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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 OF THE LANDLORD AND TENANT
ACT 1987**

CASE REFERENCE NUMBER LON/OOAY/LAM/2010/0013

**PROPERTY ADDRESS: FLATS 1-52 COURTENAY HOUSE, 9-15 NEW
PARK ROAD, LONDON**

Applicant: Metropolitan Housing Trust Limited

Respondent: Laxcon Development Limited (freeholder)

Appearances:

**For the Applicant: Mr A. Carr of Counsel
Mr H. Dervish, in-house solicitor of the
Applicant company
Mr Bruce Maunder Taylor FRICS MAE –
proposed manager**

For the Respondent: No-one in attendance

**Tribunal Mrs S. O'Sullivan
Mr L. Jarero BSc FRICS
Mrs J. Clarke JP**

Date of Hearing 15 July 2010

Background

1. The Applicant seeks an order appointing a manager under section 24 of the Landlord and Tenant Act 1987 (the "Act") and a preliminary notice was served on the Respondent landlord on 10 March 2010. The Applicant company was granted a lease of the premises at Flats 1-52 at the property which it has in turn granted sub-leases of on shared ownership leases. These flats are on the first, second and third floors of the building.
2. The application is made in respect of the premises known as Courtenay House, 9-15 New Park Road, London SW2 (the "Premises"). The Premises comprise 52 flats as demised to the Applicant as referred to above and a further 50 flats which form part of the Respondent's title on the fourth fifth and sixth floor with 2 penthouse flats on the roof. The Premises were originally constructed as an office building in the 1960s and has been subsequently converted to residential use.
3. Directions were made dated 5 May 2010, further to which statements of case were made and a bundle lodged on behalf of the Applicant for the hearing.

The Hearing

4. The hearing of the application took place on the morning of 15 July 2010. The Applicant was represented by Mr A Carr of Counsel together with their proposed manager Mr Maunder Taylor. There was no representative for the Respondent. The Tribunal had received a letter dated 14 July 2010 which confirmed that the Respondent did not object the appointment of a manager of the Premises.
5. The Respondent chose not to attend to make any submissions on either the identity of the proposed manager or the terms of any appointment.
6. In the bundle before the Tribunal was a copy of the application which attached a statement which confirmed that the application was made as a result of the Respondent's breaches of the lease and general poor management. On this basis Mr Carr submits on behalf of the Applicants that it would be just and equitable for a management order to be made under section 24 of the Act.
7. The Tribunal was referred to the proposed management order. The Applicant wished for provision to be made for the manager to have the power to invoice the Applicant's lessees direct. This would have the effect of decreasing costs and simplifying the administration of the service charges.

8. The Tribunal went on to hear from the proposed manager. Mr Bruce Maunder Taylor of Maunder Taylor gave evidence in relation to his experience as a property manager. The Tribunal heard that Mr Bruce Maunder Taylor had extensive experience in blocks where he had been appointed a manager. The Tribunal heard that he had been appointed on section 24 applications by the LVT in a number of cases and remained a manager of nine properties. He confirmed that he had inspected the Premises on 18 May 2010 and had identified the moth infestation problem as requiring action together with an issue in relation to pigeons nesting on external ledges. The Premises were heard to be in generally good condition but there had been some historic accounting problems.
9. The proposed annual fee was £250 plus Vat. Mr Bruce Maunder Taylor explained that this fee was appropriate for a block of this size with the service charges provided. Where limited services were provided the management fee might be lower.
10. The management agreement proposed an open period of appointment rather than an appointment for a fixed period. He explained that this was preferable as it avoided the cost of reappointment and was appropriate where general negligence was alleged as opposed to a particular problem which could be rectified in a set timespan.

The Tribunal's decision

11. The application was not opposed by the Respondent. The Tribunal was satisfied under section 24 (2) (a) of the Act that the Respondent is in breach of its obligations to the Applicant as contained in its lease and that it is just and convenient to make an order in all the circumstances.
12. The Tribunal was satisfied that Mr Bruce Maunder Taylor, the proposed manager was well qualified as a property manager and was a fit and proper person with the requisite skills and abilities to perform the duties of a manager and is suitable for appointment as manager and receiver of the Premises. The Tribunal was also satisfied that the management fee proposed was reasonable in the light of the evidence it heard and the Tribunal's experience generally.
13. The Applicant had asked that the Tribunal make provision for the manager to invoice the lessees under shared ownership leases direct rather than invoice the Applicant company who in turn would then invoice its lessees. The Tribunal considers this sensible. It is for the manager to decide how to administer the service charges but for the avoidance of doubt the Tribunal makes reference to this provision in the order.

