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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00DA/LAM/2014/0007**
Property	:	**Carr Mills, Buslingthorpe Lane, Leeds, LS7 2DG**
Applicants	:	**Adderstone Group Limited**
Represented by	:	**JB Leitch Limited**
Respondent	:	**Carr Mills RTM Company Limited**
Represented by	:	**Walker Morris Solicitors**
Type of Application	:	**Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager**
Tribunal Members	:	**Mr Phillip Barber (Judge)** **Ms J Jacobs**
Date of Decision	:	**26 September 2014**

DECISION

Decision

The Decision of the Tribunal is that the application should be dismissed.

Reasons

Introduction

1. This is an application under section 24(1) of the Landlord and Tenant Act 1987 to displace Carr Mills RTM Company Limited as manager of the development known as Carr Mills in Leeds. The application is made by the current landlord under the various leases by virtue of schedule 7, paragraph 8(3) of the Commonhold and Leasehold Reform Act 2002.

2. Directions were issued on the 9 July 2014 for service of the statement of case and statement in response, etc., and the application came for hearing before this Tribunal on the 26 September 2014. The Applicant was represented by Mr Simpson of Counsel and the Respondent was represented by Mr Wills of Counsel. The Tribunal were grateful for their submissions which enabled the hearing to proceed smoothly and within a reasonable timescale.

The Inspection

3. The Tribunal inspected the development on the morning of the hearing at approximately 10am in the company of both the Applicant and Respondent. We had the opportunity to view a flat and walk around the development noting its layout but we were unable to view the roof as it was too high. Other than that any relevant issues flowing from the inspection will be discussed in the body of these reasons.

4. The development comprises some 121 leasehold properties with mixed residential occupation including student accommodation; owner occupation (very few) and sub-tenanted properties (the majority of the leasehold owners are absentee landlords living in Ireland).

The Application

5. The Applicant is the landlord under all of the leases which are subject to the involvement of the Respondent as the Management Company at the premises.

6. The Respondent is a right to manage company incorporated on the 14 August 2008 and appointed in, we understand, 2010 to manage the development in place of, ironically, the Applicant (who at that time was managing it).

7. In its Notice served under section 22 of the Landlord and Tenant Act 1987 the Applicant raised the following three grounds against the

Respondent for the appointment of a manager in its place (paraphrased):

a. Failed to adequately fulfil its obligations under contract and statute;

b. Unlawfully incorporated the service charge accounts pertaining to the property into the trading accounts of a company other than Carr Mills RTM Company Ltd;

c. Breached additional requirements set out within the RICS Management Code.

8. The Notice raises a number of matters relied upon by the Applicant and which are reproduced in the Statement of Case. These will be the subject of detailed consideration in this Statement of Reasons in due course.

9. The Applicant's Statement of Case dated 25 July 2014 indicates that the Applicant wishes to have the Respondent removed as manager of the premises and for AVOCA Estate Management Limited, to be appointed in its place.

The Hearing

10. The Applicant had prepared three lever arch files of documents as part of its statement of case. The Respondent prepared a ring binder of documents as its statement in response and the Applicant then prepared a further ring binder of documents as its response to the Respondent's statement of case. At the hearing Mr Simpson also produced a 16 page skeleton argument dealing with the issues in the application.

11. We read all of these documents (with the exception of all of the sample leases) before the commencement of the Tribunal hearing and consideration of the documents has formed part of our deliberations prior to arriving at the decision of the Tribunal.

12. We heard detailed submissions from Mr Simpson and evidence from his one witness, Miss Jane Gillings, an employee of AVOCA and we heard detailed submissions from Mr Wills and evidence from Mr Jarvis. As it happened Mr Jarvis was unable to answer all of the questions put to him and so we allowed Mr Dillon to provide us with some evidence in relation to issues which were within his knowledge. The input from Mr Dillon, whilst welcome and informative, was only marginally relevant and in fact did not affect the outcome of the application. We were of the view that his input was proportionate and necessary for the resolution of the issues and Mr Simpson was provided with an opportunity to question Mr Dillon as appropriate.

