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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BJ/LAM/2013/0026**

Property : **Lumière Apartments, 58 St John's Hill, London SW11 1AD**

Applicants : **Martin Williams and 22 other leaseholders of flats in Lumière Apartments**

Representative : **In person**

Respondent : **Henley Homes South West LLP**

Representative : **None**

Type of application : **For the appointment of a manager under section 24 of the Landlord and Tenant Act 1987
28 November 2013**

Date heard

Appearances : **Martin Williams, the lead applicant**
Bruce Maunder Taylor FRICS, and Michael Maunder Taylor MSc BA
: **MIRPM Assoc RICS, of Maunder Taylor & Co, chartered surveyors**
No appearance for the respondent

Tribunal members : **Margaret Wilson**
Trevor Sennett MA FCIEH
Ruth Wayte

Date of determination : **28 November 2013**

DECISION

1. This is an application under section 24 of the Landlord and Tenant Act 1987 ("the Act") for the appointment of a manager to manage 58 St John's Hill, London SW11, a building comprising 61 residential flats, known collectively as Lumière Apartments, together with a place of religious worship, formerly a cinema, and five shops. All, or virtually all, the flats are held on long leases, as are the church premises and shops. The shops are currently unoccupied. The building is listed grade II.

2. Because of their concerns about the level of service charge debt and unpaid creditors and about problems relating to health and safety, on 15 August 2013 a number of leaseholders gave notice under section 22 of the Act that unless the landlord initiated action to remedy the problems they intended to apply to the Tribunal for the appointment of a manager. The landlord did not respond and on 4 September 2013 Martin Williams, the leaseholder of three flats and secretary of the Residents' Association, made the present application. The 22 leaseholders of 23 further flats have subsequently been joined as applicants at their request. We are satisfied that the leaseholders of all parts of the building are, or ought to be, aware of the application and that all of them either support or do not object to it. They propose that Bruce Maunder Taylor FRICS of Maunder Taylor, chartered surveyors, should be appointed as manager.

3. The landlord, by its director Shafiq Malik, has emailed the Tribunal to say that it does not oppose the appointment of Mr Maunder Taylor to manage the building, and the landlord's managing agent, J J Holmes Ltd, has resigned with effect from 25 September 2013 and Mr Maunder Taylor has been appointed as the landlord's managing agent on a temporary basis pending the outcome of the present application.

4. At the hearing of the application on 28 November 2013 the applicants were represented by Mr Williams, and Mr Maunder Taylor attended with Michael Maunder Taylor of his firm. The landlord did not appear.

5. We are quite satisfied from the evidence put before us that the landlord has failed to comply with provisions of the Service Charge Residential Management Code and that other circumstances also exist which make it just and convenient to appoint a manager, not least because the managing agent has resigned and all relevant parties wish a manager to be appointed. The appointment will have the particular advantage that the manager will be able to raise a reserve fund, which the leases do not appear to permit, and to borrow the funds needed to manage and maintain the building to a satisfactory standard. We are also satisfied that Mr Maunder Taylor is a suitable manager and that his management plan is realistic and sensible.

6. We are therefore satisfied that grounds exist for the appointment of a manager and that it is just and convenient for the appointment to be made. The applicants put a draft order before us for our consideration and we have approved it, subject to minor amendments which we discussed at the hearing. The order which we make is appended to this decision.

Judge: Margaret Wilson

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

LON/OOBJ/LAM/2013/0026

IN THE MATTER OF SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

AND IN THE MATTER OF

58 ST JOHN'S HILL, LONDON SW11 1AD

B E T W E E N:

MARTIN WILLIAMS AND OTHERS

Applicants

AND

HENLEY HOMES SOUTH WEST LLP

Respondent

MANAGEMENT ORDER

In this order:

- (a) "common parts" means any garden area, postal boxes, refuse store, cycle store, security gates, lifts, paths, halls, staircases and other access ways and areas within the premises which are provided by the respondent for common use by the lessees of the flats and/or of the non-residential premises;
- (b) "leases" means the long leases vested in the lessees of both the flats and the non-residential premises;
- (c) "lessee" means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord and Tenant Act 1987 ("the Act");
- (d) "the manager" means Bruce Maunder Taylor of Maunder Taylor, chartered surveyors;
- (e) "the premises" means the property known as 58 St John's Hill, London SW11 1AD including the 61 flats known as Lumière Apartments and the non-residential premises used for religious purposes together with five currently vacant shops and the common parts thereof;
- (f) "the respondent" includes any successors in title of the freehold estate registered under title number LN17700 or any interest created out of the said freehold title.

