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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 24 OF THE  
LANDLORD AND TENANT ACT 1987**

**Case Reference:** LON/00BK/LAM/2012/0015

**Premises:** 1, GLOUCESTER STREET, LONDON SW1V 2DB

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**Applicants:** (1) MR MAURICE CONROY (mezzanine flat)  
(2) CHRISTOPHER KIDDER and  
JULIA LO PRESTI VENTURA (Flat 1A)  
(3) GILLIAN McCURRACH (Flat 4)  
(4) PETRO REIS and NOELIA CARVALHO (Flat 5)

**Respondent:** GLOUCEST SW LIMITED

**Appearance for Applicants:** CHRISTOPHER KIDDER, JULIA LO PRESTI VENTURA,  
GILLIAN McCURRACH, PETRO REIS

**Appearance for Respondent:** None

**Other Appearances:** Mr Callum Watson MIRPM, MSc (proposed Manager)  
Douglas Gordon Property Management

**Date of Receipt of Application** 13 June 2012

**Date of Pre Trial Review and Directions** 10<sup>th</sup> July 2012

**Date of Hearing** 3 September 2012

**Date of Decision** 5 September 2012

**Leasehold Valuation Tribunal:** Mr S. Shaw LLB (Hons) MCI Arb  
Mrs J. Davies FRICS  
Mr O. Miller BSc

## DECISION

### Introduction

1. This case involves an application made by the Applicants referred to in the heading of this Decision who will be referred to collectively as "the Applicants". The application is made pursuant to the provisions of section 24 of the Landlord & Tenant Act 1987, and is an application for the appointment by the Tribunal of a manager, to deal with the management of the property at 1, Gloucester Street, London SW1V 2DB ("the property"). The Applicants are all long leasehold owners of flats at the property. The freehold owner of the property is a company called Gloucester SW Limited ("the Respondent"). Mr Kidder, Miss McCurrach, both applicants in respect of this application, are directors and shareholders of the Respondent company. There are two other directors and shareholders, namely Mr Summerfield, (who is the joint leasehold owner together with his wife Mrs Summerfield of Flat 3 at the property), and a Mr Bonneau, (who is the joint leasehold owner together with his wife) of Flat 2. Neither Mr Summerfield nor Mr Bonneau are participating in making this application. The Applicants referred to above informed the Tribunal that the other directors are opposed to the appointment of a manager. However, no written representations have been made by or on behalf of any of the other director/leaseholders, nor did they appear before the Tribunal at the hearing of the application.
2. The property comprises a large end of terrace Victorian house, which has been converted into six flats. The basement Flat 1A is owned and occupied by

Mr Kidder and his wife Ms Ventura. The ground floor Flat 2 is owned and occupied by Mr and Mrs Bonneau. There is a mezzanine flat, which is owned by Mr Conroy. Mr and Mrs Summerfield own Flat 3, which the Tribunal was informed is let to a tenant or tenants. Ms McCurrach owns and occupies Flat 4 on the second floor and Mr Reis and his wife own and occupy Flat 5, which is on the third and fourth floor.

3. The Tribunal heard evidence from the owners and occupiers of the basement Flat 1A, namely Mr Kidder and Ms Ventura, and from Ms McCurrach and Mr Reis as referred to in the heading of this Decision. The Tribunal also heard evidence from the proposed manager, namely Mr Calum Watson of Douglas & Gordon, Chartered Surveyors and Management Agents.
4. The background to this matter was explained principally on behalf of the Applicants by Mr Kidder. He told the Tribunal that, in general terms, the problems which have arisen in this case have stemmed from the fact that the leaseholders grouped together to purchase the freehold of the building and hoped thereafter that management could be arranged by themselves without reference to any outside agency. The Respondent company was formed for the purpose of holding the freehold interest and, as indicated, the shareholding in that company (and officership) is shared between Mr Kidder, Ms McCurrach, Mr Summerfield and Mr Bonneau. However, the company has not been able to speak with one voice. In particular, as explained to the Tribunal by Mr Kidder, there has been a difference of opinion about which works should or should not be carried out and the funding of such works. Mr Kidder gave evidence to the

Tribunal that the application which has been made has been spurred by three particular factors which will be set out below.

