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

Case Reference : CHI/00MW/LAM/2013/0007

Property : Roseday Court, Tennyson Road,
Freshwater, Isle of Wight PO40 9AE

Applicant Representative : Robert Drover
:

Respondent : Roseday Court Limited
Mr and Mrs Cato
Mr G Cameron
Mr and Mrs B Laidler
Mr J Laidler
Mr Burton and Mr Dalloz

Representative :

Type of Application : Appointment of Manager
Section 24 Landlord and Tenant Act 1987

Tribunal Members : Judge D Agnew (Chairman)
Mr P Turner-Powell FRICS

Date and venue of : 19th August 2013
The Law Courts, Newport, Isle of Wight
10th October 2013
Woodvale Hotel, Cowes, Isle of Wight.

Hearing

Date of Decision : 19th August 2013 (interim) and
10th October 2013 (final) confirmed in
writing 22nd October 2013

Decision

DECISION AND REASONS

Decision.

The Tribunal orders that Mr Nathan Gooch BSc AIRPM of Bridgeford and Co., 13 Quay Hill, Lymington, Hampshire SO41 3AR be appointed Receiver and Manager of Roseday Court, Tennyson Road, Freshwater, Isle of Wight PO40 9AE ("the Property") for a period of three years commencing on 9th October 2013. The terms of the said appointment are set out in the appendix to this decision.

Background

1. On 15th April 2013, Mr Robert Drover, the long leasehold owner of Flat 3 at the Property applied to the Tribunal for the appointment of a manager for the Property. The principal ground on which the application was based was the failure of the lessee management company to comply with the repair and maintenance obligations contained in the lease
2. A notice under section 22 of the Landlord and Tenant Act 1987 had been served by the Applicant requiring the breach to be remedied, failing which he stated his intention to apply to the Tribunal for the appointment of a manager.
3. Prior to the hearing a number of other lessees had written to the Tribunal opposing the application and a letter had been received from the previous managing agents notifying the Tribunal that they had resigned from their appointment. Also the Tribunal was advised that the sole remaining director of the management company had also resigned.
4. The case came before the Tribunal for hearing on 19th August 2013 when the Tribunal found that the Applicant had made out a ground for the appointment of manager in that there had been a failure to decorate in accordance with the lease but the Tribunal was unable to consider whether the nominated manager, Mr Gooch, should be appointed as he was not present at the hearing. There had been a misunderstanding as to whose responsibility it was to ensure his attendance. The case was therefore adjourned to 9th October 2013. The other lessees were added to the proceedings as Respondents and directions were given for them to notify the Tribunal if they wished to nominate their own manager for appointment.

5. None of the lessees who were added as Respondents did propose their own nominee for manager. Mr Cameron attended the hearing and confirmed this was the case. He said his main concern was over Mr Gooch's fees, particularly as he is based on the mainland. The proceedings on 9th October 2013 were mainly concerned with hearing from Mr Gooch as to his proposals for managing the Property if appointed and his fees. After hearing Mr Gooch, Mr Cameron expressed himself satisfied with Mr Gooch's appointment.

The Law

6. Section 24 of the Landlord and Tenant Act 1987 ("the Act") provides, inter alia, that:-

" (1) A leasehold valuation tribunal [since 1st July 2013 a First-tier Tribunal (Property Chamber)] may, on application for an order under this section, by order...appoint a manager to carry out in relation to any premises....

- (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver,
- or both, as the tribunal thinks fit.

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

(a) where the tribunal is satisfied –

(i) that any relevant person is in breach of an obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or part of them..... and

(iii) that it is just and convenient to make the order in all the circumstances of the case;

.....