UPON the applicants having applied for the appointment of a manager under Part II of the Act

AND UPON the First-tier Tribunal being satisfied that the applicant is entitled to so apply and that its jurisdiction to appoint a manager is exercisable in the present case

AND UPON the First-tier Tribunal being satisfied that the conditions specified in sections 24(2)(ac) and 24(2)(b) of the Act are met and that it is just and convenient to appoint a manager

IT IS ORDERED THAT

1. Bruce Maunder Taylor FRICS is hereby appointed as manager of the premises, with such functions of a receiver as are specified in this order, with effect from 28 November 2013 until 31 March 2016 and, for the duration of his appointment, is given all such powers and rights as may be necessary and convenient for the purpose of carrying out the management functions of the respondent and in particular the power:
 - (a) to receive all service charges, interest and any other moneys payable under the leases and any arrears due thereunder, the recovery of which shall be at the discretion of the manager;
 - (b) to receive the ground rents reserved under the leases and to account annually to the respondent in respect of the same;
 - (c) to carry out the obligations of the respondent contained in the leases and in particular and without prejudice to the foregoing:
 - (i) the respondent's obligations to provide services;
 - (ii) the respondent's obligations to repair and maintain the premises; and
 - (iii) the respondent's power to grant consents, save for the power to give consent for alterations in respect of any lease of a flat in the premises, such matters being retained by the respondent;
 - (d) to delegate to other employees of Maunder Taylor and to appoint such solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions;
 - (f) to appoint any agent or servant to carry out any such functions or obligations which the manager is unable to perform himself or which can more conveniently be performed by an agent or servant, and the power to dismiss such agent or servant;
 - (g) in his own name or on behalf of the respondent to bring, defend or continue any legal action or other legal proceedings in connection with the leases of the premises including but not limited to proceedings against any lessee in respect of arrears of service charges or other moneys due under the leases and to make any arrangement or compromise on behalf of the respondent;
 - (h) to commence proceedings or such other enforcement action as is necessary to recover sums due from the respondent;
 - (i) to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
 - (j) to open and operate client bank accounts in relation to the management of the premises and to invest moneys pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to section 42 of the Act. The manager must deal separately with and must distinguish between moneys received for any reserve fund (whether under the provisions of the lease or under the power given to him by this order) and all other moneys received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose moneys received on account of the reserve fund;

- (k) to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the respondent or of any lessee owing sums of money under his lease;
 - (l) to borrow all sums reasonably required by the manager for the performance of his functions and duties and in the exercise of his powers under this order in the event of there being any arrears or shortfalls of service charge contributions due from the lessees or any sums due from the respondent, such borrowing to be secured, if necessary, on the interests of the defaulting party, provided that the manager shall not secure any borrowing as aforesaid without the consent of the defaulting party, such consent not to be unreasonably withheld, or, in default of that consent, without further order of the First-tier Tribunal;
 - (m) to raise a reserve fund.
2. The current service charge financial year shall continue to 31 March 2014 and thereafter the service charge year shall run from 1 April to 31 March in each year while this order is in place.
3. The manager shall manage the premises in accordance with:
- (a) the directions of the Tribunal and the schedule of functions and services attached to this order;
 - (b) the respective obligations of all parties under the leases of the residential and non-residential parts of the premises;
 - (c) the duties of managers set out in the Service Charge Residential Management Code or such other replacement 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.
4. From the date of this order no person other than the manager or those authorised by him shall be entitled to exercise a management function in respect of the premises which is a responsibility of the manager under this order.
4. From the date when this order comes into effect the respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of services charges, administration charges or any other moneys from the lessees of the residential or non-residential parts of the premises.
5. The respondent and the lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the manager acting in pursuance of his duties and powers under this order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
6. Without prejudice to the generality of the foregoing hereof:
- (a) the respondent shall permit the manager, and assist him as he reasonably requires, to serve upon lessees any notices under section 146 of the Law of Property Act 1925 or to exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same;
 - (b) the rights and liabilities of the respondent as landlord arising under any contracts of insurance of the premises shall continue as rights and liabilities of the manager;

