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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/LAM/2012/0002

Decision of the Leasehold Valuation Tribunal on an application under Section 24 of the Landlord and Tenant Act 1987

Applicants:	David Hayes Jonathan Michael Gay
Respondent:	Bayside (2003) Limited
Re:	10 Crabton Close Road, Boscombe, Bournemouth BH5 1HL
Date of Application	6 March 2012
Date of Inspection	2 July 2012
Date of Hearing	2 July 2012
Venue	Bournemouth County Court
Appearances for Applicant	Mr Hayes in person
Appearances for Respondent	Mr R Friend & Miss T Lloyd
Also attending	Mr S Friend & Mr Z Grzywna
Members of the Leasehold Valuation Tribunal	
	M J Greenleaves Lawyer Chairman
	A J Mellery-Pratt FRICS Valuer Member
Date of Tribunal's Decision:	13 July 2012

Decision

1. The application for appointment of Mr John Andrew Woodhouse as Manager is refused.
2. Section 20C. The Tribunal makes no order

Reasons

Introduction

3. This was an application made by the Applicants David Hayes and Jonathan Michael Gay under Section 24 of the Landlord and Tenant Act 1987 (the Act) for appointment of John Andrew Woodhouse as Manager in respect of the Property 10 Crabton Close Road, Boscombe, Bournemouth.
4. Mr Hayes had served notice on the Respondent on 2 February 2012 under Section 22 of the Act on the Respondent and on 6 March 2012 made the application to the Tribunal seeking the appointment of Mr Woodhouse as Manager. Mr Gay was joined as an Applicant on his own application.

Inspection

5. We, the Tribunal, inspected the Property in the presence of the parties and lessees. The interior of the Mr Hayes' flat – flat 2 – was inspected at his request in his presence.
6. The Property was built many years ago and has been converted into 7 flats. 6 of these are served by internal common parts while flat 3, which also has its own garden, has its own entrance to the rear. The external common parts comprise tarmac and pavior block hardstandings to the front and rear for car parking with a connecting access way. Subject to points mentioned below, the Property appears to be in reasonable condition for its age and character and maintained, decorated and cleaned to a reasonable standard. We also noted a tree to the north of the Property which had been lopped.

Hearing

7. We took into account those parts of the case papers to which we were referred and we also heard submissions and evidence from Mr Hayes, Mr R. Friend and Ms T Lloyd. (Mr Gay took no part in the proceedings and filed no evidence or submissions). We also heard evidence from Mr Woodhouse as to his qualifications and experience in management.
8. Mr Hayes had made his application on the basis of issues set out in his notice which, amongst other things, included complaints of personal conduct, running of the Respondent company (of which all lessees are shareholders) and variation or attempted variation of his lease by the Respondent. As we explained to him, these are not matters which were capable of remedy by appointment of a manager and were not matters to be taken into consideration in making the determination sought.
9. Mr Hayes substantive complaints related to unreasonable service charge demands, service charge payment dates, accounting, unfinished work, payment of the cost of tree lopping from the reserve fund, uncompleted work to the rear wall, internal dampness to his flat on the external walls, drainage issues arising from the block paving work. Some other matters, e.g. the south boundary fence, were no longer an issue.

Consideration

10. In respect of these matters, we found, on all the evidence and our inspection:
 - a) there had been some reduction and increase in demands but these were not significant; there was no application before us alleging unreasonable demands;
 - b) on the evidence, the service charge payment dates resulted in payments being required later than the dates specified in the lease and could not therefore be taken as a complaint;

- c) there had been some past misunderstanding about Mr Hayes' issues about the accounts;
 - d) although there is some unfinished work to the rear wall, it is not greatly significant in terms of this application;
 - e) there was no significant problem relating to the block paving;
 - f) the tree had been lopped because of its effect on the Property; it was appropriate to pay the cost out of the reserve fund as it was a one-off item;
 - g) internal dampness: Mr Hayes had obtained a written report from his surveyor dated 13 April, 2012 which gave no indication of such dampness. This was confirmed by our own inspection, so we could identify no urgent problem to be addressed by the Respondent;
 - h) some work had been carried out to the north wall and scaffolding was in place for external decorative work to be carried out.
11. Taking the above matters into account, we considered that while the management of the premises might be improved, the grounds of the application are not substantial. Under section 24 of the Landlord and Tenant Act 1987 which is set out in full in the Appendix to these reasons, the Tribunal may appoint a manager in various circumstances. We found that the provisions of that section which might be relevant to this application were limited to:
- a) Section 24(2)(a) where the Tribunal is satisfied that there is a breach of an obligation owing to the Applicants relating to the management of the premises; that it is just and convenient to make the order in all the circumstances of the case;
 - b) Section 24(2)(ab) where the Tribunal is satisfied that both unreasonable service charges have been made or are proposed or likely to be made and that it is just and convenient to make the order in all the circumstances of the case;
 - c) Section 24(2)(b) where the Tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
12. in the light of our findings as set out above, we were not so satisfied in respect of any of those provisions to the extent that it would be just and convenient for us to make such an order in all the circumstances of the case. We accordingly refused to appoint a new manager.
13. The Applicants also applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent should not be able to recover any of its costs incurred in relation to these proceedings by way of service charge. In the circumstances as we found them, we decided not to make an order under Section 20C.

14. [Signed] MJ Greenleaves
 Chairman
 A member of the Leasehold Valuation Tribunal
 appointed by the Lord Chancellor

Section 24 Landlord and Tenant Act 1987 Appointment of manager by the court.

(1) A leasehold valuation Tribunal may, on an application for an order under this section, by order (whether interlocutory or final) 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 court 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 or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

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

(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) where the Tribunal is satisfied—

(i) that unreasonable variable administration 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;

(ac) where the Tribunal is satisfied—

(i) that 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.