

10630



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

Case Reference : **LON/00AG/LVM/2011/0002**

Property : **Frognal Estate, London, NW3 5HN**

Applicant : **(1) Mr R Southam FRICS FIRPM**

Representative : **In person**

Respondents : **RFYC Limited
The leaseholders of the estate-
See attached schedule**

Representative : **Mr Upton representative of 32
Long leaseholders at the estate**

Type of Application : **For the determination of an
application under section 24(9) of
the Landlord and Tenant Act 1987**

Tribunal Members : **Ms M W Daley LLB (Hons)
Mr K M Cartwright FRICS**

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

Date of Decision : **13 February 2015**

DECISION

Decisions of the tribunal

- a. The Tribunal determines that in all of the circumstances of this case grounds existed for the continued appointment of a manager.
- b. That the Tribunal grants Mr R Southam's Application to be released from his appointment as manager at the premises with immediate effect.
- c. That Mr Martin Kingsley is appointed in place of Mr Southam for a period of two years until **13 February 2017**. That on or before **12 February 2016** the managing agent shall apply for a hearing for the Tribunal to consider whether he should continue in his appointment until **13 February 2017**.
- d. **That on or by 19 March 2015, Mr Kingsley shall set out his strategy plan for the management of the building this plan shall deal with (a) The proposed budget for the coming financial year (b) any recovery of service charge arrears and how they are to be dealt with (c) the future plans for the building including any proposed maintenance and re decoration. This should include a timetable. This plan should deal with Mr Kingsley's proposed remuneration based on the hours needed to bring this plan into effect.**
- e. That on or by **5 February 2016** Mr Kingsley shall serve a statement setting out how he has complied with the strategic plan.

The application

1. The Applicant by a letter dated 26 January 2015 wrote to the Tribunal indicating his intention to resign from his appointment made on 22 October 2011
2. The Tribunal directed that this letter should be treated as an application under Section 24(9) of the Landlord and Tenant Act 1987 ("the 1987 Act). For the variation or discharge of an order appointing a manager.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. The Background to this Application was set out in the Directions dated 30 January 2015, which stated as follows-: "(3)...*The Tribunal considers this to be an application under S24 (9) of the Landlord & Tenant Act 1987 to discharge the manager. If the Tribunal agrees to*

discharge Mr Southam, then the management of the premises will revert to the Landlords, and the leaseholders may wish to consider their position. (4) S24(9) of the Act requires the Tribunal to be satisfied that if the manager is discharged that this will not result in a recurrence of the circumstances which led to the order being made, and that it is just and convenient in all of the circumstances of the case to discharge the Order.

5. At the Case Management hearing it was determined that the notice of hearing should be condensed and the matter was set down for hearing on 13 February 2015.

The hearing

6. At the hearing the Applicant appeared in person, 32 of the long leaseholders were represented by Counsel Mr Upton, there were a number of unrepresented leaseholders and representatives of the current managing agents KMP Solutions together with Mr Freed who represented the freeholder, also in attendance was Mr Kingsley who the who 32 of the Leaseholders agreed should be put forward as the Tribunal appointed manager in place of Mr Southam.
7. The Tribunal, agreed with submissions made by Mr Upton that the Tribunal should consider (i) whether to vary the order to appoint Mr Kingsley before deciding whether to discharge Mr Southam's appointment.
8. The Tribunal considered that a separate question arose which needed to be considered which was whether circumstances existed at the premises which gave rise to the need for a Tribunal appointed manager.
9. Mr Upton informed the Tribunal that the long leaseholders who he represented had put forward proposals for Mr Kingsley and that they had notified all but four of the leaseholders (1, 2, 4 Midland Court and 38 Frogmal Court) separate to this Mr Southam as applicant had informed all of the leaseholders of his intention to resign.
10. The Tribunal were informed that currently there were two tenant's groups at the premises, the previous resident's association who had not renewed their registration, and another group who had set up to support the managing agents. It was clear that notwithstanding their differences, both groups considered a Tribunal appointed manager to be necessary at the premises; this was also the opinion of Mr Freed who represented the freeholder. Mr Freed did not express a desire to manage the premises or appoint his own managing agents on the freeholder's behalf.

