

**FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AZ/LVM/2015/0022

Property : 113 – 117 Kirkdale London SE26
4QJ

Applicants : Mr T. Phillips and Mrs M. Phillips
(Flat 2); Ms M. Sellick (Flat 4)
Mr N. Azam (Flat 3)

Representative : All in person

Respondent : Mr T. Uthayakanthan (Landlord)

Representative : Mr John Cuninghame of Counsel

Type of Application : Variation of Management Order –
Section 24 Landlord and Tenant
Act 1987; also Costs - Section 20c
Landlord and Tenant Act 1985

Tribunal Members : Judge Lancelot Robson
Mr S. F. Mason BSc FRICS FCI Arb

**Date and venue of
Hearing** : 29th February 2016 10 Alfred Place,
WC1E 7LR

Date of Decision : 15th March 2016

DECISION

Decision Summary

- A. Order for the appointment of Mr Andrew Robin McKeer MRICS FIRPM as Manager of the Property made under Section 24 of the Act in the terms of the Management Order (with appendices thereto) attached to this decision as Appendix 1 below with effect from 29th February 2016, the Tribunal being satisfied that grounds specified in Section 24(2) of the Act exist, and that Mr McKeer is a suitable appointee,
- B. The Order shall have effect for a period of three years
- C. No Order under Section 20c of the Landlord and Tenant Act 1985 was made, as the application was not pursued at the hearing.
- D. The previous Manager appointed by the Tribunal, Mr M. Tejada and his firm HML Andertons, is ordered to co-operate with the new Manager, Mr McKeer, in handing over all papers and monies held relating to the management of this property.
- E. The Tribunal made the other decisions noted below.

Preliminary

1. Extracts of Section 24 of the Landlord & Tenant Act 1987, Section 20C of the Landlord & Tenant Act 1985 and other relevant legislation are attached to this decision as Appendix 1.
2. By an application dated 30th November 2015 the Applicant leaseholders (who hold under the terms of an agreed specimen Lease dated 1st February 2006 (the Lease) seek a variation of the Management Order dated 21st January 2015 under Section 24 of the Landlord & Tenant Act 1987 for the appointment of a substitute Manager of the property, the original Manager having proved unsatisfactory. Applications under Section 20C of the Landlord & Tenant Act 1985 and for the reimbursement of the Applicant's fees relating to this application were also made.
3. Directions were given by the Tribunal for this hearing on 16th December 2015. The appointment of the current manager, Mr Davis, was extended until 20th April 2016 by the Directions, pending the decision in this case. The matters for decision noted in the Directions are summarised as;
 - * Is it just and convenient to vary the management order?
 - * Would the proposed Manager be a suitable appointee, and if so on what terms and for how long?
 - * Should the Order extend to the commercial premises in the building?
 - * Should the Tribunal make an order under Section 20C, or for reimbursement of fees to the Tribunal paid by the Applicant?
4. The route to this application is quite convoluted. On 28th January 2011 a Management Order was made appointing a Mr Tejada of HML Andertons for a period of three years, (expiring on 31st January 2014). The then

landlord took no part in the 2011 proceedings and, we were informed, went into Voluntary Administration. The property was in poor condition, requiring major repairs to the external rendering, and cyclical repair works to the internal common parts. It later became apparent that the rendering required total renewal, although the building was only about 6 years old. Mr Tejada carried out the day to day management, and also commenced a tender process to deal with the major works. Two Section 20 notices were served, and a contractor was identified to do the work. However, (and this point was not explained in detail to the Tribunal) despite initiating and demanding a reserve fund, matters proceeded no further until his appointment lapsed. Evidence given at this hearing suggested that only two out of the 6 lessees paid the demands from Mr Tejada for the reserve fund, and the landlord (who remains liable for 40% of the cost as the owner of the commercial parts) refused to pay into the reserve fund at all until all the leaseholders had done so.

5. The Respondent meanwhile purchased the freehold at auction, and after Mr Tejada's appointment lapsed he managed the property from 1st February 2014 until he was made bankrupt on 24th June 2014. In fact, he attempted to continue the management through a family company called FGR Management Limited, which paid for certain works to the exterior and internal common parts, purportedly to fulfil the terms of the successful tender in 2011, and to satisfy a dangerous structure notice served by the London Borough of Lewisham in the autumn of 2014. He remained bankrupt and legally incapable until 3rd February 2015, after the hearing appointing Mr Davis as the new manager. The Respondent hopes to fit out the three commercial units on the ground floor and build an extra storey on top of the building. He also opposes any further appointment of a Manager and wishes to manage the building himself. He also opposes any order under Section 20C.
6. The Tribunal noted that a significant Respondent's bundle of documents in this case was served on 26th February 2016, the last working day before the hearing. Although the Respondent's statement of case was dated 22nd January 2016 it did not refer to any documents, although a number of documents were supplied to the Applicants on 5th February, which apparently were placed in the main bundle.

