9312

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAM/LAM/2013/0012**
Property	:	**Flats in Drysdale Dwellings, Dunn Street, London E8 2DH**
Applicants	:	**John Jeffery & Tristan Rodgers (Flat 3)** **Andrew Holmes (Flat 2)** **Vassos Theodosiou (Flat 6)** **Alex Emslie & Phoebe Cheshire (Flat 7)** **Anita Chatelan (Flat 8)** **Aidan Shaw (Flat 12)**
Representatives	:	**Mr John Jeffery & Mr Tristan Rodgers**
Appearances	:	**Mr John Jeffery & Mr Tristan Rodgers**
Respondent	:	**Eaglesham Properties Limited**
Representative	:	**Conway & Co Solicitors** **Y & Y Management Limited, managing agents for the Respondent**
Appearances	:	**Mr Justin Bates, Counsel** **Mr Joe Gurvits, Y & Y Management** **Miss Janine Cohen, Y & Y Management** **Mr David Babad, Avon Estates (London) Limited**
Date of Applications	:	**29th April 2013**
Type of Application	:	**S27A and 20C of Landlord and Tenant Act 1985 (service charge dispute) and s24 Landlord and Tenant Act 1987 (appointment of a manager)**
Tribunal Members	:	**Mr A A Dutton (Judge)** **Mr L Jarero BSc FRICS** **Mrs R Turner JP MA**
Date and venue of Hearing	:	**16th September 2013**
Date of Decision	:	**4th October 2013**

DECISION

The Tribunal declines to appoint a manager pursuant to the provisions of Section 24 of the Landlord and Tenant Act 1987 (the 1987 Act) for the reasons set out below.

The Tribunal findings in respect of the service charges that are in dispute pursuant to Section 27A of the Landlord and Tenant Act 1985 (1985 Act) are set out in the findings section below.

The Tribunal declines to order the refund of the fees paid by the Applicants for the application and the hearing for the reasons set out below.

The Tribunal makes an order pursuant to Section 20C so that the landlord's costs are not recoverable as a service charge for the reasons set out below.

The Tribunal declines to make an order pursuant to Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002 for the reasons set out below.

BACKGROUND

1. These two applications were made by Mr John Jeffery on behalf of himself and five of the other six long leaseholders who reside at Drysdale Dwellings. The application dated 29th April 2013 sought the appointment of a manager pursuant to Section 24 of the 1987 Act and also to determine the liability to pay and the reasonableness of certain service charges pursuant to Sections 27A and 19 of the 1985 Act.

2. There is something of a history in respect of various applications made relating to these premises by Mr Jeffrey and the other long leaseholders (save one) and those details are set out succinctly and accurately in a decision promulgated by our colleagues under actions LON/OOAM/LVM/2011/003 and LON/OOAM/LAM/2013/0012. The decision is dated 4th June 2013 and is referred to as "the decision" in this document. The procedural background is set out at paragraph 3 onwards in the decision and it seems unnecessary to repeat the factual elements that are contained therein. The decision essentially dealt with the Tribunal's position insofar as the ability to give further directions to a manager after his appointment had ceased to apply and also addressed at paragraph 45 onwards the Respondent's obligations under the terms of the leases by which the various applicants occupied their flats in the property.

3. The decision is the subject of an appeal but only insofar as it relates to the Tribunal's powers to issue directions to a manager after the appointment had ended. In its decision the Tribunal had made findings, in respect of the Respondent's obligation as landlord, under the terms of the leases held by the long leaseholders. Those details, as we have indicated above, are set out at paragraph 45 to 52 in the decision and are not the subject of appeal.

4. The management of Drysdale Dwellings has been in the hands of Y & Y Management Limited since the appointment of Mr John Mortimer expired on 24th June 2012. On 22nd February 2013 Mr Jeffery and the other long leaseholders, who were named as applicants, issued a notice under Section 22 of the 1987 Act which to an extent mirrored the previous concerns leading to the appointment of a

manager in 2009. The matters relied upon by the tenants are set out in the third schedule of the s22 Notice under paragraph 1 – 4 and are as follows:-

