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

Case Reference : LON/00AZ/LAM/2014/0026

Property : 113-117 Kirkdale, London, SE26 4QJ

Applicants : (1) Mr T David & Ms M C Phillips
(Flat 2)
(2) Ms N Azam (Flat 3)
(3) Ms M Sellick (Flat 4)

Representative : In person

Respondent : Mr T Uthayakanthan

Representative : Mr M Markou, Solicitor from
Nicholas Angelo

Type of Application : Appointment of Manager

Tribunal Members : Judge I Mohabir

**Date and venue of
Hearing** : 7 January 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 21 January 2015

DECISION

Introduction

1. This is an application made by the Applicants under section 24(1) of the Landlord and Tenant Act 1987 (as amended) ("the Act") for the appointment of a manager in relation to 113-117 Kirkdale, London, SE26 4QJ ("the property"). The appropriate section 22 preliminary notice was served on the Respondent and is dated 17 October 2014.
2. The Applicants are variously the individual and joint long leaseholders of 3 of the 6 flats in the property. The Respondent is the present freeholder who is presently bankrupt pursuant to an order made in the County Court at Croydon on 24 June 2014. Therefore, the freehold interest vests in the Official Receiver who is Mr Christopher Garwood of Wilkin Chapman LLP.
3. The property is described as a purpose built building approximately 10 years old comprising 3 storeys with commercial premises on the ground floor and 6 residential flats located on the first and second floors. All of the flats are subject to long leases.
4. The basis of this application is set out in the preliminary notice served by the Applicants annexed hereto. It is not intended to set out the details of the alleged breaches against the Respondent in the preliminary notice, as they are self-evident. Essentially, the substantive complaint is that the Respondent has breached his repairing obligations set out in the Fourth Schedule of the residential leases by failing to carry out the repairs necessary to prevent water ingress to the building.
5. It should be noted that the property was the subject matter of an earlier order made by the Tribunal dated 28 January 2011 appointing a Manager, Mr Tejada of HML Andertons Ltd, for a term of 3 years from that date (LON/00AZ/LAM/2010/0033). The Respondent then was Shinedean Ltd who did not appear and was not represented in those proceedings. In that case the Tribunal found, *inter alia*, that the

freeholder had failed to carry out repairs to prevent water ingress into Flat 2 and the external render required attention. In addition, the building appeared to be in a neglected condition. It seems that Mr Tejada did not seek or want a renewal of his appointment.

6. By a letter dated 18 November 2014, the London Borough of Lewisham served a Dangerous Structure Notice on the Third Applicant, Ms Sellick, requiring repairs to be carried out to the defective coping stones to the parapet wall and the defective rendering to the external walls.
7. By an application dated 28 November 2014, the Applicants made this application to the Tribunal seeking the appointment of another Manager. The application was made on an urgent basis because it was considered that the building was now in a dangerous state of repair as a result of the works that are the subject matter of the Dangerous Structure Notice. Apparently, large chunks of the rendering has fallen off one of the flank walls on to the roof of an adjacent building. The consequential water ingress was causing damage to the flats owned by the Applicants in particular.
8. On 10 December 2014, the Tribunal issued Directions in this matter and listed this matter for hearing on an urgent basis.

The Relevant Law

9. Section 24 of the Landlord and Tenant Act 1987 provides:

"(1) A leasehold valuation tribunal may, on an application for an order under this section, by order 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) A leasehold valuation 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 either 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...*
- (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 or likely to be made; and*
- (ii) *that it is just and convenient to make the order in all the circumstances of the case;*

(aba)...

(abb)...

(ac) where the tribunal is satisfied-

- (i) *where 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.

Hearing

10. The hearing in this matter took place on 7 January 2015. The First and Third Applicants appeared in person. The Second Applicant was represented by her brother, Mr Azam. Also present was Mr Bradley Davis, the proposed Manager. The Respondent was represented by Mr Markou, a Solicitor from the firm of Nicholas Angelo.

Procedural

11. Mr Markou made a further application to adjourn the hearing because his client's father had died. He had travelled to Sri Lanka to attend the funeral and would not be returning to this country until 6 February 2015. Therefore, to proceed in the Respondent's absence would cause his significant prejudice. In addition, Mr Markou said he had only been instructed on 5 January and only had very limited instructions but had

been told by his client that the repairs that are the subject matter of the Dangerous Structure Notice were now being carried out. This was vigorously denied by the Applicants.

