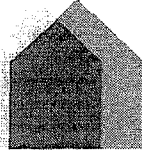


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Residential
Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1987, SECTION 24

Ref: LON/00AN/LAM/2007/0011

Property: 168 King Street, London W6 0QU

Applicants: (1) Susan Sheales and Edward Payne (as
Trustees of the Susan Burman Payne Trust)
(2) Zora Mustapic Payne

Respondent: David Lloyd Parry

Date of hearing: 8 October 2007

Date of Decision: 22 October 2007

Members of the Tribunal: Mr S Shaw LLB (Hons) MCI Arb (Chairman)
Mr F Coffey FRICS
Mr O Miller BSc

DECISION

Introduction

1. This case involves an application in respect of the property at 168 King Street, Hammersmith, London W6 0QU ("the Property"). The application is dated 8 May 2007 and is made by Susan Burman Sheales and Edward Burman Payne as Trustees of Susan Burman Payne Trust together with Zora Mustapic Payne ("the Applicants"). The Applicants are the leaseholders of Flats A and B respectively at the property. There is a further flat known as Flat C at the property which is owned by David Lloyd Parry ("the Respondent") who is also the freeholder of the property. The property includes a ground floor shop, the leasehold interest in which is owned by Muqhtar Gaibi and Goharjan Gaibi, who are not parties to the proceedings, but who have been notified of the application. In a signed statement dated 23 August 2007 they have that indicated they are fully supportive of the application.

Background

2. The application is made under section 24 of the Landlord and Tenant Act 1987 and is an application effectively by the leasehold owners for the appointment of a Manager of the premises. By notice served on or about 30 January 2007 various grounds were set out for the making of such order, and alleging various breaches both of statutory obligations and the RICS "Service Charge Residential Management Code", together with other allegations.
3. On 14 June 2007 a pre-trial review took place, and certain directions were given. Consequent upon those directions the Applicants have prepared a very full and well set out bundle containing very substantial statements and other documentation supporting the allegations upon which the

application is based. Notwithstanding a direction at the pre-trial review to the effect that the Respondent should by no later than 24 August 2007 serve upon the Applicants and lodge with the Tribunal statements in answer to the application already served, and to any statements served upon him, no such document has been filed with the Tribunal.

4. During the morning of 8 October 2007, the members of the Tribunal met with both the Applicants and the Respondent, together with the Applicants' legal advisers, to inspect the premises, and to have shown to them, principally by the Applicants, matters pertinent to the application and referred to in the grounds supporting the application for the Appointment of the Manager. A hearing subsequently took place on the same day at the Tribunal, at which Mr J Bates of Counsel represented the Applicants, together with Ms Y Mistry of Brethertons LLP, Solicitors based in Banbury. The various leaseholders also attended. The Respondent was both present at the inspection and attended in person at the hearing and represented himself.
5. At the hearing the parties spent some time discussing possible resolution of the issues between them, by consent. Indeed even before the hearing had taken place, the Respondent had indicated in writing on two occasions on 12 March 2007 and 14 June 2007 that he, without admission of any *"faults, errors or omissions listed in this notice"* (a reference to the section 22 notice) was himself desirous that a Manager be appointed. This remained the position at the hearing and indeed both Applicants and the Respondent requested the Tribunal to Appoint a Manager in order to bring to an end, hopefully, the friction which had occurred in the past in relation to the management of the property. There had been another application before the Tribunal made under Part 4 of the 1987 Act for variation of various leases at the premises, but this application had been withdrawn by the time of the hearing and had been agreed between the parties.
6. The issues therefore required for determination by the Tribunal were limited at the start of the hearing and became yet further limited as the

hearing progressed. In the event the parties were able to agree that, subject to the views of the Tribunal, a manager should indeed be appointed, and further the Respondent admitted before the Tribunal that there had been breaches on his part of the RICS Code as set out in the section 22 notice dated 30 January 200, albeit limited to the matters listed at paragraph 2 of the notice and page 5 (iv), and paragraphs 5 and 6 and further under paragraph 4.21 of the RICS code.

7. The Respondent was taken carefully through these matters by Mr Bates of Counsel, and was ready to concede, and indeed did concede that these breaches had occurred. He did so on the basis that the Applicants confirmed that they would not use these admissions in any claim for damages which they might bring against the Respondent, and the Tribunal is happy to confirm that it was told that such agreement had been reached by the parties.
8. The mere fact of course that the parties themselves are agreeable to the Appointment of a Manager does not of course lead to the conclusion that such an appointment is to be made. The Tribunal must be satisfied for the purposes of section 24 that a Manager should be appointed. Section 24(2) provides various circumstances in which the Tribunal may make an order one of which is:

“(a) where the Tribunal is satisfied -

(i) that any relevant person has failed to comply with any relevant provision of a Code of Practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and

(ii) that it is just and convenient to make the order all the circumstances of the case”.