1. The landlord has breached the following obligations
   1.1 To provide account information for the money held for the reserve fund.
   1.2 The landlord has not paid their contribution (5 twelfths) to the service charge account between June 2009 and June 2012.
   1.3 The landlord has not paid the costs associated with non-payment of the service charge.
2. The landlord is in breach of Section 42 of the Landlord and Tenant Act 1985
   2.1 The landlord has invoiced and received funds to be held in trust for the service charge accounts.
   2.2 The landlord has not provided any account information for this and a large portion of the funds are missing.
3. The landlord has made unreasonable service charges
   3.1 The landlord was ordered at the first LVT hearing to repay to the service charge account £5,153.54 of costs which were unaccounted for. The full amount was not returned to the service charge account.
   3.2 The landlord charged £5,530.69 for services in 2009 which were disputed but not considered at the first Tribunal. The leaseholders' position is that several of these charges are unreasonable.
      (a) Y & Y Management fees of 6 x £115
      (b) Cleaning costs of 5 x £155.25
      (c) Professional visit £275.54.
4. Other circumstances exist which make it just and convenient for the appointment of a manager.
   4.1 The leaseholders have been trying to access account information for their money held by the landlord for over five years. They have attended three Tribunals with the landlord over four years and have hundreds of correspondences with the landlord and his agents; still we are no closer to finding the answer. The leaseholders have no faith or trust in the landlord to manage or handle our affairs.

5. Insofar as the service charge matters were concerned, these were set out on a Scott Schedule which was to be found at page 775 of the bundle before us and we will return to these limited areas of contention later in these reasons.

6. Prior to the hearing we were provided with two bundles running to some 854 pages. Much of the early part of the bundle was historic setting out the circumstances leading to the previous applications before the Tribunal, the Upper Tribunal's findings on an appeal relating to the appointment of a manager and other issues which did not in truth assist us greatly in determining the application before us. The bundle contained a copy of the lease for flat 3, which we were told, contained the same terms for all the long leases of the building. Clause 3 contains the tenants' covenants with the landlord; Clause 4 contains the tenant's covenants both with the landlord and for the benefit of the other flat owners which includes at Clause 4(4) the obligation to pay an interim charge and a service charge in accordance with the matters set out in the fifth schedule to the lease.

7. The lessor's covenants are set out at Clause 5 onwards and at Clause 5(2) is a covenant by the landlord that every lease or tenancy agreement will contain regulations and covenants to be observed by the tenants in similar terms as those

set out in the lease and the obligation on the part of the lessor to comply with those regulations and covenants during the time that no lease or tenancy agreements subsists. Clause 5(3) reiterates this position where the leases are determined or expire. The provision of this clause was considered in detail in the decision and we have referred to that above. We consider that that decision is correct and as it has not been appealed is applicable to the matter before us.

8. Clause 5(5)(l) provides for the setting up of a reserve fund in respect of future costs. The fifth schedule to the lease contains the arrangements for dealing with the service charge and at paragraph 4 provides that if the interim service charge paid by the tenant exceeds the service charge for the period, any surplus is carried forward by the lessor and credited to the account of the tenant in computing the service charge in succeeding accounting periods. At paragraph 6 is an obligation on the landlord (as soon as practicable after the expiration of each accounting period) to provide a certificate setting out the information contained at paragraphs 6(a)(b)(c).

9. As well as including the applications and the Section 22 notice, within the bundle was a letter from Conway & Co, Solicitors for the Respondents dated 21st March 2013 which purported to respond to the Section 22 notice. In addition the bundle contained statements made by Mr David Babad of Avon Estates (London) Limited, by Mr Joe Gurvits a director of Y & Y Management Limited and Miss Janine Cohen an employee of Y & Y Management Limited and the current person having responsibility for the management of the property. We had the opportunity to consider the bundle prior to the hearing.

HEARING

10. On the morning of the hearing we were provided with a skeleton argument submitted by Mr Bates and Mr Jeffrey produced a copy of the statement which accompanied the Section 27A application which said application form had been omitted from the bundles.

