



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

Case Reference : CAM/33UF/LVM/2015/0001

Property : Trafalgar Court, 42 Cromer Road, Mundesley,
Norfolk NR11 8DB

Applicants : **Alan Walter Roper** (representing all others)
Paul Roper
Stephen Tearle & Gabrielle Julia Tearle
Eric Charles Pooley
Brenda Sawdon
William Arnold & Joyce Elaine Arnold
Ross Hawkins & Robert Girling
Judith Batchelor

Respondent : London Land Securities Ltd

Managers : Bruce Roderick Maunder Taylor & Michael Harrison
Maunder Taylor

Type of Application : For the appointment of a manager
[LTA 1987, s.24]

Tribunal Members : G K Sinclair, G F Smith MRICS FAAV REV,
& C Gowman BSc MCIEH MCFI

**Date and place
of determination** : 19th June 2015
at the tribunal office, Great Shelford, Cambs

Date of Decision : 23rd June 2015

DECISION & ORDER
following a paper determination

Order

1. For the reasons set out below the tribunal determines that discharge of the order is likely to result in a recurrence of the circumstances which led to the order being made, and therefore it is not in the best interests of either the leaseholders or the property to allow the current management order to lapse and for the landlord to resume management and control. Further, although seeking such an outcome in paragraph 29 of its Statement of Case, the respondent landlord has adduced no evidence or set out any grounds which might satisfy the tribunal under section 24(9A) of the 1987 Act that discharge of the order will not result in a recurrence of the circumstances which led to the order being made and that it is just and convenient in all the circumstances to vary or discharge the order.
2. The tribunal therefore orders that the Management Order dated 6th August 2012 continue for a further period of just over three years from and including 1st July 2015, but subject to the following variations :
 - a. Paragraph 2(B) of the Order : The order shall expire on 5th August 2018, to coincide with the current financial year commencing on 6th August
 - b. Paragraph 12 of the Directions : Unless otherwise ordered, the managers shall submit a report to the tribunal on or before 1st March 2017
 - c. Paragraph 4.1 of the Schedule to the Order : The management fee paid to Norwich Residential Management be increased by 2% from £4 500 plus VAT per year to £4 590 plus VAT.
3. The tribunal further orders that the respondent reimburse the applicants their hearing fee of £190. This was incurred only because the respondent at first insisted upon a hearing but then, by letter dated 9th June 2015, agreed to the application being determined on paper and requesting that the hearing already fixed for Friday 19th June 2015 be vacated.

Background

4. On 6th August 2012 the Leasehold Valuation Tribunal made an order appointing the above-named Bruce Roderick Maunder Taylor & Michael Harrison Maunder Taylor, both of Maunder Taylor chartered surveyors, estate agents and managing agents as managers of the above-named property for a term expiring on 30th June 2015.
5. Since their appointment the managers have succeeded, with the assistance of Janet Jury of Reynolds Jury Architects as contract supervisor, in carrying out most of the external and fire protection major works referred to as Phase 1 of the refurbishment of the property. This has included the reconstruction of a single storey, flat-roofed extension to the seaward side of the ground floor of the west wing of the building. The site of a former ballroom, this had until recently been left as a gaping void, exposing a long section of what was once the ground floor corridor to the elements. This is now weather tight, and awaits internal fitting out by the landlord as part of a group of 8 unbuilt flats which will complete the projected 32 flats in the entire building. A great deal of internal decorating and carpeting has also been carried out but other major tasks remain, such as the replacement or repair of a passenger lift that has long been out of commission.

6. Earlier this year a slightly differently constituted tribunal was most recently required to determine the reasonableness and payability of service charges which included the cost of those major works already undertaken. The tribunal largely dismissed the points sought to be made by the landlord and found in favour of the managers. At the date of this decision an application under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 concerning the costs incurred in dealing with that dispute remains outstanding.

The application

7. This application is brought by all of the “independent leaseholders”, i.e. those who have paid a market price for the leases of their respective flats. It is opposed by the freeholder and its “nominee leaseholders”, i.e. those granted a lease for the premium of £1, all on the same day and all giving as their address that of London Land Securities Ltd, which also represents them and assumes responsibility for discharge of all leasehold obligations on their behalf.
8. The documentation submitted by the applicants is slim, but is bolstered by some practical submissions from the managers about current management concerns regarding the works recently started by the respondent to the ground floor and basement of the west wing, and on requested variations to any new Order. The file also includes correspondence and e-mails from the managers, from their local managing agent and from North Norfolk District Council about the allegedly unsafe manner in which work to the basement is being carried out, that it lacks planning permission, and that Party Wall Act issues may have been overlooked.
9. The tribunal has also seen a 30 paragraph Statement of Case by the respondent, which is supported by a very substantial number of documents – many raising issues already dealt with by the tribunal’s recent decision on service charges and one comprising a rather tendentious statement by a Mr Joshi. The latter could be very relevant to the decision whether to appoint Mr Maunder Taylor senior as a manager and, if to be pursued, should be adduced in evidence in the usual way so that there is an opportunity for him to be cross-examined. The tribunal notes that amongst this material are e-mails from Eric Pooley to Michael Maunder Taylor concerning the behaviour of the main contractor, Mr Willan. Despite this, Mr Pooley is one of those seeking the continuation of the current managers in office.

Relevant statutory provision

10. By section 24(9) of the Landlord and Tenant Act 1987 a tribunal has power to vary a management order made under that section. However, where application is made by the landlord seeking restoration of management control to itself then the tribunal must also take into account sub-section (9A). This provides that :
 - (9A) The tribunal shall not vary or discharge an order under subsection (9) on a landlord’s application unless it is satisfied –
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to

vary or discharge the order.

