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

Case Reference : CHI/21UG/LAM/2013/0013

Property : 10 Albany Road,
Bexhill on Sea
East Sussex
TN40 1BZ

Applicants : Mrs. M. Pilbeam and
Mr. P. and Mrs. A. Fearn.

Representative : None

Respondent : Ms N. Steinberg

Representative : None

Type of Application : Appointment of Manager
Section 24 Landlord and Tenant Act 1987

Tribunal Members : Judge R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Mr. P.A. Gammon MBE BA

Dates and venues of Hearings : 10th October 2013
Hastings, East Sussex
21st November 2013
Bexhill-on-Sea, East Sussex

Date of Decision : 4th December 2013

DECISION

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Decision

1. The Tribunal makes the following determinations:
 - (a) Mr. Chris Hills of 13 Quay Hill, Lymington, Hampshire SO41 3AR is appointed Manager and Receiver in respect of 10 Albany Road, Bexhill-on-Sea, East Sussex TN40 1BZ (“the subject property”).
 - (b) An order is made under Section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) that all or any of the costs incurred or to be incurred by Ms N. Steinberg (“the Respondent”) in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mrs. M. Pilbeam and Mr. P. and Mrs. A. Fearn (“the Applicants”).
 - (c) An order is made under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 that by 2nd January 2014 the Respondent reimburse the Applicants’ application fee and hearing fee totalling £380 in respect of this matter.

Background

2. The subject property comprises three self contained flats. The Respondent is the freeholder of the subject property and holds a lease of the ground floor flat. Mrs. M. Pilbeam holds a lease of the first floor flat and Mr. P. and Mrs. A. Fearn hold a lease of the second floor flat.
3. An application has been made by the Applicants for the appointment of a manager in respect of the subject property. Section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) provides that the Tribunal may appoint a manager/receiver in certain circumstances and the Applicants listed the circumstances which it was suggested provided the justification for such an appointment.

Inspection

4. On 10th October 2013 the Tribunal, in the presence of the Applicants and Mrs. J. Ferguson from Bridgeford & Co., inspected the exterior and the internal common parts of the subject property and the first and second floor flats. There was no appearance by the Respondent or by anybody on her behalf.
5. Work to the structure is required. It could be seen that some work had been carried out, particularly to the front and flank walls where rendering had been removed and replaced but further work was needed to be undertaken in order to comply with an Improvement Notice. The area most obviously in need of attention is the rear wall of the subject property. There are a number of cracks in that wall and there is an area of the wall which is bulging out.

Hearing 10th October 2013

6. The hearing was attended by the Applicants and Mrs. Ferguson. There was no appearance by the Respondent or by anybody on her behalf and the Tribunal had received nothing from the Respondent.

7. The Applicants confirmed the contents of the application which in summary were that the Respondent had:

- (a) Failed to carry out repairs to the structure of the subject property as required by the terms of the leases.
- (b) Failed to comply with an Improvement Notice issued by the Rother District Council and served on her on 13th December 2011.
- (c) In May 2013 at Eastbourne Magistrates Court been found guilty of failing to comply with that Improvement Notice and had been fined £1,000.
- (d) Failed to communicate with the Applicants.
- (e) Failed to produce certificates of insurance.