Hearing

7. The Tribunal ascertained that the property had been built about 2006. It was a mixed use building with six flats on three floors, and commercial premises on the ground floor below. The flats were occupied, but the commercial units still remain as "shells". They now belong to the Respondent. The building is boxlike, with rendered external walls and a flat roof. As early as 2011, the render began to break away and the coping stones came loose. It is believed that the render had not been applied correctly during construction. No NHBC certificates had been available on the flats.

Examination of Mr McKeer

8. The Parties agreed with the Tribunal's proposal to examine Mr McKeer at the start of the hearing. The Tribunal notes that the Respondent agreed that Mr McKeer was a suitable person, but for the reasons set out in his case, he opposed the appointment. It suffices to state that Mr McKeer's experience and qualifications were impressive, and he appeared to be robust, knowledgeable in his field, and fair minded under oral examination. The Tribunal appointed him some years ago to manage a similar block in Croydon, where he still remains as Manager. His preference was for his company to be appointed as Manager, but he understood the Tribunal preferred to appoint an individual. His company, Prior Estates Limited, only dealt with residential service charge management, and did not deal with sales or lettings. He did not think it was necessary to have the management of the commercial premises in the building. He considered that if he was appointed, it should be for a period of three years, as it appeared that some major works were required, and it would be necessary to try and spread the cost out for the leaseholders over some years while getting the building back into good condition. He also might have to revise his basic charge per unit if he was appointed for less than three years, as there were certain front end costs in establishing a system for the property.
9. His plan was to commission a full survey as soon as possible to discover the problems, consult with the parties, and then prepare tenders for any necessary works. It would also be necessary to obtain funds on account from the parties before committing to the works. Also it would be necessary to obtain monies still held by HML Andertons, ensure the necessary annual accounts and certificates were prepared, and establish satisfactory systems for carrying out necessary safety inspections and reports. He requested that the Tribunal make a specific order to HML Andertons to produce the monies they held when writing its decision. (see below).

Applicants' case

10. The Applicants submitted that the existing manager, Mr Davis, had not been effective at all. He had signed a letter confirming that he wished to be released from his appointment. It had been very difficult to find anyone prepared to take on the management of this property, but finally Mr McKeer had agreed to take it on.
11. They accepted that for much of the period since 2011 the Respondent had not been responsible for the problems at the property, but during the period when he had handled the management he had not done it satisfactorily. He had not been ready to take over the management when the previous manager's appointment expired. He was unable to convince the previous manager that the Reserve Fund would be placed in a client account, and it had not been handed over. He had been in breach of the RICS Residential Management Code in several respects. The property had been uninsured from April to June 2014. He had not substantively reacted to calls from the Applicants, particularly Mr Azam, with concerns relating a roof leak over his property raised in December 2013 (apparently attended to in July 2015),

and various other matters. On 24th June 2014 he had been made bankrupt, but had failed to inform the leaseholders. Mr Azam obtained judgement against him in June 2014 for failure to repair the roof, and the return of monies paid into the reserve fund. The Respondent had delayed in informing the Trustee in Bankruptcy about the property management, and about the Dangerous Structure Notice. In about September 2014 he had tried to appoint CGR Management Ltd as managing agent, although he was legally unable to do so. When the Applicants tried to contact CGR they received no reply. The Applicants now believe that CGR and the Respondent are linked.