5. First, Mr Kidder told the Tribunal that problems arose when Mr Reis purchased Flat 5 from the then owner. The account given to the Tribunal, both by Mr Kidder and Mr Reis was that although this should have been a simple transaction, it transpired to be quite complex. The reason for this was that Mr Reis' solicitors had requested information about the state of the service charge account. The request was made of the Respondent company. As understood by the Tribunal, Mr Summerfield has been principally dealing with the affairs of the company and the company's registered address is that of his own offices. For whatever reason, the evidence put before the Tribunal was that the supply of information about the service charge accounts and other information was not promptly given, and indeed it may be that the records relevant thereto are not easily accessible. Whatever the position, this has led the Applicants to believe that the administrative affairs of the freehold-owning company, and thus the landlord, are not in good order.
6. The second factor prompting this application has been that the property, although in a desirable area, is in poor decorative state and in poor state of repair generally. The provisions of the respective long leases, which are similar although not always identical, provide for external decorations to be carried out every 4 years. The evidence put before the Tribunal was that no such decorations had taken place for about 9 years. There have been repeated attempts through email and otherwise to arrange a jointly agreed scheme of

repairs and decorations but all of this has been of no avail because consensus cannot be reached between the leaseholders or directors and shareholders of the Respondent company. Accordingly, the common parts, so the Tribunal was told, are in poor decorative state, in that they have been decorated to a poor standard and without agreement, and there are other aspects of the maintenance of the building, which require urgent attention.

7. The third factor which has also prompted this application, as articulated by Mr Kidder, is that he and his wife have had particular difficulties in their flat which have been brought about by water and waste material percolating through their ceiling and the floor of the flat above, which is Flat 2, owned and occupied by Mr and Mrs Bonneau. Once again, despite repeated efforts to obtain some consensus in how these leakages can be rectified, for reasons which need not be elaborated upon, no such agreement has been possible, and according to Mr Kidder, his fellow director of the freehold owning company and leaseholder has been unco-operative in seeking to achieve an overall resolution. The result of this has been that three substantial claims have been made by Mr Kidder and his wife under the terms of their own insurance policy, and yet the problem has not yet been remedied. So bad has been the situation that they have had to move out of their property and are living in temporary accommodation, pending the resolution of the leakage problem. They are concerned that either they may be unable to achieve a renewal of their insurance policy, or that the premium will be set so high by their current insurers as to be unacceptable. They have not been able to live in their flat since February 2010.

8. There are other aspects which go to the Applicants case generally, but the principle submission on their behalf is that because of the constant conflict between directors of the freehold owning company, there has effectively been little or no management or maintenance of the property. The result of this is that the parties' respective investments, in what are relatively expensive and substantial flats, are at risk.
9. As indicated above, there was no appearance before the Tribunal by the two non-participating shareholders/directors of the freehold owning company, the Respondent – namely Mr Summerfield and Mr Bonneau. Nor were there any written representations put before the Tribunal on their behalf despite provision having been made for such representations in the directions given by the Tribunal.
10. The evidence given by the Applicants referred to above, seemed to the Tribunal to be reliable and supported by the correspondence and other documents put before the Tribunal in the hearing bundle. The Tribunal accepted this evidence.
11. The Tribunal also heard from the proposed manager put forward by the Applicants. As indicated above, the proposed manager was Mr Calum Watson. Mr Watson is the Head of Block Management at Douglas & Gordon, which firm is a well established firm of chartered surveyors and property managers. Their block management office is directly across the road from the subject property, and is thus well situated to deal with matters of management relating to the

property. Mr Watson's professional background is set out in his CV at page 42 of the hearing bundle and no purpose is served by repeating that material in this Decision. Suffice it to say that he has full membership of the Institute of Residential Property Management and has an MSc in estate management. He has 15 years of experience in dealing with residential management, both in the public and private sectors and for the past 11 years has been concerned with what he describes as "high-end Central London buildings".

