



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

Case Reference : **LON/00AF/LAM/2013/0035**

Property : **223-225 Bromley High Street,
Bromley, Kent, BR1 1NZ**

Applicants : **(1) Mr J Lomax
(2) Mr A Syer
(3) Mr & Mrs C Agbai**

Representative : **In person**

Respondent : **Global Top Ltd**

Representative : **Mr A Berger, Director of Feldgate
Ltd, Managing Agents**

Type of Application : **Appointment of Manager**

Tribunal Members : **Judge I Mohabir
Ms S Coughlin**

**Date and venue of
Hearing** : **30 April 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16 June 2014**

DECISION

Introduction

1. This is an application made by the Applicants under section 24(1) of the Landlord and Tenant Act 1987 (as amended) ("the Act") for the appointment of a manager in relation to 223-225 Bromley High Street, Bromley, Kent, BR1 1NZ ("the property"). The appropriate section 22 preliminary notice was served on the Respondent and is dated 7 January 2013.
2. The Applicants are variously the individual and joint long leaseholders of 3 of the 4 flats in the property. The Respondent is the present freeholder.
3. The property is described as a building that has been converted into 4 residential flats over two floors with two commercial premises located on the ground floor. The Tribunal was told that all of the residential leases were granted on the same terms.
4. The basis of this application is set out in the preliminary notice served by the Applicants. It is not intended to set out the details of the alleged breaches against the Respondent in the preliminary notice, as they are self-evident. Essentially, the substantive complaints fall under four headings in the preliminary notice. These are:

Paragraph 1

- (a) the Respondent has failed to carry out repairs and maintenance to the building in breach of the Second Schedule of the leases. Further, the Respondent has failed to maintain a sinking fund for any necessary repairs and where any works have been carried out, it has been done by unskilled workmen.

Paragraph 2

- (b) various service charges that have been demanded have been excessive and unreasonable.

Paragraph 3

- (c) there have been numerous breaches of the RICS Service Charge Residential Management Code by the present managing agents, Feldgate Ltd (“Feldgate”).

Paragraph 4

- (d) there has been a complete breakdown in trust in the relationship between the Applicants and Feldgate.

- 5. By an application dated 10 December 2013, the Applicants made this application to the Tribunal seeking the appointment of a Manager. On 17 December 2013, the Tribunal issued Directions in this matter.

The Relevant Law

- 6. Section 24 of the Landlord and Tenant Act 1987 provides:

"(1) A leasehold valuation tribunal may, on an application for an order under this section, by order 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 Tribunal 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 any relevant person 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...*
- (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 the order in all the circumstances of the case;*

(aba)...

(abb)...

(ac) where the tribunal is satisfied-

- (i) where any 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;*

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

Hearing and Decision

7. The hearing in this matter took place on 30 April 2014. The Applicants appeared in person. Also present was Ms T Bartlett MCIH, the proposed Manager. The Respondent was represented by Mr Berger from Feldgate.
8. The Respondents generally repeated and relied on the complaints made in the preliminary notice. Mr Lomax emphasised that the building had not been repaired and maintained by the Respondent since it had been converted into flats in or about 2004. It was common ground that major works were required and, indeed, Feldgate had commenced statutory consultation in relation to the proposed works. However, the Applicants contend that because of the historic neglect, the proposed scope and estimated cost of the major works is unreasonable and that the Respondent had failed to establish a sinking fund to defray the cost of these works.
9. Furthermore, Mr Lomax said that where responsive minor repairs had been carried out, they had been done badly. For example, he drew the Tribunal's attention to the repair carried out to the rear fire exit door, which had left it insecure. He complained that the electricity supply to the common parts was in a dangerous condition and this had not been addressed by the Respondent.

10. As to the service charges, the Applicants complained that these appear to increase annually without any obvious reason. For example, cleaning and gardening costs are charged when in fact there is no garden and the communal areas are very small. It was asserted that the cleaning of the communal areas was only carried out once in 2011. The Applicants said that all of the service charge expenditure had been incurred by one contractor and it was suggested that there was a “relationship” between it and Feldgate. They submitted that these and the other matters set out in the preliminary notice also amounted to numerous breaches of the RICS Service Charge Residential Management Code by Feldgate.
11. Finally, the Applicants said that they had found Feldgate to be wholly unreasonable in its actions in dealing with the Applicants and dealing with their concerns and/or complaints.
12. Mr Berger’s evidence in reply is set out in his witness statement dated 6 March 2014 in which he gives a detailed response to each and every allegation made in the preliminary notice. Again, it is not intended to repeat his evidence here, as it is self-evident.
13. He states that his firm took over the management of the property from Clockwork Estates Ltd at the beginning of 2010. He explained that a separate managing agent collects the rent for the commercial premises only. His firm collects the entire service charge expenditure, including the insurance premiums for the building as whole, and in respect of which the commercial premises pay a contribution of 25% of the overall amount.
14. Mr Berger accepted that the previous managing agent had failed to carry out repairs and maintenance. However, he stressed that the Respondent was now attempting to deal with this problem by having had a condition survey report prepared on 17 August 2011. His firm had then carried out statutory consultation in relation to the proposed

works, which had been opposed by the Applicants. As a consequence, he has now commenced a second statutory consultation process in an attempt to address the Applicants concerns.

