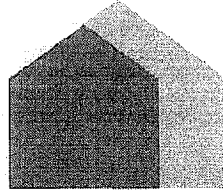


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**Residential
Property
TRIBUNAL SERVICE**

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1987, section 24

LON/00BK/LAM/ 2012/0010

Premises: 5 Leamington Road Villas, London W11 1 HS

Applicant(s): Mr James Cadisch and Mr Marc Salmon

Represented by: Mr Marc Salmon

Respondents: Mr Ken and Eileen Standish

Represented by: In Person

Date of hearing: 2 August 2012

Appearances: Mr Krish Karol – The Residents Management Company Ltd

**Tribunal: Ms M W Daley LLB (Hons)
Ms S Coughlin MCIEH**

Background

- (a) 5 Leamington Road Villas (“the premises”) are a converted house built around 1860 and converted into 4 flats.
- (b) The applicants hold long leases of the property which requires the respondent to provide services and the applicants to contribute towards their costs by way of a service charge. The Respondents also own the freehold of the adjoining property, 3 Leamington Road Villas, and the leasehold interest in 3 of the 5 flats in that building. These flats are occupied by tenants of the Respondents
- (c) On 8 March 2012 the applicants served on the respondents a preliminary notice under section 22 of the Landlord and Tenant Act 1987 (“the Act”). The Notice required the Respondent to comply with matters set out in the fourth schedule of the notice.
- (d) On 3 May 2012 the Applicant applied to the Tribunal for an order under Section 24 of the Landlord and Tenant Act 1987 (“The 1987 Act”). In their application the Applicant stated -: “... *Following the serving of the Section 22 Notice the Managers did respond by writing to the Lessees, yet they have failed to address all the points in the fourth schedule.*”
- (e) The Applicant’s then conclude by stating that if the premises are to be maintained to “*good let alone a high standard these Managers need to be changed as quickly as possible*”
- (f) At the pre-trial review on 29 May 2012 the Tribunal issuing the Directions, noted at paragraph 2 of the Directions that -: *Whilst not formally admitting the grounds relied on by the Applicants the Respondents accept that it would be just and convenient to appoint a manager but they do not agree to the appointment of either or*

both of the Applicants. Consequently the only issue for the tribunal is the identity of the proposed manager.”

- (g) The Tribunal, at the Directions hearing directed at paragraph 4, that -: *“The Applicant shall by no later than 19 June 2012 send to the Respondents-: a statement from the proposed manager that should include the following- (i) the proposed manager’s past experience (ii) the proposed managers professional qualifications (iii) details of any previous appointments by the tribunal (iv) the proposed managers terms of business (v) a proposal for the management of the property.”*

Hearing

2. At the hearing the Applicants were represented by Mr Salmon, Mr Cadisch had been unable to attend. Mr and Mrs Standish, the freehold owners, current managers, and Respondents (to these proceedings) were also in attendance.
3. Also in attendance at the Applicants’ behest, was Mr Kristof Karol a Residential Property Manager (who had been put forward by the Applicants as the proposed manager in compliance with direction 4).
4. The Tribunal noted that no ground under section 24 had been admitted by the Respondents, who did not accept that they were in breach of any of their duties as managers of the premises. Mr and Mrs Standish had indicated that they no longer wished to manage the premises, and that they were not opposed to a manager being appointed.
5. Their objections had been to the appointment of either of the leaseholders. The Respondents also wanted to be satisfied that any manager appointed was suitably qualified.

6. The Tribunal were grateful for this indication, and stated that the Respondents would have an opportunity at the hearing to ask questions of the proposed manager.
7. The Tribunal noted that as no grounds for the appointment were admitted by the Respondents and as the Tribunal were not required to formally consider whether, the circumstances which gave rise to the appointment of a manager existed. The Tribunal would therefore consider whether to appoint a manager in accordance with Section 24 2 (b) which states: "... where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made."

The decision of the Tribunal on whether circumstances exist which make it just and convenient for the order to be made

8. The Tribunal noted that the relationship of mutual cooperation and trust necessary for the management of premises, between freeholder and leaseholder had broken down. Also importantly the Freeholder no longer wished to manage the property. Therefore the Tribunal accepted, subject to a suitable manager being appointed that circumstances existed where it was "*just and convenient*" for an order for the appointment of a manager to be made.