12. On 18th November 2014 the London Borough of Lewisham served a Dangerous Structure Notice relating to loose render on the building. The Applicants informed the Trustee in Bankruptcy in early December, who had not been made aware of this development. The Trustee wrote a letter of support to the Tribunal when the Applicants made their original application in January 2015 for the appointment of a Manager. The Applicants had had the scaffolding and netting erected around the building at their expense as a temporary measure to prevent danger to the public. The scaffolding company later informed the Applicants that the Respondent had requested that they keep the scaffolding around the building at his expense so that he could carry out further works. The Applicants were surprised, but agreed. The Applicants were unaware of the specification of the work carried out by the Respondent, or if it had been completed satisfactorily. None of the contractors who had tendered for the works specified by HML Andertons had been chosen to do the works, and the company P&D Construction was unknown to the Applicants.
13. Further, the Applicants had no knowledge of the Respondent's experience. He had not followed either the RICS or ARMA codes in managing the property. They believed that the reserve fund would potentially have over £100,000 in it when all the parties paid their share. The Applicants had no confidence in the Respondent's ability manage the property or protect their contributions to the service charge.
14. The Applicants summed up by stating that the remedial works had not been done to the satisfaction of an independent surveyor. Mr Macwayed, who reported in January 2015, was in fact an architectural designer. The Respondent had done the work while bankrupt, and the property was vested in another person. An adverse inference should be drawn from this point. The Respondent's approach was reactive rather than pro-active. Any work was only done under pressure.

Respondent's case

15. The Respondent had not served a proof of evidence, but the Tribunal agreed to allow him to give evidence, and he was then cross-examined by the Applicants. Mr Cuninghame then made submissions on his behalf.
16. The Respondent stated that he was a builder. The funds to manage the property had not been released by HML Andertons in January 2014, despite

him visiting their offices on three occasions . In his view they had not co-operated with him. It was not true that he had failed to communicate with the Applicants. He had nearly always returned their calls. Counsel admitted on his behalf that the property had not been insured between April and July 2014. This was an oversight, due to lack of information from HML Andertons. He had not been aware of the bankruptcy. The Applicants' criticism of his management was misplaced. He had only had 5 months to manage the property, and had no co-operation from Mr Tejada. He had carried out works to the property in response to the Dangerous Structure Notice dated 18th November 2014. By doing this he had demonstrated that he could manage and organise works and maintenance at the property. He did not want any appointed Manager to manage the commercial properties. Although he accepted Mr McKeer was suitable, the Respondent had had his bankruptcy annulled, and he was capable of managing it. If Mr McKeer was appointed, he would want his management to be limited to 12 months.

17. In answer to questions he confirmed that the reason for his bankruptcy was due to non-payment of Council Tax. His brother-in-law had paid for the work done to the property. He had appointed FGR because no one else was managing the property. He had informed Mr Azam about the works he was doing. He agreed that there were notices which should have been served under Section 20, but Andertons had not been able to collect the money. Four leaseholders were withholding money. Andertons had suggested that he could use P&D or another company if it was cheaper. The accounts of P&D had been paid in full, totalling about £93,000. He hoped to recover 60% from the leaseholders, but was unable to explain how he would recover the money. It was not correct, as alleged by Mr Azam, that FGR operated from a derelict building. It was a big building. He had an interest in FGR. Initially he said that FGR only managed his properties. He did not know the qualifications of the Directors of FGR. Mr Williams who managed his properties had none, but he had known him for 20 years. He was aware of the RICS management code, but had not read it in detail. He owned 10 properties. All properties had separate client accounts. FGR managed them and operated the client accounts. He then stated that FGR also managed the family's investment properties. He disagreed that the work would have been done by HML Andertons if he had paid the 40% which was due from him. He had refused to pay until all the others had paid. He had chosen P&D because their price was cheaper than the contractor chosen by HML Andertons. Asked if both options included insulation, he said he did not know what work had been done by P&D. His architect would know, he had inspected the property in January 2015.
18. In final submissions, Mr Cuninghame stated that his client had done work when he could. It had been done in difficult circumstances. Andertons had withheld information and funds. The box guttering complained of by Mr Azam had been done. The Council had confirmed that the property was no longer dangerous. Its own surveyor had passed the work. There was no evidence it was not of a reasonable standard. The starting point for the Tribunal should be that the freeholder should be given the opportunity to manage his own property. It was true he had left the property uninsured for a short period, but this was due to Andertons' non-co-operation. The real

problem in this case was the Managers, not the Respondent. The Respondent should be allowed to manage, or if a manager was appointed it should only be for 12 months to smooth the path between Andertons and the Respondent. The Respondent had complied with the Dangerous Structure Notice within 10 weeks. It was accepted that he might need to apply for dispensation under Section 20, but under Daejan principles he should get the dispensation.