The Law

13. The legislative provisions are succinctly set out in section 24 of the Landlord and Tenant Act 1987. The Applicant relied upon the following parts of section 24:

> 24
>
> (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....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 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 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 reasonable practicable for the tenant to give him the appropriate notice, and
> >
> > (ii) 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
> >
> > (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.....and
> >
> > (ii) that it is just and convenient to make the order in all the circumstances of the case

14. Accordingly the approach of the Tribunal is in two stages. Firstly we have to be satisfied that one or more ground (appropriate circumstance) is made out and secondly that it is just and convenient to make an order in the circumstances of the case.

The Grounds

15. The Tribunal generally found a number of grounds to be difficult to understand and opaque. The same issues were raised under different grounds and in slightly different terms and this we found to be a hindrance to properly understanding the difficulties the Applicant had with the Respondent and why the application had been made.

16. Suffice to say that we found the application to be generally without any substance and one which should not have been brought. It has undoubtedly and unnecessarily increased the costs to the leaseholders of the service charge and has taken Mr Jarvis and Mr Dillon away from the important work of managing and hopefully turning round this development.

17. Turning to the individual allegations. Given the number of allegations made against the Respondent it is best to deal with them sequentially and in order. Mr Simpson had very usefully identified the grounds in his skeleton arguments and so the Tribunal went through them in that order. Our findings of fact and reasons are given in the following paragraphs.

Breach of an obligation owed by the Respondent to the leaseholders under the leases

18. Ground a – the Respondent failed to serve a valid service charge demand in accordance with section 47 of the Landlord and Tenant Act 1987 in that it did not provide the correct name and address of the Applicant. We found as fact that it is correct that an incorrect name was placed on the service charge demand but we decided that this was due to the Applicant's failure to inform the Respondent of the change of name. In fact there is even some confusion about when the change occurred even on the part of the Applicant as they were still using the old name as recently as 2010. The Respondent was informed of the change of name in December 2013 and thereafter altered the demands. They can hardly be blamed for this failure and have remedied it. Accordingly whilst there may well be a breach of an obligation it is not one which the Respondent is responsible for and neither is it just and convenient to make an order on this basis.

19. This ground also includes an allegation that the Respondent has failed to comply with section 21B of the Landlord and Tenant Act 1985. It is not entirely clear from the application what this is about, but we were told at the hearing that it was because the summaries named the Leasehold Valuation Tribunal rather than the First-Tier Tribunal. This may be the case but the Respondent remedied this issue as soon as it found out and accordingly there is no real substance to this allegation. The ground is not made out and neither is it just and convenient to make an order on this basis.

20. Ground b – the Respondent has failed to serve on the leaseholders service charge account statements contrary to section 21 of the

Landlord and Tenant Act 1985. We are satisfied and we find as fact accordingly that the Respondent has served service charge account statements on the leaseholders when requested. We were told as such at the hearing and as the Applicant has produced no evidence to substantiate this allegation then we prefer the Respondent's assurances given in evidence before us. In any event we agree with the Respondent that this is a statutory obligation as opposed to a tenancy obligation and therefore forms no part of section 24(2)(a).

21. Ground c – The Respondent has allowed the premises, and in particular the roof, to fall into a state of disrepair. In fact what this allegation only relates to is the issue with the roof, so it is not clear why it needed to use the words "in particular the roof". We found as fact that the Respondent had inherited the problems associated with the roof from the Applicant (who was managing the development prior to their appointment) and on the basis of the evidence before us, in particular what we were told by Mr Jarvis, we were satisfied that they were managing the issue with the roof perfectly reasonably. They have commissioned a report into the issue of the roof and they are looking to raise the funds by way of individual insurance claims. As far as we could tell from the evidence the Respondent is acting in a perfectly reasonable manner as any other management company might manage this issue. Accordingly there is no substance to the ground and there has been no breach of an obligation in this regard.

22. Ground d – the failure to serve service charge demands so as to avoid the effect of section 20B of the Landlord and Tenant Act 1985. It is not entirely clear what service charge demands breach this obligation and the Applicant has failed to produce any evidence of such a failure. On this basis it is hard for this Tribunal to be satisfied that there is any merit to this ground. That said, even if there was a failure to serve such a demand within the statutory timescale thereby rendering it irrecoverable under this section, we agree with the Respondent that this is not a breach of a tenancy obligation, there is nothing in the various leases setting this out as an obligation. The breach would relate to the inability as a result of statute to claim out of time service charges.