8. The Applicants also gave evidence that:

- (a) As had been seen at the inspection, some work had been started but not completed. As a result, at least a year had been wasted. The part of the subject property most in need of attention was the rear wall but rather than deal with that, the Respondent had had work carried out to the front and flank walls.
- (b) The consultation procedure under Section 20 of the 1985 Act had been started but not completed.
- (c) In January 2011 the Respondent had obtained a report from a structural engineer and there had been a survey but she had tried to prevent the Applicants seeing those documents.
- (d) Letters had been written to the Respondent in 2011 and 2012 asking for production of the insurance certificates but no certificates had been seen for at least three years.
- (e) On one occasion the Applicants had received a demand for charges in respect of insurance for three years.
- (f) There had been no recent demands for service charges but in the past incorrect demands had been made.
- (g) The Respondent had kept locked the wooden side gate to the subject property. As a result, the Applicants and utility companies could not gain access to the meters.
- (h) There had been no response by the Respondent to the notice served under Section 22 of the 1987 Act.
- (i) The wording of the leases held by the Applicants was similar except that the term in respect of the second floor flat was longer.
- (j) The Applicants understand the lessees' responsibility for service charges and that in the normal course of events the Respondent would insure the subject property and carry out structural repairs and the reasonable cost would be claimed from the lessees. The leases provide for one third to be paid by the lessee of the first floor flat and one third to be paid by the lessees of the second floor flat and presumably for one third to be paid by the lessee of the ground floor flat.
- (k) The appointment of a manager was required in the interests of the Applicants.

9. During the course of the hearing it became clear that there had been a misunderstanding and that it was not Mrs. Ferguson but Mr. C. Hills, the Director and Principal of Bridgeford & Co. who was to be nominated to be the proposed manager. Also the information provided was in respect of the

appointment of a managing agent rather than the appointment of a Manager/Receiver. Consequently, the matter could not be concluded and further directions, which were outlined at the hearing, were issued. The time limits for compliance with the further directions were agreed by those present at the hearing.

10. For the avoidance of doubt, it was made clear that if Mr. Hills were appointed as Manager/Receiver he would be appointed as an individual and it would not be an appointment of his firm Bridgeford & Co as Manager/Receiver.

11. In response to those further directions the Tribunal has received from the Applicants further documents but nothing has been received from the Respondent or on her behalf except for an email sent at 20:30 hours on 19th November 2013, apparently from her daughter, in which it is stated that:

“Thank you for speaking with me earlier today, concerning my mother, Ms. Steinberg. Upon your advice I am emailing you now with regards to the hearing on Thursday 21st November 2013, at Rother District Council Town Hall, Bexhill-on-Sea.

As explained (sic) have just returned to Sussex to find correspondence from yourself. My mother was unaware of this situation and that there had been a hearing in October 2013. My mother has been very ill this year and is still at the present time. She is too ill and will be unable to attend on Thursday 21st November 2013. I have been in contact with my mothers solicitor but unfortunately he is away this week and is unable to represent my mother at the hearing on Thursday 21st November 2013. As you have advised (sic) me to email you and respectfully request another hearing date so that my mother can be represented. As you have suggested, a request to adjourn the hearing on Thursday 21st Novemebr (sic) 2013, with views of my mother being notified of a further hearing in the near future so that she can be fairly represented. If you can please put this forward, my mother and I would very much appreciate it.

Please forward all correspondence to Fairfax Capital Management (UK) Ltd, 122-126 Tooley Street, London, SE1 2TU, as this is my mothers limited company for 10 Albany Road, Bexhill-on-Sea, East Sussex, TN40 1BZ.

Yours faithfully,
For and on behalf of
Fairfax Capital Management Ltd
Ms. Steinberg”

That email was referred to and considered by the Tribunal and on 20th November 2013 an e-mailed reply was sent in the following terms:

“Your email has been referred to the Tribunal and the Chairman has asked me to inform you that at this late stage the Tribunal is not prepared to adjourn the hearing. A decision on this matter is urgently required and the hearing will proceed as scheduled at 10.00 am on Thursday 21st November 2013 at Bexhill Rother DC Town Hall, London Road, Bexhill TN39 3JX.

It is open to you, or anyone else on behalf of your mother, to attend the hearing to address the Tribunal about the application to appoint a manager/receiver or to make a further application for an adjournment.”

Hearing 21st November 2013

12. The hearing was attended by the Applicants and Mr. Hills. There was no appearance by the Respondent or by anybody on her behalf and the Tribunal had received nothing from the Respondent or from anyone on her behalf except for the email dated 19th November 2013.

