



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

Case Reference : **MAN/00BY/LAM/2013/0012**

Property : **Masons Building, 28, Exchange Street East,
Liverpool L2 3PH**

Applicants : **Dr. Niaz Khan (Flats 1 & 5)**
James & Nicola Charragher (Flats 2, 9 & 10)
Om Prakash Bansai (Flat 3)
Simon Chapman (Flat 4)
Thuvarakan Dua Mahadevan (Flat 6)
Summit Agarwai (Flat 7)
Adam Nolan & Joseph Riley (Flat 8)

Represented by : **Orme Associates**

Respondent : **Tuscola (104) Ltd**

Type of Application : **Landlord & Tenant Act 1987 – sections 24(1)**
Landlord & Tenant Act 1985 – section 20(C)

Tribunal Members : **Paul W J Millward LLB (Judge)**
Ian James MRICS (Valuer Member)

**Date and venue of
Hearing** : **6th March 2014 at the Civil Court Centre,
Liverpool**

Date of Decision : **6th March 2014**

DECISION

The Application

1. By an application (the Application) dated October 2013 the Applicants seek the appointment of Liverpool Property Solutions Limited (LPS) to manage the Property. An Order for Directions (the Directions) was made by a Tribunal Member on 11 November 2013 and thereafter sent to the parties. The Respondent prepared and filed their bundle of documents pursuant to the Directions. The Applicants relied on the information set out in the Application. The parties were notified that the matter had been set down for inspection and hearing on 6 March 2014.

Applications under Section 24 of the Landlord and Tenant Act 1987 (as amended)

2. Section 24 of the Landlord and Tenant Act 1987 (the Act) provides grounds for the appointment of a manager, and in each case it is necessary for the Tribunal to be satisfied not only that the ground exists, but also that it is just and convenient to make the order in all the circumstances of the case.
3. By Section 24(2)(a) of the Act a manager may be appointed if the Tribunal is satisfied that the landlord is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises or part of them.
4. By Section 24(2)(ab)(i) of the Act an order appointing a manager may also be made where the Tribunal is satisfied that unreasonable service charges have been made or are proposed or likely to be made. By Section 24(2)(a)(ac) of the Act an order may be made where the landlord has failed to comply with any relevant provisions of the RICS Residential Management Code.

The Inspection

5. The Tribunal inspected the common areas of the Property and its surroundings on the morning of 6 March 2014. The Property is a grade II listed building converted into 10 flats over 5 floors and 2 retail units on the lower ground floor. The Property is situated in Liverpool city centre.
6. The communal areas are in fair condition. Repair and re-decoration is required externally. Some light bulbs were not working and were in need of replacement. The lift is not operational. There is a central stone staircase with cast iron and wood balustrades, decorative plasterwork to wall and ceilings. There are timber windows on the staircase with iron surrounds. The external doors are original and metal and are insecure. As a result internal security doors have been fitted.

The Lease

7. The Applicants are the lessees of the flats forming part of the Property under leases (the Leases) which are in identical form. A sample lease to flat 7 was provided to the Tribunal. The sample lease is dated 16 September 2011 and is

made between Ringwood Investments (North West) Limited (1) James Sandford Ross Graham (2) and is for a term of 250 years from and including 1 January 2011.

8. Under the Leases services to the Property are to be provided by the landlord. By various clauses of the Leases the lessees covenant to contribute a proportion of the Service Charge levied in respect of services provided as set out in the 4th Schedule to the Leases.

