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

Case reference : LON/00AN/LAM/2016/0027

Property : Market Studios, 43A Goldhawk
Road London W12 8QP

Applicant : Mr Neil Wassell (Flat 7)
Mr Michael Thomas (Flat 9)
Ms Nina Miklin (Flat 10)

Representative : Mr Wassell

Respondent : Michael Bradley and Richard
Smith, the Trustees of Boropex
Holdings Pension Scheme

Representative : Ms De Cordova of Counsel

Type of application : Appointment of a manager

Tribunal members : Judge Carr
Mr Patrick Casey MRICS
Mr Paul Clabburn

**Date and venue of
hearing** : 3rd October 2016 10 Alfred Place,
London WC1E 7LR

Date of decision : October 2016

DECISION

Decisions of the tribunal

- (1) The tribunal determines not to exercise its powers to appoint a manager under section 24 of the Landlord and Tenant Act 1987.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants seek a determination pursuant to s.24 of the Landlord and Tenant Act 1987 ("the 1987 Act") appointing a manager, Lawrence Charles Limited, in respect of the residential property at Market Studios, 43a Goldhawk Road London W12 8QP.
2. On the 14th September 2016 the tribunal issued directions on an application from the Applicants dated 5th September 2016 under section 29 of the Landlord and Tenant Act 1985 seeking the recognition of a Tenants' Association. Although on 14th September 2016 it was directed that the two applications be heard together at the hearing on 3rd October 2016, the tribunal determined not to deal with the s.29 application at the hearing of 3rd October 2016 adjourning it for 6 weeks from that date. The Applicants are directed to inform the tribunal if they intend to proceed with the s.29 application following the adjournment. In the event that they decide to proceed an oral case management conference will be held to ensure that the issues relating to that application and the next steps are clearly identified.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. Mr Wassell and Ms Miklin appeared in person at the hearing and Mr Thomas sent his apologies. Mr Wassell represented all three Applicants. The Respondent was represented by Ms de Cordova instructed by Howard Kennedy LLP.
5. Immediately prior to the hearing Ms De Cordova handed in a skeleton argument which the tribunal gave time for the Applicants to read.

The background

6. The property which is the subject of this application is a mixed block of 13 residential flats which sit above two commercial units.
7. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. Counsel's skeleton provides a useful summary of the recent management history of the property. On 28th October 2004 the parties agreed a settlement of an application to the tribunal by way of a Minute of Agreement. Subsequently Drake and Co were appointed by the Respondents to manage the property. When Drake and Co fell into financial difficulty Lawrence Charles (previously of Drake and Co) formed his own management company, namely Lawrence Charles Limited and took over the management of Market Studios. On 11th November 2014 Lawrence Charles Limited's appointment was terminated and Burton Knowles were appointed as managing agents of Market Studios and the commercial units beneath. Burton Knowles currently remain the managing agents of the property.

The issues

9. At the beginning of the hearing the Applicants identified that the grounds they were relying on were (i) s.24(2)(a), (ii) s.24(ab) and (iii) s.24(2) (b), in particular,
 - (i) The Respondent has breached its obligations under the lease because of a
 - (a) Failure to claim fully under the buildings insurance policy
 - (b) Failure to serve management accounts on time and/or erratically
 - (ii) The Respondent has made unreasonable service charge demands
 - (iii) The Respondent dismissed Lawrence Charles without consulting the lessees in breach of the settlement agreement of October 2004.

10. For the sake of clarity, the Respondent made it clear that it was not taking any issue in connection with the compliance of the preliminary notice with s.22 of the Act. The Applicants stated that they were not taking any issue arising from the RICS Code of Practice.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Has the Respondent breached its obligations under the lease?

12. The tribunal asked the Applicants to identify the terms of the lease that they allege the Respondent has breached. The Applicants agreed that there were no specific obligations upon the Respondent. However, they argued that as there were specific obligations upon them to pay their service charges it was reasonable to expect that they would be invoiced at regular intervals and reasonable to receive management accounts.
13. The Applicants referred to evidence, which suggested that there had been failures to invoice them and produce timely management accounts. They also suggested that there had been a failure to claim upon the insurance which led to the lessees having to incur extra costs.
14. The Respondent argues firstly that there is no obligation upon it within the lease, that nevertheless it provided a substantive response to the complaints set out in the preliminary notice, and that in addition outstanding management accounts were provided to the lessees prior to the Applicants application to the tribunal. The delay in serving the management accounts were due to lack of information provided by the previous managing agents. In connection with the insurance argument, the Respondent states that the lessees were not required to pay additional charges.

The tribunal's decision

15. The tribunal determines that the Respondent has not breached its obligations under the lease.

Reasons for the tribunal's decision

16. The Applicants were unable to identify specific clauses of the lease which they allege have been breached.
17. Any failures in connection with management accounts had been remedied by the time of the application to the tribunal.