14. Accordingly the Tribunal makes the order attached hereto.

15. The management agreement proposed an open appointment. The Tribunal considers that an initial appointment should be made for a period of 5 years.

16. An application was made under section 20C for an order that the landlord be prevented from adding its costs of the proceedings before the Tribunal to the service charge. In view of the fact that the Respondent has consented to the application and did not intend the landlord's costs are likely to be low. In view of the Tribunal's decision it considers it reasonable to make an order under section 20C.

Chairman.....Sonya O'Sullivan.....
Dated.....28 July 2010..

IN THE LEASEHOLD VALUATION TRIBUNAL

**Re: Flats 1-4, 101-116, 201-216, 301-316, 401-416, 501-516, 601-616, 701, 702
Courtenay House, 9 – 15 New Park Road, London SW2 4DU**

B E T W E E N :

METROPOLITAN HOUSING TRUST LTD

Applicants

- and -

LAXCON DEVELOPMENTS LIMITED

Respondent

MANAGEMENT ORDER

1. In this Management Order, the Directions and the Schedule of Rights, Functions and Services attached to this Management Order the following expressions shall have the meanings set out below:
 - (a) "the Property" shall mean and include the buildings, outhouses, gardens, amenity space, drives, pathways, roads, parking spaces, landscaped areas, passages, bin-stores, attics, common parts and all other parts of the property known as and situate at 9 – 15 New Park Road, London SW2 4DU
 - (b) "the Landlord" shall mean Laxcon Developments Limited, the Respondent to this Application, or in the event of the vesting of the reversion of the residential under-leases of the property in another, the Landlord's successors in title
 - (c) "the Leases" shall mean the long leases and/or underleases of flats in the Property and "Lease" shall be construed accordingly
 - (d) "the Tenants" shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly
 - (e) "The Applicant Tenant" shall mean The Metropolitan Housing Trust Limited
 - (f) "The Manager" shall mean Bruce Roderick Maunder Taylor of Maunder Taylor Chartered Surveyors, 1320 High Road, London N20

2. It is hereby ordered that:

- (a) In accordance with s.24(1) of the Landlord and Tenant Act 1987 the Manager shall be appointed as receiver and manager of the Property.
- (b) The order in paragraph 2(a) above shall be for a period of 5 years and shall expire on 31 July 2015.
- (c) The Manager shall manage the Property in accordance with:
 - (i) the Directions and Schedule of Rights, Functions and Services attached to this Management Order;
 - (ii) the respective obligations of the Landlord under the Leases by which the flats at the property are demised by the Landlord and in particular with regard to repair, maintenance, decoration, renewal and provision of services to and insurance of the Property; and
 - (iii) the duties of managers set out in the Service Charge Residential Management Code (2009) ("The Code") or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

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[Chairman]

[Date]

DIRECTIONS

1. That from the date of appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2,000,000 and shall provide copies of the current cover note upon request being made by the Tenants, the Landlord or the Tribunal.
2. That the Manager in the performance of his functions and duties, and in the exercise of his powers under this Management Order, shall exercise all the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and duties and the exercise of the said powers and shall indemnify the Landlord in respect of any loss occasioned by any negligent act or omission of himself, his servants or agents.
3. That not later than 4 weeks after the date of this Management Order the Landlord and the Applicants shall make available to the Manager all such books, papers, memoranda, records, computer records, minutes, correspondence, facsimile correspondence, electronic mail and all other documents and records as are necessary for the management of the Property and are within its custody, power or control or the custody, power or control of any of its servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
4. That the Landlord shall not later than 4 weeks after the date of this Management Order give full details to the Manager of all sums of money it holds or which are held by its servants or agents in the service charge fund and the reserve fund (if relevant and however described) in relation to the Property and including giving copies of any relevant bank statements, and shall by that date pay any such sums to the Manager. In the case where such sums are held by the Landlord's servants or agents, the Landlord shall take all reasonable steps to procure the giving of such information and documents and the making of such payment to the Manager. If the Landlord or its servants or agents shall thereafter receive any sums under the Leases, it shall forthwith pay or take all reasonable steps to procure payment of such sums to the Manager.
5. That the Landlord and its servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Management Order and shall not interfere or attempt to interfere with the exercise of any of his said rights, duties or powers by due process of law.
6. That the Landlord shall allow the Manager all reasonable access to those parts of the Property retained by it in order that the Manager might conveniently perform his functions and duties, and exercise his powers under this Management Order.
7. That the Landlord, its servants and agents shall permit the Manager and assist him as he reasonably requires to serve upon any Tenants any notice pursuant to section 146 of the Law of Property Act 1925.
8. That the Landlord shall deliver to the Manager forthwith copies of all specifications, tenders, planning permissions and all other consents, permissions, documents and instruments which the Landlord has, or which come into the

