

9289



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL  
PROPERTY)**

**Case Reference** : BIR/00FN/LAM/2013/0001

**Property** : 50 Cross Hedge Close, Leicester, LE4  
oUD

**Applicants** : Navneet Aggarwal  
Hammercliffe Estates Limited

**Respondent** : J H Watson Property Investment  
Limited

**Representation** : Ms Haley Bellerby of Watson  
Property Management

**Type of Application** : (a) under Section 24 of the Landlord  
and Tenant Act 1987 ('the Act') for the  
appointment of a manager and (b)  
under section 20C of the Landlord  
and Tenant Act 1985

**Tribunal Members** : Mr W J Martin (Chairman)  
Mr G S Freckelton F.R.I.C.S

**Date and venue of Hearing** : Leicester Magistrates Court on  
24<sup>th</sup> July 2013

**Date of Decision** : 3. 1. JUL 2013

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**DECISION**

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## **Preliminary**

- 1 The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1<sup>st</sup> July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1<sup>st</sup> July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber) or, where the context admits, the leasehold valuation tribunal.
- 2 On 21<sup>st</sup> December 2012 Navneet Aggarwal ('the Original Applicant') applied ('the Application') to the leasehold valuation tribunal under section 24 of the Act for an Order for the Appointment of a Manager of 50 Cross Hedge Close, Leicester LE4 0UD ('the Property'). Subsequently Hammercliffe Estates Limited ('the Joined Applicant') applied to be joined as an Applicant and the Tribunal agreed to such request. The Applicants comprise all three of the lessees at the Property. The Original Applicant is the Lessee of Flats 2 and 3 and Hammercliffe Estates Limited is the Leaseholder of Flat 1. J H Watson Property Investment Limited is the Respondent and the freeholder of the Property. J H Watson Property Management Limited (trading as Watson Property Management) is the current manager appointed by the Respondent.
- 3 The Application requests that Property Base of 5 Wellington Street, Leicester LE1 6HH is appointed as manager.
- 4 The Tribunal's power to make an Order derives from section 24 of the Act:

### **24 Appointment of manager**

- (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies-
  - (a) such functions in connection with the management of the premises, or
  - (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely-
  - (a) where the tribunal is satisfied-

- (i) that any relevant person is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give the appropriate notice; and
- (ii) ....
- (iii) that it is just and convenient to make the order in all the circumstances of the case
- (ab) where the tribunal is satisfied-
  - (i) that unreasonable service charges have been made, or are proposed to be made; and
  - (ii) that it is just and convenient to make the order in all the circumstances of the case
- (aba) where the tribunal is satisfied-
  - (i) that unreasonable administration charges have been made, or are proposed to be made; and
  - (ii) that it is just and convenient to make the order in all the circumstances of the case
- (abb) where the tribunal is satisfied-
  - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
  - (ii) that it is just and convenient to make the order in all the circumstances of the case
- (ac) 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 in all the circumstances of the case
- (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

[By virtue of section 20 (1) 'the appropriate tribunal' is defined, in respect of properties in England as the First-tier Tribunal, or where determined by or under Tribunal Procedure Rules, the Upper Tribunal]

### **Inspection**

- 4 The Tribunal inspected the Property on 24<sup>th</sup> July 2013 in the presence of the Original Applicant and Ms Haley Bellerby of Watson Property Management.
- 5 The Property is a former council house, which has been converted into three self-contained flats. It is located in the Beaumont Leys area of Leicester. Flat 1 is on the ground floor, and has its own front door. The two flats on the first and second floors are accessed by a second door from which stairs ascend to the front doors of these two flats. Stairs also descend from a first landing to a rear door which gives access to the communal garden at the rear of the Property. There is also a small area

of garden at the front of the Property. The maintenance obligations of the Landlord, or the prospective manager therefore extend to the structure of the building itself, the cleaning and lighting of the common stairs and landings and the communal garden areas.

