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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MW/LAM/2012/0011

Re : Providence Corner, 37 Pyle Street, Newport, Isle of Wight. PO30 1JA

Applicant Providence Corner Residents Association / the Lessees of Flats 1-5 & 7-16 c/o David Orlik of John Rowell Estate Management

Respondent Island Securities Limited

Date of Application 14 September 2012

Date of Inspection 19 November 2012

Date of Hearing 19 November 2012

Venue Newport (IOW) Law Courts, 1 Quay Street, Newport, Isle of Wight. PO30 5YT

Representing the parties The Applicant was represented by Mr David Orlik of John Rowell Estate Management

The Respondent was neither present nor represented

Members of the Leasehold Valuation Tribunal:

P J Barber LL.B	Lawyer Chairman
D Lintott FRICS	Valuer Member
Mrs M Phillips JP	Lay Member

Date of Tribunal's Decision: 26 November 2012

Decision

1. The Tribunal determines in accordance with the provisions of Section 24 of the Landlord and Tenant Act 1987 (the 1987 Act) that a manager be appointed to carry on in relation to the Block functions in connection with the management thereof in accordance with the management order appended to this decision.
2. The Tribunal further determines in accordance with the provisions of Section 20(C) Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent / landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees.

Reasons

BACKGROUND

3. This application for the appointment of a manager under Section 24(1) of the 1987 Act was made by Providence Corner Residents Association on behalf of 15 of the 16 residential leaseholders ("the Applicant"), in respect of the block comprising 16 residential flats situate at and known as Providence Corner, 37 Pyle Street, Newport, Isle of Wight PO30 1JA ("the Block"). The Block comprises a purpose built four storey building of 16 residential flats, constructed above two ground floor shops; one of those units is currently occupied by a charity sports wear outlet known as "Sporting Change" and the other unit is let to, and occupied by "Pizza Express".
4. As required by Section 22 of the 1987 Act, the Applicant has served a notice on the Respondent dated 8th August 2012, setting out the grounds for the application. The notice gave the Respondent warning of the Applicant's intention to make an application to the LVT for the appointment of a manager unless the remedial action / steps set out in the notice were satisfactorily resolved within a period of thirty days from the date of the notice. It is the Applicant's case that not all of the required steps / remedial action have been taken by the Respondent.

THE LAW

5. Section 24 of the 1987 Act provides that the LVT may, on an application for an order under that section, appoint a manager to carry out in relation to the relevant premises, (a) such functions in connection with the management of the premises, or (b) such functions of a receiver, or both as the LVT thinks fit.

By virtue of Section 21(2) of the 1987 Act, the premises in respect of which an order may be made consist of the whole or part of a building, if the building or part contains two or more flats. In addition, Section 24(3) of the 1987 Act provides that :

"the premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made."

In brief summary, by virtue of Section 24(2) of the 1987 Act the LVT may only make an order in one or more of the following circumstances :

- (a) Where the LVT is satisfied that :

The landlord is in breach of any obligations owed by him to the tenant under his/her tenancy and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case.

- (b) Where the LVT is satisfied that :

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) Where the LVT is satisfied that :

The landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and that it is just and convenient to make the order in all the circumstances of the case.

- (d) Where the LVT is satisfied that :

Other circumstances exist which make it just and convenient for the order to be made.

