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IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AW/LVM/2006/0002

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

AND IN THE MATTER OF 96 GLOUCESTER ROAD, LONDON, SW7 4AU

BETWEEN:

MEHRDAD GOLBAN TEHRANI
GILES DONALD BLACK
VERONICA EVANS
PHILIP MAURICE WARINGTON-SHAW
RICHARD VANEY MAXWELL-GUMBLETON
NICOLA EVE MAXWELL-GUMBLETON
GHAZAN HAMID
SALWA ALI YAHA
JOHN COUNSELL STEPHENS

Applicants

-and-

PACIFIC LLOYD LIMITED
CENTREPOINT INVESTMENTS LIMITED

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application by the Applicants to vary the term of an earlier management order made by the Tribunal on 15 July 2004 ("the Order"). The Order appointed Mr Maunder Taylor FRICS as the manager of the subject property for a term of 2 years from 7 July 2004 and upon the terms set out

therein. The Order, and therefore Mr Maunder Taylor's appointment will expire on 6 July 2006. The Applicants seek an extension of the Order generally or for such other term that the Tribunal considers appropriate.

2. It is neither necessary nor relevant to set out here the factual background that gave rise to the Order being made. Those matters have already been set out in some detail in the earlier Tribunal's Decision and are self-evident.

Hearing

3. The hearing in this matter took place on 26 June 2006. The Applicants were represented by Mr Bates of Counsel. The Respondents were represented by Miss McCann of Counsel.

4. At the commencement of the hearing, Miss McCann made an application to adjourn the hearing on the basis that she and her instructing solicitors had only been instructed by the Respondents on the previous Thursday. The adjournment would allow the Respondents the opportunity to better prepare their case. Miss McCann could offer no proper explanation as to why her clients had failed to file and serve any evidence, save for a Reply to the Applicants statement of case, and had not sought to obtain legal advice earlier.

5. The Tribunal did not grant the application to adjourn on the basis that there were no good reasons for doing so. The substantive application had been made as long ago as 10 April 2006 and the hearing date was known by the Respondents for some time. The Tribunal was not given an explanation for

the Respondents failure to adduce any evidence or to seek legal advice until a very late stage in the day. The Tribunal was of the view that if any prejudice accrued to the Respondents by the Tribunal not granting the application to adjourn, then it was entirely of their own making. Miss McCann then informed the Tribunal that in the circumstances both she and her clients had to withdraw from the hearing. The Tribunal proceeded to hear this matter on the basis of the submissions made by Mr Bates and the documentary evidence before it.

6. Mr Bates told the Tribunal that one of the main reasons Mr Maunder Taylor had been appointed as manager had been to carry through the major works project to remedy the extensive disrepair to the property as a breach of the First Respondent's ("Pacific") breach of its repairing obligation under the leases. The project was now in its final stages with only 'snagging' remaining.

7. Mr Bates submitted that the test of 'just and convenient' as set out in s.24(9A)(b) of the Landlord and Tenant Act 1987 (as amended) ("the Act") was met in the circumstances of this case. He drew the Tribunal's attention to the fact that default judgements totalling £18,985.89 had been obtained against the Second Respondent ("Centrepoint") for service charge arrears. It is suggested at paragraphs 11 and 13 of the Applicants' statement of case that both Respondents are connected and, by association, the actions of one cannot be entirely disassociated from the other. In addition, the three basement flats, known as Flats B1, B2 and B3, belonging to Centrepoint were being used as

brothels. This had been confirmed by the Metropolitan Police in letters variously dated 8 August 2005, 21 December 2005 and 30 March 2006.

8. As to the Respondents' position set out in their Replies respectively dated 20 May 2006 and 22 June 2006, Mr Bates contended that their case was limited to three points, namely:

(a) that it was in fact the Applicants who were not paying their service charge contributions and not the Respondents.

(b) that Mr Maunder Taylor was biased and has acted contrary to the interests of the Respondents.

