent's case in respect of the cost application was set out in a witness statement provided by Mr Levy, its solicitor, dated 25 February

2008. The Applicant's case was set out in a statement dated 28 February 2008 which was supplemented by a further statement hand delivered on 24 March 2008. With regard to the statement received on 24 March 2008 I had regard to it only in so far as it related to the status of the section 24 application. I had no regard to representations received after that date.

## **REASONS FOR MY DECISIONS**

### **Status of the application to appoint a manager**

15. It is abundantly clear that both parties did not consider that the decision of 7 September 2007 operated as a dismissal of the Applicant's original application to appoint a manager but rather that it operated as a dismissal of his application for dispensation with the requirement to serve a section 22 notice. That the Respondent interpreted the decision in this way is apparent from its letters of 18 December 2007 and 8 January 2008.
16. The dismissal of an application is one of two grounds upon which a cost order could be made against the Applicant (see below). In such circumstances I consider that any ambiguity in the decision of 7 September 2007 should be resolved in favour of the Applicant. Consequently I determine that the decision of 7 September 2007 did not operate to dismiss the Applicant's original application to appoint a manager.
17. The status of that application therefore remains to be considered. The Applicant objects to the words "*even if that were not the case the application would fall away .....*" in my directions of 11 February 2008. It is not clear to me why he objects to those words. In his statement of 28 February 2008 he writes "*that it is better to think of the application being invalid or even better to declare the application disqualified*". I have some difficulty in understanding the material difference between an application falling away and an application being considered invalid or disqualified.
18. Be that as it may I consider that it is perhaps more appropriate to say that, following the refusal of the tribunal to grant dispensation there is now no live application before the tribunal for the appointment of a manager.
19. For clarification I would emphasise that this decision does not prevent the Applicant from making a further application for the appointment of a manager provided, of course, that he has complied with the relevant provisions of sections 22 and 23 of the 1987 Act including in particular the service of a notice under section 22 of that Act.

### **Costs**

20. The relevant paragraph 10 of schedule 12 to CLARA reads:

10(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where –

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in proceedings by a determination under this paragraph shall not exceed –

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

21. In his statement of 25 February 2008 Mr Levy relied upon sub paragraph 10(2)(b). He submitted that in respect of the application to appoint a manager the Applicant had acted “*frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings*”.

22. The Applicant is a litigant in person. I accept that the relevant provisions of the 1987 Act are, to a layperson, of labyrinthine complexity. I do not consider that a lay person could be regarded as having acted in the manner contemplated by paragraph 10(2)(b) simply because he failed to serve a notice under section 22 of the 1987 Act before making an application under section 24 for the appointment of a manager.

23. Mr Levy suggests that the Applicant had been put on notice of the importance of serving a section 22 notice at the pre trial review on 19 March 2003. Had I been persuaded of that fact I would have considered it appropriate to make the order sought.

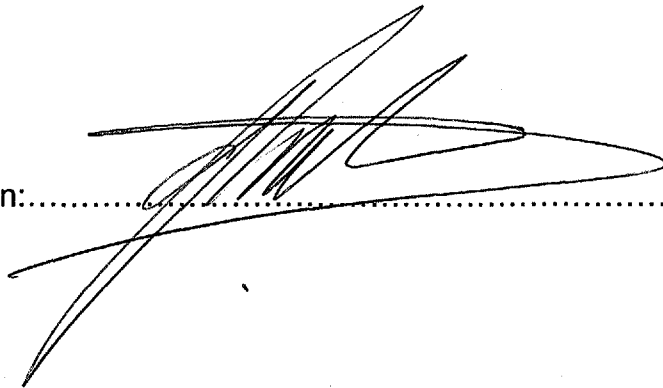
24. However as recorded above the parties clearly have different recollections of the pre-trial review. Even if I were to hear oral evidence I doubt that it would clarify the position. Ultimately I am left with the directions issued by the chairman following the pre-trial review and she simply recorded that the applicants “*withdrew their application under section 24 (Appointment of a Manager)*”. It would be inappropriate for me to go beyond that simple statement and I do not do so.

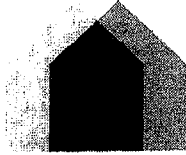
25. Having made his application for the appointment of a manager the Applicant was perfectly entitled to have the dispensation issue dealt with at

a preliminary hearing. Although the tribunal did not find in his favour there is nothing in the decision of 7 September 2007 to suggest that it regarded his request for dispensation as frivolous, vexatious, abusive, disruptive or unreasonable. There was justiciable issue to which the Applicant was entitled to a determination. However the Applicant should be aware that if he makes a further application for the appointment of a manager without complying with the statutory requirements he might well find himself in a very different position.

26. Consequently and for each of the above reasons I make no order of costs against the Applicant.

Chairman:.....(A J Andrew)

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract representation of the name 'A J Andrew'.



**Residential  
Property**  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DIRECTIONS BY LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1987 SECTION 24**

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LON/00AG/LAM/2007/0012

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**Premises:** Flat 3, 25 Priory Road, London NW6 4NN

**Applicant:** Mr. V J Amourgam

**Represented by:** In person

**Respondent:** Valepark Properties Limited

**Represented by:** Mr. Levy

**Tribunal:** Ms. L M Tagliavini  
Mr. A Andrew

**Date of hearing:** 7th September 2007

**Decision in respect of a preliminary hearing:**

1. This is an application by Mr. Amourgam, the lessee of Flat 3, 25 Priory Road, London NW6 4NN made pursuant to section 22(3) Landlord and Tenant Act 1987 seeking a dispensation of the requirement to serve a notice seeking the appointment of a manager (section 24 L&T 1987). In order for the Tribunal to grant such a dispensation it must be satisfied that it is not reasonably practicable for such a notice to be served on the landlord or his agents.

2. The Applicant seeks to persuade the Tribunal that service of such a notice would be futile as the landlord would not comply with it or would simply ignore it. Mr. Levy on behalf of the Respondent contends that the dictionary commonsense definition of "reasonably practicable" should apply ie. "capable of being done" or "feasible". Mr. Levy asserts that as the Applicant is aware of who his landlord is, and where his landlord is located, he could easily and readily comply with the statutory provisions.

3. The Tribunal is of the opinion that the Applicant could serve the requisite notice and has failed to persuade it that it was not reasonably possible or feasible to do so. The purpose of such a notice is to allow a landlord the opportunity to know of the complaints made and be provided with an opportunity to remedy them. The Tribunal is not persuaded that a dispensation should be granted depriving the Respondent of this opportunity. Further, it is the Tribunal's opinion that the same meaning to "reasonably practicable" in section 22(3) should be given to the identical phrase that appears in section 22(4) requiring the landlord to serve on his mortgagee a copy of the notice which the Tribunal interprets as meaning "as soon as possible" or "feasible".

4. The Tribunal therefore dismisses this application.

Chairman: *W. Taphawia*

Date: *7/9/07*