Decision

19. The Tribunal considered the evidence and submissions. Despite Mr Cunninghame submissions, it appeared that the Respondent had in fact had time to manage the property. His bankruptcy was not some random or sudden unforeseen event. He was made bankrupt because he had failed to comply with a properly served bankruptcy notice served arising from failure to pay Council Tax. Having been made bankrupt alone raises a question about a person's financial judgement. Also this application relates to a variation of an existing Management Order. That order had been made after service of a Section 22 Notice on the Respondent, with which he had not complied. When examined by the Tribunal he had shown unsatisfactory understanding of the legislation he would be trying to follow when managing, and his preferred Manager, FGR, did not seem sufficiently qualified or able to act in his place. The Tribunal noted that the Respondent's evidence was not preceded by a proof of evidence which could have been considered by the Applicants in advance, and there was no evidence or statement at all from FGR. In essence, it was too little, and too late.
20. The Respondent had clearly tried to rectify matters at the property in 2015, but had made more mistakes. The Tribunal accepted that his circumstances were difficult, and that others appeared disinclined to co-operate with him, but he appeared to the Tribunal to have insufficient knowledge of residential property management, and was out of his depth in trying to manage a building which was in serious disrepair. It might well be difficult for him to recover the amount he had spent on repairs. The Tribunal decided that in everyone's interests, including his own, a professional manager was needed to get the management and the property back on an even keel.
- 21 The Tribunal therefore decided to appoint Mr McKeer for a period of three years.
22. The Tribunal noted that the Respondent had attempted to tackle the major works needed to the rendering and the internal repairs, but an expert surveyor's report would be necessary to discover if the work had been done satisfactorily. The report of Mr Macswayed to the Respondent dated January 2015 appeared ambiguous, in that it confirmed that the work had been completed, or virtually completed, but, apart from complying with the Dangerous Structure Notice, it did not state clearly whether the work was satisfactory. The Manager should consider whether this work is satisfactory and whether an application to apply for dispensation from the requirements

of Section 20 would be appropriate to recover costs incurred by the Respondent.

23. All parties should note that they are required to co-operate with the Manager, and particularly to pay estimated service charges properly demanded with reasonable despatch. Any party is entitled to apply to the Tribunal under Section 27a of the Landlord and Tenant Act 1985 relating to reasonableness for service charges, as well as to apply for further variation of this order.

Costs

23. No Order under Section 20c of the Landlord and Tenant Act 1985 was made as the application was not pursued at the hearing. If the application was renewed, the Tribunal would be minded not to grant it based on the evidence of this hearing, as it was common ground between the parties that the Manager previously appointed at the Applicants' request in 2015 was unsatisfactory.

Judge Lancelot Robson

15th March 2016

Appendix 1

See the attached Decision and Management Order dated 2011 relating to this property, to take effect with such amendments as are required to implement the draft Management Agreement of the Manager's firm attached to the Applicant's submissions made in this application.

Appendix 2

Landlord & Tenant Act 1987; Section 22

- "(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(3)) be served by the tenant on-
- (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
- (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 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;
- c) specify the grounds on which the tribunal 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 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 in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.
- (4) ...”

Landlord & Tenant Act 1987 Section 24

- (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 tribunal thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-
- a) where the tribunal is satisfied-
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii) ...
 - (iii) that it is just and convenient to make the order in all the circumstances of the case
 - ab) where the tribunal is satisfied-
 - (i) that unreasonable service charges have been made, or are proposed to be made...
 -
 - ac) where the tribunal is satisfied-
 - (i) that any relevant person has failed to comply with any 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; or
- b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(3) – (6)...

(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 tribunal 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)

Tenant Act 1985 Section 20C

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.”

(2).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.”

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL

CASE NUMBER: LON/00AZ/LAM/2010/0033

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1987 SECTION 24 AND
THE LANDLORD AND TENANT ACT 1985 SECTION 20C

IN THE MATTER OF 113 – 117 KIRKDALE LONDON SE26 4QJ

Parties : Mr and Mrs T Phillips – Flat 2, 117 Kirkdale
Miss R Markou – Flat 1, 113 Kirkdale
Mr S Xenophontes – Flat 1, 117 Kirkdale Applicant

Shinedean Limited Respondent

Representation : For the Applicant:
Mrs M Phillips accompanied by
Mr M S Tejada of HML Andertons Limited
(Proposed Manager)

Date of Application : 29 September 2010

**Date of Pre-trial
Review** : 2 November 2010

Date of Hearing : 24 January 2011

Tribunal Members : Mr A A Dutton (Chairman)
Mr S F Mason FRICS
Mrs L Walter MA(Hons)