The Submissions of the Parties

9. The Applicants' Application includes (inter alia) the following:-
 - 9.1 a copy the preliminary notice served by the Applicants
 - 9.2 a full list of the Applicants' names and addresses
 - 9.3 details of the grounds for the appointment of a manager, namely that the Respondent is in breach of its obligations under the Leases, has made unreasonable charges, is in breach of the Code of Practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and is in breach of various statutory duties both under the Act and the Landlord and Tenant Act 1985
 - 9.4 details of the matters relied upon by the Applicants and
 - 9.5 details of the matters relied upon which the Applicants consider capable of remedy.
10. The Respondents Statement in reply includes (inter alia) the following:-
 - 10.1 an earlier preliminary notice had been served by the Applicant to which the Respondent had replied. The Applicants seek to rely on matters set out in the current notice without reference to the Respondent's reply to the earlier notice and the steps taken by the Respondent thereafter
 - 10.2 the statement set out the work that the Respondent had carried out as a result of the earlier notice
 - 10.3 copies of various correspondence, management contracts and invoices were attached to the statement, as well as a schedule of service charge arrears
 - 10.4 copies of service charge accounts for the period ending February 2013 were supplied, together with a copy of the insurance certificate, health and safety assessment and a report by Jubb & Jubb commissioned by the Respondent
 - 10.5 the Applicants had not taken any steps to resolve the matters they had referred to in the Application
 - 10.6 a witness statement by Mr Clifford Simmons, a director of Regent Property Management Limited (Regent), managing agents for the Respondent was also attached. The statement set out details of Regent's experience in property management and difficulties with maintaining the Property due to various factors including the entrance doorways
 - 10.7 the Respondent also replied to the Applicants' application for a section 20(C) order in relation to costs and set out the Respondent's grounds of objection to such an order.
11. The bundle of documents had been provided to the Respondent.

12. The Applicants made no written submissions other than as set out in the Application.

The Hearing

13. The Applicants' representative, Mr Andrew Orme of Orme Associates and Mr Joseph Gervin of LPS appeared on behalf of the Applicants and the Respondent was represented by Mr Michael Gubbay of the Respondent, Mr John Doyle (the property manager appointed by the Respondent) and Mr Clifford Simons of Regent attended the hearing.
14. Mr Orme said that the Applicants confirmed the matters set out in the Application and had many complaints. These included procedural matters such as lack of accounts and consultation, unreasonable charges, the high level of management fees and the high cost of insurance, surveys and insurance valuations, the lack of section 20 notices when required and physical breaches such as poor quality maintenance, failure to repair, lack of building security, the locking of the rear doors which were intended as a fire exit, soil pipes backing up and the lift being out of service.
15. Some tenants had taken matters into their own hands and had carried out roof repairs and other works at their own expense. Managers were absent.
16. The complaint is in reality about the Applicants paying for services that they had not received. All tenants had complained to the managing agents. Despite the lack of services the service charge is in excess of £2,500 per annum. The Applicants would have expected only £100 per month. The letting rents are between £575 and £650 per month. The service charge therefore amounts to one-half of the receivable rent.
17. Specifically, the insurance premium is £11,500 per annum. The building is insured for £10 million whereas it looks to be only £2 million. If the building is damaged beyond repair then it needs to be replaced, not rebuilt. The insurance premium should be in the region of £3,000 per annum.
18. Mr Gubbay, on behalf of the Respondent then said that the Applicants were cherry picking certain items. The Respondent had dealt with many matters, to which Mr Orme responded by saying that many had been carried out only after the Application had been submitted and that this amounted to window dressing.
19. Mr Gubbay also said that expenditure was as per the accounts, a copy of which had been provided. Much work has been undertaken. He referred to a letter dated 27 February 2014. More work is required including internal decoration on upper floors, entry system and the lift.
20. The Respondent had inherited the building in a poor state of repair. The Respondent was disappointed that the section 22 notice had been issued. The Applicants had not made their case and have not submitted documents as required by the Directions. In particular, no credentials had been submitted on behalf of LPS. The Property is managed in accordance with the terms of the Leases and charges are not unreasonable. Work is hampered by tenants' belligerent attitude. The evidence given by the Applicants in relation to insurance costs is incorrect.
21. LPS is not a suitable manager.