12. The Tribunal as indicated, heard evidence from Mr Watson. Evidence of the insurance cover relevant for the firm was produced and the Tribunal was satisfied that Mr Watson has sufficient experience to deal with the management of this property. At page 44 in the bundle is a management plan which he has produced and about which he spoke before the Tribunal, and solicitors on behalf of the Applicants have prepared a draft order which has attached to it an appendix, which appendix is culled from the standard terms and conditions of Douglas & Gordon.
13. Under the Landlord & Tenant Act 1987, section 24, the Tribunal may make an order provided it is satisfied that one of the grounds set out in section 24(2) has been established. On the evidence before the Tribunal, as referred to above, the Tribunal was indeed satisfied that this property is not at present being properly managed. The relevant service charge contributions are not being made or collected, necessary repairs are not being carried out, and there is a lack of cohesion in the instructions or policy to be adopted on behalf of the Respondent company. It seems to the Tribunal that there have therefore been

breaches of the repairing covenant imposed upon the landlord in this case, as well as other breaches, some of which have been identified in the Section 22 Notice. However, principally the Tribunal makes this order for appointment of a manager on the basis that it is satisfied that circumstances exist in this case which make it just and convenient for the order to be made. Those circumstances are, as referred to above, that there is effectively a log-jam in the Respondent freehold owning company which is the landlord of the various flats, to the extent that no proper management or maintenance of the building is taking place.

## **Conclusion**

14. For the reasons indicated above, the Tribunal accedes to this application and does indeed make an order for the appointment of Mr Callum S. Watson as manager of the property in the terms of the order attached hereto and the appendix to that order. The order should be read together with a supplementary paragraph 2A which reads:

*“Without prejudice to the generality of the provisions herein, this appointment is on the basis that the manager does not inherit any disputes which may exist for the period prior to the date of his appointment, which said disputes are to be resolved outside the context of his management. Rent, service charges and other monies payable for the duration of his appointment are therefore to be made regardless and free of any earlier claims or disputes, which said claims or disputes will not be the concern of the manager.”*

15. The essence of this inserted further paragraph is that the Tribunal is concerned that sums falling due after the date of the appointment of the Tribunal's manager should be paid in full and without reference to any earlier matters of



dispute which will have to be resolved by the parties in some way not involving the newly appointed manager, who should effectively start with a “clean slate”.

16. No further requests for order were made by the Tribunal and no such further orders are made, save to underline the fact that this appointment is for a period of 12 months from the date of this order, but can be reviewed or renewed with the consent of the parties or otherwise at its date of expiry.

**Legal Chairman: S. Shaw**

**Dated: 5<sup>th</sup> September 2012**

IN THE LEASEHOLD VALUATION TRIBUNAL

RE: 1 GLOUCESTER STREET, LONDON, SW1V 2DB

MAURICE CONROY  
CHRISTOPHER KIDDER AND JULIA LO PRESTI VENTURA  
GILLIAN McCURRACH  
PEDRON REIS AND NOELIA CARVALHO

Applicants

AND

GLOUCEST.SW.LTD

Respondent

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

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1. In this Order:

- a. "The Property" includes all those parts of the property known as 1 Gloucester Street, London, SW1V 2DB;
- b. "The Landlord" means the freeholder of the Property from time to time and currently Gloucest.SW.Ltd;
- c. "The Manager" means Calum Watson of Douglas & Gordon, 67 – 68 Warwick Square, London, SW1V 2AR;
- d. "The Tenants" means the tenants from time to time of the various parts of the Property

2. The Manager shall be appointed as receiver and manager of the Property with effect from the date of this Order.

→ 2A. See paragraph 14 of the Decision.

