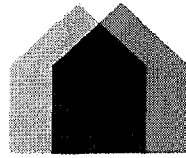


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**Residential
Property**
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00AG/LAM/2006/0012

SECTION 24 LANDLORD and TENANT ACT 1987

FLAT 3, 1 NETHERHALL GARDENS, LONDON NW3 5RN

**MR HARPINDER SINGH DHARIWAL (1) &
MRS REENA SINGH DHARIWAL (2)**

Applicants

GLOBAL PROMINENCE INCORPORATED

Respondent

Tribunal: Mr M Martynski (Solicitor)
Mr M Cairns MCIEH
Mr D Wills ACIB

Present at hearing: Mr J Garood (Counsel for the Applicants)
Mr H Dhariwal
Mr B Coppola (Managing agent for Respondent and
leaseholder)

Dates of hearing: 18 April, 7 June & 17 September 2007

Date of decision: 17 September 2007

Date of reasons: 28 September 2007

Background

1. This detailed decision follows from the Tribunal's published summary decision dated 17 September 2007. That decision was to the effect that it was right for a manager to be appointed in respect of 1 Netherhall Gardens, NW1 ('the Building') but that the proposed manager (Mr Wayne of Wayne & Silver) would only be appointed on terms that differed to the terms proposed by the Applicants.

2. The hearing of this application to appoint a manager came after the hearing of an application made by the Respondent in case reference;LON/00AG/LIS/2006/0101. That case was an Application made by the Respondent pursuant to section 27A Landlord and Tenant Act 1985 in which the Respondent sought declarations as to the reasonableness and payability of service charges for the years 2003 to 2006. The decision in that case was published on 1 March 2007.

The law

3. The relevant law is found in section 24 Landlord and Tenant Act 1987 the relevant parts of which provide as follows;

- (1) A leasehold valuation tribunal may.....by order.....appoint a manager to carry out in relation to any premises.....
 - (a) such functions in connection with the management of the premisesas the court thinks fit
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-
 - (a) 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..... and,
 - (ii) that it is just and convenient to make the order in all the circumstances of the case
 - (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)
 - (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

The Tribunal's findings

4. In its previous decision in case reference;LON/00AG/LIS/2006/0101 referred to above, the Tribunal found that the Respondent had;

- (a) been in breach of obligations owed by him to the tenant under his tenancy and relating to the management of the Building:
 - for example the Respondent had failed to give the Applicants timely service charge certificates as provided for in the Applicants' lease.
- (b) raised unreasonable service charges:
 - the Tribunal found management, cleaning, gardening and other fees to be unreasonable; there was confusion over the charging for matters that related to the Building as a whole and for matters that related solely to one of Mr Coppola's own flats

(c) failed to comply with a relevant provision of a code of practice (the code produced by the Royal Institute of Chartered Surveyors for management of residential property):

- The Tribunal found numerous breaches of the management code including failure to pursue an insurance claim (the status of the insurance claim is still unclear), failure to communicate sufficiently with tenants and problems with service charge accounting

The Tribunal's previous decision is long and detailed and should be referred to for further examples of the above.

5. Given the Tribunal's findings in its previous decision, the only other question for the Tribunal was whether, in the light of these findings and the developments since that decision, it was just and convenient to make an order appointing a manager. Both parties made lengthy submissions on this issue. The main relevant factors that the Tribunal took into consideration in reaching its decision are as follows.

6. The Tribunal in its earlier decision had heavily criticised the management of the Building by Mr Coppola who acted as the manager and who is sole shareholder in the Respondent company and owner of two of the flats in the Building. However, that criticism did not extend to the standard of upkeep of the Building. The Building was, apart from some external decorations that were due to some parts, in good condition. There was no doubt that Mr Coppola cared for the Building and its upkeep.

7. There was little doubt that Mr Coppola had suffered financially as a result of his failings as a manager as found by the Tribunal in its earlier decision. As a result of his failings, he was unable to collect considerable sums of money that would otherwise have been due from the Applicants.

