

9582

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

Case reference : CHI/OOHY/LAM/2013/0015

Property : The Limes, 2 Market Place, Melksham, Wiltshire
SN12 6EX

Applicants : Matthew Samuel Camps and Julian Walker

Respondent : Country Estates (GB) Ltd

Type of Application : Appointment of Manager Section 24(1) Landlord
& Tenant Act 1987 & Limitation on recovery of
costs as a service charge 20C Landlord & Tenant
Act 1985.

Tribunal Members : Judge S Casey (Chairman)
Judge M Tildesley OBE
Mr S Hodges FRICS

Date and venue of Hearing : Monday 4th November 2013 – Best Western Leigh
Park Country House Hotel, Leigh Road West,
Bradford-on-Avon, BA15 2RA

Date of Decision : 27th November 2013

DECISION

Decision Summary

1. Mr Dominic Gearon is appointed as a Manager of the building at 2 Market Place, Melksham, Wiltshire, SN12 6EX for a period 12 months on the terms of the Order attached to this decision.
2. An Order is made pursuant to Section 20C of the Landlord and Tenant Act 1985. None of the costs incurred or to be incurred by the Respondent in connection with this application may be added to any Service Charge payable by the Applicant.

Background

3. The property in question is located in the centre of Melksham and comprises a detached two storey period building providing accommodation on four floors including the basement and mansard roof. The Eastern section of the property dates from the Georgian period and is built with dressed natural Bath stone elevations under a slate roof. The Western part of the property appears to be of an earlier construction and is built with part rendered natural stone and brickwork elevations under a pitched roof clad with clay tiles to the front elevation and Cotswold stone tiles to the rear. To the front of the property, facing onto Market Place, is a relatively modern single storey extension occupied as a shop. This has been removed from the freehold title and does not form part of the Property.
4. The property has been redeveloped as seven residential flats. Four of the flats, (no's- 2, 3, 4 & 5), are accessed through the main entrance door off Spa Road whilst the remaining three flats, (1, 6 & 7), have access from the rear via Market Place. Adjoining the Spa Road entrance is a small enclosed garden area bounded by metal railings and there are some planted beds between the railings and the property. The seven flats and communal parts of the building are referred to collectively as, "the Property". The Tribunal was concerned with flats 3 & 5 both subject to leases made on 8th July 2008 between, Country

Estates (GB) Limited and David Campbell. The leases provided for a service charge to be paid for services to be provided by the Landlord detailed in clause 6.1.1 , 6.1.2 and 6.1.3 and other services listed in Part 1 of the Sixth Schedule. Clause 6.3 provides for the Landlord to prepare a yearly service charge account.

5. By way of background the Applicant explained that Mr David Campbell is a Director of a company known as Country Estates (GB) Limited (“the Company”). The Company owns the freehold of the whole of the whole of the Property and is the Respondent in these proceedings. Mr Campbell is a Director of the Company but owns the leasehold interest of flats 3 & 5 in his sole name rather than in the name of the Company. Mr Campbell’s former wife is also a Director of the Company. Mr Campbell purchased flat 3 and flat 5 at the Property subject to Leases made on 8th July 2008 between (1) the Company and (2) David Campbell for a term of 125 years subject to various rights and obligations, service charge payments in addition to rents for the performance of services by the Landlord, hereinafter referred to as, “the Leases”. Mr Campbell purchased each flat with the aid of a Mortgage from the Bank of Ireland secured as a Charge on each flat. Mr Campbell fell into financial difficulties and stopped paying the Mortgages and because of this the accounts fell into arrears.
6. The Applicant was appointed as a Receiver by the Bank of Ireland on the 12th June 2009 in pursuance of the power given to it by the Law of Property Act 1925. In accordance with this appointment the Applicant became in effect the lessee for flats 3 & 5 and subject to all of the rights and responsibilities contained in the Leases.
7. As detailed above in paragraph 4 the Leases provide for a Service Charge to be paid by the Tenant in respect of the Landlord’s expenditure on the insurance and the maintenance and repair of the building and maintenance cleaning and provision for lighting the common parts. The Service Charge year is set out in the Leases and the Landlord is to make demands for the payments and has to file an annual Service Charge account.
8. The Applicant received repeated complaints from the Leaseholders regarding the lack of lighting in the common parts and other issues relating to non-observance by the Respondent of their obligations under the Leases. A number of letters were sent to the Respondent by the Applicant’s Solicitors

setting out very clearly the issues of concern but no response had been forthcoming.