INSPECTION

6. The tribunal's inspection took place in the presence of Mr David Orlik and Mr David Webster, both of John Rowell Estate Management, for the Applicant; in addition certain of the lessees were present; namely Mrs Cheek (Flat 10); Mrs Strydom (Flat 15); Mr Wellfare (Flat 1) and Mr Feeney (Flat 2). The Respondent was neither present nor represented.
7. The Block is located on the corner of Pyle Street and Town Lane, Newport and comprises 6 residential flats located on each of the First and Second Floors, and 4 residential flats on the Third Floor. There are two shop units located at ground floor level and there is a shared service yard area located to the south and west of the Block. The Block was constructed in or about 2003; external walls at ground floor level are formed of coloured rendering and glass; the walls above were formed of yellow face bricks and the top floor comprised a mansard type roof, with composite slates and parapets concealing a flat felted area. Entry to the 16 flats is obtained by a single entrance door and narrow hallway at ground floor level, from the pavement at Pyle Street; single flights of stairs lead to the first, second and third floors above. The entrance door has a magnetic self closing device fitted, which appeared not always to operate correctly at the time of the inspection and which had previously not been closing properly on a regular basis, until further repair about six months ago. The walls in the landing and stairwell areas are emulsion painted and the stairs include timber handrails.
8. The Tribunal members made brief internal inspections of Flat 1 (First Floor); Flat 7 (2nd Floor) and Flat 15 (3rd Floor); the Tribunal also inspected all the landings and obtained access on to the flat roof section in order to examine the condition of the felting and gully outlets. There were signs of a water leak problem in the kitchen ceiling of Flat 1, possibly resulting from a leak from the bathroom of Flat 7 above. The bathroom in Flat 7 was in a poor condition with considerable signs of damp, mould, condensation and a lack of any ventilation, as a result of a seemingly defective extractor fan. There were signs of a water leak problem resulting in staining in the lounge ceiling of Flat 15. Various of the landing lights on each of the floors were not working. Inspection of the flat roof area indicated that poor quality felting material had been used and there were several areas of lying water; there were outlet gullies which appeared to be inadequately dressed and of inferior and crude construction and which seemed likely to be resulting in, or may have contributed to the water leakage in the ceiling of Flat 15.
9. The rear service yard, where refuse bins are located, served not only the two ground floor shop units, but also a first floor residential flat physically attached to the rear of the Block, as well as certain other commercial shop units, including "Iceland". The service yard was in an untidy condition and in one corner a manhole was visibly overflowing with running water. The Block was served by plastic guttering which appeared to be of a small size in proportion to the size of the Block; tufts of grass growing out from the guttering, were visible from ground floor level, as were one or two detached slates which the lessees said had, in at least one case, been resting loose on the guttering at third floor level for about 18 months.
10. The Tribunal members also inspected inside the "Pizza Express" restaurant premises, where there was evidence of a water staining problem extending for some distance across the middle section of the restaurant ceiling; shop staff advised the Tribunal members that on some occasions the problem extends to water dripping from the ceiling, but not necessarily only during periods of heavy rain.

HEARING AND REPRESENTATIONS

11. David Orlik and David Webster attended for the Applicant; in addition the following lessees, namely : Mrs Cheek, Mrs Strydom, Mr Wellfare, Mr Feeney, Mr Warburton, Mr Julian and Mr and

Mrs Newnham were in attendance. The Respondent did not attend the hearing and was not represented.

12. Mr Orlik presented evidence for the Applicant as set out in the Applicant's Statement of Deficiencies which formed part of the Applicant's bundle, and also gave the Tribunal a summary of which he considered to be the Respondent's management shortcomings as detailed in the Section 22 notice.
13. Mr Alastair Watson for the Respondent had submitted late written responses to the Applicant's Statement, by e-mail sent to the Tribunal offices on the working day prior to the hearing date; Mr Orlik nevertheless confirmed that he had received a copy and that he had had an opportunity to read the Respondent's documents.
14. So far as was relevant to its consideration and decision, the Tribunal noted the all case papers and the evidence and submissions, which are commented upon so far as may be appropriate, below.
15. No copy of a formally completed Lease for any flat in the Block was provided by either party to the Tribunal, although a copy of an uncompleted draft lease for Flat 15 had been included with the Applicant's bundle; the Tribunal was assured verbally at the hearing by Mr Orlik that all 16 leases were substantially completed in such form.