8. It was clear that the Tribunal's earlier decision had caused Mr Coppola to seriously reflect on the management of the Building and to change the way in which he managed and proposed to manage the Building. By the time of the final hearing of this case the 2006 service charge had been finalised. In that service charge it was clear that Mr Coppola had taken on board the Tribunal's comments regarding management fees, gardening and cleaning costs.

9. Mr Coppola told the Tribunal that he had taken on an assistant experienced in property management who he paid out of his own pocket. He also said that he proposed to retain the services of a bookkeeper/administrator for the accounts and that he had recently set up a separate bank account to receive payments on account from the leaseholders.

10. There were clear indications that Mr Coppola had learned a great deal from the previous proceedings and it was clear that he had taken steps to change the way in which he dealt with matters. Set against this however were two statements made by Mr Coppola that were of some concern to the Tribunal. The first was a statement to the effect that he intended to pursue alleged problems, which seemed minor to the Tribunal, regarding rubbish and bikes and prams in the communal hallway. This indicated to the Tribunal that Mr Coppola may lack the necessary independence to manage successfully. The second statement concerned Mr Coppola's intention to have a full structural survey carried out in circumstances where this was not strictly

necessary. This indicated to the Tribunal again that there was a lack of independent judgement and that Mr Coppola managed the building according to his own desires without due regard to other leaseholders reasonable expense.

11. Mr Coppola produced to the Tribunal a witness statement dated 23 July 2007 signed by the long leaseholders of Flat 4, Ms Kovacs and Mr Sitanyi. Prior to the signing of this witness statement, Ms Kovacs and Mr Sitanyi took no part in the proceedings despite being fully aware of them. The witness statement gave broad support for Mr Coppola and expressed concern that the fees of the proposed manager were going to be higher. In particular it was stated;

"We strongly oppose the proposal to replace Mr Coppola [a]s manager of our house"

The Tribunal was anxious if possible to hear directly from the makers of this statement. The language and style of the statement gave it the appearance of having been drafted by Mr Coppola with little or no input by Ms Kovacs and Mr Sitanyi. Ms Kovacs was telephoned by the clerk to the Tribunal and asked if she or Mr Sitanyi would be willing to attend a hearing at the Tribunal offices. Ms Kovacs stated that neither she nor Mr Sitanyi wanted to have any further part in the proceedings.

12. In the circumstances the Tribunal allowed the statement to be given as evidence. Little weight could be attached to that statement however given that the makers of the statement were so reluctant to have any other part in the proceedings.

13. In the previous proceedings and in the current proceedings, Mr Coppola refused to give details of the Respondent company which he says is a company incorporated in the U.S.A. Mr Coppola was not prepared to give any details to the Tribunal concerning the registered office of the Respondent company in the U.S.A. or the state in which the Respondent was registered nor was he prepared to confirm that the U.K. address for the Applicant was an address for service (of notices and legal proceedings). This showed a lack of candour on Mr Coppola's part in circumstances where the Tribunal was looking for openness and transparency if Mr Coppola was to continue managing the Building.

14. Balancing all the relevant factors in this case led the Tribunal to conclude that it was just and convenient for a manager to be appointed. Mr Coppola should be given credit for his proposals but given the problems that had occurred and given the concerns as to Mr Coppola's future management and the continued concern of Mr Coppola's continued refusal to give details of the Respondent company, the better course for the Building and the leaseholders in general was for the appointment of an experienced and independent manager.

15. As to the proposed manager Mr Wayne, the Tribunal had some concerns. Mr Wayne was not familiar with the RICS code of management. After considering the provisions of the code, he did however confirm that he would manage the building in accordance with that code (apart from one small point about interest on leaseholder's money – given the likely amounts involved, the Tribunal did not consider this significant).

16. The Tribunal had concerns regarding Mr Wayne's proposed fees. These were set out in his witness statement dated 3 May 2007 and were stated to be;

"....in the region of £2,500 per annum being £500 per flat per annum"

This must be a mistake as there are only four flats in the Building. The relevant figure is taken to be £500 per flat. Mr Wayne told the Tribunal that in addition to this charge, he would charge a fee equivalent to 12.5 per cent plus VAT on works of over £1,000 and £50 per flat in respect of a section 20 Landlord and Tenant Act 1985 consultation process.