9. In the event, the Tribunal was invited to consider the making of an order under this provision on the basis of the written evidence it had considered, and the admissions in person from the Respondent as to breaches of the RICS Code referred to above.
10. The Tribunal indicated to the parties that it was satisfied that this was a case in which, for reasons which need not be gone into for the purposes of this Decision, there was a very substantial history of friction and bad feeling between the Applicants and the Respondent, which had led to the property being unsatisfactorily managed. Moreover both parties were pressing the Tribunal to appoint a Manager and it did indeed seem to the Tribunal that there had been breaches of the relevant code as admitted by the Respondent. Moreover, the background referred to and generally the circumstances of the case, did indeed make it just and convenient that a Manager be appointed. The Tribunal is therefore sympathetic to the appointment of a Manager in this case.
11. The parties presented to the Tribunal a proposed Manager, who was Mr Guy Forcer Williams. Mr Williams is a director of "Lets do Business" which is the trading name of Lets do Business Ltd. That company carries on the business of Residential Lettings and Management from two offices in West London and Mr Williams works in the office at 206 Fulham Palace Road. He told the Tribunal that the business of the company was essentially the letting of flats, but that it did have a small management department which managed some 35 flats at present. His hope was to expand this portfolio.
12. The company has been trading for four years. Prior to this time Mr Williams had worked as a building contractor and developer and had acquired some property of his own. He told the Tribunal that he had experience both as a landlord and as a tenant. Mr Williams had no professional qualifications although he had, he informed the Tribunal, sat certain examinations many years ago set by the Construction Industry Trading Board.

13. The company which he owns and is a director of, had some seven staff - two of them were administrative and the others were involved in residential lettings. When asked about his experience in the field of property management he confirmed to the Tribunal that he and his company had essentially acted for tenants, and that he had not as yet been involved in any management involving the collecting of service charges on behalf of a freeholder. He had never had any appointment as Manager by a Leasehold Valuation Tribunal in the past. He put before the Tribunal no track record of having managed either individual flats or blocks of flats in this capacity.
14. He appeared slightly unclear as to what should be the appropriate charge to make for the management, and indicated that he had in mind £300 per annum per unit (which inclusive of the commercial element, would be £1200 per annum). He further told the Tribunal that he had no appropriate banking account at present for retaining service charges, but that he would set up a separate account for this purpose.
15. His office is open from 9:30am to 6:30pm. When asked by the Tribunal how leaseholders would contact the business outside office hours he was initially unsure as to how this might be achieved. He then suggested to the Tribunal that he would put a list of contractors contact numbers in the foyer of the property. He told the Tribunal although he had read the RICS Code, he did not have a copy with him and that he was not a member of the RICS; nor was he a member of ARMA.
16. When asked about his insurance cover, he told the Tribunal that he thought that he had indemnity insurance and public liability insurance, but that he was not sure for how much or with which company he was insured. When further asked what steps he would take if, after having made service charge demands and issued various reminders, the service charges were not forthcoming – he said that he was not aware of what steps were open to him to take thereafter.

17. The Tribunal was uneasy about the appointment of Mr Williams as Manager, for the reasons indicated briefly to the parties at the hearing. It should be stated at once that the Tribunal had no doubts at all as to his integrity or potential capacity, with further experience, to carry out management services of this kind. However, at present he has no proven track record as a manager of property in this capacity. His knowledge of the relevant statutory provisions was at times sketchy, and his company is presently more geared to lettings of property, than management of this kind.

18. As was indicated to the parties, it may well be that he has a good relationship with the Applicants (as was clear at the hearing) and indeed the Respondent himself was supportive of the application. However before the appointment can take place, the Tribunal itself has to be satisfied that he is a person of sufficient experience to act as the Tribunal's own manager, rather than that of the parties. The Tribunal was not so satisfied and considers that although Mr Williams may well have the potential to act as perfectly competent manager in due course, it is too early at this stage for the Tribunal to be able to appoint him as their own Manager. The Tribunal in the circumstances declines to appoint Mr Williams as the Manager pursuant to section 24 of the Act.

CONCLUSION

19. For the reasons indicated above the Tribunal although sympathetic to the making of a management order, does not make one at this stage, principally because the proposed manager put forward by the parties is not suitable. This leaves the parties essentially with two options. The first is to withdraw the application for a management order and simply to proceed with Mr Williams as their own contractually appointed manager outside the provisions of the Act. There is nothing to prevent the parties from taking this course and indeed they may wish to proceed in this way in the first instance. If this course is successful

there would be no reason to revert to the Tribunal (save to notify the Tribunal that the application has been withdrawn).

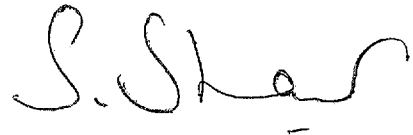
20. The other option open to the parties is to investigate whether another proposed manager is available with a present track record and some greater experience over a longer period of time, and with a greater number of properties with this type of management. The Tribunal is willing to give the parties a period of five weeks to consider these options.

21. In the circumstances therefore, the parties have until 12 November 2007 to indicate in writing to the Tribunal which course they wish to take. Of course, if the parties were able to make a decision before that date, so much the better. If the decision is to withdraw the application, then the parties should so indicate to the Tribunal in writing. If the decision is taken to proceed with the application, but with a different proposed manager, then a full statement should be taken from the proposed manager dealing with the issues mentioned above, and also the other matters raised in questions from the Tribunal at the hearing. This notification and statement should be supplied to the Tribunal also by no later than 12 November 2007. Thereafter, if this latter course is taken, a further hearing will be necessary, which would be for a maximum of half a day, at which the attendance of the proposed manager would be essential, so that the Tribunal has an opportunity to examine appropriately the candidate put forward.

22. The parties should therefore indicate to the Tribunal by no later than 12 November 2007 which course is to be taken, in the light of which indication this matter can either be brought to a conclusion without further recourse to the Tribunal, or a further date set.

Legal Chairman:

S.SHAW

A handwritten signature in black ink, appearing to read 'S. Shaw', with a horizontal line underneath the name.

Date

22nd October 2007