22. There did not appear to be consent for the alterations which have been carried out to the Property.
23. Mr Orme then interjected by saying that LPS had a small number of properties under management including 2 blocks of 6 flats each and 120 flats in King Dock Mill in relation to which LPS works with another local company. This was disputed by Mr Gubbay. Mr Orme then stated that LPS is a responsible company and employs a surveyor.
24. With regard to the insurance value Mr Gubbay said the managers must be able to reinstate the Property. Experts had placed a £10 million reinstatement value on the Property.
25. The property manager, Mr Doyle, is local. This is essential. Mr Doyle visits the Property twice a week.
26. Mr Gubbay said that the cost per flat is high due to previous disrepair and the need to bring the Property up to standard. Costs will remain relatively high for some time. There is no lack of consultation. All matters other than basic services are consulted. The Respondent must try to meet the tenants' expectations. The Application is wrong.
27. There is no record of what went on before the acquisition of the Property by the present freeholder. There was no hand over and no funds were transferred. All work has been funded by the freeholder as there are substantial arrears of service charge.
28. Mr Orme then alleged that none of the necessary notices relating to the disposal of the freehold interest had been served on the Applicants and Mr Gubbay replied that his company's Solicitors had satisfied themselves that everything was in order, but neither party provided any evidence to support either claim.
29. Mr Orme continued by saying that no service charges were raised for 8 months and that the Applicants did not know of Regent's involvement.
30. Mr Gubbay replied that the current year's service charge was substantially in arrear, and referred to the witness statement of Mr Simons and the report by Jubb & Jubb, which confirmed no major structural problems.
31. In his response Mr Orme stated that as no s21(b) notices were served, no payment had been made by the Applicants. No payment was due prior to January 2014 as no notices served before then. The lack of notices points to a lack of competence. He said that he had visited the Property on a number of occasions and that the Property would benefit from a local manager. This would put leaseholders' concerns to rest. He had managed the Property before when it was all offices and had been approached in September 2013. He did confirm that some of the work undertaken during conversion was of poor quality and that it was not easy to take on a cheap conversion.
32. Mr Gubbay countered by saying that the Property was a very expensive property to run and that the manager, Mr Duffy, had been involved since late last year. The previous manager had also been local. The Respondent can only go forward.
33. Mr Orme finished by saying that the previous manager was not good and had to be got rid of. This was why there is an issue for the leaseholders. Nothing was being done, although it was better now. The work which has been done is recent.
34. Mr Gubbay finished by claiming that the Applicants' proposed manager did not have the experience to manage a building of this type. It is necessary to find a

balance between the work required to be done and the cost of carrying it out. The Respondent's representatives would be happy to meet the leaseholders.

35. The Applicants confirmed their application for an order under Section 20(C) of the Landlord and Tenant Act 1985. In support Mr Orme said that the Applicants were not notified of their rights and that the service charge was billed before it was due. Mr Gubbay replied by opposing the application and said that costs were in the region of £2,500.

The Tribunal's Determination

36. The Applicants had nominated LPS to be appointed as managers. Virtually no evidence was presented prior to or at the hearing of the experience of that company to manage a property of this type. Vague comments were made as to the current management duties of LPS, but little or no detail. No evidence was produced to confirm that LPS had full knowledge of the RISC Management Code
37. As a result the Tribunal was unable to satisfy itself that LPS had sufficient experience and was capable of managing the Property. Furthermore, although Regent had been slow to commence maintenance work it had now got its act together (possibly as a result of the Application) and work was now being undertaken.
38. The Tribunal therefore determined to refuse the Application, as the Tribunal did not consider it just and convenient to make the order in all the circumstances of the case.

Costs

39. The Tribunal thereafter considered the Applicants' application for an order under s20(C) of the 1985 Act to restrict the Respondent from adding its costs to the service charge.
40. The Tribunal did consider that the Application was justified in part, by the apparent lack of work prior to service of the section 22 notice and that it would be grossly unfair to allow the Respondent to add all of its costs to the service charge. The Respondent had estimated its costs were in the region of £2,500 and the Tribunal determined to allow the Respondent to add a proportion of these costs to the service charge, that proportion to be limited to £1,000.