(c) that the cost of the major works carried out by the Applicants was too high.

9. Mr Bates referred the Tribunal to the witness statement of Mr Maunder Taylor dated 7 June 2006 and prepared in support of this application. The witness statement rebuts the allegations made by the Respondents especially in relation to any service charge arrears and bias on his part. Mr Bates also specifically drew the Tribunal's attention to paragraph 23 and 24 of Mr Maunder Taylor's witness statement where he concludes that the order ought to continue because if responsibility for the maintenance of the building reverted to Pacific, there was a serious risk that it would fall into disrepair again.

10. In closing, Mr Bates also referred the Tribunal to the concerns of the Applicants as set out in paragraphs 9 and 10 of the witness statement of Mr

Warington-Shaw dated 6 June 2006. He is the lessee of Flat 5 and authorised to act on behalf of all of the Applicants. Effectively, they too shared Mr Maunder Taylor's concerns that the property would fall into disrepair in the event that Pacific became responsible for maintaining the building again. Mr Bates submitted that the Respondents proposal that a mutually agreed manager be appointed by the parties was not acceptable because it would be open to Pacific to unilaterally terminate the manager's contract at any stage. This would give rise to a situation where Pacific would once again become responsible for the maintenance of the building. Mr Bates further submitted that the Applicants bore the vast majority of the financial burden for the overall service charge expenditure (95%). They all supported the application that the management order should continue and that Mr Maunder Taylor should continue as manager as they were happy with the service being provided by him.

Decision

11. The test to be applied when considering any application to vary or discharge an order appointing a manger under s.24 is set out in s.24(9A) of the Act. This provides that:

> *"The Tribunal 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.

12. In deciding this application, the Tribunal carefully considered the submissions made on behalf of the Applicants, the respective statements of case, the witness statements and other documentary evidence before it. The Tribunal found that the Replies served by both Respondents provided it with little or no assistance in this matter. The allegations contained therein were both general and evidentially unsubstantiated. The Respondents sought to raise, *inter alia*, matters concerning the major works before and at the time the Order was made. The earlier Tribunal has already made findings in relation to the disrepair of the property at the time and its reasons for making the Order. It is not for this Tribunal to revisit the Decision as the Respondents suggest. The allegation made against Mr Maunder Taylor that he was not competent or impartial and that under his tenure the cost of the major works has increased unreasonably, had been rebutted by his evidence and that of Mr Warington-Shaw on behalf of the Applicants. Having regard to all of the circumstances in this matter, the Tribunal was of the view that the test set out in s.24(9A) of the Act had been met and that this application should be granted. In deciding to grant the application, the Tribunal, in particular, had regard to the following:

(a) the earlier Tribunal had made findings of fact as to the serious state of disrepair of the property and that this was as a result of a breach of covenant to repair on the part of Pacific over a considerable period of

time. Mr Maunder Taylor, as a Tribunal appointee, formed the view that if the maintenance of the building reverted to Pacific, then there was every likelihood that the disrepair would reoccur. The Tribunal is entitled to have regard to any views expressed by him. The Applicants were of the same view. On balance, the Tribunal accepted that there was a very real risk or possibility that if the management of the property reverted to Pacific, the fears of the Applicants would be realised. On any view, it is clear that any repairs that had been undertaken by Pacific were as a consequence of the two closing orders made by the Royal Borough of Kensington & Chelsea and were not done voluntarily by it.

(b) that the Applicants are comprised of the vast majority of the leaseholders. They are liable for almost the entire amount of the overall service charge expenditure (95%) and have a vested financial interest in how that money is spent. Their universally held view is that they are satisfied both as to the cost and service provided by Mr Maunder Taylor and, in particular, the execution and management of the major works by him.

(c) that although one of the main reasons for the appointment of Mr Maunder Taylor was to oversee the major works, it was not the only reason. Paragraph 1(b) of the Order also made him entitled him to exercise all "*general management powers and functions in relation to the property*". Mr Maunder Taylor's continued appointment would

provide the Applicants with continuity and certainty as to how the property would be managed in the future.

