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LON/00BK/LVM/2006/0009

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
DECISION ON APPLICATION UNDER S.24 (9) AND (9) A OF
LANDLORD AND TENANT ACT 1987**

Property 4 Ennismore Gardens SW7 1NL

**Applicants/
Tenants** Ms M Barros
Mrs. M Gladstone
Mr. M Ziman

Respondent Mr. Nigel Cross

Application The application sought by the Applicants was for an order to vary the order made on 13th April 2004, by the leasehold valuation appointing Mr. Nigel Cross as a manager. The Applicants wished for an order varying the order to substitute Mr. R L Welfare BSc, MRICS ACIA as manager for the premises.

Tribunal Ms M Daley Chairman (LLB.Hons)
Mr. Mathews FRICS
Mrs. Baum

Date of Hearing 19th March 2007

Appearances Miss Knapton and Ms Clarke

The Application

1. The Tribunal received an application dated 21st November 2006 under Section 24a of the Landlord and Tenant Act 1987. To vary the order made by the Leasehold Valuation Tribunal on 13th April 2004 appointing Mr. Nigel Cross as a manager. The grounds on which the Applicant wished to vary this appointment were set out in the application and were as follows-
2. (1) The LVT Manager had not carried out his duties under the current LVT order, including not enforcing landlord and lessee covenants
(2) That the Building of 4 Ennismore Gardens remained in the same or worse condition as when the manager took over.
(3) That the Manager had not complied with the terms of the RICS Code of Management.
3. The Applicants wished to vary the order to appoint Mr. Welfare of Fifield Glynn. On the 23rd January 2006, the Applicants had made an application, to the LVT to vary the order, to replace Mr. Cross and substitute Mr. Welfare; Mr. Cross opposed this application.
4. The Tribunal refused the application to vary the order. On the grounds that Mr. Welfare did not have sufficient residential property management experience (and the application was also opposed by Mr. Cross). On 2.2.07. The Applicants, through their legal representation wrote to the Tribunal, indicating that the Applicants had reached an agreement with the Respondent whereby he agreed to resign his appointment, which was set out in a draft management order which the Applicants asked Tribunal to approve.

The Law

5. The relevant Law is set out below:-
Section 24(9) states
The Tribunal shall not vary or discharge an order under subsection (9) on (the application of any relevant person) unless it is satisfied
(a) that the variation or discharge of the order will result in a re-occurrence of the circumstances which led to the order being made
(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

6. The Hearing

Ms Maria Alaide Nogueirade Barros

At the Hearing on the 19th March 2007 Ms Barros gave evidence. Ms Barros was the leaseholder of flat B, and had been involved in the appointment of Mr. Cross. She informed the Tribunal that Mr. Cross was not managing the premises in the way that she had expected him to, in that he was not consulting tenants concerning issues such as the budget for service charge, and was making major decisions such as changing the lift without consulting the Tenants. And there were

other matters, such as unauthorized alterations to the common part, that the Tenants considered important, which were not prioritised by the Respondent. There were also minor matters such as ensuring that there were fire alarms in the common parts (which affected the insurance). Ms. Barros also considered that Mr. Cross had failed to adequately prioritise an enforcement notice served by Westminster council.

7. Ms Barros informed the Tribunal that because of concerns that she had about the management of the building she stopped paying her service charges in February 2006, as she had not seen any accounts. The Respondent, Mr. Cross had filed an Application under section 27(a) of the Landlord and Tenant Act 1985. Mr. Cross had indicated to the Applicants that depending on the outcome of the Application he would either continue or resign.
8. Mr. Cross indicated to the Applicant's that he was prepared to resign and Mr. Ku one of the Tenants had written to Mr. Cross and had agreed to pay him compensation of £1000 (from the service charge).
9. Ms. Barros described how she had come to meet Mr. Welfare, through Fifield Glynn, when they had been consulted by one of the Applicants concerning the enforcement notice with Westminster. The Applicant formed a favourable impression of Mr. Welfare whom was seen as diplomatic and able to bring all of the Tenants together.
10. Mrs. Barros was asked by the Tribunal to indicate, what her expectations were concerning the management of the building. She stated that she would expect positive changes within about a year.

11. Mrs. Gladstone

Informed the Tribunal that she had a flat at 4 Ennismore Gardens, and that this was her second home. Mrs. Gladstone had been the leaseholder of the property for approximately 8 years. She explained that she was originally happy with Mr. Cross, however she felt that he was listening more to some of the tenants than others, Mrs. Gladstone was unhappy because she felt that the information concerning the setting of the service charge budget was inadequate and as a result she was withholding service charges, Mrs. Gladstone was also unhappy that Mr. Cross had not sorted out work to the building, and also the fact that the former Ennismore Ltd had service charges that they had not accounted for and legal action was contemplated for the recovery of these service charges.

