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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 24 OF THE LANDLORD
AND TENANT ACT 1985**

Case Reference: LON/00BG/LAM/2013/0004

Premises: 200 Finnis Street, London E2

Applicants: Mr Doug Harper (1)
Ms Caroline Harper (2)

Representative: None

Respondent: Wilkinson Ventures Limited

Representative: Mr Wilkinson, sole director and
shareholder
Daisy Robson of BPP Law

Hearing date: 22 April 2013

**Leasehold Valuation
Tribunal:** Mrs S O'Sullivan
Mr Mel Cairns MCIEH
Miss R Emblin

Date of decision: 6 June 2013

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The Issues

There were two issues before the Tribunal, namely the need for a management order under Section 24 and the suitability of Ms Mahoney, the Applicant's suggested appointee, to fulfil the role as manager of the premises. The relevant law is contained within Section 24 (1) of the Landlord and Tenant Act 1987, as set out in the appendix hereto.

Inspection

- 1) The Tribunal did not consider an inspection would be helpful given the nature of the complaints raised in the section 22 notice and the parties agreed.

Background

- 2) An application was made by Mr and Ms Harper for the appointment of a manager in respect of the Property. Following a pre trial review directions were made on 31 January 2013 and in accordance with those directions statements of case were made by the Applicant and on behalf of the Respondent and a bundle for the hearing was lodged by the Applicant.
- 3) The property which is the subject of this application is 200 Finnis Street, built on behalf of Mr Wilkinson. The Applicants are the leaseholder owners of Flat 200a Finnis Street, the basement flat at the property. The freehold interest in the property was subsequently transferred to the Respondent and a lease of the upper floors, known as East Point, granted to Mr Wilkinson.

The Hearing

- 4) Mr and Ms Harper appeared in person at the hearing. The Respondent company was represented by its sole director, Mr Wilkinson. The Respondent was also given assistance by Ms Robson of BPP Law. The proposed manager, Ms Mahoney, also attended the hearing and gave evidence.
- 5) This decision contains a summary of the evidence heard and the Tribunal's decision.
- 6) The Tribunal would mention a procedural point. At the end of the hearing Mr Wilkinson submitted that the application did not contain a statement of truth properly signed by the Applicants. He queried

whether the signature of Mr Harper on the application form was properly his signature as it appeared different to his signature on previous documentation. Mr Harper assured the Tribunal that this was indeed his signature and it may appear different to previous signatures as he has broken his arm in the meantime and this had altered his signature. This point was raised very late in the day by Mr Wilkinson and the Tribunal had no reason to doubt Mr Harper's explanation. In any event Mr Harper had attended the hearing and given evidence, the veracity of which the Tribunal had no reason at all to doubt.

- 7) By a letter dated 23 April 2013 and received after the hearing had concluded Mr Wilkinson sought to make further representations in this regard, However the Tribunal did not take these into account in making its decision as they were received after the hearing had concluded.

The need for a Management Order under Section 24

- 8) At the commencement of the hearing Mr Wilkinson confirmed that he was content in principle for a manager to be appointed. In correspondence he had stated that the management should be of the basement flat 200a only but he now accepted that the management would be of the property as a whole including the upper floor flat known as East Point. However he wished any appointment of a manager to be made by the Respondent rather than it being a Tribunal appointment. The Applicants were unhappy with this proposal as they pointed out that the management could be terminated by the Respondent and it would still retain control of the premises. Likewise the Tribunal did not consider that such an offer disposed of the application before it. An appointment of a manager by the Tribunal is a different matter to an appointment by a landlord. A manager appointed by the Tribunal has a duty to the Tribunal and such an appointment encourages confidence in the manager by both parties. In addition a Tribunal appointment is for a fixed period and cannot be brought to an end by either party save on an application for variation of the management order. Accordingly as the parties could not reach agreement on an appointment of a manager by the Respondent, the Tribunal went on to consider the application.
- 9) An initial point was made by Mr Wilkinson that the section 22 notice had been served in respect of flat 200a Finnis Street only rather in respect of the property known as 200 Finnis Street which comprises both the lower ground flat and that on the upper floors known as Flat 200a and East Point respectively. The Tribunal considered the contents of the section 22 notice which in the Tribunal's view clearly related to the property as a whole. Although the initial address of the property is stated as "200a Finnis Street" the property in question is defined underneath as "200 Finnis Street" and all references throughout the notice are clearly to the property as a whole. In the Tribunal's view any reasonable recipient of the notice would have

realised that it related to the property as a whole. After consideration of the section 22 notice Mr Wilkinson conceded this point and did not pursue it.