The details of the proposed manager Mr Krish Karol Residential Management Company

9. The Tribunal noted that the details of the proposed manager were set out in the Applicant's bundle. The manager proposed was Mr Krish Karol of the Residents Management Company. The Tribunal asked Mr Karol how long he had been managing residential property. Mr Karol informed the Tribunal that he had been managing long leasehold property since 1986 and had been involved with a Right to Manage Company in 1990.
10. In respect of his management of properties, he had been a member of the Association of Residential Property Managers ARMA since ARMA had been established. Prior to being a property manager he had been running

a construction firm and therefore had an in depth knowledge of property maintenance.

11. The Tribunal asked for details of the size and scope of Mr Karol's property management company. Mr Karol informed the Tribunal that there were two 'front line staff, (which included himself and a personal assistant) and two other staff. There was also a telephone number for a contractor who provided emergency 'out- of -hour's service'. This service was accessed through a call centre ensuring 24 hour cover. In Mr Karol's absence calls would be routed to his personal assistant. In Mr Karol's experience this level of cover had proved sufficient over the last four years in which he had provided this service.
12. Mr Karol currently managed in excess of fifty blocks, which varied from a block with 200 flats to the smallest one, being a property with two flats. The service charge budget for these properties varied from ½ a million to approximately two thousand pounds. The majority of these properties were within the West London area with one being in Croydon, and in Mr Karol's estimate the premises was about ten minutes' drive from his business premises.
13. Mr Karol was asked by the Tribunal to elaborate on his plans for the management of the building. Mr Karol stated that he was familiar with the building (having seen the premises). He was of the view that there were no urgent repairs that needed to be dealt with, although he considered that his first priority would be to commission health and safety inspections including an asbestos survey.
14. Mr Karol stated that he had also had an opportunity to inspect the lease, and in his view the terms of the lease were unhelpful in that they provided for the service charges to be paid in arrears, and were recoverable on the production of a certificate at the end of the financial year. In Mr Karol's view this was an obvious burden placed on the freeholder. However it may need a variation of the lease in order to assist in cash flow to provide for major works and repairs.

15. Mr Karol was asked about his knowledge of the law and code of guidance on residential property management and how he kept abreast of the various changes.
16. Mr Karol stated that as a member of ARMA he attended the courses that were organised on property management. Mr Karol also attended specialist courses organised by solicitors, Teacher Stern, (who undertook legal work on the managing agents' behalf) on issues such as section 20 and the latest changes to residential property law.
17. The Tribunal asked for details of his charges, Mr Karol stated that his charge was £230 per unit, in respect of his duties these were set out in his proposals which were included in the bundle.
18. The matters which were included in the fixed fee were all of the services in respect of rent collection including keeping a statement of monies received and expended for the financial year, issuing demands, keeping a statement of account, auditing the accounts, keeping property records in relation to deeds of covenant and assignments etc. Ensuring that the building was properly and sufficiently insured, the appointment of staff and contractors and maintenance not falling under section 20 of the Landlord and Tenant Act 1985, and the preparing of specification of work for small maintenance items.
19. Mr Karol informed the Tribunal that he had a substantial number of contractors who he used in the course of his work. The Tribunal asked about the number of contractors who were currently employed at the premises. The Tribunal were informed that currently there was a cleaner, who was engaged to clean the premises once a week.
20. Mr Karol stated that he would personally carry out inspections of the premises initially every two months, and once he was familiar with the property he would anticipate that he would then commence quarterly inspections.

21. In respect of additional charges, Mr Karol stated that he would charge extra for supervising major works, and this would be at the rate of 12.5%. Mr Karol stated that he had a good working relationship with Smith Baxter Surveyors and he anticipated that the supervision, would be directly undertaken by the surveyors and this would be incorporated into the 12.5% fee for supervision of major works.
22. The Tribunal asked whether Mr Karol had public liability insurance. Mr Karol indicated that he did and that it was equal to the amount recommended by ARMA. The Tribunal indicated that they would require a copy of the insurance policy prior to determining Mr Karol's appointment as a manager.
23. The Tribunal had noted that the preliminary section 22 notice had set out work that needed to be done to the common parts. Mr Karol stated that he was aware of this, and that he knew of the requirements to serve a section 20 Notice. Mr Karol was of the opinion that he could obtain quotations, and that the work could be undertaken and most of the issues raised by the tenant could be sorted out within a year.
24. The Tribunal noted that Mr Karol had been appointed by the Tribunal to manage premises in relation to 383-385 Harrow Road W9. The Tribunal noted that in relation to the decision of the Tribunal, the Tribunal had indicated that Mr Karol's plan was not sufficiently detailed. This Tribunal had similar criticisms of Mr Karol's plan. The Tribunal indicated that if Mr Karol were to be appointed, he would need to provide a more detailed and extensive plan and that they would be looking at an appointment period, which exceeded a year.
25. The Tribunal asked Mr Salmon how he had become aware of Mr Karol's management services and whether Mr Karol was personally known to him. Mr Salmon stated that he had found out about Mr Karol via a search on the internet. In response to a question from the Tribunal concerning references, he stated that he had not obtained any references from any of Mr Karol's clients.