12. The Tribunal refused the application to adjourn the hearing for the following reasons:
 - (a) an earlier application had been made for the same reasons and refused. There had been no material change in the Respondent's circumstances.
 - (b) the Respondent had been served with the section 22 preliminary notice as long ago as October 2014 and does not appear to have acted on the repairs identified in the notice.
 - (c) the Respondent had been given sufficient notice of the application and the hearing and had not sought legal assistance until a very stage.
 - (d) the urgent nature of the application meant that an adjournment was not appropriate in the circumstances.

13. As to the matter of prejudice, the Tribunal raised the issue of the Respondent's *locus standi* in these proceedings given that he was a bankrupt and the freehold vested in the Official Receiver. Mr Markou said his instructions were that the bankruptcy order had been annulled although he had no evidence of this.

14. The Tribunal pointed out that the Official Receiver had written a letter as recently as 23 December 2014 supporting the application, which made no mention of the bankruptcy order having been annulled. Had this been the case then no doubt the Official Receiver would have mentioned this. Indeed, the letter was written in terms that clearly demonstrated that Mr Chapman was still the Official Receiver and the proper inference to be drawn was that the Respondent still remained a bankrupt and ruled, as such, he had no *locus standi* in these proceedings to oppose the application in any event. At this point Mr Markou recused himself from the hearing.

16. The Tribunal pointed out to the Applicants that the section preliminary notice had only been served by Ms Azam, the Second Applicant. On a technical point she was the only correct Applicant in these proceedings and the other "Applicants" were factual witnesses. Despite this, in practical terms, the Tribunal was still seized with jurisdiction.

Decision

17. The Tribunal then heard evidence from the leaseholders. It was told that the freehold had been acquired by the Respondent approximately 3 years ago. He had purchased it at auction from the LPA Receiver who had been appointed on behalf of the previous freeholder.
18. Since then it appears that little or no repairs to the building were carried out. Apparently, Mr Tejada had obtained a survey report approximately 2 years ago and parts of the external render fell off about a year later. A further report was obtained, which found that all of the external render needed to be replaced at an estimated cost of £120,000. It appears that some service charge monies were collected by Mr Tejada but for whatever reason repairs had not commenced.
19. The Tribunal was then handed a recent survey report prepared by Mr T C Williams, a Chartered Surveyor, dated 6 January 2015. In paragraph 3 of his report, Mr Williams identified various repairs that are required to the parapets, the main roof and external cement render on the building.
20. The Tribunal then heard evidence from Mr Davis as to his knowledge and experience if management. He said that he was one of two Directors of Homewood Homes, Estate Agents. He is an estate agent with no professional qualifications. He had been managing 3 or 4 blocks for the last two and a half years. He confirmed that the tenants are provided with an emergency contact number as part of the out of hours service. He said he is not a member of a professional regulatory body because he considered these to be "a waste of time". The

leaseholders said they were aware of these matter but were confident that Mr Davis was sufficiently competent to discharge his duties as the Manager.

21. When asked about how he intended to deal with the outstanding repairs to the building, Mr Davis said that he would first of all obtain estimated from contractors based on a specification prepared by him using the latest survey report obtained by the leaseholders. He would then collect the funds necessary to commence the works. When the point about statutory consultation was put to him, he said that he was unaware of the provisions of section 20 of the Landlord and Tenant Act 1985. Apparently, this was undertaken by the other Director and this is why it is mentioned in his firm's literature. He was also unaware of the level of professional indemnity cover his firm presently had. Again, this was dealt with by the other Director.
22. Having regard to the comments made in the previous Tribunal decision about the condition of the property as long ago as 2011, the fact that little or no repairs appear to have carried out during the tenure of Mr Tejada, the fact that the building is now subject to a Dangerous Structure Notice and the most recent survey report prepared by Mr Williams, it was clear to the Tribunal that repairs the property had been neglected for some years. This had undoubtedly resulted in the need to carry out urgent repairs to the parapet and the replacement of the render to the building.
23. On this basis, the Tribunal had little difficulty in finding that the landlord had breached the repairing obligations imposed by the Fourth Schedule of the residential leases and having regard to all the circumstances of this case it was just and convenient to appoint a Manager within the meaning of section 24(2)(a)(i) and (iii) above.
24. On balance, the Tribunal was satisfied that Mr Davis should be appointed as the Manager largely because he enjoyed the confidence

and support of the leaseholders. However, the Tribunal had some reservations about Mr Davis' lack of professional qualifications, that his firm was not subject to any professional regulation, that he was unaware of the some of the statutory legislation that applied to the management of residential buildings and the lack of knowledge of his firm's professional indemnity status. For these reasons, the Tribunal concluded that his appointment should initially be for a short period of 12 months to enable the leaseholders to assess whether he is able to discharge his duties as the Manager and, if not, the apply to the Tribunal to vary or discharge the order. The management order is annexed to this decision.

