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LON/00BA/LVM/2006/0003

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS
UNDER SECTIONS 24 (9) OF THE LANDLORD & TENANT ACT 1985
(AS AMENDED)**

Applicant: Mrs Margaret Murray

Representative: In Person

Respondents: The Keir (Resident's Association) Ltd

Representative: Mrs V Reuter
Mr. B Barkes

Re: The Keir, West Side Common, London SW19 4UG

Hearing dates: 19th September 2006

Appearances: For the Applicant: Mrs Margaret Murray

For the Respondent: Mr. I Ryder-Smith
Mr. B. Barkes
Mrs Vivian Reuter

Members of the Residential Property Tribunal Service:

Miss L M Tagliavini BA (Hons) DipLaw LL.M
Mrs E Flint DMS FRICS IRRV
Mr.D Wilson JP

1. This is an application dated 30/4/06 made by Ms. Margaret Murray, the long lessee of Flat 3, The Keir, 24 West Side Common, London SW19 4UG pursuant to section 24(9) of the Landlord and Tenant Act 1985 seeking a variation to the management order made on 13/6/03 and subsequently varied on 28/5/05. The lessees of Flats 1 (Mr. Bryan Barkes), No. 2. (Mrs. Ian Ryder-Smith) No. 5 (Ms. Vivien Reuter, No. 6 (Lee Harlow) and No. 8 (Ms. Kate Sim) applied to be joined as Respondents. The lessees of Flats 7 and 9 ("The Wing") were specifically excluded from the Management Order and variation and are not parties to these proceedings.

2. This property and these parties have a long history of litigation, details of which are set out in the decisions dated 12/2/02 when the LVT determined a manager should be appointed on the application of Ms. Murray; the 13/5/03 order setting out the terms of the management order; and 28/6/05 seeking a determination of the payability of service charges and an extension of the management order; *see: LVT/SSC/013/00/99; LVT/AOM/034/009/00; LVT/AOM/007/001/03; LON/00BA/LIS/2004/0038.*

3. Three years have now passed since the first manager, Mr. J.A. Brown FRICS was appointed by the Tribunal having been proposed by Ms. Murray as a suitable appointment. His subsequent resignation resulted in the Applicant proposed

appointment of Mr. Robert Aitken-Sykes, FIRPM, AMRSH of Prior Estates Ltd. with a clear remit from the LVT as to the steps he was expected to take as a Tribunal appointed manager. One of those obligations was to attend at the hearing of this application held on 19/9/06. Mr. Aitken-Sykes failed to turn up at the hearing and when contacted by telephone on the morning of the hearing by the Tribunal, gave his explanation that although he had probably received the directions from the LVT dated 19/5/06 stating that he was to attend, he had not put the date in his diary and was not now able to attend as he had to go to a funeral that afternoon. Mr. Aitkin-Sykes told the Tribunal that he had known of the funeral for a week and accepted he had failed to notify the Tribunal or either of the parties of his unavailability.

4. Since the appointment of a manger in 2002/03, arrears of service charges have risen and been subjected to scrutiny by the LVT. It was found that the sums claimed from the Applicant by the Respondent for major works during 2001 were not liable to be paid as the correct section 20 Landlord and Tenant Act 1985 notice procedures had not been followed. Similarly, arrears of service charges in the for the period 2000-05 were determined not to payable by the Applicant as they had not been demanded by the manager then appointed, Mr. Brown, but rather by the Respondent Resident Association. It was however, indicated that these sums were likely to be payable by Ms. Murray were they to be properly demanded by the then Tribunal appointed manager within the right period i.e. before the expiry of 18 months from the date they were incurred.

5. In a letter dated 20/2/06, Mr. Aitken-Sykes indicated to Ms. Murray they he would be seeking from her, payment of service charge arrears. This was met with the response from Mrs. Murray that she believed herself not liable to pay them. Mr. Aitken-Sykes has not collected these arrears. Since the initial appointment of a manager, the Applicant has said she has paid the sum of £1,750 to be held for payment of the management fee and the service charges incurred by the manager under the Management Order once management is commenced. It is claimed by the Respondent, that Ms. Murray has failed to pay service charges in the sum of £17,640.00 (major works included) although it is now accepted by the Respondent that the majority of these sums are not now claimable from the Applicant in accordance with the earlier Tribunal decisions.
6. In this application to the LVT, Ms. Murray sought a number of variations including clarification that the managing agent was independent of the Residents Association and an extension of the period of management for a further 12 months. The Respondents opposed this application and sought instead a variation to the period of the management order bringing it to an end in December 2006, if not sooner.
7. Ms. Murray stated in evidence that nothing had been done since the appointment of a manger; that Mr. Brown had proved ineffective and that Mr. Aitken-Sykes was not responding to her long letters of enquiry to him. Ms. Murray stated that she thought it poor Mr. Aitkin-Sykes had not replied to her. Ms. Murray stated that it should be made clear in the order of appointment that the manager was an

independent agent and was not simply an extension of the Respondent's Residents Association. Ms. Murray stated that she thought it right to have a professional manager once she had reminded him of his duties as indicated in her letter of 5/7/06 to Mr. Aitken-Sykes. Ms. Murray also stated that she thought Mr. Aitken-Sykes a good manager although he had not responded to her request to have a meeting with him, were she could go through all the matters concerning her. In his report to the Tribunal (undated) but submitted 11/5/06, Mr. Aitken-Sykes supported the Applicant's suggested variations.