11. Mr Jeffrey gave a potted history of the circumstances leading to the application before us. He was of the view that Avon Management had been incompetent and that was the reason why the application was made, successfully, for the appointment of a manager in 2009. Mr Jeffery had told us that he had been trying to determine the balance of the sinking fund, which he thought was deficient, when Section 20 notices were served concerning major works. He drew to our attention to copies of the various accounts in the periods 2003 to 2008 which indicated that there should have been a reserve fund of some £23,672. He now accepted, as a result of the information produced during the course of these proceedings, that at the time of the handover to Y & Y in late 2008 the reserve fund was correct. However, he felt that no interest had been credited to the reserve fund during that time, which was wrong, and that such interest as would have been payable was reduced because the landlord had not made contributions to the reserve fund as it should have done under the terms of the lease. He had calculated the interest which he thought would be payable on the basis of a quarter percent over base rate on a compound basis. It was, he said, the lack of interest credited to the account which was one of the major reasons why the applicants were seeking the appointment of another manager.

12. The contents of the Section 22 notice were discussed during the course of the hearing. Miss Cohen told us that the landlord had now paid all service charges claimed by Mr Mortimer in County Court proceedings which had been the subject of the decision. In a letter dated 4th July 2013 Miss Cohen said as follows *"I would like to confirm that the freeholder has paid budgeted service charge invoices up to 30th June 2013 including the period that John Mortimer were managing, except added disputed legal fees. We have available funds of £21,433.69 (we have paid insurance premium for 2013/14) and will look to transfer over any further surplus for period prior to 2013 after taking needs of necessary maintenance requirements into consideration. Therefore the balance reserve figure of £18,897 advised for 31st December 2012 will be increased."* Mr Jeffrey still felt that Y & Y Management had a too cosy arrangement with the freeholder and that the freeholder's obligations would not be enforced. Mr Gurvits confirmed that he was not a director or shareholder of the respondent company.

13. At paragraph 1.3 of the Section 22 notice concern was raised with regard to the costs associated with the non-payment of service charges. However, we heard that these could well be the subject of the County Court proceedings between Mr Mortimer's firm and the Respondents. A complaint by Mr Jeffery that whenever he wrote to the landlord he heard back from Y & Y Management was dismissed by Mr Bates as being nothing strange as it was perfectly reasonable for a landlord to make use of his agent to deal with such correspondence.

14. Mr Babad who arrived late then spoke to his witness statement which was contained at page 637 of the bundle. He told us that the accounts that had been prepared during his period of management reflected what should have happened and not the actuality. The accounts, he said, were prepared on a " putative" basis. He said that they were guided by the accountants and accepted that a certificate signed by a member of Avon for the accounts ending December 2007 was false. To an extent, however, his evidence merely underlined the reason why the Tribunal in 2009 thought it appropriate for the appointment of a manager under Section 24 of the 1987 Act. He confirmed, in answer to questions by Mr Jeffrey that the landlord had not made contributions towards the reserve fund but had only made payments if and when required. He confirmed also that the Avon Management was part of the Avon group of companies of which Y & Y Management were also a party. The Respondents, Eaglesham Properties Limited, were however a completely separate company and had nothing to do with the Avon group.

15. The question of the breaches in respect of service charges was left to be dealt with later in the hearing. Mr Jeffrey's returned to point 4 of his Section 22 notice in which he gave the view that he had not seen compelling evidence that the landlord had been required to pay all that was due and that he believed as Y & Y Management had been involved since June 2012, they had had a reasonable period of time to correct the issues set out on the Section 22 Notice. He said that he was not confident that the problems outlined on the Section 22 Notice would be resolved and he was unhappy about Y & Y Management's involvement, in particular their close relationship with the landlord. He also complained that the accounts for the year ending December 2012 had not been produced until July 2013.

16. Mr Gurvits gave evidence and relied on his witness statement which is set out in the bundle at page 663 onwards. He was asked about the present situation with

regard to the landlord's contributions and confirmed that they had collected the funds from the freeholder and that he believed the landlord was up to date. In a letter dated 9th September 2009, after Mr Mortimer had been appointed as manager, Y & Y Management Limited had sent to John Mortimer a cheque from Avon in the sum of £25,000 leaving a balance of £3,261.89 which balance was not in fact paid until June of 2011. Mr Gurvits, however, thought that his relationship with the landlord gave Y & Y a better opportunity of recovering the landlord's contributions under the terms of the lease more quickly that would have been the case with other managing agents. He told us that a separate reserve account for the property had now been set up and that it showed a reserve account with Lloyds TSB containing a credit as at 19 July of £22,437. It appears that that account was opened in October 2012 with an opening balance of £14,000.