3. The Manager shall be appointed for an initial term of 12 months from the date of this Order.

4. The Manager shall manage the Property in accordance with:

- a. The respective obligations of the Landlord and the Tenants, in particular with regard to repair, decoration and insurance of, and provision of services to, and the Property; and

- b. The duties of a Manager as set out in the Service Charge Residential Management Code ("the Code") or such other replacement code published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993; and
  - c. In accordance with the Appendix to this Order
5. That the rights and liabilities of the Landlord under contracts entered into by the Landlord in respect of its management of the Property shall become rights and liabilities of the Manager if and to the extent that the Manager deems them necessary for its proper management of the Property and:
  - a. The Landlord is to forthwith supply to the Manager details of all such contracts; and
  - b. Within 14 days of receipt of details of a contract, the Manager must write to the Landlord and to the other party (or parties) to the contract stating whether or not the Manager does wish to take over the rights and liabilities under the contract
6. That as to arrears of rent, service charges and other money payable by the Tenants of any flat within the Property:
  - a. The Manager is entitled to bring and prosecute such proceedings as are reasonable required to recover any arrears of rents, service charges and other money payable by the Tenants of any flat within the Property whether the sums fell due for payment before or after the appointment of the Manager;
  - b. The Manager shall have the power to bring any such proceedings in the name of the Landlord
7. That the Landlord will itself deliver up to the Manager, free of charge, all books, papers, records and correspondence or copies in the control of the Landlord relating to the Property on the terms that:
  - a. The Manager will make such copies of that material as it considers necessary for its own use;
  - b. The Manager will thereafter return the original documents to the Landlord;
8. That to the extent that the Landlord holds any money in any account used or held in connection with the management of the Property, the Landlord will forthwith procure, free of charge, the transfer of those monies to the Manager, less a reasonable provision for any amounts which are properly due to be paid out of those sums at the date of this Order, such sums to be thereafter held by the Manager pursuant to the terms of its appointment
9. That the Manager will appoint a surveyor of its choice to prepare a report into the condition of the Property and any works required to it and any costs associated with the preparation of such report are recoverable from the Tenants.

10. That the Manager will have the power to carry out a Fire Risk Assessment, Health and Safety Assessment, Asbestos Survey and any other such statutory inspections that may be required upon its appointment and implement any such recommendations following the assessment. Any costs associated with the preparation of any such report referred to in this clause, and implementation of the recommendations, shall be recoverable from the Tenants.
11. That any legal or professional costs incurred by the Manager in the running of the Property can be recovered from the Tenants.
12. That the Manager shall forthwith set a reasonable budget for maintenance of the Property and collect the Tenants' contributions accordingly.
13. That the Manager shall be remunerated in the following sums:
  - a. £3,000 plus VAT per annum;
  - b. 2.5% plus VAT of total expenditure in respect of works where a specification is required;
  - c. Such reasonable sum so as to cover the costs of attendance at any Court or tribunal hearing but not less than £140.00 per hour plus VAT
14. That the Manager shall have permission to apply to the Tribunal for such further directions as he may require in order to give effect to this Order and the Applicants, the Landlord and the Manager (as an interested party) shall have permission to apply to the Tribunal to vary this Order