9. The Applicant sent a preliminary Notice dated 16 January 2013 to the Respondents pursuant to Section 22 Landlord and Tenant Act 1987 (the Act). The Notice gave the grounds for an application for the appointment of a Manager by the Leasehold Valuation Tribunal under s24 (2)(a) of the Act arising from a number of breaches of the Lease detailed as follows:-
 - (a) The Landlord was in breach of Clause 6.1.1 because it failed to keep the common parts in good repair and condition and properly and regularly cleansed and lighted
 - (b) The Landlord was in breach of Clause 6.3, having failed to supply Service Charge accounts as required.
 - (c) The Landlord was in breach of Clause 1 of the Fifth Schedule because it failed to clean and light the Common Areas which in turn prevented the Tenant from peaceably enjoying the occupation of the premises.
 - (d) The Landlord was in breach Clause 2 of the Fifth Schedule having failed to insure the property as required.
10. The Notice set out remedial action required of the Respondent to remedy the alleged failings and a reasonable time period to do this. The Respondent did not respond in any way and in consequence, an Application for the Appointment of a Manager was issued on 5 September 2013.

Inspection

11. The Tribunal inspected the Property on the morning of the hearing accompanied by the Applicant.
12. The Tribunal noted that the garden borders at the front entrance of the Property were overgrown and unkempt. The external front door and window frames needed redecoration.

13. The Tribunal was told by the Applicant that the door entry system was not working and the communal electricity supply had been disconnected by the electricity company thereby preventing the communal fire alarm system and common parts lighting from working also.
14. The common stairs and hallway on the ground floor were dusty and needed cleaning and redecorating. On the first and second floors the communal areas were noticeably more neglected and had more cobwebs than on the ground floor. This indicated, as the Applicant stated, the Leaseholders of the other flats were themselves providing a small amount of cleaning service to the ground floor. There were items of rubbish and boxes were being stored on the communal hallway and landings.
15. Inside flat 3 there was evidence of a damp problem in the bottom corner of the main room.
16. Immediately above the internal entrance door to flat 5 there was evidence of water penetration and resulting damage caused to the ceiling. The stairway to flat 5 was very narrow and steep and difficult to negotiate in daylight. At the time of the inspection there was no lighting to this or any other of the common parts. In parts the communal area and stairwell to flat 5 would have been potentially dangerous in the dark.
17. Upon external inspection, the Tribunal noted that in places the render was blown or missing and this needed attention to avoid causing or continuing to cause damage to the Property and the internal decorations. By the designated car parking spaces there were bags of rubbish lying on the ground that were not binned and were causing a potential tripping and hygiene hazard.

Evidence

18. The First Applicant, Mr Matthew Samuel Camps with the proposed Manager, Dominic Gearon attended the hearing and both gave oral evidence. The Applicant was not legally represented. The Respondent did not attend and was not represented.

19. The Tribunal had before it the Applicant's bundle containing the Applicant's witness statement which supported the application; the Mortgage Deed to the Bank of Ireland, The Appointment of Receivers, copies of the Lease of flat 3 and the Lease of Flat 5, The Limes, Market Place, Melksham; made between Country Estates (GB) Limited and David Campbell. Correspondence from Trethowans LLP Solicitors addressed to the Respondent; copy of the Section 22 Notice of the Landlord and Tenant Act, and the proposed Manager's information.

The issues and the Tribunal's views on those issues

20. As a preliminary issue the Tribunal considered whether all those who needed to have Notice of the application and who had an interest in the determination had been properly informed and provided with an opportunity to make representations. A view of the HM Land Registry Register was made on 5 November 2013 relating to the freehold title of 2 Market Place, Melksham. This revealed in the Proprietorship Register that the Proprietor is Country Estates (GB) Limited and the freehold is subject to a Charge in favour of HSBC Bank Plc. The Applicant confirmed that HSBC Bank PLC has been served with a copy of this application and the Applicant's bundle. The Tribunal was able to read the correspondence which had been sent to the Respondent clearly setting out the matters which formed the subject of the application and was satisfied that the Respondent and all of the other Leaseholders had had sufficient Notice of the application. The Tribunal was told that a number of letters had been sent to the Respondent both to their registered address and to Mr Campbell's personal address. Further, Mr Campbell's former wife, who is also a Director of the Company and manages other properties in the local area, had been served. The Applicant had attempted to speak with her face to face about the Property but informed the Tribunal that she simply refused to have any conversation about it.