11. The Tribunal noted that Mr Southam was the second person to be appointed, and that he had resigned on 26 January 2015, in circumstances where it was clear that he had been unable to complete the matters which had given rise to his appointment. Mr Southam had also recently separated the function of appointed Tribunal manager from the day to day management of the premises by appointing managing agents. This meant that they were still in the process of establishing their role at the premises.

The decision of the Tribunal on whether an order remained necessary

12. The Tribunal determined that the circumstances at the property which had necessitated two previous appointments still existed in that Mr Southam was not seeking to be discharged because his appointment was no longer necessary.
13. The Tribunal noted that this was not the view of any of the parties who attended the hearing.
14. Accordingly the Tribunal determined that an order remained necessary.

The Leaseholder's application for the order to be varied

15. The Tribunal were asked to consider the appointment of Mr Kingsley, He had been proposed as an appointed manager, he was known to one of the leaseholders, and also KMP Solutions who were the managing agents. There was also no objection to his appointment.
16. The Tribunal considered his CV which set out his property management experience. He had worked for a number of property firms, and in his oral evidence set out that he had experience of dealing with properties that varied in size from 5 units to 250 units. He also had experience of managing properties within the local area.
17. The Tribunal asked about his Public Liability insurance, he confirmed that he had insurance in place of up to £2 million. He also indicated in answer to the Tribunal's questions that was familiar with the RICS code of guidance on Residential Management and had been a Tribunal appointed manager in another case, and was familiar with what this entailed. Mr Kingsley stated that he had visited the premises and that his assessment was that it was in need of on going maintenance.
18. He indicated that he would be prepared to develop a capital expenditure plan along with the managing agents.

19. His proposed remuneration was £120 per hour plus VAT, with a cap of £1200.00. He proposed for the order to be extended for six months.
20. The Tribunal noted that there was no opposition to his appointment by any of the parties present.
21. The Tribunal decided to consider Mr Southam informed the Tribunal that he had recently been appointed Chair of the Leasehold Advisory Group. He had been concerned that allegations had been made against him by leaseholders which he considered to be "*wild allegations(s) about my probity and good character*" He stated in his statement of case that "*On Monday 26 January ...I received the most distressing and distasteful email with a comment that is the most appalling abuse I have ever seen...*" A copy of the email had been enclosed with his letter to the Tribunal
22. Mr Southam stated that there had been no apology and that in all of the circumstance his position was untenable and that he did not wish to continue in his appointment.
23. On behalf of the freeholder, Mr Freed expressed concern that an appointment of the Tribunal could be interrupted in this way because of leaseholders who might seek to derail the process. Mr Upton stated that it was agreed by the leaseholders whom he represented, that their had been a breakdown in the relationship, such that it was no longer possible for Mr Southam to continue to manage the premises.
24. Mr Southam agreed that he would affect an orderly hand over should the Tribunal appoint someone in his place, however he wished for his remuneration during this period to be increased to his normal rate of £300.00 per hour.
25. Mr Kingsley also indicated that on reflection his proposed figure of £1200 for the six month period had been somewhat unrealistic.

The tribunal's decision on whether grounds exist for the Management order to be varied by (1) appointing a new manager (2) the extension of the order dated

26. The Tribunal determines that Mr Southam should be released from his appointment.
27. The Tribunal noted that all parties accepted the need for a Tribunal appointed manager; nevertheless it was for the Tribunal to apply its judgement having heard evidence and submissions from the parties and

considered all of the documents provided of whether to vary the order and if so upon what terms.

