



Case Reference : **CAM/42UD/LAM/2013/0002**

Property : **Beverley Court, 72 Christchurch Street,
Ipswich, Suffolk IP4 2DH**

Applicants : **Tenants as per attached Schedule**

Representative : **Mr Christopher Storey MRICS of
SB Surveyors,
1 Bank Buildings
Station Road
Sudbury
Suffolk CO10 2SP**

Respondent : **Ace Estates Inc of Panama**

Representative : **Unrepresented**

Type of Application : **Appointment of Manager
Landlord & Tenant Act 1987 section 24**

Tribunal Members : **Mr G M Jones (Chairman)
Mr G F Smith FRICS FAAV
Mr R Thomas MRICS**

**Date and venue of
Hearing** : **Eastern Regional Office
28 June 2013**

Date of Decision : **2 August 2013**

DECISION

SCHEDULE OF TENANT APPLICANTS

Flat 1	Mr C G Grunbaum
Flat 2	Mrs Margaret Barritt
Flat 3	Mr Stephen Conway
Flat 4	Mr J A Bevan
Flat 5	Mr Timothy Fraser
Flat 6	Dr R Chhabbra
Flat 7	Ms Tracey Beaney
Flat 8	Ms Olga Reilly
Flat 9	Mr Benjamin Sillitoe
Flat 10	Miss Wendy Clayton
Flat 11	Mr John Symons
Flat 12	Mr Philip Richard Milsom

GMJ 2.8.2013

**CAM/42UD/LAM/2013/0002
Beverley Court, Ipswich**

Mr C G Grunbaum & Others –v- Ace Estate Inc.

ORDER

**UPON HEARING Christopher Storey MRICS for the Applicants
AND the Respondent not appearing**

IT IS DECLARED THAT: -

1. The Tribunal is satisfied that the Respondent is in breach of its obligations to the Applicants as tenants of Beverley Court in that no management arrangements have been in place since 24 March 2013 and that it is just and convenient in all the circumstances of the case to appoint a manager for Beverley Court with full management powers in accordance with the lease terms.
2. The Tribunal is further satisfied that Christopher Storey MRICS is a suitable person to appoint as manager and that, provided satisfactory terms of appointment can be agreed and approved by the Tribunal, he should be appointed manager for Beverley Court with full management powers as aforesaid.

AND IT IS ORDERED THAT: -

3. Mr Storey must by 4.00 pm on Friday 13 September 2013 (or within such further period as may be allowed by the Tribunal) submit to the Tribunal Regional Office and serve on Ace Estate Inc as per the Directions Order for substituted service his draft terms and conditions of appointment including the proposed fee structure.
4. Upon receipt of the said draft terms the Tribunal Clerk must send copies thereof to the Tribunal members and the Tribunal will convene to approve the said terms or to propose amended terms and to confirm the appointment.
5. In default of compliance with paragraph 3 hereof the Tribunal will make no appointment and the Application will be deemed dismissed.

**G M Jones
Chairman
29 August 2013**

REASONS

o. BACKGROUND

The Property

- 0.1 The property the subject of this Application is a block of 12 flats in Ipswich let on long residential leases. The block dates from about 1975 and is built on a sloping site with small areas of communal gardens front and rear and visitor parking and garages or dedicated car parking spaces for all tenants. The block previously came to the attention of the Leasehold Valuation Tribunal in 2010 when a service charge dispute under case reference CAM/42UD/LSC/2009/0139 was decided by a Tribunal chaired by the present Chairman.
- 0.2 At that time the freehold was owned by Ryan Elizabeth Holdings Limited under title number SK20876 (now it appears to be David Phillips & Co). The block had been built by HGS Builders (Ipswich) Limited under a building lease from Gosang Properties Limited. HSG Builders subsequently ceased trading. At some stage the head lease had passed to Plintal SA, a company registered in Panama. Mrs Helen Kemp is a director of Plintal. The head lessee under title number SK23534 was transferred to HND Investments Limited, a company 80% owned by Mrs Kemp, from Plintal SA on 12 May 2009. Mrs Kemp's father, Mr Harry Gold, a solicitor formerly with West End firm Bennetts, but since 1988 practising in Guernsey, appears to have been associated with all the above-mentioned companies.
- 0.3 During the period when Plintal SA owned the head lease, the managing agent (instructed by Mr Gold) was Edward Tish. It was suggested that he was not a very good manager. He died late in 2006, following which the management of the block was totally neglected for a time. Opus Property Consultants Limited of Harefield, Middlesex were then appointed managing agents. There were problems over insurance and dilapidations, which led to service of a section 146 notice by the freeholder (a company based in the Ipswich area) on Plintal.
- 0.4 Mr Gold and Mrs Kemp appear to have decided to set up HND Investments to acquire the head lease. Also set up was Samnat Investments Ltd, a company owned by Mrs Kemp and her husband, with the intention of managing Beverley Court and also Burnham Lodge, another block built by HSG Builders in 1976.
- 0.5 Burnham Lodge also came to the attention of the LVT earlier this year under case reference CAM/42UD/LBC/2012/0008. This was an application by HND Investments, represented by Mr Gold and Mrs Kemp, for a declaration that Dr Chhabbra and his wife, as tenants of Flat 3, were in breach of covenant. No more need be said about it except that the Tribunal made a number of criticisms of the conduct of those directing and acting for HND Investments Limited.
- #### **The Lease**
- 0.6 Nothing need be said about the terms of the leases except that they provide for the mesne landlord to manage the block and for the tenants to make contributions to insurance premiums and service and management charges. As will be seen, the tenant applicants have serious concerns about the current management (or lack of management) of the block.

