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

Case Reference : CAM/26UJ/LVM/2013/0001

Property : Flats 1-5, 134 High Street, Rickmansworth,
Hertfordshire WD3 1AB

Applicant : Mr J Benveniste
Mr D Peppett
Mr V Benveniste
Mr C Read

Representative : Integrity Property Management Limited

Respondent : Mr B Singh (Head Leaseholder, in absentia)
Mr K R McCarthy (Freeholder)

Representative : None

Type of Application : Decision of the Leasehold Valuation Tribunal
on an Application Under Section 24 of The
Landlord and Tenant Act 1987 (The Act)

Tribunal Members : Mr A A Dutton (Judge)
Miss M Krisko BSC (Est Man) FRICS

Date of Decision : 5th August 2013

DECISION

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Decision

The Tribunal determines that grounds have been made out for the appointment of Mr Matthew Young as the Manager of the above property for an indeterminate period or further Order.

There be an Order under Section 20C of the Act preventing the Respondents from recovering any costs from these proceedings as a future service charge.

BACKGROUND

1. This application was made by the Applicants on 22nd April 2013 seeking in effect a continuance of the management order made by the Tribunal on 20th April 2011.
2. The application sought a variation of the order to extend it for an indefinite period and to make certain changes to the terms. The order which was attached to the original decision dated 20th April 2011 was for a period of two years to run from the date of the order which was 20th April 2011.
3. In a statement of case the Applicants set out the reasons for seeking a variation of the order to continue it for an indefinite period. For some reason they appear to believe that the order made in 2011 expired on 26th April 2013. However, the order clearly states that it is to run for a period of two years from the date of the order which was as we have indicated above 20th April 2011. Accordingly the application for variation came in after the order itself had lapsed.
4. We noted in the grounds for the application the position with regard to the five leaseholders and the attempts made to serve the missing freeholder and landlord. The grounds for the application are clearly set out and are in effect a continuance of the grounds which lead to the order being made in 2011.
5. If the Tribunal was of the view that the first order had lapsed then they sought dispensation from us of the provisions of Section 22 of the Act, namely the service of a preliminary notice.
6. The Applicants sought certain changes which were set out under the determination sought heading at paragraph 21 and these matters were borne in mind when making our decision.

THE LAW

7. The provisions of sections 22 and 24 of the Act have been applied by us in reaching this determination.

FINDINGS

8. This is an attempt to vary the order made by the Tribunal in 2011. However, as we indicated to the Applicants in directions issued in May of this year we were concerned that the original had expired and there would need to be a full application made. The Upper Tribunal case of *Eaglesham Properties Limited v John Jeffery* reference [2012UKUT157(LC)] was referred to the Applicants. Presumably taking cognisance of this the Applicants sought to argue that

dispensation should be granted under Section 22 of the Act for the reasons set out at paragraph 18 which were as follows:

- (a) It is not reasonably practicable to serve on either Respondent as the Freeholder lives outside the United Kingdom and the Head Leaseholder is in absentia.
 - (b) The Tribunal provided Applicants with a copy of a letter from the last known representative of the Head Leaseholder D W F M Beckman stating that the firm in question no longer acted for the Head Leaseholder.
 - (c) The Freeholder has not responded to any correspondence from the Applicants and/or Applicants' representatives regarding the 2013 application and to the Applicants' best knowledge has not responded to any correspondence from the Tribunal regarding the 2013 application.
 - (d) The Applicants' representatives have received an email from the Tribunal stating that "there was nothing more to do with regards Mr Singh seeing how he did not take part in the previous case".
9. Given the history of this matter and the problems that gave rise to the original order in 2011, we are satisfied that it is not reasonably practicable for the Applicants to effect service of these proceedings on the Freeholder or the Head Lessor and accordingly we are prepared to grant dispensation pursuant to s22(3) of the Act from the need to serve a notice under the provisions of Section 22(1) of the Act.
10. The same circumstances which pertained in 2011 exist now. If the residents do not take on the responsibility of managing the property nobody will. It seems to us therefore wholly appropriate for the order appointing Mr Young as the manager to be, in effect, resurrected and we conclude that it should be for an indeterminate period. Our reason for this is that presently there seems no possibility that either Respondent is going to show any interest in managing the property. It would be unnecessarily expensive and an unnecessary use of tribunal time if the matter has to come back on a regular basis. "Any person interested" shall have the rights under the Act to seek a variation at any time, which could include a discharge of the Order. It is in these circumstances that we make this unusual order. We must however make it clear that whilst the Order is of an indeterminate length it does not mean that the present manager has a job for life. Any interested party may apply at any time to vary the order or for its discharge. Such variation could include a change of manager.
11. It does seem to us that steps should continue to be made to determine the whereabouts of the Respondents. Presumably, if they have not already done so some enquiries could be made of the lessees of the commercial premises in the property.
12. The terms of the original order remain, subject to the alterations suggested by the Applicants at paragraph 21 of the Statement of Case. In the main we have accepted those but with some changing in the wording. We think that the potential for a 10% annual increase is too great and that a 5% increase on an annual basis is sufficient. The immediate uplift in rates is acceptable.