23. Ground e - The Respondent has accounted for service charge monies in a trading account other than the Respondent company in breach of section 42 of the Landlord and Tenant Act 1987. The Applicant raises this issue in more detail under the ground relating to breaches of the RICS code and so it will be dealt with more appropriately there. However, suffice it to say that again we agree with the Respondent generally on this point in that it is not a breach of a tenancy obligation but moreover a statutory requirement placed on a management company. Even if it were a breach of an obligation under the terms of the tenancy, we are satisfied that the ground is not made out as will be explained later in this decision and statement.

24. Ground f – the failure to establish and/or maintain a sinking fund contrary to paragraph 4(O) of the Memorandum of Association. It is true that there is no sinking fund in place at the development. This is an issue which we thought should be remedied by the Respondent as it is clearly not in the interests of the leaseholders to be faced with significant service charge demands for major works (as for example they may be with the roof). However, there is nothing in the various leases to which our attention was drawn which placed this as an obligation on the management company. In any event and even if this did amount to a breach of such an obligation we would have determined that it was not just and convenient to make an order on this basis. We found the evidence of Mr Jarvis on this point to be both reasonable and persuasive in that there have never been sufficient funds with which to establish a sinking fund given the level of arrears at the development. It has to be recalled that this is a development made up almost exclusively of leaseholders who live in Ireland with a large number (we were told about 80) of whom no longer take an active interest in the leases to the extent that LPA receivers have been appointed by the mortgage lender. This is hardly a situation conducive to building up a reserve fund.

Breach of the RICS Code

25. The RICS Code is reproduced in tab 12 of bundle 3 of the Applicant's bundles. Their statement of case sets out a number of allegations of ways in which the Code has been breached. In approaching these allegations the Tribunal had in its mind the final paragraph of the "Foreword and application of the Code" on page 1 of the Code. The Code itself provides that compliance with it is not mandatory but "managers should be able to justify departure from it."

26. Again it is appropriate to deal with the alleged breaches of the RICS Code sequentially and in accordance with Mr Simpson's very useful skeleton arguments.

27. Breach a) – as far as we understand this ground, it appears to be that there has been a breach of the RICS code on the basis that the service charge accounts have been placed in an incorrect bank account, or a bank account with an incorrect name. However, we were satisfied on the basis of the documents (in particular the letter from NatWest Bank dated 19 June 2014), that an appropriate bank account had been opened and that there was compliance with the RICS Code. If there had been a breach of the Code in the past we thought that this was not particularly significant. In any event it could hardly be described as just and convenient and accordingly we find that this ground is not made out.

28. Breach b) – failure to comply with requests for information from tenants. There is no substance to this allegation. It is not particularised

in the Statement of Case but it turned out to arise from an email from one of the leaseholders for membership of the RTM company. Mr Simpson did not know how he had come to be in possession of this email and the writer did not attend. In any event Mr Jarvis told us that the writer had now had this issue resolved and they were on "friendly terms". Accordingly there is no substance to this allegation and in fact it may have been withdrawn at the hearing (although nothing was clear on this point).

29. Breach c) – this is the same as the breach dealt with in paragraph 16 above and the Tribunal relies upon the same reasoning. There has been no significant breach here.

30. Breach d) – again this appears to be the same breach as that claimed in paragraph 25 above. We repeat what we had said in that paragraph. There is no substance to this breach and in any event it has been remedied.

31. Breach e) – this is again the same breach as dealt with in paragraphs 16 and 17 above.

32. Breach f) – this is again not a particularly well identified breach as it is not clear what the problem is. The reference to "page 20 of annex 12 Bundle 3" which one might think supports this allegation is in fact reference to a page of the RICS Code. Mr Jarvis told us that that there is no substance to this allegation and that no requests have been made and if they were they would have been responded to. Again this is simply an unsubstantiated allegation.

33. Breach g) – this is another reference to the lack of a sinking fund which has been dealt with elsewhere in this decision and statement. It lacks merit as an allegation of breach.

34. Breach h) – reference is made to paragraph 31 above.

35. Breach i) – this is a reference to the manner in which the Management Company has held service charge accounts and has been dealt with to some extent previously in this decision and statement. Having heard from Mr Jarvis and Mr Dillon we are quite satisfied that there is no evidence whatsoever of any inappropriate activity. We were satisfied that Mr Jarvis and Mr Dillon were simply making the best of a particularly troublesome situation at the development with regard to management. There was no evidence put to us that there had been any loss to anybody and as far as we could work out these allegations were just floating unsubstantiated attempts to cast some shadow over their work. In relation to this issue of charges, we note that AVOCA were proposing to charge almost the same amount. Finally in relation to the bank account name being an issue, we note that there is now a new account into which service charge payments are being made.