(d) that the landlord and tenant relationship between the Applicants and Pacific had broken down irretrievably.

(e) that although the Respondents are in law strictly separate legal entities, it appears that they are comprised of the same personnel. This was not denied by them despite being specifically put by the Applicants in their statement of case. It is also perhaps the reason why Centrepoint, as a leaseholder, joined with Pacific in resisting both this and the original s.24 application. It follows that in the context of this matter the Tribunal should, as part of its wider discretion under s.24(9A)(b), have regard to the conduct of both parties as, by association, one reflects on the other. In particular, the Tribunal had regard to default judgements totalling £18,985.89 obtained against Centrepoint for service charge arrears. Although it is alleged by Centrepoint that the judgements have been improperly obtained, no application to have them set aside has been made. There was no evidence before the Tribunal that it had paid any service charges to Pacific as alleged. In any event, even if that were true, those payments should have been made to Mr Maunder Taylor pursuant to paragraph 1(b) of the Order. The Tribunal also had regard to the fact that the three basement flats belonging to Centrepoint were continued to be used as a brothels and were now subject to s.146 notices to forfeit the leases. On balance, the Tribunal was satisfied that

both Respondents were aware of this situation as a result of the attempts made by the Metropolitan Police to contact certainly Centrepoint through the previous managing agent, Ellison Management Services, who purports to represent both Respondents.

(f) the Tribunal accepted Mr Maunder Taylor's evidence, at paragraph 11 of his witness statement, that as at the date of the Order, the only buildings insurance that had been effected by Pacific was in relation to the flats owned by Centrepoint. This is perhaps not coincidental and consistent with the view that both companies ought to be treated as being one and the same for the purpose of these proceedings despite being separate limited companies. Mr Maunder Taylor has since effected a buildings insurance policy to cover the entire building.

(g) it is common ground that the freeholder, Pacific, is a company registered in the Isle of Man. It is outside the jurisdiction of this country and the Applicants are not aware that it has any assets within the jurisdiction. Consequently, any judgements or other orders obtained against it may be unenforceable. The Tribunal, therefore, accepted the Applicants submission that any service charge payment made to Pacific was potentially at risk. The Tribunal considered this to be an undesirable position for the Applicants, especially having regard to Pacific's historic conduct in the management of the building.

13. Accordingly, for the reasons stated, the Tribunal decided that the Order should continue on the same terms until further order. The variation order is annexed to this Decision.

Reimbursement of Fees

14. Mr Bates told the Tribunal that the Applicants had incurred fees of £350 in issuing this application. The Tribunal orders, pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, that the First Respondent and freeholder, Pacific, is to reimburse the Applicants the entire amount within 28 days of service of this Decision by the Tribunal. The Tribunal directs that payment is to be made to Mr Maunder Taylor on behalf of the Applicants.

Dated the 3 day of July 2006

CHAIRMAN... I. Mohabir .....

Mr I Mohabir LLB (Hons)

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Applicants

-and-

PACIFIC LLOYD LIMITED
CENTREPOINT INVESTMENTS LIMITED

Respondents

VARIATION OF ORDER

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1. This variation is in respect of the Leasehold Valuation Tribunal Order dated 15 July 2004 (Ref: LON/00AW/LAM/2004/0002) ("the Order").

2. Paragraph 1 of the Order is varied so that the Manager, Mr Maunder Taylor, shall continue to be appointed until further order by the Tribunal.

3. In every other respect the terms of the Order shall stand unless further varied by the Leasehold Valuation Tribunal.

4. For the avoidance of doubt, the parties shall have permission to apply in the same terms as set out in paragraph 14 of the Order.

Dated the 3 day of July 2006

CHAIRMAN ..... I. Mohabir .....

Mr I Mohabir LLB (Hons)