12. Mrs. Gladstone considered that Mr. Cross had been slow to deal with this issue and that as a result, the management company had gone into liquidation, and a liquidator was appointed whilst Mr. Cross was on holiday. It was her hope that the appointment of Mr. Welfare could unify the Tenants in some way.

13. Mr. Roderic Welfare

Mr. Welfare was a director of Fifield Glynn, he had attended the hearing with David Kohegyi, he informed the Tribunal about the structure of Fifield Glynn, he

explained that most of the Administration work was undertaken by staff within the Chester Office, whilst Mr. Welfare dealt with the main London office with three staff who were David Kohegyi, Clive Wilboughy and Roderic Welfare, he was aware that the Tribunal who had heard the application to vary the management order had expressed concerns about Mr. Welfare's lack of residential property management experience, since that hearing in 2005 he had recruited Mark Elves who had residential property management experience he had worked with the Freshwater group and had been appointed approximately six months before to build up the Residential Property portfolio, although Roderic Welfare would be the main project manager. He informed the Tribunal that although he had stated that he did not have Residential Property management experience at the hearing in 2005, he had flats that he owned in Eastbourne and Brighton, which he managed, he had also been involved in the management of listed buildings.

14. Mr. Welfare stated that he was aware of the scope of the management problems at Ennismore Gardens, and that there were a huge amount of issues, and that he expected that all three of the staff in the London office would be involved in the management of the premises initially. He considered that a year would be an optimistic time-table to deal with all of the issues, however some issues such as the fire-alarm were issues that he considered could be dealt with quite quickly, although he considered that within a year he should be able to show that things were moving in the right direction.

15. The Tribunal asked Mr. Welfare about how he would go about collecting the arrears of service charges, and whether he was familiar with the RICS Code on Service Charges. Mr. Welfare stated that his colleague Mark Elves would deal with service charge issues.

However the process that he would expect to be followed was that reminders would be sent out, and then telephone calls, to the Leaseholders who were in default, he would then seek further instructions from clients as to whether to take forfeiture proceedings. However he would be looking for leaseholders to come to some arrangement about the payment of arrears of service charges.

16. The Tribunal asked Mr. Welfare, about how he would attempt to unify the differing groups of Leaseholders, he was aware of Mr. Rickman, he had met him six years ago when he had first been approached by some of the leaseholders, concerning the issue of the boiler, (Mr. Rickman had decided to move from district heating to individual heating, and some of the Leaseholders who did not agree had found themselves without heating and hot water) He stated that he had tried to meet with him but he was not amiable to discussing the issue. Mr. Welfare nevertheless felt that he would try to bring tenants together so that they could agree on the management objectives of the building by having one to one meetings. He felt that he could mediate about some of the issues, for example he would try to alter the lease so that those who had no heating and hot water from the district heating would not pay service charges for heating and hot water.

17. He was asked about whether his company operated a complaints procedure and he stated that Fifield Glynn operated the RICS complaints procedure.

The Tribunal asked about the charging rates, and Mr. Welfare explained that the rates per hour were £175 for his time, £75-100 for David's and £100 per hour for Mark's time.

18. The Tribunal asked about how service charge funds would be managed.
Mr. Welfare stated that he would need to establish a budget based on what had been paid before, and he would have to cost the work that was needed, which would then inform the budget. This would be set out in the draft management plan
19. The Tribunal asked about Mr. Welfare's knowledge of the Law and Residential property management issues, Mr. Welfare had knowledge of issues from his ownership of properties in Eastbourne, however he expected to undertake some courses on the legislative aspects of Residential Property Management, and Mark Elves would be able to deal with the legislative aspects.
20. The Tribunal asked about how Mr. Welfare would prioritise the work Mr. Welfare indicated that he would undertake work on matters, such as the fire alarm and safety first and also matters such as the enforcement notice that had been served by the London borough of Westminster and would then consider the service charges and proposed budget for the work.

