12490

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LSC/2017/311**
Property	:	**Kings Court and Carmel Court, King's Drive HA9 9ES**
Applicant	:	**Robert Robertson**
Respondents	:	**(1) South Coast Watch Fair Limited** **(2) Apexbrook Limited** **(3) Goldplaza (Mitcham) Limited** **(4) Apex (1999) Limited** **(5) Mrs Ester Harouni** **(6) Belinda Margaret Adams-Pearce**
Representatives	:	**Mr Petts (Counsel for the Applicant)** **Mr Bates (Counsel for the Respondent)**
Type of Application	:	**Transfer from High Court (Service Charges)**
Tribunal	:	**Mr M Martynski (Tribunal Judge)** **Mr L Jarero BSc FRICS**
Date of Hearing	:	**14 November 2017**
Date of Decision	:	**20 November 2017**

DECISION

DECISION SUMMARY

1. The Applicant remains the Manager of Kings Court and Carmel Court ('the Subject Buildings') pursuant to the Appointment of Manager order made by the tribunal and dated 28 May 2009.

BACKGROUND

2. Following litigation in the Leasehold Valuation Tribunal ('LVT') between Wisestates Limited and various lessees at the Subject Buildings, on 28 May 2009 an order was made by the Tribunal (as it was then), by consent, appointing the Applicant, Mr Robertson as Manager of the Subject Buildings.

3. The litigation leading to that order appears to have been; (a) an application to the LVT for a determination of Service Charges made by Wisestates; (b) an application to the LVT by various lessees of the Subject Buildings for a determination regarding Service Charges; (c) an application to the LVT by leaseholders for the appointment of a Manager.

4. The material part of the order made by the LVT appointing Mr Robertson as a Manager reads as follows:-

> Mr Robert Robertson..... be appointed as manager and receiver..... of the Landlord [sic] situate at and known as Kings Court and Carmel Court..... The appointment shall be for a minimum of 5 years commencing on the date of this order.

5. The question before this (FTT) tribunal arises out of litigation started in 2015 in the Chancery Division of the High Court. In that litigation, the Applicant, Mr Robertson, claimed various Service Charges from the Respondents dating back to 2009. The Respondents' defence filed in that litigation alleged; (a) that the Management order made in 2009, properly construed, lapsed at the end of the five-year minimum period specified by the LVT (that being 28 May 2015) and accordingly Mr Robertson had no standing to issue and pursue the proceedings; (b) that if Mr Robertson did have sufficient standing, various Service Charges claimed by him were not payable for various reasons.

6. By order dated 3 December 2015, Master Clark transferred the litigation to this tribunal, the material parts of that order are as follows:-

> Pursuant to s.176A, Commonhold and Leasehold Reform Act 2002, so much of the proceedings as relate to the determination of [the] following questions.....are transferred to the First Tier Tribunal....
> (1) Does the Claimant's appointment as manager and receiver continue, pursuant to paragraph 1 of the Leasehold Valuation Tribunal's order of 28 May 2009?
> (2) To what extent (and in what amount), if any, are the service charge items, particuarlized [sic] in the Scott Schedule annexed to this order, payable by the Defendants?

7. Upon the transfer of the proceedings to this tribunal, on 19 September 2017 directions were issued setting down the 'question of whether or not the applicant's appointment has been determined' to be heard as a preliminary issue. That issue came before us on 14 November 2017. The Respondents maintained their position in this tribunal that Mr Robertson's term of management had expired in May 2015 and that he no longer had any standing to pursue Service Charges.

Decision

8. There is no record of the tribunal having issued a written decision when it made the appointment of Manager order in 2009. It is probable that there was no such decision as the order appears to have been drawn up by the parties in settlement of, not only the question of the appointment of a Manager, but also on the Service Charge issues between them at that time. That consent order then appears to have been approved by the tribunal. It seems to us therefore that it would be a fruitless exercise to try to determine the intention of the parties in the framing of that part of the order dealing with the appointment of a Manager. That order therefore must be taken at face value and the words used given, if possible, their natural meaning.

9. The wording; "*The appointment shall be for a minimum of 5 years commencing on the date of this order*" appears to be plain on its face. The natural meaning of these words is that the order is of indefinite duration but that it will last for a minimum of five years. There has been no further order modifying that order and therefore Mr Robertson remains the Manager.

10. It would appear that the words '*shall be for a minimum of 5 years*' in the management order do not add anything to the order as a matter of law. Section 24 of the Landlord and Tenant Act 1987 (as in force at the relevant time) provides that the order can be made during a specified period or without limit of time [s.24(5)]. It further provides that once an order is made, the order can be varied or discharged upon the application of any interested person [s.24(9)]. The tribunal has no power to impose a minimum term on an order during which it cannot be varied or discharged upon application. Any interested person may make an application to vary or discharge at any time. If one were not satisfied of the meaning of the order on a plain reading, taking out the redundant words '*shall be for a minimum of 5 years*' leaves an order without time limit.

11. In support of the Respondents' stance, Mr Bates put the following arguments before us.

12. First, he argued that in a decision of the FTT dated 1 December 2013 made in respect of previous proceedings between the parties to this action, the FTT 'decided' that the management order in question was an order with a fixed duration of 5 years.

13. We disagree. At the outset of the decision made in December 2103, at paragraphs numbered (1), (2) & (3), the tribunal set out the decisions made. Those decision were; various service charges not payable; demands for contributions to reserve fund are valid; and an order pursuant to section 20C Landlord and Tenant Act 1985.

14. At paragraph 4 of the main body of the decision, there is a heading '*Background*'; under that heading various matters are recorded and there is included the statement; "*Mr Robertson is a tribunal appointed manager, appointed for a term of 5 years from May 28, 2009*".

15. In paragraphs 7 & 8 of the decision, under the heading '*The issues*', the tribunal sets out the issues that were before it. Those issues are recorded as being; service charges and demands to the reserve fund.

16. There are then two more relevant headings, the first is '*Pre-purchase arrears – the tribunal's decision*' (followed by the decision on the service charge issue at paragraph 11) and, '*Reserve fund – the tribunal's decision*' (followed by the decision on the reserve fund issue at paragraph 18).

17. It seems to us that the tribunal's decision is a model of clarity in the way that it set out the issues before it and the decisions it made. It is clear, in our view, that the tribunal did not deal with the issue of the length of the manager's appointment nor did it make any decision in that respect. The reference therefore to the 5-year appointment of the manager forms no part of the decision. That (erroneous) reference to the manager's term was not binding on the parties in any way nor is it binding on this tribunal.

18. Second, Mr Bates argued that the proper construction of the order was one limited to five years. Mr Bates made the point that, if one wants to make an order without a time limit, there is no need to specify any period, the order should just say 'until further order'. Whilst we agree with this point, we repeat our comments above as to the plain meaning of the actual words used and the redundancy of minimum term of five years specified in the order. We do not see how we can replace the reference to a 'minimum' term with a meaning of a 'maximum' term.

19. Third, Mr Bates made the point that the wider accepted practise on the making of a management order is to limit the order to a term rather than make an indefinite order. We agree, however there is nothing unlawful in making an order without a time limit and such orders, especially in earlier years, have regularly been made. As we have stated above, we cannot guess the intentions of the tribunal and the parties at the time the order was made and cannot infer that they meant to follow, what is now considered to be, best practice, by making a time limited order.

20. Accordingly for the reasons above, we consider that the Applicant, Mr Robertson remains the Manager of the Subject Buildings and accordingly has the necessary standing to pursue the current proceedings.

Mark Martynski, Tribunal Judge
20 November 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.