8. Ms. Murray opposed the resumption of the management of The Kier by the Respondent, specifically Mr. Barkes as she stated she thought he was too old and incapable of proper management.

9. In response, Mr. Ryder-Smith told the Tribunal on behalf of the Respondent that, since 1994 and the Applicant's arrival at The Keir, there had been a number of managers appointed but all of who had eventually left, due it was said, to the excessive demands on their time by Ms. Murray. Consequently, Mr. Barkes had taken over and the care of the property had improved until the mistake over the section 20 consultation procedures, which had led to the appointment of Mr. Brown. Although, unhappy with the appointment, the Respondent co-operated fully with Mr. Brown and passed over all the documentation that was needed for him to carry out his duties. However, Mr. Brown failed to carry out his obligations as manager as it appeared that his appointment was inconsistent with his contract of employment with Bells. Consequently, service charges were not

collected and in order to prevent further arrears from accruing, the Respondent had stepped in and made demands for annual service charges from the lessees. Ms. Murray, unlike the remainder of the lessees, refused to pay.

10. Mr. Ryder-Smith also told the Tribunal that since 2002/03, the Respondent had become more aware of the intricacies of property management and were now better equipped to manage this property, and would, where necessary rely on outside expertise to guide them. Mr. Ryder-Smith also told the Tribunal that no major works had been carried out to the building since 2001 and works to the exterior were again now required, as due to the unusual nature of the building these works were required more often than a building of a more conventional build and fabric.

11. Mr. Barkes told the Tribunal that as Company Secretary he had been happy to manage the property. Ms. Murray purchased her flat in 1994 and matters had proceeded smoothly until 2000 when major works were initiated. Resident meetings were open and Mrs. Murray invited, along with all the other lessees to attend with monthly management reports being sent out. An annual budget was set and for the last six or seven years had remained consistent with previous year. Mr. Barkes indicated he would be willing to resume the management of The Keir, as the day to day running of the house is quite straightforward. It was also stated that since a manager had been appointed the running of the building had gone downhill, specifically the report required by the LVT to be served by Mr. Aitkin-Sykes by 15/3/06 was several months late; that for the first time invoices were

paid late; service charge arrears were not collected from Ms. Murray; and no major works had been put in hand.

The Tribunal's Decision

12. The Tribunal considered carefully the steps taken by the Tribunal appointed managing agents and could see little or no improvement to the management of this property since the appointment. The Tribunal is of the view that both managers had shown a marked lack of interest in pursuing the collection of service charges from any defaulters, which in this case appeared only to be Ms. Murray, with the result that arrears of service charge had grown substantially. The Tribunal accept that Ms. Murray is quite rightly permitted to stand on her strict legal rights to refuse to pay sums improperly charged, but also note her own lack of confidence in the managers proposed by her to manage this property successfully. This is evidenced by her need to query at every step the manager's actions and to seek yet another variation of the Tribunal's order of the manager's duties. The Tribunal also notes that Mr. Aitken-Sykes failed to assume management of this property until the end November 2005 despite having been appointed some five month earlier, which he attributed to the several applications made, including those by Ms. Murray for corrections to errors and omissions to the order appointing him as manager.
13. The Tribunal appreciates that Ms. Murray is entitled to have her concerns aired and appropriately dealt with by the manager, although at the same time must recognise the financial constraints on a manger appointed on her application for

which charges of £250 per flat per annum are paid. The Tribunal notes that in the determination of the hearing dated 28/06/05, Mr. Aitkin-Sykes was expressly directed that he had authority to demand appropriate sums from any of the under-lessees for the period before his appointment without reference to the payments received by, or paid by the Keir Resident's Association, provided they were demanded in accordance with the terms of the lease and particularly the 1962 lease of Ms. Murray, subject to section 20B Landlord and Tenant Act 1985. These sums could include the costs of repairs to the garages and all the expenditure included in the Keir Resident Association's accounts from 2000 to 2005.