21. Michael Ashton MRICS Chartered Surveyor

Mr. Michael Ashton, had prepared a report on the premises which was enclosed in the bundle, his involvement with the building dated back to 2000 when he was working for Farley's they had been appointed in 2000 by Mr. Hickman who was part of Ennismore Garden management company (who were now in liquidation) the partners had read the files and then resigned the appointment. Mr. Ashmore had carried out an inspection on 22 August 2005; he had noted that one of the directors had carried out a number of unauthorized alterations to the building such as changing the arrangements in side the entrance and undertaking work to the cornice and installing a false ceiling. He was aware of some of the issues of managing a listed building; he also had experience of supervising work in a listed building, and was currently replacing a lift in the same street. In his report he had set out work that he considered being necessary, for example he had inspected the false ceiling and in his opinion the cornice might still be there once the false ceiling was removed. He had inspected the lift and considered that it might be dangerous. He had undertaken some costing and provided a work schedule, on behalf of the tenants, which could assist Mr. Welfare in taking matters forward.

22. Determination of the Application

- (i) The Tribunal decided that that it is just and convenient in all the circumstances of the case to vary or discharge the order made by the Tribunal on 8th April 2004. That the order should be varied so that Mr. Nigel cross should be discharged from his appointment as manager with

effect from 26th March 2007. The Tribunal formed this opinion, based on the fact that Mr. Cross had indicated that he consented to resign his appointment on terms set out in the agreement, which had been put before the Tribunal.

- (ii) The Tribunal was minded to make an interim management appointment for a six-month period. This was because the Tribunal considered that there were many complex issues at the building, and the Tribunal was mindful of the fact that this was the second appointment that the Tribunal had been asked to make in a three-year period. The Tribunal wanted to be satisfied that Mr. Welfare fully appreciated the implications of his appointment, and that he had a reasonable opportunity to put a draft management plan in place once he had had an opportunity to consider the relevant documents and to meet with the tenants who occupied or owned properties in the building.
- (iii) The Tribunal had discussed with Mr. Welfare the fact that a previous application for his appointment as a manager had been refused by the Tribunal because, the Tribunal were not satisfied that Mr. Welfare had sufficient Residential Property management experience, the Tribunal wanted to review the appointment in six months, with a view to deciding whether to extend it, the Tribunal also wished to review a more detailed management plan.
- (iv) The Tribunal indicated that they were not satisfied with the charges proposed by Mr. Welfare and he was asked to indicate whether he could provide a revision of the charges, and also whether he was prepared to accept the appointment on the basis proposed by the Tribunal. He indicated that he was, he was asked to provide further details on the proposed costing for the Tribunal, and the appointment would be on the terms set out in the Management Order.

CHAIRMAN.....

DATE.....

M. J. O'Connell
19th April 2007

LON/00BK/LVM/2006/0009

IN THE LEASEHOLD VALUATION TRIBUNAL

Property	4 Ennismore Gardens SW7 1NL
Applicants/ Tenants	Ms M Barros Mrs. M Gladstone Mr. M Ziman
Respondent	Mr. Nigel Cross

Order of the Tribunal

Ms M Daley Chairman (LLB.Hons)
Mr. Mathews FRICS
Mrs. Baum

ORDER FOR APPOINTMENT OF MANAGER RE: 4 ENNISMORE GARDENS,
LONDON SW7 1NL PURSUANT TO AN APPLICATION UNDER SECTION
24(9) LANDLORD AND TENANT ACT 1987

1. That Mr Roderic Welfare of Fifield Glyn Chartered Surveyors and Commercial Property Consultants of 26 Wilfred Street, Westminster, London SW1E 6PL, is hereby appointed the Manager and Receiver ("Manager") of 4 Ennismore Gardens, London SW7 1NL ("The Property") for an interim period of 6th Months with effect from 1st April 2007.
2. The Order made by the Leasehold Valuation Tribunal on 8th April 2004 appointing Nigel Cross as Manager is discharged with effect from 31st March 2007.
3. Mr Nigel Cross must by 31st March 2007 transfer to Mr Welfare all funds relating to the property, together with a statement showing all income and expenditure in respect of the property since 13th April 2004.
4. On receipt of the funds and the documents set out in paragraph 3 Mr Roderic Welfare pay the sum of £1000 plus VAT to Mr Nigel Cross, such sum to be deducted from the funds held on account of the Tenants. Mr Cross to deliver a receipted VAT invoice for these fees to Mr Welfare within 7 days of receiving the same.
5. During the period of his appointment, the Manager shall collect all the various funds reserved and made payable by the Lessees ("the Lessees") in the respective Leases ("the Leases") of the flats ("the Flats") in the property including but not limited to:

- a. Ground rent.
 - b. Insurance rent.
 - c. Service charges.
 - d. And the arrears of any of the above.
6. To ensure the proper management of the property and its service charge account, the Manager shall be entitled to all reports, bank statements, invoices, accounts and other documents relating to the property in the possession or control of
- a. The Lessees and/or their solicitors, accountants, employees or agents.
 - b. Mr Nigel Cross and/or his solicitors, accountants, employees or agents.
 - c. The Directors of Ennismore Limited and/or their solicitors, accountants, employees or agents.
 - d. Equity Asset Management Limited.
 - e. County Estate Management Limited.