17. In the Tribunal's experience, a basic management fee of £500 per flat is considerably over the market rate in circumstances where a percentage fee is also charged on works. The market would normally expect to see a top fee of around £350 per flat. The percentage basis of charging for additional work is not one that is viewed as best practice. The Tribunal found that a fee based on a percentage of 12.5 was too high when combined with a basic fee of £350 and considers that better value of 10 per cent could be obtained in the market. There was no objection to the fee of £50 plus VAT for a section 20 consultation process.

18. The other area of concern for the Tribunal was the proposed manager's insurance cover. There was some confusion over this but it appeared to be limited to no more than £100,000 per head of claim. In appointing a manager the Tribunal would normally look for a minimum cover of £500,000.

19. In the circumstances, the Tribunal is prepared to appoint Mr Wayne as the manager in this case but only on amended terms to those proposed. His fees would have to be £350 per flat plus ten per cent of the value of works over £1,000 and £50 per flat for a statutory consultation process (all figures to have VAT added). In addition, Mr Wayne would have to increase his insurance to a minimum cover of £500,000.

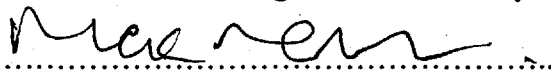
20. The Applicants made an application pursuant to section 20C Landlord and Tenant Act 1985 the relevant parts of which provides as follows;

(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 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).....

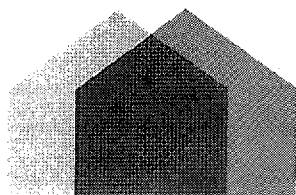
(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

21. Given the Tribunal's findings above, the only order that it can reasonably make in the circumstances is that none of the costs incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.



Mr M Martynski (Chairman)

28 September 2007



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ORDER OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00AG/LAM/2006/0012

SECTION 24 LANDLORD and TENANT ACT 1987

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**MR HARPINDER SINGH DHARIWAL (1) &
MRS REENA SINGH DHARIWAL (2)**

Applicants

GLOBAL PROMINENCE INCORPORATED

Respondent

Tribunal:

Mr M Martynski (Solicitor)
Mr M Cairns MCIEH
Mr D Wills ACIB

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Robert Clive Wayne of Wayne & Silver ('the Manager') is appointed as manager of the property at 1 Netherhall Gardens London NW3 ('the Property').
2. This order shall continue for a period of two years from 1 January 2008.
3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order.
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular

with regard to repair, decoration, provision of services and insurance of the Property.

- (c) The duties of a manager 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 section 87 Leasehold Reform Housing and Urban Development Act 1993

4. An order is made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs of these proceedings shall not be added to the service charge.



Mr M Martynski (Chairman)

3 October 2007

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £500,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than 31 December 2007 the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 January 2008 become rights and liabilities of the Manager.
4. The Manager is to be entitled to prosecute claims in respect of causes of action accruing before or after the date of his appointment.
5. The Manager shall account forthwith to the Respondent for the payment of ground rent (if any) received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
6. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- i. Maintain appropriate building insurance for the Property. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Set, demand and collect service charges (including contributions to any sinking fund), insurance premiums and any other payment due from the lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor if required by the Manager.
- ii. Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- iii. To maintain an account at such bank or building society as the manager shall from time to time decide into which service charge contributions and all other monies arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- i. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- ii. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- iii. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- i. Fees for the above mentioned management services will be a basic fee of £350 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- ii. Preparation of specifications and obtaining tenders for all the supervision of external and internal common parts decorations and repair roof renewal

- or such other major items with a contract value in excess of £1000 will be subject to a charge of 10% of the cost.
- iii. The additional fee of £50.00 per flat in respect of any section 20 Landlord and Tenant Act 1985 consultation process.
 - iv. VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
 - v. The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.