



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

Case Reference : **MAN/OOCC/LAM/2015/0007**

Property : **29-63 (odd) Town Lands Close
Barnsley S73 0BQ**

Applicant : **Nigel Pickles**

Representative : **Sleigh Son & Booth**

Respondents : **(1) Wallace Estates Limited
(2) Mr & Mrs Upson**

Representative : **(1) Stevensons Solicitors**

Type of Application : **Landlord & Tenant Act 1987-
Section 24(1)
Landlord & Tenant Act 1985-
Section 20C**

Tribunal Members : **Judge J. Oliver
Mrs S. Kendall MRICS**

Date of Determination : **12th August 2015**

Date of Decision : **24th August 2015**

DECISION

Decision

1. With effect from 12th August 2015 (“ the Appointment Date”) Arcaria Management and Consultancy Limited (“Arcaria”) is appointed to carry out all management functions in relation to all the residential flats at 29-63 (odd) Town lands Close, Barnsley (“the Property”) for a period of two years from 12th August 2015.
2. Permission to dispense with service of the notice pursuant to section 22 and application pursuant to section 24 of the Act upon Park Mews (Darfield) Management Company Limited Company no 5208859) is granted.
3. The Applicant is directed to file with the Tribunal for approval a draft order for the appointment of the manager within 14 days of the receipt of this order.
4. An order is made pursuant to section 20C of the Landlord and Tenant Act 1985

Reasons

Background

5. This is an application made by Mr Nigel Pickles (“the Applicant”) who is the registered leaseholder of four of the flats in the subject property, namely 53-59 (odd) Town Lands Close, Barnsley for the appointment of a manager pursuant to section 24(1) of the Landlord & Tenant Act 1985 (“the Act”).
6. The Respondents to the application are the freeholder, Wallace Estates Limited (“the First Respondent”) and Mr & Mrs Upson (“the Second Respondent”). Mr Upson was the director of Park Mews (Darfield) Management Company Limited (Company no 3208859) (“the Company”), the company appointed in the leases of the Property to have responsibility for its day-to-day management.
7. The Company was struck off the register on 30th August 2011, Mr Upson having resigned as the company director and secretary on 1st April 2010.
8. No other management company was appointed to replace the Company but shortly after the resignation of Mr Upson other residents invited Mr Paul Reid of Arcaria Management and Consultancy Limited (“Arcaria”) to assume responsibility for the management of the Property, a role he has continued since that time.
9. The Applicant filed his application for the appointment of Arcaria Management and Consultancy Limited as the manager of the Property on 10th February 2015 and thereafter served the same upon the freeholder Wallace Estates Limited. The application was not served upon the Company and the application seeks to dispense with service upon it.
10. Directions were issued on 1st April 2015 directing the parties to file statements and thereafter for the matter to be listed for a hearing.

11. The First Respondent confirmed by a letter to the Tribunal that it did not object to the application and did not intend to attend the hearing.

The Inspection

12. The Tribunal inspected the Property in the presence of Mr Reid from Arcaria, Mr Upson and his representative, Mr Egerton.
13. The Property comprises 18 flats with three separate entrances, each serving 6 flats. The flats are on three floors.
14. Mr Reid advised the Tribunal that the grass was cut once per month, but there were insufficient funds to cut the bushes on the Property. The communal entrances, hallways and stairs were cleaned when there were sufficient funds to do so. Some monies had recently been expended on clearing the gutters; it had been required in order to obtain insurance for the Property.
15. There was evidence of some disrepair to the Property, namely some fall pipes were broken in a number of places. Decorative stone balls at the entrance to the flats were either missing or damaged. There were two panels missing from fencing around the Property. Electrical items had been left by the bin store that had been there some considerable time. A caravan was in the car park and appeared to have been there some time. Mr Reid confirmed he had left a note asking for its removal, but with no effect.
16. Mr Upson advised that the emergency lighting outside his flat had not worked and he had paid for its repair. Mr Reid confirmed the lighting had been tested but was unable to confirm when.