13. The Tribunal informed the Applicants of the contents of that email and asked them if they had been made aware of the existence of Fairfax Capital Management (UK) Ltd, 122-126 Tooley Street, London, SE1 2TU. They stated that they had not, until they received a letter dated 21st October 2013 from that company, a copy of which was passed to the Tribunal. The Tribunal considered again the request for an adjournment contained in that email but were satisfied that there was no good reason for an adjournment and that the hearing should proceed.

14. Mr. Hills had not seen a copy of any of the leases of the flats at the subject property. He was provided with a copy of one of the leases and was given the opportunity to read it and to discuss with the Applicants any relevant matters.

15. The hearing resumed and Mr. Hills confirmed that he understands the difference between acting as a managing agent and being appointed as a Manager/Receiver under the 1987 Act. Also, that he holds two similar appointments.

16. Mr. Hills appreciates the following:

- (a) That work is urgently needed to be carried out at the subject property.
- (b) That there is the possibility that the subject property may not be insured.
- (c) That the Respondent holds a lease of the ground floor flat and that in that capacity she will need to be a party to any consultation process under Section 20 of the 1985 Act.
- (d) The need to comply with statutory requirements and the provisions of the lease.
- (e) That there is no provision in the lease to collect service charges in advance.

17. Mr. Hills stated that the Applicants had agreed to put funding into the service charges to allow work to proceed and the Applicants confirmed this.

18. Mr. Hills provided a copy of his Indemnity Insurance.

The reasons for Appointment of a Manager/Receiver

19. Tribunal considered the documents produced by the Applicants and the email dated 19th November 2013 together with what had been seen at the inspection and the evidence received at the hearings.

20. The Tribunal was satisfied of the following:

(a) That under Section 24 (2) (a) of the 1987 Act the Respondent is in breach of an obligation owed by her to the lessees under the leases and relating to the management of the subject property and that it is just and convenient to make the order in all the circumstances of the case. The Respondent is in breach of her repairing obligations in Clause 3 (4) of the lease and the provision in Clause 3 (2) of the lease that she shall insure the property and produce to the Lessees on demand the policy or policies of such insurance and the receipt for the then current premium.

(b) That under Section 24 (2) (ac) of the 1987 Act the Respondent has failed to comply with relevant provisions of the Service Charge Residential Management Code and that it is just and convenient to make the order in all the circumstances of the case. There has been an almost total lack of communication by the Respondent with the Applicants.

(c) That under Section 24 (2) (b) of the 1987 Act other circumstances exist which make it just and convenient for the order to be made. There is an almost total lack of management and a failure to comply with the Improvement Notice. In addition, it appears from the email dated 19th November 2013 that the Respondent is suffering from ill health and that may be preventing her from carrying out her duties as landlord of the subject property.

(d) That Mr. C. Hills is a suitable person to be appointed as Manager/Receiver in respect of the subject property.

Application under Section 20C of the 1985 Act

21. There is before us an application for an order under Section 20C of the 1985 Act. We find that it is just and equitable in the circumstances to make such an order because as a result of the Respondent's conduct the Applicants were in the situation where the application was necessary to prevent further deterioration of the subject property. In addition, neither the Respondent nor anyone on her behalf complied with the directions made by the Tribunal or provided any evidence. It may be that the Respondent is not able to claim costs but, for the avoidance of doubt, an order is made that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Application for reimbursement of fees

22. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 provides that the Tribunal may make an order requiring

a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. Having regard, in particular, to the fact that the Respondent has not provided any evidence or challenged any of the Applicants' evidence or indeed made contact with the Tribunal at all, except for the email dated 19th November 2013, the Tribunal considers it just and equitable to make an order requiring the Respondent to reimburse the Applicants' application fee of £190 and hearing fee of £190 in respect of this application and hearing.

Appeals

23. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

24. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

25. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

26. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)