- power, control or custody of the Landlord after the date of this Management Order, concerning or arising out of the Landlord's construction of additional flats at the Property or which are in the power, control or custody of any of the Landlord's servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
9. That the rights and liabilities of the Landlord and/or the former managing agent arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall upon the date 4 weeks from the date of this Management Order become rights and liabilities of the Manager.
 10. That the Manager shall account forthwith to the Landlord for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Landlord's covenants contained in the Leases.
 11. That the Manager shall recover and shall account forthwith to the Applicant Tenant for rent received by him from those tenants holding shared ownership leases granted by the Applicant Tenant
 12. That the Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges under the Leases of the Property) in accordance with the Schedule of Functions and Services attached.
 13. That at the expiry of 6 months from the date of this Management Order, the Manager shall prepare a brief written report for the Tribunal on the progress of the management of the Property up to that date and shall submit the same to the Tribunal by no later than 31 January 2011.
 14. That the Manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited) to the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
 - (c) in the event that there are insufficient sums held by him to pay the manager's remuneration.

SCHEDULE OF RIGHTS, FUNCTIONS AND SERVICES

A. SERVICE CHARGES

- 1.1 The Manager shall have the right to treat the service charge financial year for the Property as commencing on the date of this Order for one year and thereafter from year to year.
- 1.2 The Manager shall have the right to demand and receive from the Tenants, as the proprietors of any flats in the Property, and their successors in title to any flats in the Property, service charge contributions in such reasonable and proper proportions to be determined by the Manager.

- 1.3 The Manager shall have the right to demand and receive from the Tenants half-yearly payments of service charges in advance on account of actual expenditure to be incurred by the Manager on the first date of this Order in such sum as the Manager shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year and for avoidance of doubt shall have the same right in respect of each subsequent service charge financial year.
- 1.4 The Manager shall have the right to establish and maintain a reserve fund ("the Reserve Fund") to make provision for any maintenance, repair and renewal of the Property which shall not be carried out in the service charge financial year during which any contribution towards the Reserve Fund is demanded.
- 1.5 The Manager shall, in his discretion and having regard to any reasonably necessary anticipated repair, maintenance and renewal works required at the Property, be entitled to demand from the Tenants a reasonable contribution towards the Reserve Fund as part of the service charges for works of maintenance, repair and renewal of the Property which will not be carried out within the service charge financial year during which the demand for payment is made and for avoidance of doubt all references to "service charges" or "service charge" within this Management Order shall include such contribution to the Reserve Fund.
- 1.6 The Manager shall have the right to demand and collect ground rents, insurance rents and any other payments due from the Tenants.
- 1.7 The Manager shall have the right to demand and collect service charges from those tenants holding shared owner leases granted by the Applicant Tenant
- 1.8 The Manager shall prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants as per the percentage share of under the terms of their respective Leases.
- 1.9 The Manager shall have the power and the duty to carry out the obligations of the Landlord contained in the Leases (save as varied by the terms of this Management Order), and in particular, and without prejudice to the generality of the foregoing shall have:
 - (a) the Landlord's obligation to provide services;
 - (b) the Landlord's repairing, maintenance and renewal obligations; and
 - (c) the Landlord's obligation to arrange insurance of the buildings on the Property ("the Buildings") with a reputable insurer PROVIDED that the Manager shall neither determine nor vary the Respondent's existing contract for the insurance of the Buildings without the consent of the Tribunal.
- 1.10 The Manager shall have the power in his own name on behalf of the Landlord to bring and defend any action or other legal proceedings in connections with the Leases or the Property including but not limited to proceedings against any Tenants in respect of arrears of rent, service charges or other moneys due under the Leases, and to make any arrangements or compromise on behalf of the Landlord, save that the Manager shall not have the right to continue any such action or other legal proceedings or to make any arrangements or compromise on behalf of the Landlord in relation thereto, as shall have been

commenced before the date of his appointment and which the Landlord shall be at liberty to pursue.