10) The Applicants took the Tribunal through the grounds for their application in some detail. The main grounds relied upon were as follows:

- a) It was submitted that the Respondent had charged unreasonable service charges. The Tribunal was referred to a previous decision of the Leasehold Valuation Tribunal reference LON/OOBG/LSC/2012/0584 dated 12 December 2012. In this decision the Tribunal had considered service charges of £7380 and upheld only the sum of £250 as reasonable. In particular we were referred to paragraph 18s and 19 of the decision in which the Tribunal stated Mr Wilkinson *"had no evidence to support his claim"*.
- b) The Applicants referred to serious breaches of the RICS code. Again the Tribunal's comments in the previous decision were relied upon in relation to Mr Wilkinson's lack of knowledge of good practice. The RICS code provides that correspondence should be *"accurate, clear, concise and courteous"*. The Tribunal was referred to a tranche of correspondence from Mr Wilkinson containing phrases such as "you need professional help", warnings not to *"do anything foolish you may live to regret"* and *"you must be incredibly obtuse or plain stupid"*.
- c) It was submitted that part 4 of the RICS code had been breached by the manner in which the Respondent had accounted for the leaseholders' monies. In particular Mr Wilkinson had failed to pay out monies received from NHBC without the issue of proceedings, had requested service charge payments to a personal bank account and wrote *"I see no difference between monies I believe are owed to Wilkinson Ventures under the lease and monies you believe are owed to you"*.
- d) The Applicants complain that part 6 of the RICS code has been breached as incompliant demands for service charge have been made in that the demands contain no summary, no address to which notices may be served, only 4 day being given for payment in breach of the lease. Complaints in relation to the demands have brought only the response that the Applicants are *"nit picking"*.
- e) It is submitted that the Respondent has breached part 10 of the RICS code in its accounting for service charge. Reliance was again placed on the previous decision of the Tribunal in which at paragraph 34 it called into question Mr Wilkinson's claims of knowledge and experience.
- f) Criticisms were made of the Respondent's conduct in relation to insurance which is said to be in breach of part 15 of the RICS code. The Tribunal was referred to correspondence in which there was confusion as to who was the insurer and whether proper insurance was in fact in place.

- g) The Applicants also relied on "*other circumstances*". The Tribunal heard of a long running dispute in relation to the ownership of the patio area at the property and the alleged preferential treatment by the freehold Respondent of Mr Wilkinson as the leaseholder. Another example of this was a threatened forfeiture action in respect of a satellite dish being erected on the Applicants' property whereas a satellite dish had been erected on Mr Wilkinson's property upstairs.

11) In response Mr Wilkinson made several submissions.

- a) First, he submitted the application for appointment of a manager was malicious. He complained that the appointment of a manager would increase costs for both parties although he conceded that he would in any event wish to appoint a manager given the poor relationship between the parties.
- b) The Tribunal heard that the previous service charge demands which were the subject of the previous proceedings had arisen out of exceptional circumstances. He submitted that he attempted to keep costs down and often did not pass costs on as he knew the Applicants would be difficult, examples of such charges were the repair of the gate and clearance of rubbish.
- c) The Tribunal heard that he had attempted to find a manager in 2012 but had found it difficult to find one. He did not oppose the appointment of a manager but wanted to restrict it to a 1 year fixed term which could be renewed if he so wished.
- d) As far as the correspondence was concerned he felt that this was one sided but admitted that it was unprofessional in tone and apologised.
- e) Mr Wilkinson submitted that he had made an agreement to manage the property informally with the Applicants and not to follow the RICS code. This was challenged by the Applicants and Mr Wilkinson was not able to offer any documentation or correspondence in support of this submission.
- f) As far as the insurance was concerned Mr Wilkinson submitted that the Applicants had refused to pay the insurance on renewal until they saw proof of title. A demand for the insurance monies was made late in the day as Mr Wilkinson said that he had not received a reminder from the insurers. It became clear to the Tribunal that due to the late demand and the unclear manner in which demands were made the property had been left uninsured for a period of 9 days. Although he accepted the seriousness of the failure to insure he submitted that the Applicants did not have "*clean hands*" due to their difficulty in seeking further information before paying the invoice.
- g) The Tribunal also heard about the dispute in relation to the ownership of the patio area. It was clear that there was some disparity between the plans on the leases held by the parties.