(ac) where the tribunal is satisfied –

(i) that the relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

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

7. Section 22 of the Act requires a preliminary notice to be served upon the landlord and any person (other than the landlord) by whom obligations relating to the management of the premises are owed to the tenant under his tenancy. before such an application is made. This notice must specify the tenant's name and address, that he intends to make an application for an order appointing a manager but that he will not do so if the requirements to remedy the matter are complied with, specify the grounds on which the tribunal would be asked to make an order and state a time within which the matters capable of remedy are to be remedied and the steps to be taken to remedy them.

8. A tribunal may dispense with the service of such a notice if it is not reasonably practicable to do so (section 22(3) of the Act). Further, by section

24(7) of the Act, the Tribunal may make an order, if it thinks fit, notwithstanding that the period for compliance is not a reasonable period or that the notice failed to give the prescribed content.

The lease.

9. The lease of Flat 3 is for 125 years from 1st June 1997. It is a tri-partite lease between the landlord, the management company (Roseday Court Limited) and the lessee. The only relevant clause for the purpose of this case is that by clause 6.4 the Management Company covenants with the lessee and the lessor that so often as reasonably required and not less than once in every fourth year of the said term decorate treat and protect the exterior of the Block.

The Tribunal's decision.

10. The Tribunal had decided on 19th August 2013 that the Applicant had made out a ground for the appointment of a manager and considered it just and convenient for an order to be made. This was particularly so as the previous managing agents had resigned and the sole director of the management company had also resigned so that there was something of a "rudderless ship" as far as management of the Property was concerned.

11. The Tribunal was satisfied that Mr Gooch had the necessary experience to be appointed as the Tribunal-appointed manager, that his proposed fee structure was reasonable, that he understood the duties and responsibilities of a Tribunal-appointed manager and that he carried an appropriate amount of insurance cover.

12. The Tribunal decided therefore that it would appoint Mr Gooch to be Receiver and Manager of the Property for the period of 4 years. As the decision was announced to the parties at the conclusion of the hearing the 4 year period would run from the date of the hearing, namely the 9th October 2013. The powers and duties of the Manager are as set out in the Appendix hereto.

Dated the 22nd day of October 2013

Judge D. Agnew (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

Mr Nathan Gooch BSc AIRPM is hereby appointed Receiver/Manager in respect of Roseday Court, Tennyson Road, Freshwater, Isle of Wight PO40 9AE ("the Property") for a period of three years from the date hereof with the following powers and responsibilities:-

1. To receive the ground rents and account to the freeholder therefor.
2. To effect buildings insurance for the Property on the best terms reasonably obtainable.
3. To undertake the duties and obligations of the management company for the repair and maintenance of the Property and other matters set out in clause 6 of the lease and to collect from the lessees in advance a contribution towards the estimated cost thereof in accordance with the said lease. At the end of each year to account to the lessees for the expenditure effected and to collect any shortfall of contributions from the lessees.
4. If the manager deems it appropriate, to establish a sinking fund to provide for future expenditure and require the lessees to contribute thereto in accordance with the lease.
5. To carry out a fire risk assessment and implement the findings thereof.
6. To charge a management fee of £150 plus vat per flat (plus reasonable travelling expenses to be shared where possible with the lessees of other flats managed by Mr Gooch or his company on the Isle of Wight) at the Property payable by the lessees. For major works requiring section 20 consultation, in addition to the annual management charge, a fee of 12% plus vat of the net cost may be charged. Other costs as specified as specified in paragraph 2 of the Annex to the document headed "Proposed Remuneration" attached to Bridgeford and Co's letter to the Tribunal of 29th July 2013 may be charged in addition if incurred and provided the said charges are reasonable. The foregoing fees may be reviewed annually either by agreement with the lessees or, in default of agreement, on application to the Tribunal.
7. If necessary and appropriate in the manager's discretion to take any action including court action to recover any charges or fees outstanding from any lessee at the Property.
10. To apply to the Tribunal for any additional powers the manager considers necessary in the reasonable management of the Property.
11. At all times to manage the Property in accordance with the provisions of the Service Charge Residential Management Code in force at the time approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 or any subsequent legislation which replaces it.

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