17. He told us that Y & Y Management had been formed in 2008 to take over management from Avon who were not, he accepted, very good at managing residential blocks It seems that they were more involved with commercial properties. When the original Section 22 notice was served leading to the appointment of manager in 2009, it was concluded that Avon could not repair the position and he accepted that in 2009 the property had not been well run but that they had come too late into the process to put the matters right. He confirmed that in his view Y & Y were perfectly capable of managing a block such as Drysdale, that they were members of ARMA and that they did want to continue the management.

18. He was asked by Mr Jeffrey why there had been a delay in producing the accounts for the year end 2012 and he told us that this was partly as a result of trying to deal with the accounts that John Mortimer had been involved in up to June of 2012. Mr Gurvits told us that he had been involved in the management of properties for some 25 years and that he had accountancy qualifications. He did not himself deal with the day to day management but that was left with Miss Cohen.

19. Miss Janine Cohen, an employee of Y & Y Management Limited, also gave evidence and her witness statement was to be found at page 709 onwards of the bundle. She told us that she was experienced in the management of property and was an AIRPM. She told us that in the summer of 2012 she had been asked to take over the management of the property and believed it was her job to assist leaseholders in ensuring that the terms of the lease were fully complied with. She explained the software used to produce the accounts. She told us that there had been no handover from John Mortimer and that when she had asked Mr Jeffrey for assistance nothing had been forthcoming. There was some discussion concerning the electrical supply and other issues relating to health and safety matters. She accepted, however, that the building was in a somewhat dilapidated state and that works were required. She said that if the management was retained by Y & Y Management she would immediately start to review the state of repair, instruct a surveyor to carry out a survey, obtain quotes and proceed with the Section 20 procedures. She said that she would like to work with the leaseholders to move forward.

20. Mr Jeffrey cited the existence of scaffolding on site which had come as something of a surprise to Miss Cohen and, which Mr Jeffery said, was an example of the lack of management at the property.

21. We then turned to the Section 27A issues, the first being cleaning. The issue raised by Mr Jeffery was that it appeared that the managing agents, Y & Y Management, in 2009 had entered into an eleven month contract with cleaners which he thought was unreasonable. He thought the cleaning was not done satisfactorily and had obtained a comparable quote at a figure of £13.20 per hour, either for three hours fortnightly or two hours a week. These were their minimum requirements and did not include cleaning equipment or products. He also relied upon a letter from another resident, a Mr Brunner, who appeared to indicate that he was in fact carrying out the majority of the cleaning. For the Respondents it was asked whether it was reasonable to incur costs for cleaning which was an obligation under the lease and was the cost incurred a reasonable sum for the work that had been done. The comparable quote obtained by the Applicants did not include cleaning materials or cleaning equipment. We were asked to note the findings by the Tribunal which made the appointment of manager order as to the condition of the property at that time. The cleaning fees in dispute are only for the year 2009 through to July. On the schedule there are cleaning costs in January, March, April, May and July 2009 of £155.25 per month and each is disputed as being payable for the reasons set out in the schedule.

22. The second item of dispute in respect of the service charges was a legal and professional fee of £275.54 claimed by a surveyor Mr R E Raye, which according to the narrative of his invoice was for "visiting and inspecting the exterior of the premises on 27th January 2009 and taking photographs in readiness for preparing schedule of works." The sum claimed of £275.54 included time spent, out of pocket expenses and VAT. The Applicants dispute that this charge was reasonably incurred. The Section 20 procedures were not proceeded with in 2009 because of the application to the Tribunal to appoint a new manager but even prior to that application Mr Jeffrey had written a lengthy letter erroneously dated 28th January 2008 but was in fact 2009, in which acting for six of the leaseholders he makes detailed comments on the Section 20 notice and its inadequacy. This letter of 28th January 2009 post-dated the Section 22 notice which had been sent leading to the appointment order.

23. The third item in dispute was pest control. It was accepted by the Applicants that there had been an infestation of mice and rats but it was thought this was largely as a result of the poor maintenance of the building. Mr Jeffery thought that the treatment had resolved the problem and the charge was £57.50 per flat. The fee note was for £600 plus VAT and represented two visits to the property by Pest Go in February 2009. The Applicants challenged half the amount.