However this dispute did not have relevance for the application before the Tribunal.

- h) In conclusion Mr Wilkinson argued that all his management failures were past ones (save for the issue of insurance) which had all been remedied. Mr Wilkinson submitted that he was doing the best he could to manage the property and keep costs down.

The Tribunal's determination in relation to the need for a manager

12)The Tribunal concluded that there was a need for a manager.

13)It had seen a catalogue of management failures, some of which were very serious including;

- i. The tone of written communication from the Respondent to the Applicants was poor with comments such as "*you are being very malicious and naughty indeed*" and "*you must be incredibly obtuse or plain stupid*" (emails dated 13 October 2011)
- ii. There had been a history of unreasonable service charges as set out in the previous determination by the Tribunal and it did not appear that the Respondent had demonstrated its ability to learn from its mistakes
- iii. Mr Wilkinson found it difficult to separate his identity as a leaseholder and sole director of the freehold company.
- iv. There were many breaches of the RICS code and Mr Wilkinson fully accepted he had not been RICS compliant.
- v. He appeared to consider criticisms of his failure to comply with relevant leasehold legislation as "*nit picking*"
- vi. Mr Wilkinson had displayed a lack of understanding of management of leasehold property and did not seem to understand what items could properly constitute service charge
- vii. He had left the property uninsured for 9 days without notifying the leaseholders.
- viii. Mr Wilkinson made references to an "*informal agreement*" with the Applicants in relation to the management of the property but produced no evidence of the same.

14)The Tribunal was of the view that it was highly likely that such management failures may occur again the future. Mr Wilkinson did not appear to recognise the full extent of his management failures and had not demonstrated to the Tribunal the ability to learn from his mistakes.

15)Accordingly the Tribunal concluded that there was a need for a manager to be appointed.

16) It was clear that there was some bad feeling between the Applicants and the Respondent and that the appointment of a manager would also assist in improving the relationship between the parties.

The suitability of the proposed manager

17) The Applicants had proposed Ms Mahoney, of Vision Property & Estate Management, as manager who appeared to give evidence and answer the Tribunal's questions. The Respondent did not raise any issues with the suitability of Ms Mahoney and indeed had been willing to appoint her directly.

18) The Tribunal heard that Ms Mahoney had been a property manager for 14 years. The company is a member of ARMA and won an award from London Property Managers of the year in 2013. They managed approximately 650 units. Her priorities were to set a budget and reserve fund and to look at the issue of the ownership of the patio area.

19) Ms Mahoney proposed a fee of £175 per flat plus Vat per annum for the first 2 years and £185 per flat plus Vat for the third year and a percentage of 12% on any major works..

20) The Tribunal was satisfied that Ms Mahoney was a suitable manager.

The management order

21) The Tribunal produced its standard management order and asked for the parties' comments. Mr Wilkinson raised concerns about the manager's powers to collect the ground rent. He wished the Respondent to retain this responsibility as he was concerned it could have negative tax implications for him. The Applicants wished the manager to have responsibility for collecting ground rents as they were concerned about the previous issues with invoicing. Ms Mahoney confirmed it was standard practice for the manager to collect ground rents.

22) The Tribunal concluded that the manager should have responsibility for the collection of ground rent. It saw no reason to depart from the standard practice and the matter of Mr Wilkinson's personal tax affairs are not a matter for the Tribunal.

23) Accordingly the Tribunal makes the order attached hereto.

Application under s.20C and refund of fees

24) At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid

in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicants of £300 within 28 days of the date of this decision.

25) The Applicants also applied for an order under section 20C of the 1985 Act. The Tribunal was somewhat concerned to hear that Mr Wilkinson proposed to pass through some £1,000 of costs in respect of his own professional fees in relation to the proceedings although he accepted that he had no legal expertise. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

26) The Applicants also applied for an order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 for an order for costs of £500. The Tribunal declined to make such an order as it did not consider that the Respondent had acted unreasonably in connection with the proceedings themselves.

Sonya O'Sullivan
(Chairman)

Dated 6 June 2013

Appendix of relevant legislation

Landlord and Tenant Act 1987

24 Appointment of manager by the court

(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 court thinks fit.