Case Ref: LON/00BK/LAM/2012/0015

IN THE LEASEHOLD VALUATION TRIBUNAL

RE: 1 GLOUCESTER STREET, LONDON, SW1V 2DB

MAURICE CONROY  
CHRISTOPHER KIDDER AND JULIA LO PRESTI VENTURA  
GILLIAN McCURRACH  
PEDRON REIS AND NOELIA CARVALHO

Applicants

AND

GLOUCEST.SW.LTD

Respondent

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APPENDIX

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~~SECRET~~

## AGENT'S DUTIES AND OBLIGATIONS

### Section 1 - General Management

- a. General advice on the Property, reports on current matters, attendance at meetings as reasonably required.
- b. Advice on legislation and policy affecting the Property, such advice being limited to advice within the range of the Agent's duties and obligations under this Agreement.
- c. Where the Client has a leasehold, contractual or statutory regular and recurring obligation, to arrange for compliance with the obligation on the Client's behalf.
- d. Maintenance of property records of all relevant matters and significant events affecting the Property.
- e. Supervision of the Property, checking compliance with lease covenants, generally reporting on matters requiring decisions, inter alia, applications to assign, sub-let or alter the property, liaising with solicitors and any other advisers (including reporting generally on matters falling within Section 3 below).
- f. General liaison with other relevant parties including the fostering of good landlord and tenant relationships.
- g. Carrying out periodic property inspections. Reporting, as and when necessary, on state of repair, decoration, use and other relevant matters, following up any matters that may arise and in the case of formal notices instructing the Client's solicitors to serve them and liaising with appropriate advisers thereon.
- h. Dealing with day to day maintenance matters and minor redecoration works of communal areas and paying outgoings.
- i. Bringing to the Client's attention any relevant matters concerning property insurance including inter alia, the need to prepare valuations, renew policies, revise cover or notify any claims or potential claims.

- j. If the Agent is to retain any insurance brokerage commission or other commission share in accordance with Clause 4.3, handling any insurance claims that may arise.

#### **Section 2 - Rent Collection, Financial and Accounting**

- a. Collection of ground rents, service charges and other property income including interest where appropriate. Liaison with Client and solicitors on collection of arrears (Court attendance not included – see paragraph (c) of the Annexure)
- b. Management of funds and held in specially designated accounts and remission on a regular basis in accordance with agreed written arrangements.
- c. Preparation of quarterly income and expenditure reports together with budget compliance accounts.
- d. Providing information regarding VAT collected and paid and keeping in proper form all records in respect of VAT, where applicable.
- e. Identifying and paying out of the Client's funds all outgoings properly incurred on the Client's behalf in respect of suppliers, insurers, statutory undertakers, contractors, staff and consultants properly engaged for the purpose of providing the day to day Management Services. The Agent shall reasonably consult with the Client on any non recurring or extraordinary expenditure.

#### **Section 3 - Management of Service Charge**

- a. Arranging for provision and regular reviews of all services to comply with landlord's covenants and other obligations, statutory or otherwise, and otherwise using all reasonable endeavours to ensure that all landlord's obligations to tenants or superior landlords are fulfilled.
- b. Arranging the appropriate testing and inspection of mechanical and electrical installations.
- c. When necessary, at the Client's expense and subject to confirmation of instructions by the Client, instructing specialist consultants (mechanical and electrical engineers, structural engineers, architects, building surveyors, etc.). Liaising with such consultants and where necessary, implementing their recommendations. Fees and expenses to be recovered through the service charge if applicable, and if not to be paid by the Client.

- d. Placing appropriate contracts as agent for the Client in accordance with the Client's lease obligations to the tenants. Reviewing these contracts and obtaining competitive tenders, as appropriate.
- e. Employing or arranging the employment of, supervising, disciplinary, discharging and replacing as agent for and on behalf of and in the name of the Client such staff as may be required for the provision of services under the various leases from time to time in force. Where any such employee is for any reason liable to be dismissed (either due to misconduct, redundancy or otherwise), then the Agent will in consultation with the client and subject to all legal requirements take appropriate steps to bring such employment to an end (not including legal proceedings in relation to employment matters).
- f. Administering the service charge including calculation and apportionment of sums to be collected from the tenants.
- g. Authorising invoices and payment of all outgoings.
- i. Preparing annual (or more often where necessary) budget costs and statements of income and expenditure for future periods.
- j. Arranging, as necessary, the preparation of and the audit of the service charge account and the preparation of service charge certificates. Crediting or demanding excess sums as appropriate.