CONSIDERATION

16. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of both parties.
17. The Tribunal considers that a manager for the Block should be appointed as a result of the issues, as presented in written evidence and as developed at the hearing itself. In reaching a decision, the Tribunal had regard to the fact that the Respondent had, in his letter of 14 November 2012, agreed to the appointment of John Rowell Estate Management. However, although the Respondent had denied certain of the management shortcomings alleged by the Applicant, it had for example, still not actually produced any of the supporting vouchers or receipts in respect of service charges claimed for previous years or explained clearly the lack of service charge accounts for 2003-5 or the lack of accountant's certificates.
18. The Tribunal is satisfied that the Respondent is in continuing breach of obligations owed by it under the leases for the Block, relating to the management thereof and that such breaches may be likely to continue. The Tribunal is further satisfied that unreasonable service charges have been made and that accordingly, in each case, it would be just and convenient in all the circumstances of this case to make a management order. In summary, the Tribunal is satisfied that the Applicant has established the grounds required in Section 24 of the 1987 Act for the appointment of a manager.
19. The issues which are of particular concern to the Tribunal are the Respondent's lack of communication with the lessees, especially in regard to ongoing water leaks from the roof at the property since or about 2009; a history of repeated defects with the main entrance door to the flats, resulting in access to communal areas being obtained by unauthorised third parties; repairs to the communal fire alarm outstanding from July 2012; failure to pay the electricity account for the common parts causing disconnection of the electricity supply and subsequent disabling of the lighting and fire alarm system; and other concerns in relation to accounting generally, including a lack of certainty as to the holding of service charge moneys in a separate account in trust; certified annual statements of account not being issued to lessees; no copies of supporting invoices and receipts being provided; an absence of tenant rights notices accompanying demands, and otherwise. Although Mr Watson had provided details of what he claimed to be a separate bank account into which service charge proceeds were paid, Mr Orlik said that the account

number was in fact the same as that previously advised to have been used, and thus still considered by the Applicant to be defective.

20. The Tribunal was concerned variously that the Respondent had not presented accounts to lessees for the years 2003, 2004, 2004 and 2005; that the account for 2006 to 2009 had apparently been prepared on a consolidated basis; that the account summaries for 2010 and 2011 were subject to anomalies including a lack of accountant's certification; absence of recorded credits from payments on account made previously by lessees; a seemingly excessive waste payment of £11,888.00 in 2006-09; a management charge exceeding 10% contrary to the requirements of the leases; remaining concerns over VAT issues including an apparent addition of VAT to a water services account and remaining doubt as to the holding of service charge moneys other than in a separate trust account. The written submissions made by the Respondent were not in the view of the Tribunal sufficient to resolve definitively, or address fully all the Applicant's concerns.
21. The Tribunal also heard evidence of the alleged failure of the Respondent to maintain the roof of the Block resulting in water leaks; the Tribunal noted during the inspection the poor nature of the water outlet gullies on the roof, and considered that a routine or recurring programme of inspection and clearance might have alleviated many of the problems, had it been undertaken. The Tribunal were further concerned at the intermittent lack of a properly maintained and secure main door entry system, which had allowed access to the communal areas to be obtained by unauthorised third parties. Although the door access system appeared to be partly operating correctly at the time of the inspection, Mr Orlik indicated that it had been causing recurring problems until about six months ago; however prior to that, trespassers had been obtaining access, and on one occasion such trespassers had attempted to burn certain items in the hallway. The Tribunal were particularly concerned that a fire in the communal entrance hall could have catastrophic consequences, given that the entrance serves all 16 flats and there was no other currently usable fire exit available. The timber meter cupboard doors in the ground floor entrance hallway and timber handrails could be readily combustible and the risks were further increased due to ongoing defects in the communal fire alarm. The Tribunal further took into account the other alleged management failings in relation to the service charge accounts, provision of invoices and otherwise as previously mentioned.
22. The Tribunal considered the suitability of the proposed manager nominated by the Applicant, being Mr David Orlik of John Rowell Estate Management. Mr Orlik advised the Tribunal that he had worked at John Rowell Estate Management for the last 9 years and that the firm is now owned by Mr Orlik and his wife; Mr Orlik submitted that the firm is probably the largest property management business on the Isle of Wight, looking after well over 100 blocks of flats. A copy of the RICS Management Contract and Professional Indemnity Insurance (PII) policy were provided in the Applicant's bundle and Mr Orlik confirmed that a dedicated deposit account would be maintained for all service charge funds received for the Block. Mr Orlik is not qualified as a chartered surveyor but has a B.Sc degree from Reading University, but submitted that he has many years of practical experience as well as the confidence generally of the lessees in the Block. The Tribunal was thus satisfied that Mr Orlik has the necessary experience, qualifications and resources to be a robust and effective manager of the Block.
23. Mr Orlik submitted that if a management order were to be made then it should be for a minimum of 3 years in order to allow sufficient opportunity for the amount of work to be undertaken to bring the Block into a proper state of repair and condition; Mr Orlik was of the view that the 12 months period which had been proposed in written representations by Mr Watson for the Respondent, was simply not a realistic or long enough period, given the nature of the tasks required. Mr Orlik further submitted that there would be practical advantages in including the 2 commercial units within the terms of any management order, as well as the responsibility for service charge, insurance and ground rent collection for both the residential and commercial