13. We make an order under s20C of the Act considering it just and equitable in the circumstances.

Chairman: Andrew Dutton
A A Dutton

Date: 5th August 2013



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

CASE REFERENCE CAM/26UJ/LVM/2013/0001

IN THE MATTER OF 134 HIGH STREET, RICKMANSWORTH, HERTFORDSHIRE WD31AB

**ORDER FOR THE APPOINTMENT OF A MANAGER
UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987**

1. Matthew Young of Intergrity Property Management Limited of Jubilee House, Merrion Avenue, Stanmore, Middlesex HA7 4RY (the "Manager") is hereby appointed as the Manager of the 5 residential flats, and common parts serving same, at 134 High Street, Rickmansworth Hertfordshire WD3 1 AB ("the Premises") pursuant to s24 of the Landlord and Tenant Act 1987 (the "Act") and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Lessees' Leases of the Premises (the "Leases") to carry out the management functions of the Respondents and in particular;
 - (a) To receive all ground rents ("Rents"), service charges, interest and other monies payable under the Leases including any arrears the recovery of which shall be at the discretion of the Manager.
 - (b) The power and duty to carry out the obligations of the Respondents contained in the Leases and in particular and without prejudice to the foregoing.
 - (i) the Respondent's obligations to provide services;
 - (ii) the Respondent's repair and maintenance Obligations and,
 - (c) The Respondents' Obligations and responsibilities under the terms of a Head Lease dated 26th May 1999 made between Carisma Holidays (Properties) Limited (1) and Beacon Housing Association (2) ("the Head Lease")
 - (d) The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.

- (e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself, or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (f) The power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases, the Premises or the Head Lease including but not limited to proceedings against any Leaseholder in respect of arrears of rent, service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent and proceedings against the Head leaseholder/freeholder in connection with his obligations under the terms of the Head Lease.
- (g) The power to enter into any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (h) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in Parts 1 and 2 of the First Schedule of the Trustee Investment Act 1961 and to hold those funds pursuant so s42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases (if any) or by agreement with the Lessees) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
- (i) The power to rank and claim in the bankruptcy, Insolvency, sequestration or liquidation of any Leaseholder owing sums of money under his Lease.
- (j) The power to effect insurance of the Building, to include the commercial premises on the ground floor and to recover by such means as may be necessary. a due proportion of the premium for such insurance from the occupiers for the time being of the commercial premises.

2. The Manager shall manage the Premises in accordance with:

- (a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
 - (b) the respective obligations of the Respondents as Landlord and the Leases by which the flats at the Premises are demised by the Respondent and the Respondent's obligations and responsibilities under the Head Lease
 - (c) the duties of managers 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 s87 of the Leasehold Reform Housing and Urban Development Act 1993.
3. The Respondent shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
4. Without prejudice to the generality of the foregoing hereof:
- (a) To the extent that this has not already been done the Respondent shall within 28 days of this Order deliver to the manager all such books, papers memoranda, records, computer records, minutes, correspondence, facsimile correspondence and other documents as are necessary to the management of the premises as are within his custody, power or control together with any such as are in the custody, etc of any of his consultants in which last case he shall take all reasonable steps to procure delivery from its consultants.
 - (b) To the extent that this has not already been done the Respondent shall within 28 days of this Order give full details to the Manager of all sums of money he holds in the service charge fund and any reserve fund in relation to the Premises, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive such sums under the Lease of any leaseholder he shall forthwith pay such sums to the Manager.
 - (c) The Respondent shall permit the Manager and assist him as he reasonably requires to serve upon Leaseholders any Notices under s146 of the Law of Property Act 1925.
 - (d) The rights and liabilities of the Respondent as Landlord arising under any contracts of insurance and/or any contract for the provision of services to the Premises shall from the date hereof become rights and liabilities of the Manager.