- (c) the manager shall be entitled to remuneration, which shall be recoverable as part of the service charges, in accordance with the schedule of functions and services attached to this order.
7. The manager shall in the performance of his functions under this order, exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and 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 request by any lessee, the respondent or the Tribunal.
8. The manager shall act fairly and impartially in his dealings in respect of the premises.
9. The manager is directed to register this order against the respondent's freehold estate registered under title number LN17700.
10. The manager's appointment shall continue from the date of this order until 31 March 2016.
11. The obligations contained in this order shall bind any successor in title to the landlord and the existence and terms of this order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or the freehold interest.
12. The manager may apply under section 24(4) of the Act to the First-tier Tribunal (Property Chamber) for further directions in respect any matters relating to the exercise of his functions under this order which may include, but are not limited to:
- a. any failure by any party to comply with an obligation imposed by this order;
 - b. directions in the event that there are insufficient sums held by him to discharge his obligations under this order and/or to pay his remuneration.
3. The respondent shall not be entitled to recover its costs of these proceedings from any leaseholder by way of a service charge.

Judge: Margaret Wilson

Date: 29 November 2013

SCHEDULE
FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget (consulting with the lessees as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the lessees according to their percentage share under the terms of the leases.
2. Demand and collect service charges, insurance premiums and any other payments due from the lessees in the percentage proportions set out at Annex 1 to this order. Instruct solicitors to recover any unpaid service charges and any other monies due to the respondent.
3. Create a form of reserve fund.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the lessees or the respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this order in respect of day-to-day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the premises.

Insurance:

7. Take out on behalf of the respondent and in accordance with the terms of the leases an insurance policy in relation to the premises and the contents of the common parts of the premises with a reputable insurer, and provide a copy of the cover note to all lessees and the respondent.
8. Manage or provide for the management through a broker and with the insurer of any claims brought under the insurance policy taken out in respect of the premises.

Repairs and Maintenance

9. Deal with all reasonable enquiries raised by the lessees in relation to the repair and maintenance of the premises, and instruct contractors to attend and rectify problems as necessary.
10. Administer contracts entered into on behalf of the respondent and lessees in respect of the premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
11. Manage the common parts and service areas of the premises, including the arrangement and supervision of maintenance.
12. Carry out regular inspections (at the manager's discretion but not less than four per year) without use of equipment, to such of the common parts of the premises as can be inspected safely and without undue difficulty to ascertain, for the purpose of day-to-day management only, the general condition of those common parts.

Major Works

13. In addition to undertaking and arranging day-to-day maintenance and repairs, arrange and supervise major works which are required to be carried out to the premises (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the leases or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the lessees and supervise the works in question).
14. Undertake as soon as practicable a full health and safety review and an assessment of the electrical supply to the premises.

Administration and Communication

15. Deal promptly with all reasonable enquiries raised by lessees, including routine management enquires from the lessees or their solicitors.
16. Provide the lessees with telephone, fax, postal and email contact details and a complaints procedure.
17. Keep records regarding details of lessees, agreements entered into by the manager in relation to the premises, and any changes in lessees.

Fees

18. Fees for the above mentioned management services (with the exception of supervision of major works) will be a fee of £18,300 plus VAT per annum for the remainder of this financial year and for the following financial year. Thereafter the fee will be reviewed annually in line with inflation.
19. An additional charge will be made in relation to the arrangement and supervision of major works (including the preparation and service of any statutory consultation notices) on the basis of a fee of 1% of the cost of the works plus VAT.
20. An additional charge will be made in relation to the arrangement, claims handling and brokerage of insurances for the premises, public liability, engineering and employee cover, on the basis of a fee of 15% of the insurance premium.
21. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £150 plus VAT payable by the outgoing lessee.
22. Further tasks which fall outside those duties described above will be charged separately at a present hourly rate ranging from £125 plus VAT for a qualified member of staff but, if the matter requires the manager's personal attention, at a present hourly rate of £300 plus VAT. The recovery of outstanding service charge moneys will give rise to an administration charge payable by the defaulting lessee of £30 for each letter written after the first letter.