Date of Decision : 28 January 2011

DECISION

The tribunal finds that the Respondent is in breach of an obligation owed under the terms of the Lease and that Section 24(2) of the Landlord and Tenant Act 1987 ("the Act") has been complied with. The tribunal finds it just and convenient to make an Order appointing Mr Mark Steven Tejada of HML Andertons Limited to be the Manager and Receiver for the subject premises at 113 – 117 Kirkdale, London SE26 4QJ ("the Premises") for a period of three years upon the terms of the Order attached hereto. As the Respondents have taken no part in these proceedings any attempt by them to claim costs would be inappropriate and accordingly the tribunal makes an order pursuant to section 20C of the Landlord and Tenant Act 1985 preventing the recovery of any such costs on the ground that it considers it just and equitable in the circumstances so to do.

REASONS

A. BACKGROUND

1. This application under Section 24 of the Act was made by Mr and Mrs Phillips, the leaseholders of Flat 2, and Miss Markou and Mr Xenophontes, the leaseholders of Flats 1 in 113 and 117 Kirkdale ("the Premises"). On the 8th September 2010 the Applicant served on the Respondent Company, Shinedean Limited, a preliminary Notice under Section 22 of the Act setting out therein the alleged breach of obligations owed by the Respondent to the Applicant under the terms of their Lease. The Notice also recorded the fact that HSBC, the mortgagees in possession for Flat 3 at 113 Kirkdale, supported the Notice and the intended application.
2. The Notice set out the allegations, in particular that there was water damage to the two top floor flats caused by ingress from the roof area, the intercom systems was not working, the lights in the communal hall and staircases at 113 Kirkdale were not working and that the common parts for both properties had not been cleaned, or decorated for some time. It was also suggested that there was evidence that the rendering to the outside of the building required attention and that there were gaps between the windowsills and external walls, allowing further water ingress.

3. In addition to the above allegations, it was stated in the Notice that the landlord's proposed service charges for the financial year to the 31 December 2010 were unreasonable in that it included claims for general repairs, cleaning and electricity supply, when in fact none of these services had been provided. It also recorded that the buildings insurance estimated at £4214 was excessive and there was no evidence that in fact insurance had been put in place. The Notice then went on to set out the steps required with the time estimate. Attached to the Notice were letters sent by Mrs Phillips to Shinedean Limited on the 15 July 2010 and on the 28 July 2010, and from her solicitors on the 17 August 2010; none of which had elicited a response. We also had before us a copy of a letter from Shoosmiths, acting on behalf of HSBC Bank, who confirmed that they supported the application and stated in their letter of the 24 August 2010 as follows:

"The current freeholder, Shinedean Limited, have not been able to provide us with completed leasehold information for the property, in particular they have not provided us with evidence of insurance of their obligations contained within the Lease, making it very difficult for our client to sell the property under their Power of Sale".

B. INSPECTION

4. We inspected the subject premises on the morning of the 24th January 2011 in the presence of Mrs Phillips. We were able to gain access to the roof area and noted that the coping stones to the parapet wall appeared to be of insufficient width and may well be allowing the water ingress. Furthermore, there was evidence of cracking to the render and the parapet gutters on the roof appeared to be holding some water and certainly in one instance were affected by vegetation growth.
5. The common parts to 113 require attention. The door entryphone was not working, the common parts appeared not to have been cleaned for some time, and save for something of a 'Heath Robinson' approach to lighting, we understand installed by a tenant, there was no lighting to the common parts. Further, the hatch to the roof appeared to consist of a wooden board with

some lead covering that was slid into place over the aperture and did not have any permanent fixing, and was therefore susceptible to water ingress and a lack of security. Insofar as the communal lighting was concerned, there appeared to be a large number of sunken light units in the ceiling which were devoid of bulbs, and it was from the smoke alarms that the tenant appeared to have rigged up some form of temporary lighting arrangement to give some light to the common parts, which otherwise would have been in almost total darkness.

6. The common parts to 117 were in better order in that they did have communal lighting which worked and an answerphone system which appeared to be functioning satisfactorily. However, it was noted that occupiers have stored items in the common staircase which represents a fire hazard.
7. We were able to internally inspect the flat owned by Mr and Mrs Phillips and noted evidence of water ingress on the flank wall and ceiling in the living room, but were unable to inspect other rooms in the property.
8. The subject premises are three-storey with lock-up shops at ground floor level, and entrance doors to 113 and 117 to each side of these shops. The entrance door to 113 served four flats, and the entrance door to 117 just two. The property, which we were told had been built approximately five years ago, appeared not have had any decorating works or works of repair since the original build.
9. To the rear of the property we noted that the shops extended beyond the upper floors, solely at ground floor level, and there was also a loading bay which was becoming something of a depository for rubbish. There were a number of holes in the flank walls which may either have been created to allow flues to be inserted, or were incorrectly positioned for drainage arrangements. It was difficult to tell, but certainly they needed to be blocked up. The outflow from the valley guttering to the right-hand side of the property, when looking at it from the rear, appeared to either be missing the down pipe, or merely discharged in a waterfall affect onto the flat roof of the shops below. The property had an air of neglect.