The Tribunal was satisfied that the Respondent had been given notice of the proceedings, and that it was in the interests of justice to proceed in the absence of the Respondent.

21. The Tribunal considered the grounds of the application set out in the application form and also those in the Section 22 Notice dated 16 January

2013 which were identical. It was clear that the Applicant sought the appointment of a Manager on the basis that the Landlord was in breach of obligations owed to the Leaseholders under the Leases. These breaches were particularised as being, as; a) failure to keep common parts of the Property in good repair and condition and regularly cleansed and lighted; b) failure to provide Service Charge accounts; c) failure to keep the common parts clean and lit thereby preventing right to peaceable enjoyment; d) failure to insure the Property.

22. The Tribunal were able to see upon their own inspection that grounds (a) and (c) were made out. Further the Tribunal did not receive any evidence or response from the Respondent to refute grounds (b) and (d). No evidence was filed of Service Charge accounts or of any property insurance.
23. The Tribunal heard evidence from the Applicant that The Respondent purchased the whole of the Property on 1st May 2008 subject to a charge in favour of HSBC Bank PLC .In addition the Respondent had then created the seven leases of land dividing up the whole freehold title including flats 3 & 5 and the freehold was charged with such rights as were granted by those leases. Following the bankruptcy of Mr David Campbell, a director of the Respondent, and the leaseholder of flats 3 & 5, HSBC Bank had appointed for a period of around 18 months and ending on or about the 25th June 2012 Receivers under powers exercised under the Law of Property Act 1925, in relation to the freehold property. During this time the Receivers who were Mr R J Belcher and Mrs R J Goode of GVA Grimley Limited exercised some managerial role. The receivers issued demands for ground rent and service charges on account for the periods 01/01/2008 to 31/12/2010 and for the period 01/01/2011 to 01/03/2011. Other than that no Service Charge accounts or demands for ground rent were ever prepared and issued. There was no evidence any insurance was ever arranged.
24. The Tribunal was satisfied that the Respondent was doing nothing in respect of the management of the Property. The failures were serious leading to deterioration in the fabric of the Property and creating health and safety risks, affecting the enjoyment of the Property. Under Section 24(2) (a), (c) and (b) of the 1987 Act, the breaches potentially justify the appointment of a Manager.
25. The Tribunal has discretion whether to appoint a Manager. In this instance it was considered there has been (and unless a Manager is appointed) there will

continue to be serious neglect of the Landlord's duties. Unless the Tribunal appoints a Manager the Property would not be managed at all.

26. Given the above circumstances the Tribunal the examined the Applicant's proposal that Mr Dominic Gearon c/o OM Property Management was a suitable person for the appointment of Manager. The Applicant had filed details of the proposed Manager's information in his bundle at page 95, 96, 97, 98 and 99 together with details of Professional Indemnity insurance cover at pages 100 & 101 of the Applicant's bundle.
27. Upon examination it was asserted by the Applicant and Mr Gearon the proposed Manager, that there were no local Agents who were prepared to take on the appointment of Manager of this particular property. It was suggested that the reason for this was that the Property was too small. The Applicant had approached half a dozen or more local Agents unsuccessfully. The intention in this case would be to regularise the management of the freehold of the Property to get effective systems in place. The Applicant accepted that there would be significant capital costs to get the freehold management of the Property in working order and the Bank would be prepared to bear the start up costs and did not expect to recoup those costs from the Leaseholders.
28. The information contained in the Applicant's bundle referred to above was confirmed by Mr Gearon and he confirmed that systems were in place for the appropriate and efficient management of the Property. Mr Gearon confirmed that his company in particular were prepared to take on this appointment as they saw additional opportunities arising from it. The Tribunal was not persuaded based upon their expert knowledge and experience that no other local Managing Agents would be prepared to take on this appointment as a consequence of the size of the Property. The Tribunal did take the view that OM Property Management would be an appropriate company to manage this particular property but were also of the mind that other more local firms would be likely to be able to manage a property of this size but may have refused because of its recent history rather than because of its size.
29. The Tribunal emphasised very clearly that this would be a personal appointment by the Tribunal of Mr Gearon and it would be expected that he would take on the personal responsibility of that appointment. The Tribunal considered a period of appointment of 12 months to be appropriate with leave to extend that period by application to the Tribunal, such application to be

made after 9 months from the commencement of the period. The Tribunal considered that the fee proposed of £1,500 per annum set out on page 95 in the proposed Manager's Information in the Applicant's bundle to be appropriate.