15. On the issue of cleaning and gardening costs, Mr Berger said that the cleaning was done by "Sam" and appeared to be of a satisfactory standard. However, he could not say when he had last inspected the property. When asked by the Tribunal, he said that he had only inspected the property 3-4 times since his firm took over the management.
16. Mr Berger accepted that in 2013 he was aware that the Applicants were unhappy about the cleaning and that there "might be a problem". Nevertheless, he conceded that he continued to pay the contractor despite the Applicants' complaints. He strenuously denied that his firm's management of the property had been inadequate as alleged in the preliminary notice. In addition, he maintained that he could continue to effectively manage the property despite the animosity between the parties.
17. The Tribunal then heard evidence from the proposed Manager, Ms Bartlett, as to her knowledge and experience in managing properties. She had set these matters out in her CV. Her application for ARICS was pending.
18. Ms Bartlett said that she had visited the property in December 2013 and had looked at the leases. She had found the property in disrepair and unclean. She confirmed that she had prepared a management plan for the building and has 3 consultant Surveyors who she can refer to in relation to the proposed repairs.
19. Ms Bartlett said that her firm is based in nearby Beckenham. Her basic management fee would be £125 per flat per annum and this included the preparation of accounts, service charge demands, debt collection,

dealing with responsive repairs and maintenance. Any additional work, for example major works, would attract a fee of 10% of the total cost together with any professional fees. There would be no supervision fee charged by her firm if a surveyor is instructed. She told the Tribunal that she only used local contractors.

20. Ms Bartlett said she would be the designated property manager. She was familiar with the RICS Service Charge Residential Management Code and complied with it. She confirmed that she had many years experience managing both commercial and residential properties. She also confirmed that her firm had the requisite professional indemnity cover.
21. It was overwhelmingly clear to the Tribunal that there was no working relationship between the Applicants and Feldgate and this had been the position for some time. The Tribunal was also satisfied that there was no possibility of that relationship improving either now or in the foreseeable future. In the Tribunal's judgement, such a relationship is essential for there to be effective management of a property, despite Mr Berger's assertion that he could continue to manage the property. Having regard to these circumstances, the Tribunal found it was just and convenient for a manager to be appointed under section 24(2)(b) of the Act.
22. It was common ground that the property is in some state of disrepair and has been so for several years. The extent of the disrepair is evident from the Respondent's condition survey report. The Tribunal finds that this is a breach of the repairing obligation imposed on the Respondent in the Second Schedule of the Applicants' leases within the meaning of section 24(2)(a)(i) of the Act.
23. The Tribunal accepted the evidence given by the Applicants that the frequency and standard of the cleaning of the common areas of the property had been unsatisfactory for some time. This was corroborated

by the photographic evidence adduced by the Applicants. The correspondence passing between the parties on this issue demonstrates that it has been long standing. It was not until 2013 that Mr Berger acknowledged that there was “a problem” with the cleaning and despite this continued to pay the contractor and continued to render demands to the Applicants to pay for this expenditure. On this item of expenditure alone, the Tribunal concluded that the cleaning costs were “prima facie” unreasonable within the meaning of section 24(ab)(i) of the Act. The Tribunal makes no finding in relation to the other service charge expenditure demanded by the Respondent, as there was no clear evidence upon which the Tribunal could make a finding that they were unreasonable.

24. Similarly, the Tribunal makes no findings in relation to the various alleged breaches of the RICS Service Charge Residential Management Code because the breaches were not specifically argued by the Applicants and there was inadequate evidence upon which to make specific findings in relation to each and every allegation.
25. Having had the benefit of hearing Ms Bartlett give evidence, the Tribunal concluded that she possessed sufficient professional qualifications and experience to be appointed as the Manager for an initial period of 2 years. The management order is annexed to this Decision.

Section 20C & Fees

26. The Applicants sought an order preventing the Respondent from being able to recover through the service charge account any costs it had incurred in relation to these proceedings under section 20C of the Landlord and Tenant Act 1985 (as amended).
27. Having regard to the Tribunal’s findings set out above, the application has succeeded. It is beyond doubt that the application had to be made by the Applicants given the level of animosity and disagreement

between the parties. Therefore, applying the general principle that “costs should follow the event”, the Tribunal concluded that it would not be just or equitable that the Applicants should in effect be financially penalised for being liable for the Respondent’s costs. Accordingly, the Tribunal makes an order preventing the Respondent from being able to recover any of the costs it may have incurred in this matter.