C. HEARING

10. The landlords have taken no part in these proceedings and did not attend the hearing. Mrs Phillips came to the hearing, together with Mr Tejada, the Proposed Manager. Mrs Phillips told us that she did not think there was any insurance cover in place and that she was in fact insuring hers and her husband's property. She told us that Shinedean had notified HSBC's solicitors in 2009 that there was no insurance on the property, and she believed that still to be the case. On title documentation produced, we saw that Shinedean had bought the land in 2001 and that the building had apparently been erected in 2005 or 2006. Mr and Mrs Phillips bought their flat in July of 2010. She told us that the commercial parts were probably one third of the total floor area.
11. Mr Tejada had submitted to the Tribunal a Statement setting out his experience, a copy of the ARMA Certificate, Management Plan, remunerations details and a copy of the insurance schedule.
12. He told us that he was an Associate Director based at the Croydon office dealing with some 8000 individual properties. He told us that he had sixteen members of staff who were responsible for the day-to-day management, and that he had been a Tribunal appointee on two previous occasions. One was at a property, 53 Sutherland Square, Kennington, and the other at 113 – 133 Honour Oak Road, London. He told us that he did not actively seek to manage commercial premises, but was used to dealing with a commercial/residential mix. He confirmed that he would also wish to be appointed a Receiver as well as a Manager.
13. He said that he would wish to put together a twin schedule budget for commercial and residential elements, although he had not yet been able to see the terms of the commercial lease. He was aware, however, that there were outstanding problems which he had listed in his Statement, and would be arranging for the in-house chartered surveyors (assuming that the residents agreed) to carry out a condition report as soon as possible. He told us that the surveyor would probably charge somewhere in the region of £100/120 per hour. He told us that he was aware that a lease of the

commercial premises had been granted in October of 2009, but no commercial outfit had taken occupation.

14. He confirmed that HML Andertons had insurance cover of up to £5million with a £5000 policy excess, and that he was fully aware and would comply with the latest RICS requirements. He was of the view that an appointment for three years would be appropriate and would enable him to deal with the outstanding matters.
15. On the question of insurance he said that this would be placed through brokers on a folio basis. He confirmed that no commission was earned by HML Andertons and that instead they used Centaur to deal with insurance matters who retained any commission as they handled the claims that may arise.
16. Insofar as the ground rent was concerned, he confirmed that he would be prepared to receive that on behalf of the landlord, although there would be an administration charge of 10% in connection with the collection of same. He also told us that accounts would be prepared and that they had external accountants who dealt with that. He thought also an electrical survey and fire and Health & Safety surveys would be required. The latter would be £245 for both common areas, but he could not say what the electrical survey or condition survey may cost.

D. THE LAW

17. The appropriate part of the 1987 Landlord and Tenant Act in respect of the appointment of managers is to be found in Part II and at Sections 21 to 24 inclusive. Section 21 states that a 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. Sub-section (2) of Section 21 states as follows:

"Subject to sub-section (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."

18. Section 22 sets out the basis upon which a Notice is required by the tenant to the landlord setting out the default and giving the landlord a reasonable period of time to rectify same. One then turns to Section 24 to see the basis upon which an Order can be made, and in this case Section 24(2) would apply, which states as follows:

"A Leasehold Valuation Tribunal may only make an Order this section on the following circumstances, namely:

- (a) *Where the Tribunal is satisfied*
- (i) *that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact it has not been reasonably practical for the tenant to give him appropriate notice and*
 - (ii) *that it is just and convenient to make the order in all the circumstances of the case."*

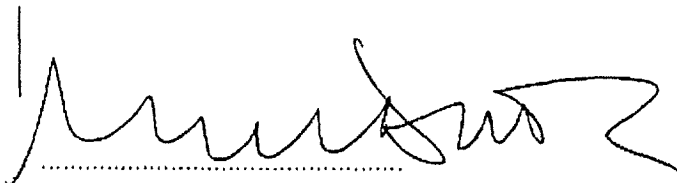
Sub-section 11 of this section states:

"References in this part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises".