The Law

17. Section 24 of the Act sets out the matters the Tribunal must consider before appointing a manager. Section 22 also sets out upon whom the application must be served. This was complied with, save for service upon the Company.
18. Section 24(1) of the Act provides:
 - (1) *[A leasehold valuation tribunal] may, on 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*
19. Section 24(2) sets out the circumstances under which an order can be made, namely:
 - (a) *where [the tribunal] is satisfied-*
 - (1) *that [any relevant person] either is in breach of any obligation owed to 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 upon notice) would be in breach of any obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii).....

(iii) that it is just and convenient to make an 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) where the tribunal is satisfied-

(i) that unreasonable variable administration 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;]

[(abb) where the tribunal is satisfied-

(i) 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 an order in all the circumstances of the case;] or

(b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.

[(2ZA) In this section "relevant person" means a person-

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.]

[(2A) For the purposes of subsection (2) (ab) a service charge shall be taken as unreasonable-

(a) if the amount is unreasonable having regard to the items for which it is payable;

(b) of the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable.)]

The Hearing

20. The Applicant did not attend the hearing but was represented by Mr Sleigh who had filed the original statement on his behalf. The Tribunal therefore decided to proceed in his absence, Mr Sleigh being acquainted with the facts of the case and able to deal with all enquiries

- on his behalf. Mr Egerton attended with and represented Mr Upson. Mr Reid also attended the hearing.
21. The Applicant confirmed the application had been made to regularise the position that had existed since 1st May, 2009 when Mr Reid had been asked to manage the Property. It was said that at that time all the leaseholders agreed the appointment but since then Mr Upson had failed to pay his service charge, the debt amounting to £9120 at the date of the hearing. Two other leaseholders were also in arrears and Mr Reid had no standing to enforce payment. The lack of funds meant that day-to-day repairs and maintenance could not be undertaken.
 22. The Applicant stated that Mr Upson had, in the past, tried to manage the Property but had not had widespread support. Mr Upson had set up a Right to Manage Company on 15th May 2006 but Mr Sleigh did not believe the necessary notices had been served to make this effective. This company was never used and the Company of which Mr Upson was both director and secretary had been dissolved in 2011. There was therefore no management structure in place and Mr Reid was acting in a vacuum without any proper authority.
 23. Mr Reid confirmed the outstanding service charges, totalling £17360, from three leaseholders made it difficult to effectively manage the site. The service charge was £60 per flat per month, the charge being unchanged since 2009. One leaseholder had reached an agreement to discharge his debt of £1880.
 24. Mr Reid confirmed that he had not been able to renew the insurance for the Property because the insurance company required the gutters to be cleaned out. He had requested updated payments from all the leaseholders and had thereafter paid for the gutters to be cleaned at a cost of £1000. He can only now try and renew the insurance. Mr Reid stated the management account currently has a balance of £100.
 25. Due to the lack of funds, the cleaning of the communal areas only occurs once per month and that cannot always be maintained. The windows are cleaned approximately once every four months. Payments for the communal electricity are met.
 26. It was advised that Mr Reid does not have RCIS membership but he confirmed he would be willing to enter an undertaking to comply with its Code.
 27. Mr Egerton for the Second Respondent, submitted that the notice filed pursuant to section 24 of the Act was flawed and should be rejected. It was also submitted that since an agent had already been appointed there was no need for the Tribunal to make any appointment.
 28. It was proposed that Mr Egerton of Hunters be appointed as the manager for the Property, Mr Reid not having the necessary qualifications to be appointed. It was also said that given the defects found at the inspection, he was not a suitable manager. The service charge invoices sent by Mr Reid did not comply with either sections 47 or 48 of the Act. The Tribunal was shown an example of the demand sent to Mr Upson and another pro-forma by Mr Reid, the latter being completely different to the one shown by Mr Upson. Mr Reid conceded he had recently changed the invoices to make them compliant. He had also sent out the necessary notices advising of the leaseholders' rights and obligations at the beginning of August 2015. Mr Upson stated he

had not received such a notice. He also expressed concern at the quality of the management provided by Mr Reid and identified the poor maintenance of the site. For example, the fire doors were not locked. The fall pipes were in a state of disrepair. There were numerous satellite dishes erected on the Property, despite a covenant in the lease forbidding their installation. Items were left on the landings even though there is a covenant to prevent this. Mr Egerton expressed concern for the safety of the tenants living in the Property.