Discussion

11. The tribunal is dismayed to see that much of the respondent's Statement of Case appears to be an attempt to rehash issues recently dealt with in the service charge application. This includes exhibiting the whole of Mr Martin Hemming's report (effectively a survey of condition) which was adduced at that earlier hearing.

12. The only part of the Statement of Case which addresses the issue now before the tribunal is paragraph 29, which reads :

29. The Respondent believes that the discharge of the appointment of the manager is unlikely to lead to reoccurrence of the original complaint. The state of the building shows that the Applicant manager has failed to deliver a water tight building despite the Respondent paying a high cost. The building can be managed by in house caretaker and team that will cover security, cleaning, ground maintenance and small jobs. The outstanding building work can be managed by MH Associates who are fully credited RICS members and already familiar with the state of the building. The Respondent request the tribunal to discharge the Applicant as manager and receiver in the circumstances and re-instate the Respondent as Manager.

13. Paragraph 22 of the same document, when discussing the eight new flats, states that :

The Respondent has commenced works to complete the eight new flats in the west wing. The work **would be overseen** by MH Associates.
[emphasis added]

14. The tribunal is troubled by the suggestion that the respondent has started work on the basement and ground floor of the west wing without supervision already being in place. Precisely when would MH Associates become involved, and under what sort of contract? Concern is heightened by an e-mail dated 13th May 2015 from Guy Hudson of Norwich Residential Management, appointed by Maunder Taylor as local managing agent. He challenges the respondent about a load of surplus concrete being dumped in the garden area and, more seriously, about health & safety issues concerning protection of the basement works. These are illustrated in several large colour photographs. One shows floor joists being propped up by "poor temporary structural supports" which look like a couple of pieces of timber nailed together to achieve the right length, with a very insecure footing. Have the respondent's contractors not heard of acrow props?

15. North Norfolk District Council has also become involved. An e-mail dated 14th May 2015 from Dan Theobald, District Building Control Surveyor, to Michael Maunder Taylor expresses concern that :

...it appears that works are now being extended into the basement area which do not fall under the 1988 permission. Works of this sort are a

concern due to possible means of escape, ventilation, insulation, and damp proofing issues and I have written to Mr Sharma ... requesting an application which will require the input of professional advice (I would not be happy to accept a Building Notice for this work) .

16. That letter to Mr Ravinder Sharma, dated 13th May 2015, comments :

Work is now in progress to the ground floor area of the property although I am now informed that it is proposed to extend these units downwards into the basement area to create two-storey units in the area of the former ballroom.

The 1988 consent does not include this scope of works and a further application will be needed to cover these additions.

The letter goes on to refer to the concerns about ventilation, means of escape, etc mentioned in the letter to Maunder Taylor.

17. Further, the tribunal notes that in an e-mail dated 26th May 2015 from Michael Maunder Taylor to Ravinder Sharma the writer notes his understanding that the respondent company has given notice to Mr Marsland that his employment at Trafalgar Court is terminated with effect from 30th June 2015. Confirmation is sought in case any arrangements need to be made for cleaning, etc after that date.
18. In the respondent's letter to the tribunal dated 9th June 2015 Mr Sharma sought to make a number of points which he seemingly wished to have included in any new management order. These included that the manager comply with "our" rights (meaning the landlord's?) under sections 21, 22 & 23 of the 1985 Act, and in point 4 that
- The manager should account to the landlord on a monthly basis and provide bank statements and other such relevant documents and cooperate with the landlord.
19. Such a condition wholly ignores the fact that it is the tribunal which is appointing an external manager to look after the building due to the landlord's past failures to do so internally. Here the respondent persists with its desire to micro-manage the works despite control having been removed from it.
20. The tribunal is not impressed with the respondent's bald assertion that restoring control of the building to it while major works are being undertaken would not cause the previous management problems to recur. The respondent provides no supporting evidence for that. On the contrary, the evidence now available tends to the opposite conclusion :
- a. Structural work is being undertaken to the basement and ground floor for which no planning or building consent has been given
 - b. The work is being carried out unsafely, which strongly suggests a lack of skill and/or supervision

- c. The identity of the contractors and what provision they may have made for insuring the building and the works is unknown
 - d. Party Wall Act issues may have been ignored
 - e. Further major works are required to the building, including works to the lift, and there is no hint that the respondent has a proper management plan in place
 - f. Arrangements for caretaking and security, etc have been thrown up in the air by the apparent sudden dismissal of Mr Marsland, who is known and trusted. What alternative arrangements would be made by the respondent are unexplained.
21. The general impression is deeply unsatisfactory and, with the respondent failing to satisfy the requirements in section 24(9A), the only safe course of action is for the tribunal to extend the term of office of the current managers, making the minor amendments noted in paragraph 2 above.
22. Amongst a list of suggested variations to the current order Maunder Taylor asked in a letter dated 10th April 2015 that the tribunal “kindly consider” amending paragraph 4.6 of the Schedule by increasing the hourly rate to be allowed for Michael Maunder Taylor from £150 per hour plus VAT to £200 plus VAT to take into account his entering into partnership in the firm. However, the tribunal has to balance the interests of the managers and those paying for them. Although this has not been the easiest of tasks, and a firm based in London rather than one operating in the immediate area has been asked to assume control, the tribunal notes that Michael Maunder Taylor qualified as an AssocRICS as recently as August 2011 and is not yet a full Member, and considers that even in London an hourly rate of £150 plus VAT is towards the top end of the fee range for a person of that grade engaged in the management of residential property. Until further notice the rate shall remain unchanged.

Dated 23rd June 2015

Graham Sinclair

Graham Sinclair
Tribunal Judge