### **The Leases**

- 6 A copy of the Lease of Flat 2 was supplied. It is dated 27<sup>th</sup> March 1992 and is made between Macmillan Stewart Securities (1) and Ruth Green (2). The Lease demises Flat 2 for the term of 120 years from 24<sup>th</sup> June 1991 at a ground rent of £100 together with service charges as defined in the Lease. The Tribunal were informed, and accept as the case, that the leases of all of the Flats are in a similar form.

### **Submissions, Hearing and Determination**

- 7 Directions of the Tribunal had been issued and in compliance with those Directions submissions and bundles were provided by the Joined Applicant and the Respondent. No further written submissions were provided by the Original Applicant, other than the letter of 10<sup>th</sup> April 2013 referred to in paragraph 9 below.
- 8 The Application was heard at Leicester Magistrates Court on 24<sup>th</sup> July 2013 following the inspection. The Original Applicant was present and also Ms Bellerby on behalf of the Respondent. Mr Vezis, Director and Secretary of Hammercliffe Estates Limited, had informed the Tribunal shortly before the Hearing that he had intended to attend the Hearing, but he lives abroad and his doctor had advised against travel.
- 9 At the commencement of the Hearing the Chairman informed the parties that, in the event that the Tribunal decided to appoint a manager it would not wish to appoint a limited company or a partnership, but would prefer to appoint an individual. Mr Aggarwal informed the Tribunal that, jointly with his wife, he controls the company which trades as Property Base, and that he personally would be prepared to accept the appointment. Mr Aggarwal had, in a letter written to the Tribunal dated 10<sup>th</sup> April 2013, suggested that the management would be conducted through a new company in which 25% of the shares would be owned by the Respondent, 50% by Mr and Mrs Aggarwal as the owners of Flats 1 and 3, and 25% by Hammercliffe Estates Limited. The Chairman informed Mr Aggarwal that this would not be satisfactory and that the appointment, if made, would be personal. A manager appointed under section 24 of the Act is an officer of the Tribunal.
- 10 Mr Aggarwal said that he relied on the submissions and witness statements of Mr Vezis (made on behalf of Hammercliffe Estates Limited) and the information contained in the Application form and supporting documents, including specifically the Section 22 Notice, which had been served on 5<sup>th</sup> November 2012.
- 11 The written submissions and Section 22 Notice, as regards the grounds for the Application, are summarised as follows:

01. There have been two previous Tribunal decisions in respect of the Property. It is alleged that these have not been complied with, particularly with regard to the production of certified annual accounts, the use of a reserve fund when the lease does not permit this, and a failure to meet with the leaseholders prior to the production of the accounts, which are presented as a fait accompli.
02. The Respondent has failed to maintain the Fire Alarm System, which was found disabled and not serviced in accordance with the service contract. The fire which was started in Flat 1 may have been prevented if this the alarm had been working.
03. The Respondent is attempting to charge for reinstating the rear garden which was used by contractors to carry out the refurbishment following the fire. The fence was damaged by the fire brigade. There is also a question as to whether horizontal fire stopping has been inserted between the three floors at the Property.
04. There is a conflict of interest between the Respondent and the management company, which is a subsidiary company of the Respondent.

12 Mr Vezis' submissions are summarised as follows:

01. There is no contract between the Respondent and Watson Property Management as required by the R.I.C.S Code of Practice. Evidence of this was provided by a witness statement of Jean Bramhill used in one of the previous Tribunal proceedings.
02. The Tribunal decision BIR/00FN/LIS/2009/0002 found that the solicitor's fees of £21,401.05 and Counsel's fees of £2,875 were not recoverable through the service charge. However a letter dated 22<sup>nd</sup> September 2009 from Last Cawthra Feather, the Respondent's solicitors to the Respondent, says that these costs would be re-charged as an administration charge in due course
03. The above LVT decision said that the Certification of the Annual accounts was a pre-condition of liability to pay the service charge, although this was capable of subsequent remedy. The accounts are still not certified. Although Ms Bellerby says in her witness statement that this is now carried out, Mr Vezis maintains that he has never seen them.
04. The Respondent charges sums to the service charge account which it knows will be re-credited (such as payments to contractors in respect of the fire which would be subsequently paid by the insurer). It is alleged that the sums are then put in another account, rather than credited, thus causing confusion and increasing alleged arrears.
05. There is a lack of professionalism. This is illustrated by the failure to maintain the fire alarm system. Mr Vezis says that he was shown the severed wire in the fire alarm box by the Police and Fire Brigade. The box was not lockable and was open to all and

sundry. Tranters, who maintain the system, told Mr Vezis that they were unable to service the alarm at one point as the lock had been changed to the main entrance door to Flats 2 and 3.