- 1.11 In the event that the Tenants shall be in breach of their covenants in the Leases and/or their obligations as provided in this Management Order, the Manager shall be entitled to recover from any such Tenant on a full indemnity basis any costs, fees, charges, expenses and/or disbursements incurred or occasioned by him in the appointment of any solicitors, counsel, surveyors or any other professional reasonably retained by the Manager for the purposes of enforcing such covenants or obligations whether or not the Manager brings any proceedings in court or before any tribunal

PROVIDED THAT in default of recovery of the same from the particular Tenant in breach of the covenants in the Leases and/or the obligations as provided in this Management Order, the Manager shall be entitled to recover the same through the service charges

- 1.12 The Manager shall place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the Property within the service charge budget.
- 1.13 The Manager shall have the power to appoint solicitors, accountants, architects, surveyors, and such other professionally qualified persons as may reasonably be required to assist him in the performance of his functions.
- 1.14 The Manager shall have the power to appoint any agent or servant to carry out such functions or obligations which the Manager is unable to perform himself or which can be more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- 1.15 The Manager shall have the power to open and operate bank accounts in his own name in relation to the management of the Property and to invest moneys received pursuant to his appointment in any manner specified in parts I and II of the First Schedule of the Trustee Investment Act 1961 and to hold those funds received from the Tenants of the flats in the Property pursuant to section 42 of the Landlord and Tenant Act 1987

PROVIDED THAT the Manager shall deal separately with and shall distinguish between moneys paid as contribution towards the Reserve Fund and all other moneys received pursuant to his appointment.

- 1.16 The Manager shall have the power to claim in the bankruptcy, insolvency, sequestration or liquidation of any Tenant owing moneys due under his, her or its Lease.
- 1.17 The Manager shall have the power to receive, consider, refuse, grant or otherwise deal with application for consents or licences of whatever nature as to dealings, alterations or any other matters requiring the consent of the Landlord under the Leases which relate to the Tenants or as to their flat(s). In relation to such applications the Manager shall where applicable use his best endeavours to secure a reasonable open market premium and shall account to the Landlord therefore. Where the Manager has confirmed that such consent or licence shall be granted the Landlord shall execute all necessary documents to give effect thereto without delay or request for payment

PROVIDED THAT the provisions of this paragraph shall be subject to an obligation on the part of the Manager to give reasonable notice to the Landlord of any such applications received by him and the terms thereof which he proposes to grant, with the intent that the Landlord shall have the opportunity of making observations to the Manager on such applications and proposed consents.

- 1.18 The Manager shall have the power to borrow all sums reasonably required by the Manager for the performance of his functions and duties and the exercise of this powers under this Management Order in event of there being:
- (a) arrears or other shortfalls of service charge contributions due from the Tenants; or
 - (b) arrears, or other shortfalls of other sums due from the Tenants,
- such borrowing to be secured (if necessary) on the interest of the Landlord in the Property or any part thereof

PROVIDED THAT the Manager shall not secure any such borrowing without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed), or in default of the Landlord's consent, without further Order of the Tribunal.

B. ACCOUNTS

- 2.1 The Manager shall prepare and submit to the Landlord an annual statement of account detailing all monies received and expended on its behalf. The accounts may be certified by an external auditor if required by the Manager.
- 2.2 The Manager shall upon request produce for inspection receipts or other evidence of expenditure.
- 2.3 All monies collected on the Landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the landlord.

C. MAINTENANCE

- 3.1 The Manager shall deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. The Manager shall deal with all building maintenance relating to the services and structure of the building.
- 3.2 The Manager shall give consideration to works to be carried out to the Property in the interest of good estate management and make the appropriate recommendations to the Landlord and the Tenants.
- 3.3 The Manager shall set up a planned maintenance, repair and renewal programme to allow for (amongst other matters and without imposing any limitation) the periodic re-decoration of the exterior and interior common parts and such other periodic maintenance, repair and renewal as may be required at the Property.
- 3.4 If Major works are to be carried out to the Property The Manager will (where it is necessary) prepare a specification of works, obtain competitive tenders, serve

relevant notices on lessees informing them of the works and supervising the works.

D. FEES

- 4.1 Fees for the above mentioned management services will be a basic fee of £250.00 per annum per unit for the flats within the Property, reviewable annually. Those services shall include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS.
- 4.2 The Manager shall be entitled to recover all costs, fees, expenses and disbursements properly and reasonably incurred in employing any solicitors, counsel, surveyors, architects, accountants or any other professional.
- 4.3 An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.4 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 4.5 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed.

E. COMPLAINTS PROCEDURE

- 5.1 The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Institution upon request.