units. If the responsibilities for the residential and commercial units were to be split, Mr Orlik submitted that practical management problems and difficulties would be likely to arise, as a result of him having to liaise and co-ordinate with the Respondent, in circumstances where there had already been a long history of neglect and failure by the Respondent to act and co-operate in the past. For the reasons stated above the Tribunal makes a management order in the terms of the draft set out in the schedule hereto.

24. The Applicant also applied for an order under Section 20(C) 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 to make an order that none of the costs incurred by the Respondent are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees of the Block

25. We made our decisions accordingly.



[Signed] P J Barber LL.B

Chairman

A member of the Tribunal appointed by the Lord Chancellor

SCHEDULE

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 24(1) OF THE LANDLORD AND TENANT ACT 1987

Case No. CHI/00MW/LAM/2012/0011

BETWEEN :

Providence Corner Residents Association

and

Island Securities Limited

MANAGEMENT ORDER

Interpretation : In this order :

- (a) "the Block" means the 16 residential flats and communal areas and the two ground floor shops situate at Providence Corner, 37 Pyle Street, Newport, Isle of Wight. PO30 1JA
- (b) "the Respondent" includes any successors in title to the Respondent
- (c) "lessee" means a person holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987

UPON hearing Mr D Orlik the proposed manager

AND UPON considering the evidence

IT IS ORDERED pursuant to Section 24 of the Landlord and Tenant Act 1987 that :

Mr David Orlik of 29 Connaught Road East Cowes Isle of Wight PO32 6DW ("the Manager"), is appointed manager of the Block for a period of three years from 1st January 2013 ("the Period")

The Manager shall during the Period collect and apply in accordance with this Order :

- (a) the ground rents reserved on each and any of the flats included within the Block which have been demised on long leases (but excluding the two ground floor shop units); and
- (b) the service charges (including insurance contributions) payable by (i) the lessees in the Block and (ii) by the lessees of the two ground floor shop units.

During the Period the Manager shall carry out the management functions in respect of the Block in accordance with the rights and obligations of the landlord under the leases demising the flats and

in accordance with all relevant statutory requirements and in compliance with the requirements of the service charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State for England and Wales under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993

AND in particular and without prejudice to the generality of the foregoing the Manager shall :

- (a) arrange, manage and where appropriate, supervise all maintenance or building work to the Block;
- (b) hold all monies received pursuant to this Order as trustee in an interest bearing account pending such monies being defrayed;
- (c) prepare service charge demands and service accounts and budgets on an annual basis;
- (d) account annually to the Respondent for ground rents collected;
- (e) account annually to the Respondent and the lessees of the flats or other parts of the Block for the monies received as service charges;
- (f) be entitled to take such action and court or tribunal proceedings as may be necessary to collect the service charge or rent arrears and to take such court action as may be necessary or desirable to secure compliance with the lessees obligations under the leases relating to the flats in the property

The Manager shall maintain a policy of professional indemnity insurance to cover his obligations and liabilities as manager.

The Manager shall be entitled to charge a fixed management fee of £2,000.00 + VAT per annum (plus contractual annual RPI increases) in respect of providing such management services to be paid on a six monthly basis in arrears, together with a reasonable fee for setting up and overseeing (project managing) larger items of work .

There shall be liberty for the parties and the Manager to apply to the Leasehold Valuation Tribunal for variation or discharge of this Order pursuant to Section 24(9) of the Landlord and Tenant Act 1987.