Has the Respondent made unreasonable service charge demands?

18. The Applicants argument, which was made by Ms Miklin related to the costs of major works carried out by the Respondent in 2014 and general repairs and maintenance charges demanded in 2014 and 2015.
19. The tribunal found it difficult to understand the argument which was not supported by any evidence that the charges levied were unreasonable.

The tribunal's decision

20. The tribunal determined that the Respondent has not made unreasonable service charge demands.

Reasons for the tribunal's decision

21. The Applicants produced no evidence to support this argument.

Is the Respondent's dismissal of Lawrence Charles Ltd without consulting the lessees' 'other circumstances' which make it just and convenient for the order to be made?

22. The Applicants consider that the dismissal of Lawrence Charles Ltd was in breach of the agreement reached in settlement of the application to the tribunal made in October 2004. The implication of their position is that this is sufficient to justify the appointment of a manager.
23. The Respondent argues that the Applicants have misunderstood the obligation upon the Respondent that it consults with the leaseholders before changing the managing agents. That obligation was conditional upon the Applicants forming a Tenants Association membership of which was to be open to all lessees at the property. No such Tenants Association has been formed and therefore the obligation does not arise.

The tribunal's decision

24. The tribunal determines that the Respondent's dismissal of Lawrence Charles Ltd without consulting the lessees is not other circumstances which make it just and convenient for the order to be made.

Reasons for the tribunal's decision

25. As the Applicants did not fulfil their obligation in the agreement to form a Tenants Association the obligation upon the Respondent to consult with them does not arise.

26. The tribunal therefore determines that the Applicants have failed to establish any grounds for a determination that a manager be appointed. For that reason, there is no requirement for the tribunal to consider the requirement that an appointment would be just and convenient or for it to consider the suitability of the proposed manager.
27. The tribunal is aware that the Applicants will be disappointed by this decision. However, the Applicants should note that a decision to appoint a manager is a serious matter as it is an infringement of the rights of a freeholder to appoint the manager it considers to be most suitable. It is for this reason that the statutory requirements for the appointment of managers are substantial and any application to the tribunal must fully comply with those requirements.
28. In the particular circumstances of this case, unfortunately the applicants have paid insufficient attention to the statutory requirements, have not considered the terms of the lease with sufficient care and have provided little evidence to support their case.

Name: Judge Carr

Date: 20th October 2016

Appendix of relevant legislation

PART II

APPOINTMENT OF MANAGERS BY THE COURT

S21 Tenant's right to apply to court for appointment of manager.

- (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.
- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
- (3) This Part does not apply to any such premises at a time when—
 - (a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or
 - (b) the premises are included within the functional land of any charity.

[(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.] [FN1]

- (4) An application for an order under section 24 may be made—
 - (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
 - (b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be

1 24 May 2005 construed accordingly.

- (5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
- (6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.
- (7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.[...] [FN2]

[FN1] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 161

[FN2] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 161

S22 Preliminary notice by tenant.

- (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served [by the tenant on--] [FN1]

- [(i) the landlord, and
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.] [FN2]
- (2) A notice under this section must—
- (a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] [FN3] may serve notices, including notices in proceedings, on him in connection with this Part;
 - (b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with] [FN4];
 - (c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
 - (d) where those matters are capable of being remedied by [any person on whom the notice is served, require him] [FN5], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
 - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) a leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section[on a person] [FN6] in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the [person] [FN7], but a leasehold valuation tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

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- (4) In a case where—
- (a) a notice under this section has been served on the landlord, and
 - (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.[...][FN8]

[FN1] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN2] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN3] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN4] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN5] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN6] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2
c 5 s 160 (2)

[FN7] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2
c 5 s 160 (2)

[FN8] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2
c 5 s 160 (2)

S23 Application to court for appointment of manager.

- (1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless—
 - (a) in a case where a notice has been served under section 22, either—
 - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
 - (ii) that paragraph was not applicable in the circumstances of the case; or
 - (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—
 - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
 - (ii) no direction was given by the court when making the order.

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch
14 Para 1

S24 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—

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where the court 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 court 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 court 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 court is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section "relevant person" means a person—
 - (a) on whom a notice has been served under section 22, or
 - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—
 - (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to—

- (a) such matters relating to the exercise by the manager of his functions under the order, and
- (b) such incidental or ancillary matters,

- as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the court may, if it thinks fit, make such an order notwithstanding—
- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the court may by order direct that the entry shall be cancelled.
- (9A) The [tribunal] [FN1] shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.[...] [FN2]

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[FN1] substituted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 13 Para 9

[FN2] substituted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 13 Para 9

S24A

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1

S24B

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1

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