28. The tribunal considers that the circumstances that exist at the premises, as such those grounds exist for the continuing appointment of a manager, as specified in section 24(2) of the 1987 Act. The Tribunal noted that the issues at the premises which led to the appointment of firstly Mr Maunder Taylor and secondly Mr Southam although having moved forward there was no management program in place to resolve the long term underlying issues which existed at the premises.
29. The Tribunal noted that Mr Southam was no longer willing and this made him not suitable to continue in his appointment, given this it was entirely appropriate that the existing order should be varied so that a new manager be appointed.
30. The Tribunal were however very concerned about the manner in which the previous appointment had broken down, given this, The Tribunal determined that it was appropriate to consider the test in extending the order should be whether it was just and convenient to extend the management order. The Tribunal were satisfied that the circumstances at the property were such that that it was reasonable firstly to extend the order to give effect to the original purpose of the Tribunal in appointing a manager.
31. The Tribunal were concerned that Mr Kingsley did not have a draft strategic plan and that his terms were unrealistic, and this gave the Tribunal some concern about his appointment. However the Tribunal noted that he had the support of those who attended, and that experienced managing agents who had taken part in a tendering exercise and evaluation would be available to deal with the day to day management.
32. Mr Kingsley although previously appointed as a manager by the Tribunal needed to demonstrate that he was aware of the issues and had a realistic time framed plan which could deal with the issues. The Tribunal made the following order at the hearing

The Decision of the Tribunal and Reasons for the tribunal's decision

33. That Mr Southam should be released from his appointment.
34. That the period of the original order should be extended for two years until 13 February 2017, the Tribunal consider the period proposed to be

unrealistic, and insufficient to give effect to the terms of the original appointment.

35. That Mr Kingsley should be appointed with effect from 13 February 2015. At a rate of £120.00 per hour plus VAT for the duration of the order. Mr Southam shall make immediate arrangements to hand over the accounts and other documents concerning the premises and that any handover work should be remunerated at the rate of £200 per hour plus VAT to be capped at 5 hours of work.
36. Mr Kingsley shall **by 13 March 2015**, produce a strategic plan for the management of the premises, setting out a time table and assessment of the hours needed to give effect to that plan.
37. That the draft order shall be sent to the Tribunal with the amendments so that the same can be approved by the Tribunal.

Application under s.20C and refund of fees

38. At the end of the hearing, No application was made under section 20C, any party wishing to make such an order may do so by **13 March 2015**.

Name: Judge Daley

Date: 13 February 2015

Appendix of relevant legislation

S24 Appointment of manager.

- (1) A leasehold valuation 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, or
 - (b) such functions of a receiver, or both, as the court thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—
 - (a) where the court 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 reasonably practicable for the tenant to give him the appropriate notice, and
 - (iii) that it is just and convenient to make the order in all the circumstances of the case; or
 - (ab) where the court 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;
 - (ac) where the court 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 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 court 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 to be unreasonable-

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if 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).

- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to- (a) such matters relating to the exercise by the manager of his functions under the order, and (b) such incidental or ancillary matters, as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
 - (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the court may, if it thinks fit, make such an order notwithstanding—
 - (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the court may by order direct that the entry shall be cancelled.

Appendix two

Parties in attendance at the hearing on 13.02.2015

In the matter of Frognal Estate, Finchley Road, London NW3 5HN LON/00AG/LVM/2011/0002

Mr J I Laco Perez – Flat 1 Frognal
Mr L M Brassey – Flat 2 Frognal
Ms A Kory – Flat 6 Frognal
Ms L Basu – Flat 7 Frognal

Ms M Garside – Flats 15 & 20 Frognal
Convoke Properties LLP – Flats 18, 19, 22, 31 & 37 Frognal 9 (James & Paul Boyle)
Mr S Cole – Flat 21 Frognal
RFYC Ltd – Flats 23, 26, 43 & 45 Frognal - Mr N Freed
Dr M Anson – Flat 36 Frognal

Also in attendance

Mr Philip Klein (KMP Solutions)
Mr Solomon Mozes (KMP Solutions)
Ms Gail Lawrence (Chainbow)
Ms Claire Savill (Chainbow)
Mr Danny Thompson (Chainbow)