24. As a general comment Mr Jeffery asked for an explanation as to how the credits had been reflected in the accounts as a result of the Tribunal's rulings on Section 27A issues in 2009. The matter was explained but we are not convinced that Mr Jeffrey accepted the position and we will address that in the findings section.

25. We were told that the monies recently received from the landlord had not yet been credited to the reserve fund but that they would be so credited in the near future.

26. The hearing concluded late in the afternoon and with a view to avoiding the attendance of the parties the following day with the proposed new manager. We indicated to the parties that we were not minded to appoint a new manager for the reasons we will set out in the findings section.

27. On the question of costs, Mr Bates said that in principle the landlord would be looking to recover the costs on the assumption that the lease allowed them to do so. He accepted that if we found there were legitimate reasons for concerns on behalf of the applications, the matter should perhaps be dealt with on the basis that 50% would be recoverable from the landlord, who would of course have himself to pay the balance.

28. Mr Jeffery said that there were legitimate concerns and it was only after they served the notice and the applications that the information became available. He did not believe they had any choice but to proceed as they did. He also complained that the solicitors acting for the Respondents had not copied the Applicants into those letters and that this had resulted in him wasting time and money on copying and postage which he thought was deliberate. He sought a refund of the application and hearing fee and also suggested that the Respondents had acted vexatiously in not copying the Applicants into correspondence.

THE LAW

29. We have considered the provisions of the Landlord and Tenant Act 1985 and 1987. In particular, with regard to the determination of the reasonableness and the requirement to pay service charges section 18, 19 and 27A of the 1985 Act. In so far as the appointment of a manager is concerned we have considered the provisions of section 22 and 24 in reaching our decision

FINDINGS

30. We will deal firstly with the Section 27A issues and firstly the question of cleaning. In the tribunal's previous decision in 2009, the tribunal determined at paragraph 36, that the landlord was in breach of his obligations to keep the common access ways clean and lit and failed also to keep clean and tended the communal gardens and amenity areas. The comparable quote obtained by Mr Jeffery is of some assistance although it does not include cleaning materials or equipment which is strange if the company was a commercial enterprise, which we would have thought provided such items. Doing the best we can, therefore, we propose to allow half the amount set out in the schedule rounded to a figure of £75 per month for the months January, March, April, May and July 2009. The balance is disallowed.

31. Insofar as the legal and professional fees are concerned, we disallow those. The major works were not proceeded with. There is a suggestion that the Section 20 procedures had not been dealt with correctly. We find that the cost of a further survey for any additions that may have arisen in January of 2009, was an unnecessary expense. Such an inspection should, in our view, have been carried out when the scaffolding was in place but there is no suggestion that this was the case. Accordingly the total sum associated with the survey of £275.54 is disallowed.

32. The final matter relates to the pest control. It was accepted by Mr Jeffery that there was a mice problem and that that problem has been cleared. A cost of under £60 per resident for two treatments seems to us to be perfectly reasonable and we therefore allow that sum of £690 in full.

33. We then return to the Section 24 application under the 1987 Act and confirm that we are not minded to make an appointment of a manager as sought by Mr Jeffrey and the other leaseholders.

34. Our reasons for not doing so are that whilst there may be arguments that some of the reasons provided for in Section 24 have arisen which would make the appointment of a manager a possibility, we do not believe that the Applicants have overcome the 'just and convenient' provisions set out in that section. If we were to appoint another managing agent this would be the fifth manager in five years. It seems to us that Y & Y Management need to be given time to bring the management of the property into good order. We are not satisfied that the appointment of a new manager at this time would solve the ills which have undoubtedly beset the property. They did not start managing until the summer of 2012 and although we accept that there were discussions between Mr Jeffery and Mr Gurvits to reach agreement on matters, such agreement, for reasons not conveyed to us, was not achieved. By February 2013 a Section 22 notice had been served which would have undoubtedly affected the managing agents' willingness to become too heavily involved in the management of the property.