13 The Respondent's written submissions are summarised as follows:

01. Both of the previous Tribunal proceedings were commenced by the Respondent due to non-payment of service charges by Hammercliffe Estates Limited. There were some small credits awarded to the leaseholders, but the major item was the removal of the legal fees. These were removed on 18<sup>th</sup> September 2009 following which agreement was reached with Mr Aggarwal, that on receipt of a credit of £3,869.62 in respect of interest for late payment, Mr Aggarwal would pay the outstanding sums. This demonstrates goodwill. Unfortunately, Mr Aggarwal has reverted to erratic payments and continues to incur interest and late payment administration charges.
02. Section 5 Notices offering to dispose of the Freehold were served on the Applicants but not taken up.
03. The accounts for 2009, 2010 and 2012 have been certified, although 2011 was overlooked. The accountants have been requested to provide this.
04. A reserve fund is not collected. However, the computer system used is designed to protect the leaseholder trust funds and shows surpluses as reserve funds (i.e. unspent monies). However, this is subsequently transferred as credits to the leaseholders.
05. It is not uncommon for management to be carried out by a subsidiary. However, there is complete transparency, and no attempt has been made to hide the true position.
06. Watson's try to keep the service charges as reasonable as possible. The annual budget is about £3,000. It is denied that there is not liaison between the property manager (Mr Patel) and the Leaseholders.
07. It cannot be denied that the Property is difficult to manage, but this is due to late payments and the fact that the leaseholders want to manage the Property themselves and therefore do not wish to interact with Watsons.

14 At the Hearing, Mr Aggarwal said that the leaseholders feel they are being overcharged by Watsons. Mr Aggarwal is a local letting agent himself. His firm manages many small blocks like the subject Property and considers that the service charge could be reduced to around £1,000 per annum. The current charge represents about 28% of the rental income achievable, which is too high. The rents won't support the level charged, and this is why the full service charges demanded have not been paid. When he completed the purchase of Flat 3 in January 2013 he paid half of the service charge through his solicitor and then attempted to contact Watsons to discuss how the amounts could be reduced. Mr Aggarwal said his requests were ignored. He also requested facilities to pay on a monthly basis.

- 15 As the Tribunal were told at the Inspection, although the service charges are demanded, Watsons are not in fact carrying out all of the services. The gardening is being done by the tenant of Flat 1. It is true that light bulbs were installed the day before the Inspection, but nothing had been done for a long time prior to this. New locks were also installed, but unfortunately no keys were available to obtain access to the rear garden from Flats 2 and 3.
- 16 After the fire, Mr Aggarwal had to arrange for his tenant to vacate. He considered that he should have been provided with loss of rent from the insurers, but apparently this is not covered. Whilst the Property was vacant he suffered the theft of a boiler and copper pipes, costing him £6,000. He has still not received any payment from the insurers. This is an example of poor management.
- 17 Ms Bellerby said that it is true that only essential services are being carried out. Accordingly, the amounts demanded in the budget for items such as gardening and cleaning are not paid, but the service charge account is credited in the year-end accounts. This is the way the service charge provisions in the Lease are supposed to work.
- 18 With regard to the insurance claim in respect of the boiler and copper, Ms Bellerby said she would need to obtain further information from the office in Wetherby. With the Tribunal's consent, a further submission relating to this was provided after the Hearing. The Respondent submitted that the forms were held by the Applicant and/or his associate, Mr David Taylor and that a delay arose because of this. Further forms have now been provided and these have now been received, having been completed by the Applicant. With regard to the insurance claim regarding the fire Ms Bellerby also confirmed that some items in the service charge accounts had been paid in respect of insured items, but that they were re-credited after payment by the insurers. An example of this was the VAT on the loss adjuster's fees, which had been inadvertently unpaid by the insurer.
- 19 With regard to the claim in respect of the boiler and the copper pipes, the Tribunal had also allowed Mr Aggarwal to make a final written submission, having seen that of the Respondent. He said that the Respondent misses the point: all of the information they needed to process the claim was with them by 2<sup>nd</sup> October 2012.
- 20 Regrettably, with the written submissions relating to the theft, both parties included further written submissions upon other matters. The Tribunal had not given permission for any such further submissions, and these have not been considered by the Tribunal. With the exception of the submissions relating to the theft and the insurance claim arising out of it, the Tribunal confines its deliberations to the written submissions made before the Hearing and the oral submissions made at the Hearing.