These documents should be delivered to the Manager Mr Roderic Welfare of Fifield Glyn Chartered Surveyors and Commercial Property Consultants at 26 Wilfred Street, Westminster, London, SW1E 6PL within 14 days of this order.

7. During the period of appointment the Manager shall carry out the management obligations of 4 Ennismore Limited in accordance with the provisions of the Leases and in particular and without prejudice to the generality of the foregoing;
- a. He should establish the current balance in the Service Charge Account and Reserve Account for the Property.
 - b. He should appoint an independent firm of accountants to undertake a review of the service charge accounts for the year ending 31 December 2004 and present the accountant's written report to the Lessees by 25 June 2007, together with his recommendations as to the future proper management of the service charge and the reserve accounts.
 - c. He should forthwith ensure the building is fully and properly insured.
 - d. He shall consult with the Lessees and then:
 - i. Draw up a 3- year action plan (including a plan for the 6 month interim period of his appointment). Including a planned maintenance programme and specifying what action he intends to take, in particular, in respect of the lift, the communal heating and hot water, electrical intake and distribution system and the decoration of common parts. This plan shall be put in writing and sent to the Lessees no later than 19th July 2007, and:

- ii. Prepare a service charge budget for the year ending (2007/08) to be put into writing and sent to all the Lessees no later than (19th September 2007).
- e. He shall observe the Respondent's covenants under the Leases in respect of the flats in the property with regard to insurance, repairs, services and alterations to the property.
- f. He shall enforce the Lessee's covenants.
- g. He shall comply with all statutory requirements, including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended and with the requirement of the relevant residential Code of Management published by the RICS and approved by the Secretary of State from time to time under S.87 of the leasehold Reform Housing and Urban Development Act 1993.
- h. The Manager shall be under a duty to account to the Respondent landlord for the ground rent and any other monies received and lawfully due to the Respondent with the exception of insurance, rent and service charges which shall be respectively applied by the Manager in respect of the insurance, repairs and other services set out in the Sixth Schedule to the leases.
- i. That the Enforcement Notice of the Westminster Council be adhered to and that the necessary works be undertaken to remedy the problems. Funds to do so should be retrieved from Mr Roger Hickman, Ms Maria Constantinou Hickman and Ms Nahla Murad, who were found liable for the initial works. (LVT Decision dated 26th August 2004).

Further advice should will be sought in relation to retrieving service charge monies, from the before mentioned individuals, which were used to complete these works.

- 8. The Manager shall be entitled to charge the sum of £1800 plus VAT and disbursements per year by way of basic management fees to cover those day to day duties referred to in the RICS Code of Management ("the Code"), with the exception of duties under Clause 2.6 of the Code, in particular matters relating to the financial problems that have beset the property, dealing with the resolution of the various breaches of the lease terms that have occurred, and 10% plus VAT of the cost of any major works up to a sum of £50,000, then 5% plus VAT for larger sums, for duties undertaken under Clause 2.6 of the code or such remuneration to be recovered by the Manager as part of the overall service charge (Such Charges not to exceed £2000 within the six month period).
- 9. The Manager will be entitled to appoint, if he thinks fit, any Surveyor, Architect, Engineer and other appropriate persons to assist him in carrying out any duties contained in Clause 2.6 of the Code of Management and will be entitled to recover the cost thereof from the Lessees of the property

through the service charge provided that always such costs are reasonably incurred and that the services of such a person are of a reasonable standard.

10. The Directors of 4 Ennismore Limited (in liquidation), their employees and agents and all the Lessees, shall give all reasonable assistance and co-operation to the Manager while acting in accordance with his duties under this order.
11. The Manager shall have permission to apply to the Tribunal for further directions.
12. The Manager shall produce a written progress report for the Tribunal with copies to be sent to the Applicants and the Respondents no later than (*1st September 2007*) and appear at a hearing fixed for (*date to be confirmed*) at 10 Albert Place, London WC1E 7LR. All parties may attend this hearing at which the Tribunal will consider giving further directions.

CHAIRMAN.....*M. Kelly*.....

DATE.....*19th April 2007*.....