1. THE DISPUTE

- 1.1 Some time between December 2012 and the end of March 2013 HND Investments transferred the head lease to Ace Estate Inc. another Panamanian company. Little is known about this company except that it has solicitors in Guernsey and was set up by the same company agent as Plintal. Tenants received a letter dated 12 December 2012 from Spicer & Partners LLP, a body registered in London and regulated by the Solicitors Regulation Authority. Its place of business is St Peter Port, Guernsey. This informed tenants that the head lease had been sold to Ace Estate and that the appointment of Samnat as managing agent would terminate on 24 March 2013. No indication was given as to how the block would be managed after that date or by whom. The letter invited the tenants to nominate a manager or take over management themselves.
- 1.2 Mr Storey, who has been assisting tenants in their dealings with Samnat and with the mesne landlord for some time, has had considerable difficulty in communicating with Ace Estate. Spicer & Partners would not accept service of any documentation on behalf of Ace Estate. Ace Estate has provided no address for service in England & Wales (or indeed anywhere except the registered office in Panama). Its directors are all nominees; so the true ownership of the company is unknown. No responses having been received to correspondence sent to Ace Estate's registered office in Panama, it proved necessary for the Tribunal to make an order for substituted service. Service having been effected in accordance with the Tribunal's direction, nothing has since been heard from Ace Estate.

2. THE ISSUES

- 2.1 The Applicants are very anxious that the block should be managed and managed properly. They would like the Tribunal to appoint Mr Storey as managing agent.

3. THE EVIDENCE

- 3.1 The Tribunal heard from Mr Storey and was satisfied that he was a suitable person to manage the block; indeed, because of his existing knowledge with the problems associated with the building, he is probably the best manager who could be found. He has the necessary expertise and experience and he has the confidence of the tenants.
- 3.2 Moreover, on the evidence, there has been no manager for the block since 24 March 2013 and no management has taken place. It is difficult to imagine a clearer case for the appointment of a manager with full management powers.
- 3.3 Mr Storey proposes that his contract of appointment should be based on standard RICS terms. The Tribunal indicated at the hearing that, provided it was satisfied that his proposed terms of appointment (including the provisions for notice on either side) were acceptable to the Tribunal (which seemed likely to be the case), the Tribunal was willing to make the appointment for an indefinite period. As at the date of this Decision, Mr Storey has not yet submitted his proposed term of appointment, which the Tribunal now orders as a condition his appointment.

- 3.4 Mr Storey indicated that the tenants would probably set up a right-to-manage company so as to gain permanent control of the management of the block.

4. THE LAW

Appointment of Manager

- 4.1 Under section 24 of the Landlord & Tenant Act 1987 the Leasehold Valuation Tribunal or, from 1 July 2013 the First Tier Tribunal (Property Chamber), may appoint a manager in the circumstances therein set out. These include management failures; the making of unreasonable service charges; or where circumstances exist which make it just and convenient. The appointment may be made with full powers of management or may be limited to such functions in connection with management and/or such functions of a receiver as the Tribunal thinks fit.