Section 20C & Fees

25. The Applicants sought an order preventing the Respondent from being able to recover through the service charge account any costs it had incurred in relation to these proceedings under section 20C of the Landlord and Tenant Act 1985 (as amended).

26. Having regard to the Tribunal's findings set out above, the Tribunal concluded that it would be just or equitable to make an order preventing the Respondent from being able to recover any of the costs he may have incurred in this matter.

Judge I Mohabir
21 January 2015

IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER

IN THE MATTER OF PART II OF THE LANDLORD & TENANT ACT 1987

AND IN THE MATTER OF 113-117 KIRKDAKE, LONDON, SE26 4QJ

LON/00AZ/LAM/2014/0026

BETWEEN:

(1) Mr T David & Ms M C Phillips (Flat 2)

(2) Ms N Azam (Flat 3)

(3) Ms M Sellick (Flat 4)

Applicants

-and-

Mr T Uthayakanthan

Respondent

ORDER

1. That Mr Bradley Davis of Homewood Homes, Estate Agents of 336 Kennington Lane, London, SE11 5HY ("the Receiver/Manager") be appointed as the Receiver and Manager of the land and premises at and known as 113-117 Kirkdale, London, SE26 4QJ ("the property") in place of the freeholder, the above named Respondent, and their successors in title and to exercise in that capacity the rights of the freeholder and to carry out in that capacity all the responsibilities of the freeholder under and in respect of the various leases granted in respect of the property on the terms of this Order.
2. Within 2 months from the date of this order the previous Manager, Mr Tejada, shall provide the Receiver/Manager with all sums of monies (if any) held on trust for the lessees together with banks statements, invoices and documents relating to the property together with a statement showing all income and expenditure in respect of the property. Upon receipt thereof, the

Receiver/Manager shall establish the current balance of the service charge account and reserve account (if any) for the property.

3. In particular the Receiver/Manager shall:
 - (i) account to the Official Receiver for the payment of the ground rent he receives; and
 - (ii) comply with all applicable statutory provisions, including the Landlord and Tenant Acts 1985 and 1987, as though the Receiver/Manager was the freeholder of the property and act in accordance with the duties of a Manager as set out in the Service Charges Residential Management Code ("the 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.
4. That the Receiver/Manager be appointed from the date of this Order for a period of 12 months from the date hereof ("the Management Period").
5. That the Receiver/Manager shall have permission to apply to the Tribunal for such further directions as he may require in order to give effect to this order and the Applicants, the Respondent and the Receiver/Manager (as an interested party) shall have permission to apply to the Tribunal to vary or extend this Order.
6. That the Receiver/Manager be otherwise appointed under the terms set out in the schedule attached hereto.

Judge I Mohabir

21 January 2015

SCHEDULE

1. General Duty during the Management Period

- 1.1 The Respondent does not have the right to carry out any works to the property save as such works constitute development works relating to the premises and are agreed in advance with the Receiver/Manager (such agreement not to be unreasonably withheld or delayed) and is not liable to the tenants under the leases for any breach of the landlord's covenants under those leases.
- 1.2 That the Receiver/Manager will manage the property in a proper and businesslike manner. For the avoidance of doubt, the Receiver/Manager's management functions in relation to the commercial premises will be the same as those carried out pursuant to this order.
- 1.3 That the Receiver/Manager shall be responsible for carrying out the freeholder's obligations as to the repair, maintenance, decoration, insurance, management and supervision of the premises at the property and for the provision of services and upkeep of the amenities thereof and for enforcing against the tenants under the leases their obligations under and in accordance with the terms of those leases and this Order.
- 1.4 Specifically, the Receiver/Manager shall scrutinise all invoices issued in respect of goods and services supplied to the property to ensure the property is managed in an economic manner.
- 1.5 The Receiver/Manager owes a duty to the Respondent and to the lessees under the leases to use reasonable skill and care in carrying out the Receiver/Manager's duties and in exercising the Receiver/Manager's powers under this Order.

