

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL AT A HEARING ON
APPLICATIONS UNDER SECTIONS 24 AND 20C OF THE LANDLORD AND
TENANT ACT 1985**

**Premises: Flats at Queens Court and Bentley Court Nuneaton Warwickshire CV11
5NF**

Applicants: Mr. M. Moyers and Others (tenants)

Respondent: MAC Developments & Construction Limited (landlord)

Date of hearing: 16 November 2006

Appearances:

The Applicants were represented by Mr. G. Harrison (Counsel).

The Respondent was represented by Mr. S. Chaudry (Company Secretary) and Miss. K. Knight (Administrator)

Members of the tribunal:

Mr. A. P. Bell MA LLB
Mr. D. J. Satchwell FRICS
Mr. M. H. Ryder

Date of the tribunal's decision:

18 December 2006

Background

1. This is an application to the Tribunal under Section 24 of the Landlord & Tenant Act 1985 (the 1985 Act) to appoint a manager in respect of two blocks of flats at Queens Court and Bentley Court Nuneaton Warwickshire built in 1999 and containing 16 flats in total (the Courts). There is also an application under section 20C of the 1985 Act.
2. There are eleven individual applicants (the Applicants) who are all tenants at the Courts and members of the BCQA Residents Association.
3. The Applicants grounds for seeking the appointment of a manager are fourfold

(a) that the Respondent either is in breach of any obligation owed by him to the tenants under their tenancies and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case;

(b) that unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case;

(c) that the Respondent has failed to comply with the relevant provisions 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 that it is just and convenient to make the order in all the circumstances of the case;

(d) that that other circumstances exist which make it just and convenient for the order to be made in so far as there has been a breakdown of trust between the parties arising from the lack of information regarding the service charges (including the insurance) which has prevented some of the tenants from selling their properties thereby causing them loss.

Inspection

4. The Tribunal inspected the car park, grounds and the common parts of the Courts prior to the hearing.

Hearing

5. The hearing was held at Nuneaton and Bedworth Museum Riversley Park Nuneaton CV11 5NF at 11 a.m. on 16 November 2006. The Applicants were represented by Mr. G. Harrison of Counsel. MAC Developments & Construction Limited (the Respondent) was represented by Mr. S. Chaudry and Miss. K. Knight.
6. The hearing for the appointment of a manager was preceded by the hearing of the Applicants' application for a determination under Section 27A of the 1985 Act to determine whether a service charge was payable and, if so, the amount which was payable.
7. The Applicants had submitted a draft order in accordance with the Directions of the Tribunal dated 19 June 2006. Mr. Harrison, on behalf of the Applicants, contended that the terms of the appointment of the manager were the concern of the Applicants as they would be paying their fees. The reasons for seeking the

selection of Watson Property Management were stated in Applicants' Statement of Case dated 5 July 2006 and were as follows:

- (a) They are a professional property management company whose only field of work is property management. They operate on a national scale and have qualified local representatives in the Midlands area.
- (b) They are members of the Association of Residential Managing Agents.
- (c) They are members of the Royal Institution of Chartered Surveyors.
- (d) They have robust administration, accounting and reporting systems that can provide the Applicants with the confidence that monies handed over can be traced and accounted for at any time. They use computerized accounting systems.
- (e) They have the requisite experience and expertise to ensure that the property will be maintained to the level that will meet the requirements of the Applicants.

The Applicants submitted a copy of the management submission of Watson Property Management to the Tribunal.

8. The Respondent in their letter of 9 August 2006 to Mr. M.T. Moyers (one of the Applicants) confirmed that in principle it had no objection to the Applicants' proposal to appoint Watson Property Management as managers of the Courts, but made several comments with regard to the terms of the draft order which the Tribunal noted. Further by a letter to the Residential Property Tribunal Service dated 10 November 2006 the Respondent made a without prejudice offer to settle the dispute over management by granting the concurrent lease in favour of the management company (Q&B Management Company Limited) ahead of the sale of the remaining flat which had prevented the concurrent lease being granted earlier.
9. In response to a question from the Tribunal to Mr. Harrison whether the Applicants wished to proceed with its application to appoint a manager in consequence of this offer Mr. Harrison stated that the Applicants would prefer to form another company to take responsibility for future management rather than take over the management responsibilities from Q&B Management Company Limited since this would involve taking over that company's liabilities.
10. The Tribunal found that the draft order submitted by the Applicants in accordance with the Directions dated 19 June 2006 did not deal adequately with all the issues referred to in section 24(5) of the 1987 Act.