- 21 The Tribunal inquired as to the size of Watson's business and were told that it presently operates from its head office in Wetherby, but that it will shortly re-locate to Leeds. It deals with property management on a nationwide level. The Property is the only one it managed in Leicester, but the property manager is Mr Patel, who operates from Birmingham. In fact, Mr Patel, when he makes his periodic visits cleans the interior areas himself, whilst there are insufficient funds from the leaseholders in the service charge account to cover the cost of all the work required.
- 22 Mr Aggarwal, on being questioned by the Tribunal, said that he considered he had sufficient experience to manage the Property, and that he has contacts with many local contractors who would be able to keep the Property adequately maintained and serviced at a much lower cost than at present. He said his fees would only be £100 per annum for the whole Property, against Watson's fees of £800 plus. He also said that the company had professional indemnity insurance which would extend to him personally if appointed.

### **The Tribunal's Determination**

- 23 The service of a valid section 22 Notice is a necessary precondition to an Application under section 24 of the Act. There has been no challenge by the Respondent in respect of the Notice, and the Tribunal therefore finds that it was validly served.
- 24 Even though it is only necessary for the Tribunal to be satisfied in respect of one or more of the grounds specified in sub clauses 2 (a), 2 (ab), 2 (aba), 2 (abb), 2 (ac) and 2 (b) of section 24, the Tribunal is in fact satisfied in respect of a number of them as follows:
01. Section 24 (2) (a): The Respondent is in breach of the covenant to provide services. There is no precondition for payment of the service charge estimate, and thus, although it is understandable, the Respondent cannot lawfully withdraw services.
  02. Section 24 (2) (ab): It is clear from the previous Tribunal decisions that unreasonable service charges had been demanded. It also appears to the Tribunal that the Management Fee is, *prime facie*, unreasonably high.
  03. Section 24 (2) (aba): There is no provision in the leases permitting the making of variable administration charges for late payment. There is a clause requiring payment of 'expenses including solicitors costs.... incurred.....incidental to the preparation and service of a notice under section 146 of the Law of Property Act' (Clause 2 (24)). However, this clause does not permit recovery of 'late payment fees' or solicitors letters or any other expenses leading to County Court actions for recovery of debts. Accordingly, it appears to the Tribunal that unreasonable administration charges have been made. It is not clear to the Tribunal whether the legal costs relating to the previous Tribunal were 're-charged as administration charges' as suggested in the



letter from Last Cawthra Feather, but if they were, this would also amount to an unreasonable administration charge.