28. For the same reasons, the Tribunal order the Respondent to reimburse the Applicant the fees of £340 they have paid to the Tribunal to have this application issued and heard.

Judge I Mohabir
16 June 2014

IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER

IN THE MATTER OF PART II OF THE LANDLORD & TENANT ACT 1987

**AND IN THE MATTER OF 223-225 HIGH STREET, BROMLEY, KENT,
BR1 1NZ**

LON/00AF/LAM/2013/0035

BETWEEN:

**(1) Mr J Lomax
(2) Mr A Syer
(3) Mr & Mrs C Agbai**

Applicants

-and-

Global Top Ltd

Respondent

ORDER

1. That Ms Toni Bartlett MCIH of Beckenham and Bromley Property Management Ltd of 27 Seven Acres, New Ash Green, Longfield, Kent, DA3 8RN ("the Receiver/Manager") be appointed as the Receiver and Manager of the land and premises at and known as 223-225 Bromley High Street, Bromley, Kent, BR1 1NZ ("the property") in place of the freeholder, the above named Respondent, and their successors in title and to exercise in that capacity the rights of the freeholder and to carry out in that capacity all the responsibilities of the freeholder under and in respect of the various leases granted in respect of the property on the terms of this Order.
2. Within 2 months from the date of this order the Respondent shall provide the Receiver/Manager with all sums of monies (if any) held on trust for the lessees together with banks statements, invoices and documents relating to the property together with a statement showing all income and expenditure in respect of the property since the appointment of the present managing agent,

Feldgate Ltd, in 2010 until the date of this Order. Upon receipt thereof, the Receiver/Manager shall establish the current balance of the service charge account and reserve account (if any) for the property.

3. In particular the Receiver/Manager shall:
 - (i) account to the freeholder for the payment of the ground rent she receives; and
 - (ii) comply with all applicable statutory provisions, including the Landlord and Tenant Acts 1985 and 1987, as though the Receiver/Manager was the freeholder of the property and act in accordance with the duties of a Manager as set out in the Service Charges Residential Management Code ("the 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.
4. That the Receiver/Manager be appointed from the date of this Order for a period of 2 years ("the Management Period").
5. That the Receiver/Manager shall have permission to apply to the Tribunal for such further directions as she may require in order to give effect to this order and the Applicants, the Respondent and the Receiver/Manager (as an interested party) shall have permission to apply to the Tribunal to vary or extend this Order.
6. That the Receiver/Manager be otherwise appointed under the terms set out in the schedule attached hereto.

Judge I Mohabir

16 June 2014

SCHEDULE

1. General Duty during the Management Period

- 1.1 The Respondent does not have the right to carry out any works to the property save as such works constitute development works relating to the premises and are agreed in advance with the Receiver/Manager (such agreement not to be unreasonably withheld or delayed) and is not liable to the tenants under the leases for any breach of the landlord's covenants under those leases.
- 1.2 That the Receiver/Manager will manage the property in a proper and businesslike manner. For the avoidance of doubt, the Receiver/Manager's management functions in relation to the commercial premises will be the same as those presently carried out by the present managing agents, Feldgate Ltd.
- 1.3 That the Receiver/Manager shall be responsible for carrying out the freeholder's obligations as to the repair, maintenance, decoration, insurance, management and supervision of the premises at the property and for the provision of services and upkeep of the amenities thereof and for enforcing against the tenants under the leases their obligations under and in accordance with the terms of those leases and this Order.
- 1.4 Specifically, the Receiver/Manager shall scrutinise all invoices issued in respect of goods and services supplied to the property to ensure the property is managed in an economic manner.
- 1.5 The Receiver/Manager owes a duty to the Respondent and to the lessees under the leases to use reasonable skill and care in carrying out the Receiver/Manager's duties and in exercising the Receiver/Manager's powers under this Order.

2. Specific Responsibilities

Without prejudice to the generality of the foregoing, it shall be the duty of the Receiver/Manager during the Management Period to do the following:

- (i) To deal in a reasonable fashion with all items of repair and maintenance for which the freeholders are responsible provided that in respect of major works of repair and maintenance as defined hereafter, the Receiver/Manager shall be entitled to reasonable additional remuneration payable out of the Service Charge Account, which remuneration shall not exceed 10% of the cost of the works (before VAT) involved. For the purpose of this Order "major works" are defined as any works requiring the service of a notice or notices under section 20 of the Landlord and Tenant Act 1985 (as amended).
- (ii) To purchase all such items as may be necessary to effect such aforesaid repair, maintenance, service and amenities. Notwithstanding that responsibility, the Receiver/Manager will not be required to make purchases thereunder if this would result in the Service Charge Account for the property becoming overdrawn.
- (iii) To enter into contracts for the maintenance and supply of goods and services.
- (iv) To recruit, employ, supervise and pay the salaries or wages of such residential and non-residential staff as the Receiver/Manager may reasonably consider necessary, at such rates of remuneration as reasonably appear to him to be proper in order to maintain adequate staff and ensure the efficient running of the property.
- (v) To deal with all PAYE, VAT and National Insurance matters arising in relation to such staff.
- (vi) To estimate in advance the anticipated cost of services for each year and the cost of each item of expenditure which is other than annual in nature. Such items will include (but will not be limited to) external or internal redecoration and replacement of equipment. The total cost of the services to be provided to the property will then be apportioned by the Receiver/Manager among the lessees thereof in accordance with the lease terms.