36. Breach j) – again we cannot see any substance to this unsubstantiated allegation. As far as we can tell it relates to substantially the same matters as referred to in paragraph 33 above.

37. Breach k) – there is no requirement for the service charge accounts to be audited and in any event this would simply lead to additional unnecessary costs for the leaseholders. There is no substance to this allegation.

38. Breach l) – again there is no substance to this allegation. In fact it remains unclear as to what it is referring to.

39. Breach m) – as far as the Tribunal could determine the service charge monies were held on trust for the leaseholders. This is the position at law and seemed to be the position with respect to the operation of the RTM Company. Insofar as the service charge money may have been held in a bank account in an incorrect name this has now been remedied and we could not see how this has caused any detriment to the leaseholders (or the landlord).

40. Breach n) – this is not really a breach but a submission as to status of the RICS Code.

Associated Companies

41. A separate section of the Applicants' Statement of Case raises a number of issues relating to the associated companies of Mr Jarvis and Mr Dillon. These allegations seem to be in substance the same allegations as raised under the headings "breach of obligations" and "breach of the RICS Code" and the Tribunal dealt with them under that heading. However, to repeat the Tribunal's findings of fact, we could find no substance to the allegations. We agree with the Respondent that there was no impact on the Applicant, Respondent or leaseholders by the fact that the functions of the Respondent were carried out by an agent. In fact the Respondent could really only act through an agent.

42. We accept the Respondent's position that the payment of £14,274 was the reimbursement to Newhomes in connection with expenses incurred in the maintenance of the premises and that there is no profit element. The Applicant has provided no evidence to substantiate any allegation otherwise.

43. As to the various peripheral allegations about the activities of the Respondent company, we were satisfied that the Respondent was set up at the instigation of the leaseholders and that Mr Jarvis and Mr Dillon were asked to act as managing agents arising out of their success in a development in Nottingham which had similar problems. Having heard from Mr Jarvis and Mr Dillon we were satisfied that they were chosen appropriately and that they were managing the development in a responsible and effective way, as agents for the Respondent, given the considerable problems at Carr Mills.

44. It seems to us that the Applicant has attempted to create the illusion of Mr Jarvis and Mr Dillon acting inappropriately with a view to substantiating their application. For example, there is an unsubstantiated allegation that they had "yet further and separate and distinct companies" which is manifestly without foundation.

Accounts and Tenant/Forte Correspondence

45. Here we agree with the Respondent that the allegation has been remedied appropriately. It was listed as a ground capable of remedy and that has been done. A client account was set up in June 2014 (see above) and accordingly the ground is not made out.

46. In relation to the balance of the allegations under this heading insofar as they are different to the one dealt with in paragraph 45 above, we note the evidence of the Respondent that the Applicant has been invited to inspect all records held at the Respondent's office and has not accepted this invitation.

47. In relation to the allegation relating to the increase in the service charge made in paragraph 37, we understand that there is no evidence to support anything other than this simply being a reasonable increase in accordance with the rising cost of managing the development. The Tribunal found as fact that this was an unsubstantiated claim intended to again simply cast a "shadow" over the work of Mr Jarvis and Mr Dillon.

48. In relation to the issue of the drain, it was not clear at the hearing whether this was being pursued. However, the Tribunal in any event preferred the evidence of Mr Jarvis in relation to the drain in that the installation contravened building regulations and they were attempting to resolve the problem appropriately. This is something which the Respondent had again inherited and we were perfectly satisfied that the issue was being dealt with appropriately.

49. The issue with the roof has been dealt with elsewhere in this decision and reasons.

Conclusion

50. We found there to be no substance to many of the allegations made in the application. The balance of the allegations was either minor issues or ones which would not make it just and convenient to make an order.

51. The Tribunal took note of the fact that no leaseholder had come forward with any allegation against the RTM Management Company and that this company had in fact been incorporated with the intention of displacing the Applicant as manager. It would therefore perhaps

seem a nonsense that this Tribunal might replace the RTM Company with the Applicant as manager.

52. The Tribunal accordingly declined to make the order.