2. Specific Responsibilities

Without prejudice to the generality of the foregoing, it shall be the duty of the Receiver/Manager during the Management Period to do the following:

- (i) To deal in a reasonable fashion with all items of repair and maintenance for which the freeholders are responsible provided that in respect of major works of repair and maintenance as defined hereafter, the Receiver/Manager shall be entitled to reasonable additional remuneration payable out of the Service Charge Account, which remuneration shall not exceed 10% of the cost of the works (before VAT) involved. For the purpose of this Order "major works" are defined as any works requiring the service of a notice or notices under section 20 of the Landlord and Tenant Act 1985 (as amended).
- (ii) To purchase all such items as may be necessary to effect such aforesaid repair, maintenance, service and amenities. Notwithstanding that responsibility, the Receiver/Manager will not be required to make purchases thereunder if this would result in the Service Charge Account for the property becoming overdrawn.
- (iii) To enter into contracts for the maintenance and supply of goods and services.
- (iv) To recruit, employ, supervise and pay the salaries or wages of such residential and non-residential staff as the Receiver/Manager may reasonably consider necessary, at such rates of remuneration as reasonably appear to him to be proper in order to maintain adequate staff and ensure the efficient running of the property.
- (v) To deal with all PAYE, VAT and National Insurance matters arising in relation to such staff.
- (vi) To estimate in advance the anticipated cost of services for each year and the cost of each item of expenditure which is other than annual in nature. Such items will include (but will not be limited to) external or internal redecoration and replacement of equipment. The total cost of the services to be provided to the property will then be apportioned by the Receiver/Manager among the lessees thereof in accordance with the lease terms.

- (vii) To prepare and serve the ground rent and service charge demands in accordance with the provisions of the leases.
- (viii) To arrange and vary from time to time and keep in force the insurance of the property and the contents of the common parts of the property against such risks as the Receiver/Manager reasonably sees fit. The Receiver/Manager will also effect and keep full insurance against public liability. The Receiver/Manager will agree the terms of such insurance and will pursue claims arising therefrom expeditiously. The Receiver/Manager shall endeavour to make payment directly to the insurance company or broker concerned and shall obtain a receipt from such company or broker confirming that such insurance is paid after date. The Receiver/Manager shall declare to all interested parties any commission that he may receive upon and in respect of the placing of any insurance.
- (ix) To maintain efficient records and books of account which will be open to inspection together with relevant vouchers by appointment at all reasonable times by all interested parties and to maintain on trust an interest bearing client account with a bank or building society into which the Service Charge monies will be paid when they fall due (the "Service Charge Account") together with such other accounts as the Receiver/Manager may think necessary and appropriate.
- (x) To deal with all enquiries, reports, complaints and other correspondence with the freeholders, individual lessees, solicitors, accountants and other professional persons in connection with matters arising from the day-to-day management of the property. The Receiver/Manager shall, however, be entitled to a reasonable fee additional to the remuneration set out in paragraph 5 of this schedule for the provision whenever so required of a "solicitor's pack" supplied to the solicitor acting tenant of a lease for a who wishes to assign the lease. Such fee will be chargeable to the person requiring such "pack".
- (xi) To advise all interested parties in respect of:

- (a) essential major repairs, redecoration and maintenance; and
 - (b) improvements or alterations which may be considered desirable.
 - (c) and to provide annual reports in relation to (a) and (b) above.
- (xii) To perform such duties as are consistent with the best principles of estate management and as are necessary in order to procure and maintain all services at the most reasonable cost, including the procurement of three quotes for all major services supplied, such quotes to be available for inspection by all or any interested parties.
- (xiii) To collect all service charges and, where this Order applies to other monies, such other monies as may be payable under the lessees' leases.
- (xiv) To take any legal action which the Receiver/Manager is reasonably required to take, to make good such arrears, it being recognised that the Receiver/Manager shall be entitled to an indemnity from the Service Charge Account in respect of any legal or other professional costs arising in connection with such action.
- (xv) To pay and discharge out of the monies so collected (subject to the availability of adequate funds in the Service Charge Account) of all rates, taxes, insurance premiums, rents, wages, water, gas and electricity bills, costs of cleaning materials and other outgoings including payment of the Management Fee for which the Receiver/Manager is responsible pursuant to this appointment. The Receiver/Manager will take all reasonable steps to ensure that no liabilities accrue which cannot be financed from the Service Charge Account.
- (xvi) To manage the common parts and service areas of the building, including the arrangement and supervision of maintenance.
- (xvii) To use reasonable endeavours to require any leaseholder who sublets his flat to provide the Receiver/Manager with a written undertaking that any subletting will be for a period of not less than 90 days, and to lodge with the

Receiver/Manager a copy of the letting agreement or other relevant document along with the names and principal addresses of all the sub-tenants.

(xviii) To maintain professional indemnity insurance of at least £1,000,000 per claim.