26. Mr and Mrs Standish indicated that they were satisfied with the questions that the Tribunal had asked Mr Karol and that they did not have any further questions for Mr Karol. They did not accept the allegations that were made concerning their management of the premises; however they were content for a manager to be appointed by the Tribunal.
27. The Tribunal noted that neither the Applicant nor Mr Karol had produced a plan for the specific management of the premises in accordance with paragraph 4 of the directions. The Tribunal directed that a plan together with a draft order should be produced for the tribunal's consideration **within 28 days of the hearing.**

Application for cost made by the Applicant

28. Mr Salmon made an application for costs in the sum of £373.80; this was for the application fee, the hearing fee and for copying charges.
29. The Tribunal indicated that the Leasehold Valuation was essentially a no cost jurisdiction, unless cost were claimed in circumstances where the other party had acted "frivolously or vexatiously" under schedule 12 Para 10 of The Commonhold and Leasehold Reform Act 2002; which on the basis of the evidence before the Tribunal did not apply in this case. The Applicant could however make an application for reimbursement of the application and hearing fee under regulation 9 of The Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
30. The Respondent's indicated that they opposed this application, as they did not consider that this would be fair, in the circumstances where they had been managing the property themselves as freeholders rather than as managing agents, and had been required to expend monies in advance of reimbursement.
31. The proposed manager subsequent to the hearing, on 30 August 2012 provided the Tribunal with (i) a copy of the Residents Management Company Professional (KL Professional Risks) and Public Liability

Insurance (NIG Policies) (ii) The management plan for the first 12 months (iii) a Copy of a draft management order.

32. The Tribunal considered these documents in reaching its determination.

33. **The law**

34. A leasehold valuation tribunal may, on an application for an order under section 24 of the Act, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which Part II of the Act applies:

- (a) such functions in connection with the management of the premises,
or
- (b) such functions of a receiver,
or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances namely

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

The tribunal's decision

35. The Tribunal having considered all the circumstances in this case are satisfied that it is reasonable in all the circumstances to appoint Mr Karol as manager of the premises known as 5 Leamington Road Villas. The Tribunal have reached this decision having read the documents supplied in the hearing bundle, having heard from Mr Karol at the hearing (on 2 August 2012) as well as the Applicant, Mr Salmon. The Tribunal also noted the lack of objection from the Respondents, Mr and Mrs Standish's to the appointment of Mr Karol as manager of the premises.
36. The Tribunal noted that one of the issues that arose, which led to the Applicant objecting to Mr and Mrs Standish continuing to manage the premises, was that there was a lack of clarity about the extent of the common parts and whether, as defined by Mr and Mrs Standish it included areas that were currently solely for the benefit of their tenants in the adjoining property, 3 Leamington Road Villas.
37. Given the fact that the Respondents did not oppose the order, these issues were not explored in any depth at the hearing. However the Tribunal consider that there is a need for these matters to be addressed and for the major work in respect of redecorating the common parts to be taken forward by Mr Karol, as part of his plans to manage the building.
38. The Tribunal determine that Mr Karol should be appointed subject to fulfilling the terms **set out below**.
39. Whilst the Tribunal initially indicated that the period should be for a minimum of three years, the Tribunal are not satisfied that the management plan put forward in the written submissions is sufficiently robust and deals with the concerns raised by the Tribunal about the lack of a detailed plan, at the hearing on 2 August 2012.
40. The Tribunal adopts the Terms of the appointment as set out in the draft order proposed by Mr Karol in appendix one, save for the following amendments:- Under paragraph 3 the words "**... The manager will manage the property in a proper and business-like manner.**" The Tribunal delete the paragraph **and substitute** the following as paragraph 3:- "*That he shall manage the property in accordance with the duties of a manager set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered*

Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.”