E. FINDINGS

19. We find that the Respondent landlord has been in breach of its obligations under the terms of the Lease. There is a clear indication that the property has not been insured and in all probability is not insured. It is clear that the lighting to the common parts, particularly in those serving 113, is defective and requires immediate attention. Further, the entryphone system to that section of the premises is not working. We were also able to see that there were problems with the roof causing either water ingress or condensation beneath the parapet gutter in Mrs Phillips' flat. In addition, the building itself is in a somewhat neglected condition. There are a number of cracks in the external rendering and it needs attention. The landlord appears to have no

interest in the premises, and in those circumstances therefore we find that the provisions of Section 24(2) have been fully complied with and it is just and convenient to make an Order in all the circumstances of the case. We should perhaps comment that the time given by Mrs Phillips in the Section 22 Notice of 14 days seems to be on the tight side. However, we note that she wrote to the landlord twice in July of 2010 and instructed her solicitors to write in August of 2010, for which there was no response. Further, we are told that Mrs Phillips contacted Shinedean after service of the Notice under Section 22 of the Act, and was told it had been received and that she would be contacted, but no such contact has taken place. Under those circumstances, we take the view it is appropriate to make an Order in the terms attached to this Decision which will be effective from the 1 February 2011 for a period of three years. The Manager is reminded of his obligations to the Tribunal and the rights to seek a variation and any further directions as provided for under the Act.



ANDREW A DUTTON

Dated... 28 January 2011

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

CASE REFERENCE LON/OOAZ/LAM/2010/0033

IN THE MATTER OF 113 – 117, KIRKDALE, LONDON SE26 4QJ

**ORDER FOR THE APPOINTMENT OF A MANAGER
UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987**

1. Mark Steven Tejada of HML Andertons Limited of 94 Park Lane, Croydon, Surrey CR0 1JB (the "Manager") is hereby appointed as the Manager and Receiver of 113 – 117, Kirkdale, London SE26 4QJ ("the Premises") pursuant to s24 of the Landlord and Tenant Act 1987 (the "Act") and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Lessees' Leases of the Premises (the "Leases") to carry out the management functions of the Respondent and in particular;
 - (a) To receive all ground rent and insurance rents ("Rents"), service charges interest and other monies payable under the Leases including any arrears the recovery of which shall be at the discretion of the Manager.
 - (b) The power and duty to carry out the obligations of the Respondents contained in the Leases and in particular and without prejudice to the foregoing.
 - (i) the Respondent's obligations to provide services, including insurance of the Premises; and
 - (ii) the Respondent's repair and maintenance obligations.
 - (c) The power to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
 - (d) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more

conveniently be done by an agent or servant and the power to dismiss such agent or servant.

- (e) The power 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 or Premises including but not limited to proceedings against any Leaseholder in respect of arrears of rent, service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent.
- (f) The power to enter into any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (g) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in Parts 1 and 2 of the First Schedule of the Trustee Investment Act 1961 and to hold those funds pursuant so s42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.
- (h) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any Leaseholder owing sums of money under his Lease.

2. 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 the Respondents as Landlord and the Leases by which the flats at the Premises are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
- (c) the duties of managers set out in the Service Charge Residential Management Code (the "Code") or such other replacement code published by the Royal

Institution of Chartered Surveyors and approved by the Secretary of State pursuant to s87 of the Leasehold Reform Housing and Urban Development Act 1993.

3. The Respondents shall give reasonable assistance and cooperation to the Manager 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.
4. Without prejudice to the generality of the foregoing hereof:
 - (a) The Respondents shall by 21st February 2011 deliver to the Manager all such books, papers memoranda, records, computer records, minutes, correspondence, facsimile correspondence and other documents as are necessary to the management of the premises as are within its custody, power or control together with any such as are in the custody, etc of any of its consultants in which last case it shall take all reasonable steps to procure delivery from its consultants.
 - (b) The Respondents shall by 21st February 2011 give full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Premises, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive such sums under the Lease of any leaseholder it shall forthwith pay such sums to the Manager.
 - (c) The Respondents shall permit the Manager and assist him as he reasonably requires to serve upon Leaseholders any Notices under s146 of the Law of Property Act 1925.
 - (d) The rights and liabilities of the Respondent as Landlord arising under any contracts of insurance and/or any contract for the provision of services to the Premises shall from the date hereof become rights and liabilities of the Manager.
 - (e) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
5. 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 indemnify the Respondent in respect of any loss occasioned by the negligent act or omission of himself, his servants or agents, and from the date of 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 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.