Determination

11. Following an adjournment of the hearing the Tribunal gave an oral decision to make an order for the appointment of a manager subject to the Applicants submitting a revised draft order for the Tribunal's consideration and approval. Following the conclusion of the hearing the Tribunal decided that it might be helpful if they submitted a draft order (setting out the issues that the Tribunal considered the order should address) to both parties for their comments, and this was done. The Tribunal also made an oral decision that the Respondent could not

recover as part of the service charge the costs incurred by it in respect of dealing with the Applicants' application for the appointment of a manager.'

12. The Tribunal are satisfied that grounds (a), (b) (c) and (d) referred to in paragraph 3 above (which are contained in section 24 of the 1987 Act) have been established by the Applicants' evidence relating to both the appointment of a manager and the service charge dispute for the reasons given in the determination by the Tribunal in respect of the service charge dispute under the same reference as this decision (namely BIR/44UC/LAM/2006/0001), since the Respondent is in breach of its obligations to the Applicant under the leases, unreasonable service charges have been or are likely to be made by the Respondent, the Respondent has failed to comply with the relevant code of management practice and it is imperative that a manager is appointed so that the Applicants are placed in a position where they can sell their flats which has not hitherto been the case. Under each of the four grounds which the Applicants have established to the satisfaction of the Tribunal the Tribunal find that that it is just and convenient for the Tribunal to make the order for the appointment of a manager, as a result of both the direct and consequential loss to the Applicants through the longstanding mismanagement of the service charges at the Courts and the complete breakdown of communication between the parties which has been the outcome of this mismanagement over the period from the year 2000 up to the present time. The Tribunal accordingly confirms its oral decision to make an appointment of a manager, such appointment to be on the terms set out in the attached order having had regard to the comments of the Applicants and the Respondent and the provisions of section 24(5) of the 1987 Act.

13. With regard to the application by the application made by the Applicants under section 20C of the 1985 Act for an order that all costs incurred or to be incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them the Tribunal confirms its oral decision that it is just and equitable to make this order in the circumstances of this case for the reasons given in paragraph 12 above. The Applicants' application is therefore allowed.

CHAIRMAN

A P Bell

Dated

18 December 2006

BIR/44UC/LAM/2006/0001

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND REB ASSESSMENT
PANEL**

IN THE MATTER OF:

MR. M. MOYERS & OTHERS

Applicants

-and-

MAC DEVELOPMENT & CONSTRUCTION LIMITED

Respondent

**Order for the Appointment of a Manager in respect of flats at Queens Court and
Bentley Court Nuneaton Warwickshire CV11 5NF**

1. Watson Property Management of 11 Bank Street, Wetherby, West Yorkshire LS22 6NQ ("the Manager") be appointed as managers of Bentley Court and Queen's Court Nuneaton, Warwickshire CV11 5NF ("the Property") with effect from 16 November 2006.
2. In performing the functions of its appointment the Manager must comply with all statutory requirements and the provisions of the Service Charge Residential Management Code.
3. The Manager shall be authorised to carry out the following functions and duties:
 - (a) to receive the service charges and any other monies payable by the tenants of the Property other than rent

- (b) to recover any arrears of the service charges and any other monies payable by the tenants of the Property arising on or after 16 November 2006
 - (c) to administer the service charge and reserve fund (if any) accounts for the Property
 - (d) to carry out the Respondent's obligations under the Fourth Schedule to the leases of each flat to provide insurance cover, effect repairs, and provide the services specified in the Fourth Schedule
 - (e) to receive, consider, grant or otherwise deal with all applications for consents of whatsoever nature arising as to dealings, alterations or any other matters requiring the consent of the Respondent as far as such consents relate to the tenants or their flats
4. The remuneration the Manager shall be governed by the standard terms of the management contract provided by Watson Property Management, a copy of the draft budget incorporating the Manager's remuneration having been produced to the Tribunal by the Applicants.
5. The Applicants, the Respondent and the Manager shall each have liberty to apply to the Leasehold Valuation Tribunal for further directions.
6. The Order shall remain in force until varied or revoked by a further order of the Tribunal.

DATED 18 December 2006

SIGNED A.P. Bell
CHAIRMAN