Right to Manage under CLRA 2002 Part 2 Chapter 1

- 4.2 The Commonhold and Leasehold Reform Act 2002 introduced a new collective right for long leaseholders (basically those with leases for a fixed term of more than 21 years) to acquire the right to manage premises as defined in section 72 through the medium of a right-to-manage or RTM company. An RTM company is a company limited by guarantee one of whose objects is the acquisition and exercise the right to manage the premises in question. There can be only one RTM company in respect of any particular premises. Its members can only be qualifying tenants or, from the date on which it acquires the right to manage, landlords of the whole or any part of the premises. The company must be incorporated in accordance with the RTM Companies (Model Articles) (England) Regulations 2009 SI 2009/2767, replacing with effect from 9 November 2009 the RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 SI 2003/2120.
- 4.3 The right to manage applies to premises only if they consist of a self-contained building or part of a building, with or without appurtenant property; they contain two or more flats held by qualifying tenants; and the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises. A building is a self-contained building if it is structurally detached. A part of a building is to be treated as self-contained if it constitutes a vertical division of the building; the structure of the building is such that it could be redeveloped independently of the rest of the building; and if the relevant services provided for occupiers of it (i.e. services provided by means of pipes, cables or other fixed installations) are provided independently of such services provided for occupiers of the rest of the building, or could be so provided without involving the carrying out of works likely to result in a significant interruption of any relevant services for occupiers of the rest of the building.
- 4.4 Schedule 6 paragraph 1 provides that there is no right to manage premises if the internal floor area of any non-residential part or parts (taken together) exceeds 25% of the internal floor area of the premises (taken as a whole). In performing this calculation, the area of any common parts is disregarded altogether. This provision is frequently important where a building includes commercial premises (e.g. shop or office units with flats above). There is no statutory definition of internal floor area.

- 4.5 Notice of a claim to the right to manage must be given by a RTM company whose membership includes a number of qualifying tenants of flats in the premises which is not less than half the total number of flats in the premises. (The RTM company must first under section 78 invite all qualifying tenants to become members.) The claim notice must comply with section 80 but, under section 81(1), is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80. The claim notice must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which Chapter 1 applies; it must identify the RTM company and the qualifying tenants; and it must specify dates for the giving of a counter-notice (not less than one month) and the intended date of acquisition of the right to manage (not less than three months after that); and it must comply with the Right to Manage (prescribed Particulars and Forms) (England) Regulations 2010 SI 2010/825 (replacing 2003 SI 2003/1988).
- 4.6 By section 81(3), where any premises are specified in a claim notice, no subsequent claim notice which specifies the premises, or any premises containing or contained in the premises, may be given so long as the earlier claim notice continues in force. A claim notice continues in force until the right to manage is acquired by the company unless it has previously been withdrawn (see section 86) or deemed to be withdrawn (under section 87), or ceases to have effect, under the provisions of Chapter 1. The recipient of a claim notice may give a counter-notice under section 84 which may either admit the right to manage the premises or, by reference to a specified provision of Chapter 1, deny the entitlement of the RTM company to manage. The form of the counter-notice must comply with the 2010 Regulations. If the right is denied, the company has two months to apply to the LVT for determination, in default of which the company's claim notice ceases to have effect. Obviously, the claim notice will also cease to have effect if the LVT determines that the company is not entitled to acquire the right to manage.
- 4.7 A RTM company is liable for the landlord, other lease parties and any manager appointed under Part 2 of the LTA 1987; but such costs do not include costs of proceedings before the LVT unless the company's application is dismissed. Any question arising in relation to the amount of costs payable is, unless agreed, to be determined by the LVT.

Costs

- 4.8 The Tribunal has no general power to award inter-party costs, though a limited power now exists under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.
- 4.9 In cases commenced after 1 July 2013 a somewhat wider power to award costs will apply under regulation 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. The Tribunal will have unlimited power to award wasted costs or costs in circumstances where a party has acted unreasonably in bringing, defending or conducting proceedings.

- 4.10 Under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise. A similar power exists as of 1 July 2013 under regulation 13(2) of the 2013 Regulations.
- 4.11 There appears to be little purpose in making modest costs orders or orders for reimbursement of modest fees against an elusive Panamanian company with no place of business in the UK.

5. CONCLUSION

- 5.1 Accordingly, the Tribunal is satisfied that it has power to make an order and makes the Order set out above. The Tribunal points out that, if Mr Storey does not submit to the Tribunal in the time allowed his proposed terms and conditions of appointment, or if the Tribunal considers those terms to be unsatisfactory, the appointment will not take effect.

Geraint M Jones MA LLM (Cantab)
Chairman
29 August 2013