- (vii) To prepare and serve the ground rent and service charge demands in accordance with the provisions of the leases.
- (viii) To arrange and vary from time to time and keep in force the insurance of the property and the contents of the common parts of the property against such risks as the Receiver/Manager reasonably sees fit. The Receiver/Manager will also effect and keep full insurance against public liability. The Receiver/Manager will agree the terms of such insurance and will pursue claims arising therefrom expeditiously. The Receiver/Manager shall endeavour to make payment directly to the insurance company or broker concerned and shall obtain a receipt from such company or broker confirming that such insurance is paid after date. The Receiver/Manager shall declare to all interested parties any commission that he may receive upon and in respect of the placing of any insurance.
- (ix) To maintain efficient records and books of account which will be open to inspection together with relevant vouchers by appointment at all reasonable times by all interested parties and to maintain on trust an interest bearing client account with a bank or building society into which the Service Charge monies will be paid when they fall due (the "Service Charge Account") together with such other accounts as the Receiver/Manager may think necessary and appropriate.
- (x) To deal with all enquiries, reports, complaints and other correspondence with the freeholders, individual lessees, solicitors, accountants and other professional persons in connection with matters arising from the day-to-day management of the property. The Receiver/Manager shall, however, be entitled to a reasonable fee additional to the remuneration set out in paragraph 5 of this schedule for the provision whenever so required of a "solicitor's pack" supplied to the solicitor acting tenant of a lease for a who wishes to assign the lease. Such fee will be chargeable to the person requiring such "pack".
- (xi) To advise all interested parties in respect of:

- (a) essential major repairs, redecoration and maintenance; and
 - (b) improvements or alterations which may be considered desirable.
 - (c) and to provide annual reports in relation to (a) and (b) above.
- (xii) To perform such duties as are consistent with the best principles of estate management and as are necessary in order to procure and maintain all services at the most reasonable cost, including the procurement of three quotes for all major services supplied, such quotes to be available for inspection by all or any interested parties.
- (xiii) To collect all service charges and, where this Order applies to other monies, such other monies as may be payable under the lessees' leases.
- (xiv) To take any legal action which the Receiver/Manager is reasonably required to take, to make good such arrears, it being recognised that the Receiver/Manager shall be entitled to an indemnity from the Service Charge Account in respect of any legal or other professional costs arising in connection with such action.
- (xv) To pay and discharge out of the monies so collected (subject to the availability of adequate funds in the Service Charge Account) of all rates, taxes, insurance premiums, rents, wages, water, gas and electricity bills, costs of cleaning materials and other outgoings including payment of the Management Fee for which the Receiver/Manager is responsible pursuant to this appointment. The Receiver/Manager will take all reasonable steps to ensure that no liabilities accrue which cannot be financed from the Service Charge Account.
- (xvi) To manage the common parts and service areas of the building, including the arrangement and supervision of maintenance.
- (xvii) To use reasonable endeavours to require any leaseholder who sublets his flat to provide the Receiver/Manager with a written undertaking that any subletting will be for a period of not less than 90 days, and to lodge with the

Receiver/Manager a copy of the letting agreement or other relevant document along with the names and principal addresses of all the sub-tenants.

(xviii) To maintain professional indemnity insurance of at least £2,000,000 per claim.

3. **Power to Contract and to Terminate Pre-Existing Contracts**

Subject to the foregoing obligations, during the Management Period the Receiver/Manager is empowered to enter into contracts for supplies and services, including items of a non-recurring nature and including with solicitors, accountants, building surveyors and other professional persons, and where necessary to terminate the same. The Receiver/Manager is further empowered to terminate remaining contracts existing prior to this Order, in his discretion.

4. **Authority to Negotiate Adjustments to Service Charge Payments**

The Receiver/Manager is empowered to make and agree reasonable adjustments and other reasonable compromises with the tenants at the property, in respect of the Service Charges and Interim Charges where appropriate, and also in respect of any outgoings payable.

5. **Remuneration**

As remuneration for his services during the Management Period the Receiver/Manager will be paid a fee in accordance with the following charges.

Basic fee - £125 plus VAT per flat per annum