- 24 The Tribunal does not find that the Respondent's practice of demanding the amount it considers appropriate to carry out its obligations is unreasonable, or is in contravention of the lease or the R.I.C.S. Code of Practice. Although, as stated above, the Respondent is not permitted to withdraw services in respect of non-payment, it is quite correct for the non payment for these services to be credited at year end rather than not charged through the budget, as was suggested by the Applicants. Similarly, although it is unfortunate that the computer programme assigns these credits to 'reserves', rather than to a more appropriately named account, the Tribunal is satisfied that there is no breach of the lease, the Code of Practice or section 42 of the Act in the manner in which these are dealt with.
- 25 Similarly, the Tribunal does not find the conduct of the Respondent in respect of the insurance claims, of itself, a sufficient breach of its obligations under the Lease despite that fact there appears to have been a breakdown in communication with regard to the claim form in respect of the boiler and copper pipes.
- 26 However, as the Tribunal is satisfied in respect of one or more of the grounds set out in section 24 of the Act, it must therefore consider whether it is just and convenient that Mr Aggarwal is appointed as manager.
- 27 The Tribunal is, of course, mindful of the fact that it is the express wish of the leaseholders of all of the three flats that the appointment is made. However, there are a number of factors which lead the Tribunal to the conclusion that it should not make the appointment.
- 28 Firstly, the only submission of Mr Aggarwal following the issue of the Tribunal's Directions, was the letter dated 10<sup>th</sup> April 2010. This is a letter from Property Base. The letter heading does not disclose whether the trading entity is owned by a limited company, or by an individual, or individuals. Mr Aggarwal provided this information upon being questioned by the Tribunal, but the lack of this information in any form prior to the Hearing, and the unrealistic suggestion as to the incorporation of a separate company to manage the Property displays a worrying lack of professional expertise.
- 29 Similarly, the fact that there were no concrete proposals with regard to the management provided prior to the Hearing, is a matter of concern. All of the proposals as to the management should have been disclosed as part of the Tribunal process, including essential information as to the qualification, experience, and the professional indemnity details of the proposed manager, as well as the terms under which the management would be conducted. The Tribunal finds that the suggestion of a £100 fee is unrealistic as a professional fee. If it were intended that, as Mr

Aggarwal and his wife own two of the flats, there would be no charge, and that there would be a small charge against Hammercliffe Estates Limited, this ought to have been considered in advance and provided to the Tribunal, preferably in the form of a draft of the Order which was sought. Further, written evidence of the professional indemnity insurance ought to have been supplied.

- 30 The Tribunal is also mindful that the jurisdiction under section 24 of the Act is essentially a problem solving jurisdiction and that a factor to be considered in deciding whether it is just and convenient to make an order is whether the order will achieve, or be a step towards achieving the resolution of a problem. The Tribunal is not satisfied that the appointment of Mr Aggarwal would have this effect. There are certainly problems at the Property but the Tribunal finds that much of the difficulty occasioned by the Respondent in managing the Property is caused by the wilful withholding of service charge contributions by the Applicants, including Hammercliffe Estates Limited. Whilst there are faults which the Tribunal have identified in respect of Watson's management, the Tribunal is not satisfied that, had the service charges been paid by the Applicants, there would have been problems at the Property of a sufficient seriousness to warrant an appointment under section 24 of the Act.
- 31 There are alternative remedies available to the Applicants in respect of unreasonable service charges and unreasonable administration charges, and accordingly the grounds upon which the Application is based are capable of resolution in this manner.
- 32 There are also alternative methods by which the Applicants can gain control of the Property, and thus put in place their desired management options. These are Collective Enfranchisement under the Leasehold Reform Housing and Urban Development Act 1993 and no-fault Right to Manage under the Commonhold and Leasehold Reform Act 2002. The Tribunal also notes that the Respondent served notices under section 5 of the Act, which would have enabled the Applicants to purchase the Property, on 21<sup>st</sup> April 2009, but that these were not taken up.
- 33 However, the Tribunal, for the reasons set out above, does not find that it would be just and convenient for Mr Aggarwal to be appointed manager under the provisions contained in section 24 of the Act.

#### **The section 20 C Application**

- 34 The leasehold valuation tribunal in the case BIR/00FN/LIS/2009/0002 found that the Lease does not permit the recovery of the Lessor's costs through the service charge. The Tribunal concurs with that finding and accordingly grants the section 20C Order requested.

#### **Conclusion**

- 35 In reaching its decisions the Tribunal took account of its inspection of the subject property, the submissions of the parties, the relevant law and

its knowledge and experience as an expert tribunal, but not any special or secret knowledge.

- 36 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

W.J Martin - Chairman

**3 JUL 2013**