3. **Power to Contract and to Terminate Pre-Existing Contracts**

Subject to the foregoing obligations, during the Management Period the Receiver/Manager is empowered to enter into contracts for supplies and services, including items of a non-recurring nature and including with solicitors, accountants, building surveyors and other professional persons, and where necessary to terminate the same. The Receiver/Manager is further empowered to terminate remaining contracts existing prior to this Order, in his discretion.

4. **Authority to Negotiate Adjustments to Service Charge Payments**

The Receiver/Manager is empowered to make and agree reasonable adjustments and other reasonable compromises with the tenants at the property, in respect of the Service Charges and Interim Charges where appropriate, and also in respect of any outgoings payable.

5. **Remuneration**

As remuneration for his services during the Management Period the Receiver/Manager will be paid a fee in accordance with the following charges.

Basic fee - £395 plus VAT per flat per annum

PRELIMINARY NOTICE APPLICATION FOR THE APPOINTMENT OF A MANAGER

(Section 22, Landlord and Tenant Act 1987)

To: (landlord) Thambithurai Utayakanthan, 45 Culverley Rd, Catford, London SE6 2LD

Address of the property: (1) Flat 3, 113 Kirkdale, Sydenham SE26 4QJ

We, the persons whose names and addresses are set out in the First Schedule attached, GIVE YOU NOTICE as follows:

1. This notice is served under Section 22 of the Landlord and Tenant Act 1987 by the tenant(s) of flats in Flat 3, 113 Kirkdale, Sydenham SE26 4QJ (The Property).
2. The tenant(s) intend to make an application for an order under Section 24 of the Act to be made by the appropriate tribunal (2) to appoint a manager in respect of the property but will not do so if you comply with the requirements specified in paragraph 5 below.
3. The grounds on which the Tribunal will be asked to make the order are set out in the Second Schedule attached.
4. The matters which will be relied upon by the tenants for the purposes of establishing the grounds are set out in the Third Schedule attached.
5. The matters which are capable of being remedied by you and the steps to do so are set out in the Fourth Schedule attached; the tenants require you to take steps specified for the purpose of remedying those matters within a period of 14 days (3) from the date of this notice.
6. If your interest in the property is subject to a mortgage, Section 22(4) of the Act requires you to serve a copy of this notice on the mortgagee as soon as is reasonably practicable.

Date: 17 October 2014

Notes

- (1) the building, or part of a building, which is the subject of the application.
- (2) the appropriate tribunal for England is the First-tier Tribunal (Property Chamber) (eg London, Southern etc) and for Wales is the Leasehold Valuation Tribunal.
- (3) this must be a reasonable period for the landlord to be able to carry out the specified steps.
- (4) the address at which the landlord is to communicate with the tenants, either one tenant's own address or the address of your solicitor or other professional adviser.

FIRST SCHEDULE

Names and addresses of tenants

N Azam, 98 Whitchurch Gdns, Edware HA8 6PB

SECOND SCHEDULE

Grounds for the appointment of a manager

1. The landlord is in breach of obligation owed to the tenants under the lease and not replying.

2. The landlord has not undertaken urgent repair works and the building is in disrepair.
3. The landlord has not circulated audited service charge accounts by the due date.
4. The landlord has not insured or shown proof that the building is insured.
5. The landlord is in breach of the Code of Practice approved by the Secretary of State under Section 87, Leasehold Reform, Housing and Urban Development Act 1993.
6. That other circumstances exist which make it just and convenient to appoint a manager.

THIRD SCHEDULE

Matters relied on by the tenants

1. Breaches of obligations owed to the tenants under a lease: See Fourth schedule in the lease: essential urgent repairs to (a) roof leaking 4 yrs (b) roof leaking from common sky-hatch (c) severe damp due to cracks in external rendering (d) wooden flooring damaged (e) wooden flooring damaged and doors not closing as a result of a, b and c, (f) faulty coping stones on roof and external wall rendering not being repaired resulting in water penetration despite professional surveyor reporting.
2. Service charge accounts not prepared under section 1.2 of the lease.
3. Building uninsured under section 7.5 of the lease.
4. Breaches of majority of the Code of Practice which is too long to list in its entirety.
5. Other circumstances: Landlord not replying at all to correspondence.

FOURTH SCHEDULE

Matters specified in the Third Schedule which are considered capable of remedy; steps required to remedy them

1. Undertaking the third schedule urgent repairs.
2. Preparing and circulating annual service charge accounts.
3. Insuring the building and providing evidence.
4. Replying to leaseholders.