35. We do, however, have sympathy with the Applicants. For reasons we do not need to go into in this decision, the previous appointment of a manager in 2009 was overturned on appeal. We are, however, prepared to accept Mr Gurvits' and Miss Cohen's assertions that matters are progressing, that monies had been obtained from the landlord to correct the deficiency in the service charge fund and reserve fund and that Y & Y Management would now move forward to address the issues that had concerned the residents for so long.

36. One matter which caused Mr Jeffery concern was the method by which the findings of the previous tribunal in 2009 in respect of the reduction of service charge claims had been dealt with. We were shown copies of demands made of Mr Jeffery which showed a credit being given in respect of the reduction in the sums allowed by that previous tribunal. This is the correct way of dealing with the matter.

37. We think it might be helpful if we gave an indication as to the steps that we believe Y & Y Management should undertake in the near future to avoid Mr Jeffery and the other leaseholders coming to the conclusion that our willingness to grant a further time was in error. We would hope that Mr Jeffery would give Y & Y Management perhaps 18 months or so to correct the clear deficiencies that had arisen prior to the management by Mr Mortimer. It is accepted we believe that in the short period in 2009 when Y & Y Management were involvement little had been done and that they had not, in reality, had the opportunity to get to grips with the difficulties that were associated with the property before Mr Mortimer's appointment took place.

38. The findings in the decision indicate that the landlord has, in our view, taken advantage of the terms of the lease and not made payments as he should have done both in respect of the annual service charges and reserve fund contributions. It is essential that Y & Y Management get to grips with this and they implement paragraphs 45 to 52 of that decision.

39. The first thing, therefore, that we would say Y & Y Management need to address are the accountancy issues. There is a clear concern on behalf of the Applicants,

which is shared by us, that the reserve fund has not been fully accounted for. We say this because in the accounts for the year ending December 2011 on the balance sheet at page 219 of the bundle, there is shown a contingency fund of £42,811. However, this contingency fund is made up of some £20,330 service charge arrears. It is not wholly clear where those arrears rest but it does seem to us on the information available that a good proportion of that is as a result of the landlord's failures to make payments to the reserve fund as and when they fall due. In the 2012 accounts the reserve fund appears to have reduced to £18,897, the reasons for which are not wholly clear from the accounts. This needs to be resolved and greater transparency is required so that the tenants are aware of the income received from the landlord and are satisfied that the landlord is complying with the terms of the lease. The accounts should, therefore, show what actually is contained in the reserve fund and information should be given to the tenants to know what should have been contained within the fund. Steps then need to be taken by Y & Y Management to correct that position. This is something that we believe Y & Y Management should deal with as quickly as possible so that there is transparency moving forward. We should say that we consider any deficiencies in the reserve fund account are a matter for another Court. These are accounting and trust issues and as was stated in the Solitaire Property Management Co Ltd v Holden [2012]UKUT 86 (LC) not within our jurisdiction. The only issue now appears to be the question of interest that could have been earned on the reserve fund monies, which we now know are held in a separate account headed 'Drysdale reserve account' with Lloyds TSB. We do hope however, that the issue can be addressed to the satisfaction of the applicants by Y & Y and the respondent. Whether such interest is payable and at what rate is a matter best dealt with in the County Court under the trust provisions.

40. The next matter that we believe Y & Y Management need to address as quickly as possible is the state of repair of the property. In that regard, therefore, it seems to us that a surveyor, preferably one who is independent, should be instructed to prepare a full schedule of works with the estimated likely costs. This could then be discussed with the leaseholders and subject to the input of the leaseholders and the landlord, Section 20 procedures should be undertaken within the 12 months of the date of this decision. Those Section 20 procedures should be completed and a timescale put in place to enable those works, which are required, to be undertaken without further delay. Insofar as these works are concerned, reference was made to the landlord's potential refusal to carry out works which constitute an improvement. In particular the question of works to the gates affording access to the rear of the property, was discussed. It seems to us that the landlord is entitled to carry out works which might constitute an improvement by reference to clause 5(5)(k) which states as follows *"without prejudice to the foregoing to do or cause to be done all such works, installations, acts, matters and things as in the absolute discretion of the lessors may be considered necessary or advisable for the proper maintenance, safety, amenity and administration of the building and the estate."* It is on matters such as this that Y & Y Management, the landlord and the long leaseholders must work together. It seems to us that in having five assured short lettings in the property the landlord would want to maximise the rental return by ensuring the property is maintained to a reasonable standard. We of course make that statement without knowing the terms upon which the AST lettings have been negotiated.