29. Mr Egerton submitted that the management accounts were in the name of Park Mews Property Management Limited, a company that was not appointed by the lease and was not a Right to Manage Company. Concerns were also expressed that the service charges collected from the leaseholders were not held in a properly designated client account.
30. Upon enquiry by the Tribunal Mr Reid confirmed the account in which the monies were held, contained only the monies received from the service charges. The account was designated Park Mews Property Management Company. Mr Reid and his wife are the directors of that company. The leaseholders had been asked if any of them wanted to be directors of this company and no-one had come forward.
31. Mr Upson explained to the Tribunal that the original managers of Property, appointed by the developers, had resigned after approximately two years. This manager did not have a good relationship with the leaseholders. Nobody had then managed the Property and consequently he had set up a Right to Manage Company in 2006 with a view to managing the Property. There was no formal AGM to agree the appointment. Thereafter he had paid the insurance premiums for two years but when the service charges were not paid and Mr Reid was appointed to manage the Property, he dissolved the Company and effectively took no further part in the management of the Property.
32. Mr Upson confirmed he had never made any formal application to the First-tier Tribunal for the appointment of a manager.
33. Mr Upson confirmed that should Arcaria be appointed as manager for the Property he would be unwilling to pay the service charge for his properties.
34. Mr Reid advised that should Arcaria be appointed its charges for management would be £200 per month. The company is not registered for VAT. A charge of 15% of the contract value would be charged for any work carried out pursuant to section 20. Mr Reid's property management experience had been set out in the statement provided to the Tribunal.
35. The Applicant confirmed that although the application had included one for an order pursuant to section 20C of the Landlord & Tenant Act 1985, this was no longer required given the freeholder's lack of involvement in the proceedings.

Determination

36. The Tribunal considered the submissions regarding the validity of the application and determined that the application was properly brought. Whilst a management company had been appointed under the leases for the Property, that had been dissolved and a vacuum had been created. Mr Reid had managed the Property since 2009 but was doing so on the wishes of the majority of the leaseholders and without any proper authority. It was only by the current application being made could that position be rectified. The Tribunal was not persuaded by the arguments of the Second Respondent in this regard.
37. The Tribunal determined that the application for the dispensation of service of the notice upon the Company would be granted, pursuant to section 22 (3) of the Act. In light of the dissolution of the Company it was not reasonably practicable for any notice or application to be served upon it.
38. The Tribunal further determined that Arcaria would be appointed the manager for the Property. Arcaria was familiar with the Property, having managed the same for six years and there was no credible alternative presented to the Tribunal. It did not consider it appropriate to refuse the application, since to do so, would leave the management of the Property in the same difficulty as now existed.
39. The Tribunal considered the arguments put forward by both parties. It noted, in particular, the proposal made that Mr Egerton of Hunters be appointed as the manager, in preference to Mr Reid of Arcaria. The Tribunal could not consider this as an alternative, the proposal only being made at the hearing. The Tribunal had no information about either Mr Egerton or Hunters, nor had the Applicant had the opportunity to consider the matter. If the Second Respondent had wanted the Tribunal to consider this, it should have been proposed at a much earlier stage.
40. Mr Reid had found himself in an extremely difficult position, having been asked to manage the Property, but with insufficient funds to do so. He then faced criticism from Mr Upson, who, in refusing to pay his service charges, had been, in part, responsible for Mr Reid's inability to maintain the Property to a high standard.
41. The Tribunal determined the appointment of Arcaria should be for a period of two years. Whilst the application had been for an indefinite appointment, the Tribunal did consider that there were certain aspects of Arcaria's management that could be criticised. For example, an experienced manager should be able to comply with the necessary requirements of sections 47 & 48 and not be rectifying that matter after some six years of managing the Property. It is expected that once appointed, Arcaria can collect arrears of service charge and thereafter have the necessary funds to maintain the Property. The period of the appointment should allow for the defects seen at the inspection to be rectified. The appointment can be renewed upon further application to the Tribunal.
42. The Tribunal noted the Applicant's submissions regarding the application for an order pursuant to section 20C and determined that such an order should be made. Whilst the Applicant did not consider

the order necessary, given the freeholder's position, the Tribunal noted that the making of such an order would prevent any further arguments upon this issue at a future date.

43. The Tribunal did not have before it a draft management order for approval and therefore directs the Applicant to file the same within 14 days of the service of this order for approval by the Tribunal.