- (e) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
5. The Manager shall in the performance of his functions under this Order exercise the reasonable Skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions, and shall indemnify the Respondent in respect of any loss occasioned by the negligent act or omission of himself, his servants or agents, and 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 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.
6. The Manager shall act fairly and impartially in his dealings with the Respondent, the Leaseholders of the Premises and the Head Landlord
7. The Manager shall be appointed from the date of this Order and the duration of his appointment shall be of an indefinite term, subject to the right of the Leaseholders and their successors in title and the Respondents to apply to the Tribunal for further or other Directions or variations in connection with his appointment, including, but not limited to, the replacement of the Manager with an alternative manager for the Premises.
8. The collection of the ground rent payable under the Leases shall be the responsibility of the Manager and, subject to deduction of an administration charge not to exceed 10% of the sums recovered, shall be held in an interest earning account on account for the Respondent Mr Singh to be paid to him within 7 days of the rent being demanded by Mr Singh.
9. The use of the word "Respondent" in this Order is intended to include any successors in title to the Respondents.

SCHEDULE OF FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget (consulting with the Leaseholders and the Head Landlord as appropriate) administer the service charge and prepare and distribute

appropriate service charge accounts to the Lessees as per the percentage share under the terms of the Leases.

2. Demand and collect Rents, service charges, insurance premiums and any other payments due from the Leaseholders under the terms of the Leases and the Head Lease and as demanded by the Head Landlord. Instruct solicitors to recover any unpaid rents and service charges and any other monies due to or from the Head Landlord or the Respondent.
3. Produce for inspection, within a reasonable time following a written demand by the Respondent or the Leaseholders, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any) in an agreed form.
4. Manage all outgoings from the Service Charge Account in respect of day to day maintenance and pay bills using funds from the Service Charge Account.
5. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

6. To comply with the Respondent's obligations in respect of insurance under the terms of the Head Lease and to obtain details of the insurance cover put in place by the Head Landlord (if any) and in the absence of same to insure the Building and provide such details to the Lessees and to ensure that the insurance cover is sufficient for the Premises. To collect contributions to the insurance premium from the residential lessees and from the occupiers of the ground floor commercial premises.

Repairs and Maintenance:

7. Deal with all reasonable enquiries raised by Leaseholders in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary and provided for under the terms of the Leases or to liaise with the Head Landlord's representatives to ensure that issues of repair and maintenance are dealt with in a thorough and efficient manner.

8. If required to administer contracts entered into on behalf of the Respondent and Leaseholders in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
- 9 Discharge payments in respect of contracts entered into on behalf of the Respondent and Leaseholders in respect of the Premises.
11. Manage the common parts, and service areas of the Premises.
12. Carry out regular inspections (at the managers discretion but not less than one per year) without use of equipment, to such of the common parts of the Property as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those common parts.

Major Works:

13. In addition to undertaking and arranging such day-to-day maintenance and repairs as are required under the Leases, to arrange and supervise such major works as may be required to be carried out to the Premises under the terms of the Leases

Administration and Communication:

14. Deal promptly with all reasonable enquiries raised by Leaseholders, including routine management enquiries from the Leaseholders or their solicitors.
15. Provide both the Leaseholders and Respondent with telephone, fax, postal and e-mail contact details.
16. Keep records regarding details of Leaseholders, agreements entered into by the manager in relation to the Premises and any changes in Leaseholders.
17. Attend meetings when reasonably required by the Leaseholders or the Landlord.

Fees:

18. Fees for the above mentioned management services (with the exception of supervision of major works) shall be £200 plus VAT per annum per unit for the Premises. Upon presenting the service charge budget for the next financial year and for each subsequent financial year the Manager shall notify the lessees of any changes to his fees for such management PROVIDED ALWAYS that the increase for each financial year shall not exceed 5% of the previous management fee.

19. An additional charge (on a basis to be agreed) may be made in relation to the arrangement and supervision of major works.
20. An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing Leaseholder at the present hourly rate of £150 plus VAT ("the standard charge"). Such hourly rate may be subject to annual increase as provided for in paragraph 18 above.
21. The undertaking of further tasks which fall outside those duties described above are to be charged separately on the standard charge basis save that this will not include tasks undertaken by the in-house legal department of Integrity Property Management Limited which shall be charged separately the present hourly rate being £175 but subject to increase as provided for at paragraph 18 above.

Dated 5th August 2013