14. Despite this helpful direction, the Tribunal finds that almost no attempt has been made to collect these sums despite his letter of 20/2/06 to Ms. Murray in which he states that he has the ability to demand service charges found by the Tribunal to be reasonable for the periods 2000-05, as they are clearly part of his responsibility. In reply, the Applicant wrote on 8/3/06, that she relied on section 20B of the Landlord and Tenant Act 1985 and that in her view there is unlikely to be any outstanding amount due. The Tribunal might have expected to see some conciliatory gesture on the part of Ms. Murray and an offer to contribute at least part of those service charge sums, particularly in respect to charges for gas and electricity utilised by her.

15. Since then, it appears that little if anything has been done by Mr. Aitken-Sykes to further this matter. The Tribunal was told that the property is now in need of

further external works and is not confident that the appointed manager is sufficiently on top of matters to progress this. The Tribunal noted that Ms. Murray evinced a degree of dissatisfaction with the manner in which Mr. Aitken –Sykes had carried out his management duties and ended her letter of 8/3/06 with the threat of county court proceedings in order to enforce the order if necessary.

16. The Tribunal was left unimpressed as to the casual approach Mr. Aitken-Sykes adopted toward his duties and his responsibilities, and specifically his failures to comply in respect to; (i) the direction that he report to the LVT in a timely manner and (ii) was to attend at a hearing on 19/9/06. The Tribunal noted that Mr. Aitken-Sykes has the authority to make applications to the Tribunal in his position as manager for any extension of time or variation of the wording or time appointed yet has failed to do so. Consequently, the Tribunal was left with little confidence in Mr. Aitken-Sykes' interest or ability to manage this particular property, particularly when balanced against the demands made upon him by Ms. Murray and the low level of recompense afforded to him.

17. The Tribunal is of the opinion that the variations sought by the Applicant are not necessary to clarify the remit of the manager, and are in any event likely to prove ineffectual so long as the approach adopted by Mr. Aitkin-Sykes is maintained. The Tribunal is of the opinion that Mr. Aitken-Sykes' approach to his duties regarding this building is unlikely to significantly change as he has had ample opportunity and time to move matters along. However, the Tribunal is satisfied that since the appointment of a manger, the management of The Keir has

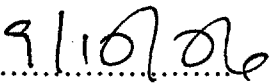
deteriorated to the point that unless the lessees act voluntarily to collect service charges and pay bills, little or nothing is done. The Tribunal attributes this inactivity, not to the lack of assistance or co-operation afforded by the Respondent's members, but rather to the low level of recompense allowed to the manager, and the high level demands made by Mrs. Murray on his time and expressions of discontent and her unwillingness to depart from the strict letter of the law and contribute not only to the costs of insurance, repair and maintenance but also for the supply of gas and electricity to her flat, although she has enjoyed their benefit. The Tribunal also finds that the adversarial and unnecessarily demanding approach adopted by Ms. Murray towards both the Respondent Company and Mr. Aitken-Sykes to be designed to draw out and complicate matters unnecessarily. This has had the result, whether incidental or intended, of making service charges irrecoverable due their delay in being validly demanded. This is to be compared to the approach adopted by the other lessees all of whom have paid the service charges demanded (whether strictly in compliance with the black letter of the law or not) and almost all of who have sought to oppose Ms. Murray's application for variation.

18. Having heard from Mr. Ryder-Smith, Mr. Barkes and Mrs. Reuter the Tribunal is satisfied that the events leading up to the initial appointment of a manager will not be repeated. The Tribunal is satisfied that the Respondent's members are sufficiently wiser and more experienced in the management of this property having received extensive guidance from the LVT through its past decisions as to where the Respondent Company had gone wrong previously. The Tribunal is

satisfied by the reassurances from the Respondent's members that they are suitably able to manage the property without the appointment of a Tribunal appointed manager and will when necessary, seek and take on board expert advice in order to keep abreast of legal developments and specifically in relation to the new consultation procedures for major works. It appears to the Tribunal that there is some urgency in getting a major works programme of external repair and redecoration underway and little benefit in continuing with the present management regime.

19. Consequently, the Tribunal refuses the Applicant's application to vary the order of 28/6/06 in the manner sought and finds it is appropriate to allow the Respondent's cross-application for variation and directs that the order of 28/6/05 be varied pursuant to section 24(9) Landlord and Tenant Act 1987 at paragraph 3 so that it should continue only to 17/10/06.

Chairman: 

Dated: 

LEASEHOLD VALUATION TRIBUNAL

VARIATION OF THE MANAGEMENT ORDER DATED 13 MAY 2003 AND
VARIED ON 28 May 2006.

RE: THE KEIR, 24 WEST SIDE COMMON, WIMBLEDON, LONDON SW19 4UG

BETWEEN:

Mrs. M. Murray

Applicant

The Kier Residents Association Ltd

Respondent

The Tribunal varies paragraph 3 of the order dated 28/6/06 which now shall read:

“In accordance with s.24(9) of the Landlord and Tenant Act 1987 the 2003 order shall be varied so that it continues until 17/10/06.”

Chairman: L M Tagliavini

Dated: 8/10/06