30. The Tribunal finds on the above facts that the Respondent was in breach of its obligations to the Applicant under the terms of the lease in relation to the management of the premises. Further the Tribunal holds that the breaches were ongoing with no likelihood of the Respondent resuming management of the premises in the foreseeable future. Accordingly the Tribunal is satisfied that it is just and convenient to appoint Dominic Gearon of OM Property Management, Manager of the Property pursuant to the provisions of Section 24(2)(a)(i)&(ii) of the Landlord and Tenant Act 1987 for a period of 12 months.

31. The Tribunal has considered the questions of costs and related issues. It is unlikely that the Respondent would have incurred costs arising from this application. It is equally unlikely that the Applicant would be able to recover any costs awarded. Nonetheless the Tribunal has determined such matters so that the position is clear should there subsequently be any involvement by any person or body claiming such involvement by, through or on behalf of the Landlord/Respondent. The Applicant applied under Section 20C of the Landlord and Tenant Act 1985 for an Order that the costs incurred or to be incurred by the Respondent in connection with the Proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Leaseholders. The Tribunal considers that any costs incurred or to be incurred by the Respondent in this case should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Leaseholders, and accordingly made an order under section 20C of the 1985 Act.

**ORDER UNDER SECTION 24 OF THE LANDLORD AND
TENANT ACT 1987**

CASE REF: CHI/OOHY/LAM/2013/0015

TYPE OF APPLICATION: Appointment of a Manager (Section 24
Landlord & Tenant Act 1987)

PROPERTY: The Limes, 2 Market Place, Melksham, Wiltshire
SN12 6EX

APPLICANT: Matthew Samuel Camps & Julian Walker

RESPONDENT: County Estates (GB) Ltd

TRIBUNAL MEMBERS: Judge S Casey (Chairman)
Judge M Tildesley OBE
Mr S Hodges FRICS

DATE OF ORDER: 27th November 2013

ORDER FOR THE APPOINTMENT OF A MANAGER

1. In accordance with section 24(1)(a) Landlord and Tenant Act 1987 Dominic Gearon ("the Manager") C/O OM Property Management of Marlborough House, Wigmore Lane, Wigmore Place, Luton, Bedfordshire LU2 9EX is hereby appointed manager of The Limes 2 Melksham Place, Melksham, SN12 6EX ("the property")
2. The order shall continue for a period of one year.
3. 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 by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property.
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ("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 Leasehold Reform Housing and Urban Development Act 1993
4. In addition, in accordance with section 24(1)(b) Landlord and Tenant Act 1987 the Manager is appointed as receiver of the landlord to the following limited extent:
- (a) To receive ground rents payable under the leases; and
 - (b) To receive those service charge funds currently held by the landlord.
5. The Manager shall have liberty in accordance with section 24(4) of the Landlord and Tenant Act 1987 to apply to the tribunal for directions at any time during the subsistence of this Order.

Judge S Casey

DIRECTIONS

1. From the date of the 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 of the Property or the Respondent.
2. The manager shall use its best endeavours to ensure that this Order is brought to the attention of the Respondent and the mortgagee of the freehold,
3. That no 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 Applicant and the Respondent shall transfer to the Manager all the accounts, books, records and funds.

4. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon date of this order become rights and liabilities of the Manager.
5. The Manager shall apply the ground rent and all other amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
6. The Manager shall be entitled to remuneration of £1500.00 per annum plus VAT at a fixed rate increasing in line with the RPI on a yearly basis (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property). The manager shall be entitled if instructed to charge fees for the additional services as identified in his application.
7. By no later than 1 November 2014 the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- i. Maintain appropriate building insurance for the Property. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. Instruct solicitors or take action to recover unpaid rents and service charges and any other monies due to the Respondent.
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor if required by the Manager.

- ii. Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- iii. To maintain on trust an interest bearing account/s at such bank or building society as the manager shall from time to time decide into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- i. 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 Property. Where the total value of each contract does not exceed £2,500 excluding VAT per calendar year, the manager's costs in connection with the contract will be included in the annual fee of £1,500.
- ii. 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 Respondent and the lessees.
- iii. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- iv. The visiting of the building at reasonable intervals by a property manager such inspections to be not less than once every six weeks