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IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1987 – SECTION 24(1)

LANDLORD AND TENANT ACT 1985 – SECTION 20C

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LON/00BG/LAM/2009/0023

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**Premises:** Osier Court, Osier Street, London E1 4AP

**Applicants:** (1) Stephanie Greig  
(2) Paul Vernon  
(3) Michael Loates

**Represented by:** In person

**Also present:** Mr. P Koopman MRICS

**Respondent:** Sandringham Land Limited

**Represented by:** Mr. A Carr, counsel instructed by Ananir Law

**Also present:** Mr. BR Maunder Taylor FRICS MAE

**Tribunal:** Ms. LM Tagliavini, LLM, DipLaw, BA Hons  
Mr. D Banfield FRICS  
Mrs. L Walter MA Hons

**Hearing Date:** 8 February 2010

1. This is an application made pursuant to section 24(1) of the Landlord and Tenant Act 1987 seeking the appointment of a manager for premises known as Osier Court, Osier Street, London E1 together with an order under section 20C of the Landlord and Tenant Act 1985 for the limitation of the landlord's costs incurred in these proceedings. This is a 1930's purpose built block of 16 flats, with 14 new flats added in 2009. The application is made by the lessees of Flats 13 and 16 whose interests are held under leases granted for a term of 99 years from 29 September 1975. By an application dated 17 September 2009, it was said that the Respondent and its managing agents continued to be in default in implementing the decision of the LVT dated 14 January 2008; were continually charging the lessees for work they were not liable to pay; and passing some of the costs of the new build flats onto the existing lessees. A section 22 notice was served on 31 July 2009 by the Applicants on the Respondent with a copy to Salter Rex (Chartered Surveyors), the landlord's managing agents.
  
2. Initially, the Respondent appeared to oppose the application for the appointment of a manager as set out in its Reply dated 30 November 2009, and requested an adjournment of the full hearing. However, on the date of hearing itself, the Respondent informed the Tribunal that the appointment of a manager was not opposed, but put forward an alternative manager to that suggested by the Applicant. Therefore, the Tribunal was required to only consider substantively which manager should be appointed.
  
4. The Applicants' proposed manager Mr. Paul Koopman, MRICS in a witness statement dated 21 December 2009 gave a detailed written account of his qualifications and experience of managing properties. On questioning by the Tribunal, Mr. Koopman admitted over his 20-year experience, he had managed mostly commercial units, but currently had four residential units ranging from 4 to 9 flats mostly in

and around the London area. He stipulated that the setting up of a rolling indemnity fund in the sum of £10,000 was a condition of his accepting the appointment as manager of the subject building. This fund was required in order to meet the requirements of running the building and to provide for payment of his fees as advance service charges were not collectable under the terms of the leases in respect of the 16 'old' flats. He stated that in his opinion there was no present need to set up a reserve fund but would keep that under review. Fees of £250 + VAT per annum per flat would be payable for his services and he would maintain a personal indemnity insurance policy up to a maximum of £1,000,000.

5. The Tribunal was also provided with detailed information on the qualifications and experience of Mr. Maunder Taylor, FRICS, MAE, the Respondent's nominated manager. Attached to this was a copy of the usual Management Agreement and Conditions utilised by Mr. Maunder Taylor. The Tribunal was also presented with a draft Management Order for consideration by the Tribunal as containing suitable terms for the appointment of a manager.
  
6. In his oral evidence Mr. Maunder Taylor reiterated that he personally managed residential properties although there was a completely separate part of his business that managed commercial properties. He told the Tribunal that he had insurance up to £5,000,000. In the draft management order, Mr. Maunder Taylor specified that he would set up a reserve fund; resolve the outstanding disagreements between the parties arising from the previous LVT decision and its implementation and collect service charges in the appropriate amounts at the appropriate times. Mr. Maunder Taylor stated he was aware that there were differing provisions for the collection of service charges in the leases, including those for the 14 newly built flats.

7. Mr. Maunder Taylor explained the £225 + VAT per annum per flat charge as being within the range of the going rate for such blocks and cited to the Tribunal examples of other similar blocks where slightly higher management fees had been charged to reflect the need to sort out existing problem areas.

The Tribunal's Decision:

8. The Tribunal is of the opinion that it is a proper exercise of its powers to appoint a manager for the subject property pursuant to section 24(1) of the Landlord and Tenant Act 1987, notwithstanding both parties are in agreement that the LVT should do so. The Tribunal found both proposed managers to be experienced and competent in their roles but on balance was persuaded that the appointment of Mr. Maunder Taylor was the appropriate choice.
9. In reaching this decision the Tribunal took into account the significantly greater experience of managing exclusively residential properties demonstrated by Mr. Maunder Taylor, and his increased understanding of the potential complexities that might arise where there were newly created leases that now might require a change to their implementation under the terms of any management order, in respect of the collection of service charges.
10. The Tribunal carefully scrutinised the terms of the revised draft management order proposed by the Respondent. In the light of the shortcomings of the current leases to adequately provide for the advance collection of service charges or the provision of a reserve fund, together with the complicating factor of 14 new flats having been built and let in the block, the Tribunal is satisfied that the draft management order put forward by the Respondent, as amended and

attached to this decision, should be made by the LVT pursuant to its powers under section 24(1) of the Landlord and Tenant Act 1985.

### Fees

11. The Tribunal had regard to the conduct of the Respondent in this matter, and the extremely late indication to either the Applicants or the Tribunal of its intention not to continue to oppose the application. In light of the Respondent's opposition to the application until the day of the hearing, and without opposition from the Respondent the Tribunal is of the opinion that the application fee should be reimbursed to the Applicants. Further, had the Respondent provided the applicant with its concession, details of its suggested appointment and draft management order the parties may well have been in a position to have agreed all matters subject to the Tribunal's final order.

11. The Tribunal exercises its discretion pursuant to regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003, and directs that the Application will reimburse to the applicants both the application and hearing fees (totaling £500) within 14 days of the date of this decision.

12. In so far as is necessary, and in light of the above decisions, the Tribunal directs that it would not be fair or reasonable for any costs of this litigation to added to the service charge.

  
Chairman: LM Tagliavini

Dated: 16 February 2010

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**Re: OSIER COURT, OSIER STREET, LONDON E1 4AP**

**BETWEEN:**

**(1) STEPHANIE GREIG  
(2) PAUL VERNON  
(3) MICHAEL LOATES**

**Applicants**

**- and -**

**SANDRINGHAM LAND LIMITED**

**Respondent**

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**MANAGEMENT ORDER**

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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 Osier Court, Osier Street, London E1 4AP
  - (b) “the Landlord” shall mean Sandringham Land 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 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 continue until further order.
- (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.

  
Chairman: LM Tagliavini

Date: 18 February 2010

## 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 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.
12. 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 1<sup>st</sup> September 2010.
13. 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 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.
- 1.8 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.

- 1.9 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.
- 1.10 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

- 1.11 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.
- 1.12 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.
- 1.13 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.
- 1.14 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.

- 1.15 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.
- 1.16 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.

- 1.17 The Manager shall have the power to borrow at the best available rates reasonably available, 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.

#### D. FEES

- 4.1 Fees for the above mentioned management services would be a basic fee of £225.00 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 Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees informing them of the works and supervising the works) will be subject to a charge of 1% of the cost. The professional fees of any architect, surveyor, or other appropriate person in the administration of a contract for such works will be charged separately.
- 4.3 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.
- 4.4 An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.5 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 4.6 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.