41. The Order shall be amended to include a new paragraph 9a-: “... *That he shall make arrangements with the present insurers of the building to make any payments under the insurance policy presently affected by the Respondent to him.*”
42. The order shall be amended with copies served on the Applicants and Respondents and any other leaseholder of the property **within 28 days of this determination.**
43. The Tribunal direct that the manager shall **within six months (by 13 March 2013)** produce and put into operation a plan for the management of the redecoration major works in relation to the common parts, the plan shall include the timetable for the section 20 consultation process. The Plan shall be served on the Respondent’s and the leaseholders at the premises, and a copy shall be filed at the Tribunal together with this determination for consideration as set out below.
44. By **2 September 2013** the Managing agent shall produce a report to the Tribunal setting out the major steps that have been undertaken during the previous 12 months and the future plans in relation to the manage the premises.
45. The Applicant and Respondents shall provide a statement in writing by **16 September 2013** confirming whether or not they are happy for the management order to remain in place.
46. The report together with the responses from the Applicants and respondents shall be considered further at a paper determination in the week **beginning 30 September 2013.**
47. In the event that any party opposes the management order, or wishes for a variation of the order, then the matter shall be listed for hearing on **30 September 2013** (with a time estimate 2 hours).
48. The Management order shall remain in force until further order of the Tribunal.

The Tribunal’s decision on cost

49. The Tribunal noted that the Applicant had applied for reimbursement of the application and hearing fee. The Tribunal noted that Mr and Mrs Standish, as Freeholders had attempted to manage the property themselves and had willingly conceded on the Application of the Applicants, that this was no longer appropriate.
50. The Tribunal noted that management of property over the years has become more complex and as such, the Respondents, unless professional property managers, would have faced many hurdles in complying with the law, and acting in accordance with the duties of a manager set out in the Service Charges Residential Management Code. This may in part have led to mistakes having been made, and to the level of dissatisfaction experienced by the leaseholders.
51. The Tribunal note however that given the terms of the lease, the Respondents have been required to pay for services in advance of reimbursement from the Leaseholders, and as such have gained little, if any, financial benefit from managing the premises.
52. Taking all of these matters into account, the Tribunal consider that it would not be appropriate to make an order requiring the Respondent to reimburse the cost incurred by the Applicants.

Signed 

Dated 5-10-2012

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1987, section 24

LON/00BK/LAM/ 2012/0010

Premises: 5 Leamington Road Villas, London W11 1 HS

Applicant(s): Mr James Cadisch and Mr Marc Salmon

Represented by: Mr Marc Salmon

Respondents: Mr Ken and Eileen Standish

Represented by: In Person

Date of hearing: 2 August 2012

Appearances: Mr Krish Karol – The Residents Management Company Ltd

Appendix one

1. Order for the Appointment of a Manager and Receiver
2. Management plan for the first 12 months

5 LEAMINGTON ROAD VILLAS

Order for the Appointment of a Manager and Receiver

General management powers and duties

1. The LVT appoints Mr Kristof Karol (hereinafter called the manager) of 294 King Street, London, W6 0RR to receive the rents and other monies payable under the leases of the residential parts of the property known as 5 Leamington Road Villas, London, W11 1HS ("the property") Schedule 1 of this Order sets out the details of the residential parts of the property.
2. In respect of the residential parts of the property, the LVT appoints the manager to manage the same in accordance with the rights and obligations of the leaseholders and the reversioner thereof.

Specific management powers and duties

3. The manager will manage the property in a proper and businesslike manner.
4. The manager will be responsible for carrying out the reversioner's obligations under the leases of the residential parts of the property and for enforcing against the tenants of the residential leases their obligations under the same.
5. The manager may take any legal action which is reasonably required when a leaseholder is reasonably believed to be in breach of a covenant under the lease (save as excluded in paragraph 4 above). This includes, but is not limited to:
 - (a) legal action to recover monies due;
 - (b) legal action to determine that a breach of covenant has accrued;
 - (c) legal action to prevent a further breach of covenant;

(d) any application to the LVT which the manager deems necessary in the interests of the effective management of the property.

6. The manager is empowered to enter into (and to terminate) any contract or arrangement and/or to make any payment or take any step which is necessary, convenient or incidental to the performance of his functions. Any sums due under such contracts or arrangements shall be paid from the monies collected under the terms of this order.
7. Save that the manager cannot be required to effect any contract or arrangement where the same would, in his reasonably opinion, result in the service charge account going into deficit.
8. The manager shall deal in a reasonable fashion with all items of repair and maintenance for which the reversioner is responsible provided that, in respect of works or agreements falling within the scope of s.20 *Landlord and Tenant Act 1985*, the manager shall be entitled to reasonable additional remuneration, not to exceed 12.5% (plus VAT) of the costs of the works (before VAT) involved.
9. The manager is empowered to make and agree reasonable adjustments and other reasonable compromises with any tenant under a lease in respect of any service charges or other sums payable under the terms of the lease.