6. The Manager shall act fairly and impartially in his dealings with the Respondent and the Leaseholders of the Premises.
7. The Manager shall be appointed from the date of this Order and the duration of his appointment shall be limited to a **period of three (3) years from the date hereof**, subject to the liberty of the Leaseholders and the Respondent to apply to the Tribunal for further or other Directions in connection with his appointment, including, but not limited to, the replacement of the Manager with an alternative manager for the Premises.
8. The collection of the ground rent payable under the Leases shall be the responsibility of the Manager who shall provide receipts to the Lessees. The Manager shall account to the Respondent for the annual ground rent and shall be entitled to recover a fee for such collection which shall not exceed 10% of the ground rent so recovered in any one year.
9. The use of the word "Respondent" in this Order is intended to include any successors in title to the Respondent.

SCHEDULE OF FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget (consulting with the Leaseholders and the Landlord as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the percentage share under the terms of the Leases.
2. Demand and collect Rents, service charges, insurance premiums and any other payments due from the Leaseholders. Instruct solicitors to recover any unpaid rents and service charges and any other monies due to the Landlord upon the Landlord's instructions.
3. Create, with the agreement of the leaseholders, a reserve fund for the purposes of major works of repair.

4. Produce for inspection, within a reasonable time following a written demand by the Landlord or the Leaseholders, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any) in an agreed form.
5. Manage all outgoings from the Service Charge Account in respect of day to day maintenance and pay bills using funds from the Service Charge Account.
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 Landlord and in accordance with the terms of the Lease an insurance policy in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note to all Leaseholders and the Landlord.
8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance:

9. Deal with all reasonable enquiries raised by Leaseholders in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.
10. Administer contracts entered into on behalf of the Landlord and Leaseholders in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
11. Discharge payments in respect of contracts entered into on behalf of the Landlord and Leaseholders in respect of the Premises.
12. Manage the common parts, and service areas of the Premises, including the arrangement and supervision of maintenance. Arrange for occupiers to remove stored items from common staircase at 117 to ensure means of escape in case of fire is not compromised.

13. Carry out regular inspections (at the managers discretion but not less than one per year) without use of equipment, to such of the common parts of the Property 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:

14. (a) In addition to undertaking and arranging day-to-day maintenance and repairs, to 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 Lease, or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Leaseholders and supervise the works in question).

(b) In particular to take immediate steps to facilitate the following works of repair and/or reinstatement:

- (i) Investigate and deal with water ingress/condensation problems
- (ii) Decoration of the common parts and repair to the door entry phone system at 113
- (iii) Urgent repair to the communal lighting in the common parts of 113
- (iv) Installation of appropriate locks to the main entrance doors which will allow easy means of escape in case of fire.

By "facilitate" is meant investigating the exact nature and cause of the defects referred to, the preparation of specifications and other contract document, the invitation of quotations of cost together with the administration of a contract for works.

In this regard it is accepted that funds will need to be provided to the Manager for the purposes of carrying out the above works and it is in that regard that the creation of some form of reserve fund has been provided for at paragraph 3 of the Schedule of Functions above.

Administration and Communication:

15. Deal promptly with all reasonable enquiries raised by Leaseholders, including routine management enquiries from the Leaseholders or their solicitors.
16. Provide both the Leaseholders and Landlord with telephone, fax, postal and e-mail contact details.
17. Keep records regarding details of Leaseholders, agreements entered into by the manager in relation to the Premises and any changes in Leaseholders.
18. Attend meetings when reasonably required by the Leaseholders or the Landlord.

Fees:

19. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £250 plus VAT per annum per unit for the Premises.
20. An additional charge of 10% may be made in relation to the arrangement and supervision of major works if managed and overseen by HML Andertons. If an external surveyor is employed a fee representing 2.5% of the cost of the works may be charged for administration. A fee of £45 plus VAT per unit may be charged for dealing with section 20 procedures under the Landlord and Tenant Act 1985.
21. An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing Leaseholder.
22. The undertaking of further tasks which fall outside those duties described above are to be charged separately on a fee basis to be agreed. A fee for the production of a Fire and Health and Safety Risk assessment report of £245 plus VAT for the whole property is allowable.