41. A further area where we believe Y & Y Management need to grasp the nettle is to adopt a more proactive management stance and certainly to be more proactive in ensuring that the landlord fully complies with its covenants under the terms of the lease. Miss Cohen in her evidence to us indicated that much of her management was done upon taking 'instructions', although from whom, clearly not the applicants, it was not clear. However, there is the need for Y & Y Management to achieve a proper balance between the landlord's needs, wants and obligations and the tenants' needs, wants and obligations. We are concerned that in the past the landlord may have taken advantage of the arrangements whereby the long leaseholders complying with their obligations under the lease provide funds for maintenance works to be carried out potentially limited to the funds that they provide, thus enabling the landlord to in effect have a free ride. If that is the case, that should stop following our colleagues' decision which made it perfectly clear that the landlord is to observe his obligations under the terms of the lease, including the payment of interim service charges and contributions to the reserve fund. If that is done, then we believe that much of the concerns of the leaseholders will be abated.

42. We accept the evidence put to us by Mr Gurvits and Miss Cohen that they are endeavouring to put these shortcomings right. They have already recovered a substantial sum of money from the landlord which has yet to be fully allocated and we accept also that the issue of a Section 22 notice so early into their new management era would inevitably have curtailed their enthusiasm and ability to deal with the management as they may wish. By not making an appointment of a manager we are giving Y & Y Management the chance to put these deficiencies right. However, it seems to us that if there has not been a clear improvement within say the next 18 months, Mr Jeffery may take the view that he and his leaseholders need to return to the Tribunal to seek the appointment of a manager. We hope that that does not take place but the onus is on Y & Y Management with the help of Mr Jeffery and the long leaseholders to resolve the difficulties that have arisen.

43. Insofar as the costs and Section 20C are concerned, it does not seem to us the lease contains the clear and unequivocal wording enabling the landlord to recover the legal costs of these proceedings. At clause 5(5)(g) there are provisions for the employment of a managing agent and to employ others such as surveyors, builders, architects, engineers, tradesmen, accountants or other professional person. No mention of any member of the legal profession is referred to. Bearing in the mind the line of authorities in this regard, it seems to us that the lease does not make provision for the costs to be recoverable. In any event, it seems to us that the landlord's failures insofar as contributions towards the service charge and reserve funds until recently, are such that it would be inappropriate for it to be able to recover these charges through the service charge regime, if we were wrong in our interpretation of the lease. Accordingly we make an order under Section 20C considering it is just and equitable in the circumstances.

44. Insofar as the costs asked for by Mr Jeffery are concerned it seems to us that this is not a matter that falls within the remit of schedule 12, paragraph 10 of the 2002 Act. The complaint made by Mr Jeffrey was that he had sent papers through to the Respondents because he had not been copied into correspondence that the Respondents were having with the Tribunal about amendments to the directions. The directions were issued on 6th June 2013. They required, in the first instance,

for the Respondents to be responsible for the preparation of the bundles for the hearing. That order was in fact amended by the Tribunal on 21st June 2013 and Mr Jeffery was provided with a copy of the letter from the Respondents of 19th June 2013 and the reasons for the Tribunal's decision. It is accepted that papers were sent by Mr Jeffery to the Respondents prior to that. However, it is not the Respondent's fault if the Tribunal decides to vary the directions and as the bundles were not required until 2nd September 2013 it seems that Mr Jeffery could have delayed sending the papers across until a later date. In any event it does not seem to us that the Respondents have acted in a manner which would enable us to visit the penalties contained in the 2002 Act and accordingly we make no order for costs.

45. Similarly we are not inclined to order a reimbursement of the fees. We do think that the application under Section 24 of the 1987 Act was somewhat premature. Furthermore the issues in respect of service charges under Section 27A of the Act were relatively minor. There has been partial success for Mr Jeffrey and his fellow leaseholders in respect of the Section 27A application but in refusing to make an order that the landlord can recover their costs, it seems to be a fair balancing act to require the Applicants to bear the costs of the Tribunal fees.

Judge: *Andrew Dutton*

A A Dutton

Date: 4th October 2013