(2)[A leasehold valuation tribunal] may only make an order under this section in the following circumstances, namely –

(a) where [the tribunal] is satisfied –

(i) that the landlord 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

(ii)

(iii) 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 them in all the circumstances of the case;

(ac) where the tribunal is satisfied-

(i) that the landlord has failed to comply with any relevant statutory 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;

or

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

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Landlord and Tenant Act 1985

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

In the Leasehold Valuation Tribunal

Reference number LON/00BG/LAM/2013/0004

In the matter of an application under section 24 of the Landlord and Tenant Act 1987 (as amended)

And in the matter of 200 Finnis Street, London E2

Between:

Mr Doug Harper, Ms Caroline Harper

Applicants

-and-

Wilkinson Ventures Limited

Respondent

ORDER APPOINTING A MANAGER

1. In this order:

- A. "The property" include all those parts of the property known as 200 Finnis Street London E2
- B. "The landlord" means Wilkinson Ventures Limited or in the event of the vesting of the reversion of the residential under-leases of the property in another, the landlord's successor's in title.
- C. "The manager" means Roison Mahoney of Vision and Estate Management Limited.

It is hereby ordered as follows:

- 2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as receiver and manager of the property.
- 3. The order shall continue for a period of three years from the date of this order.

4. That the manager shall manage the property in accordance with:
- a) The Directions and Schedule of Functions and Services attached to this order.
 - b) The respective obligations of the landlord and the leases and/or under-lessees by which the flats at the property are demised by the landlord and in particular with regard to repair, decoration, provision or services to and insurance of the property.
 - c) The duties of the manager as set out in the Service Charge Residential Management Code (2009) (“The Code”) or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

Sonya O’Sullivan

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Chairman

Date: 6 June 2013

DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the landlord or the Tribunal.
2. That not later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the manager an orderly transfer of responsibilities. No later than this date, the applicants and the landlord shall transfer to the manager all the accounts, the books, records and funds (including without limitation any service charge reserve accounts) and the landlord shall forward a copy of Mr Wilkinson's lease.
3. The rights and liabilities of the landlord arising under any contracts of insurance, and/or any contracts for the provision of any services to the property shall upon the date four weeks from the date of this order become rights and liabilities of the manager.
4. That the manager shall account forthwith to the landlord for the payment of ground rents received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the landlord's covenants in the said leases.
5. That he shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the under-leases and/or leases of the property) in accordance with the Schedule of Functions and Services attached.
6. That at the expiry of 12 months from the date of this order, the manager shall prepare a brief written report for the Tribunal on the progress of the management of the property.
7. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987 with particular regard to (but not limited to) the following events :
 - (a) Any failure by any party to comply with paragraph 2 of these directions and/or:

- (b) (If so advised) upon the service of any report in paragraph 6 of these directions, and/or;
- (c) In the event that there are insufficient sums held by him to pay the manager's remuneration.

SCHEDULE OF FUNCTIONS AND SERVICES

A. SERVICE CHARGES

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the leaseholders as per the percentage shares in the leases.
- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from under-lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the landlord upon the landlord's instructions.
- 1.3 Place, supervise and administer contracts and check demands for payments for goods, services and equipment supplied for the benefit of the property within the service charge benefit.

B. ACCOUNTS

- 2.1 Prepare and submit to the landlord an annual statement of account detailing all monies received and expended on its behalf. The accounts to be certified by an external auditor if required by the manager.
- 2.2 Produce for inspection receipts or other evidence of expenditure.
- 2.3 All monies collected on the landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the landlord.

C. MAINTENANCE

- 3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the building.
- 3.2 The consideration of works to be carried out to the property in the interest of good estate management and making the appropriate recommendations to the landlord and the under-lessees.
- 3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts.

D. FEES

- 4.1. Fees for the above mentioned management services would be a basis fee of £175 plus Vat per flat for the first two years and £185 plus Vat per flat for the third year. Those services to include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by RICS.
- 4.2. Major works carried out to the property (preparing a specification, obtaining tender, serving relevant notices) will be subject to a charge of 12%.
- 4.1. An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.2. Vat to be payable where appropriate.
- 4.3. The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties at 4.1 above are to be charged for on a fee basis to be agreed.

E. COMPLAINTS PROCEDURE

- 5.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.