Provision for payments to the manager

10. Payment to the manager of all sums to which he is entitled under this order shall be made as follows:
 - (a) in the first instance, insofar as any such payments may be lawfully charged to the leaseholders of the residential properties mentioned above, by virtue of the provisions in their respective leases for the payment of

service charges, they shall be made by such leaseholders as part of their service charges;

(b) by virtue of his inherent powers as a receiver, and further or alternatively, by virtue of s.24(5)(c) of the *Landlord and Tenant Act 1987*, from moneys payable by tenants by way of the service charges, rents, interest on arrears of service charges and any other moneys which the manager may receive as manager and receiver of the property;

(c) if and insofar as the above moneys may be insufficient to pay the sums to which the manager is entitled, they shall be paid by the leaseholders of the residential premises by virtue of s.24(5)(c) of the *Landlord and Tenant Act 1987*.

Remuneration of the manager

11. The manager is directed to pay himself £230 per annum in respect of each residential unit, plus any VAT due on the same.

Legal and professional costs

12. The manager is further directed that he is to be reimbursed in respect of reasonable cost, disbursements and expenses (including, for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) of and incidental to any application or proceedings, (including these proceedings) whether in the court or LVT, to enforce the terms of the leases mentioned above.

13. Further, and for the avoidance of doubt, the aforementioned provisions apply equally to applications or proceedings commenced by the manager or proceedings to which he is a respondent.

Successors in title

14. The terms of this order shall be binding on the current reversioner and leaseholders of the residential parts as well as their successors in title.

WHAT RMC WOULD AIM TO ACHIEVE IN THE FIRST 12 MONTHS OF MANAGEMENT

- 1 Obtaining accounts from the Freeholders clearly detailing the building's expenditure for the last three years.
- 2 Obtaining individual Service Charges positions for the Individual flats.
- 3 Inputting all flat owners/freeholder details in the computerised database and management programme.
- 4 Analysing the findings detailed in the asbestos report and implementing any recommendations. Ensure that a re-inspection is carried out if required.
- 5 Analysing the findings detailed in the Health & Safety report and implementing any recommendations. Ensure that a re-inspection is entered in the diarised inspection system.
- 6 Analysing the findings detailed in the Fire Risk report and implementing any recommendations. Ensure that a re-inspection is entered in the diarised inspection system.
- 7 Revisit the status of all contractors (cleaners) attending the building. Analyse all contracts in place, such as electricity and entry-phones. Renegotiate any existing contracts and/or terminate any contracts that are not to the benefit of the residents.
- 8 Meeting with the Lessees to discuss the terms of the individual leases and proposing the Deed of Variation that would change the terms of the individual leases to the extent that the individual flat owners are required to make an on account and in advance contribution towards the anticipated building's annual expenditure and amended contributions towards the building's running costs and taking into consideration, amongst others, the next door property (Number 3) is using the staircase of Number 5 to gain access to their flats.
- 9 Approach various insurers with regards to the renegotiation and renewal of the building's insurance policy, ensuring that all risks are properly covered by the policy including Terrorism cover and Property Owners Public Liability cover. Arranging for an insurance valuation of the building prior to the renegotiation and/or renewal of the policy.
- 10 Draft, propose and discuss with the flat owners a 5 year plan of works that need to be carried out to the exterior fabric of the building including roofs and the internal common parts.
- 11 Draft and propose a set of Rules and Regulation governing the occupancy of the 5 Leamington Road Villas, which would summarise not only the rules and regulations contained in the terms of leases but also include additional rules and regulations that would regulate and formalise various aspects of occupancy of 5 Leamington Road Villas.

TERMS OF DRAFT ORDER

DIRECTIONS

- 1 From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request made by lessee of the Property or the Respondent and equivalent public liability insurance.
- 2 The Manager shall during the period of the appointment collect all the various funds reserved and payable to the Lessees ("the Lessees") in the respective Leases ("the Leases") of the flats ("the Flats") and in the property including but limited to (a) Ground Rent (b) Insurance (c) Service Charges and (d) the arrears of any of the above. The Manager shall account forthwith to the Respondent for the payment of the Ground Rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
- 3 The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the Service Charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
- 4 By no later than 6 months the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date. (Use only if appropriate).
- 5 The Manager shall be entitled to apply to the Tribunal for further directions.