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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/00LC/LAM/2012/0015**

Property : **Samuels Towers, Longhill Avenue,
Chatham, Kent, ME5 7AT**

Applicant : **Mr I MacGregor & Others**

Representative : **Mr I MacGregor**

Respondent : **B M Samuels Finance Group Plc**

Representative : **Mr J Thornton (Hurford Salvi Carr)**

Type of Application : **s24 Landlord and Tenant Act 1987
(appointment of Manager)
s20C Landlord and Tenant Act 1985
(limitation of costs)**

Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM
Mr P A Gammon MBE BA**

**Date and venue of
Hearing** : **2nd December 2013, Chatham**

Date of Decision : **5th December 2013**

DECISION

1. This is an application under section 24 of the Landlord and Tenant Act 1987 for the appointment of a new manager/receiver of the Property.
2. The Tribunal accompanied by Mr MacGregor inspected the Property in the morning, which consisted two residential blocks, block A and block B containing 44 flats in total. Both blocks and surrounding area were in a terrible state of repair and condition. To list just a few of the items that were pointed out, there were:
 - a. Large amounts of rubbish strewn over the surrounding grass land, as well as fly tipping;
 - b. Entrance doors to both blocks without any working locking mechanism and both in a state of disrepair;
 - c. Internal lighting was very poor, which some parts of the communal stairwells continually in darkness;
 - d. Evidence of drug use in the basement of block B;
 - e. Large holes in the walls of the communal areas;
 - f. Holes in the roof and slipped tiles.
3. The application was largely unopposed by the Respondent.
4. The Respondent accepted that there had been a triggering event for the Tribunal's jurisdiction under s24 (2) (ab) (i), namely the recent determination of the Tribunal, by a decision dated 22nd November 2013, in which, amongst other matters, the Tribunal found that unreasonable service charges had been made (see by way of example paragraphs 89 and 101).
5. Further, Mr Thornton on behalf of the Respondent confirmed that they had no desire to maintain the management of the Property.

6. In those circumstances the Tribunal considered that subject to the proposed manager being satisfactory, it would be 'just and convenient' for the purposes of s24(1), (2)(ab)(ii), to make an order appointing a new receiver/manager of the Property.
7. The Applicant proposed David Woolley MCMI and after some hesitation the Tribunal considered that it would make the order. The Tribunal's hesitation arose out of the fact that Mr Woolley:
 - a. had no prior experience of acting as a receiver/manager rather than as a managing agent;
 - b. did not have any property management qualifications;
 - c. seemed reluctant to engage in continuing professional development;
 - d. had not sought copies of the leases of the Property to familiarise himself with the service charge mechanism.
8. Despite those reservations, the Tribunal was comforted by the fact that a number of the leaseholders supported his appointment and that that would enhance the prospects of obtaining funds to rectify the difficulties that the Property faced. Further, it was of concern to the tribunal that if it was left to the current scheme of management, there seemed little prospect of matters improving.
9. However, as appears in the Directions in the Order, Mr Woolley must obtain professional indemnity insurance to at least £1,000,000.
10. There was also an application under s20C of the 1985 Act, as well as a claim for costs under Rule 9 of the Tribunal Procedure (First-tier Tribunal) Rules 2013 (SI 2013/1169) and a claim for reimbursement of the application and hearing fee.
11. The Tribunal considers that an order should be made under s20C and an order for reimbursement on the basis that the condition and management of the Property was such that this application needed to be made.

12. The Tribunal does not make a costs order though as there was nothing in the conduct of the Respondent in the course of these proceedings that was unreasonable. Whilst Mr MacGregor complained that the Respondent had not provided a bundle as directed, the Tribunal did not consider that that breach warranted any sanction. The Tribunal was not hindered by the absence of any Respondent's bundle and given the Respondent's stance on this application, it would have simply been a duplication of paper to have produced one.
13. The Tribunal therefore makes the Management Order as attached, makes an order under Section 20C prohibiting the recovery of the landlord's costs of this application through the service charge and orders the Respondent to reimburse the Applicant the application fee (£350) and hearing fee (£150) by 4pm on 19th December 2013.

Judge D Dovar

Chairman

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



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Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM
Mr P A Gammon MBE BA**

**Date and venue of
Hearing** : **2nd December 2013, Chatham**

Date of Order : **5th December 2013**

MANAGEMENT ORDER

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1. In this order:

- A. "The property" includes all those parts of the property known as Samuels Towers, Longhill Avenue, Chatham Kent ME5 7AT.
- B. "The landlord" means B M Samuels Finance Group Plc or in the event of the vesting of the reversion of the residential under-leases of the property in another, the landlord's successors in title.
- C. "The manager" means David Woolley of PMUK (London) Limited.

It is hereby ordered as follows:

- 2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as receiver and manager of the property.
- 3. The order shall continue for a period of two years from the date of this order.
- 4. That 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 and/or under-leases by which the flats at the property are demised by the landlord and in particular with regard to repair, decoration, provision of services to and insurance of the property.
 - (c) The duties of manager set out in the Service Charge Residential Management Code (2009) ("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 of the Leasehold Reform Housing and
Urban Development Act 1993.

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Judge D Dovar

Chairman

5th December 2013

DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the landlord or the Tribunal.

2. That not later than three weeks after the date of this order 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 landlords 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 landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall from 31st December 2013 become rights and liabilities of the manager.

4. That the manager shall account forthwith to the landlord for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the landlord's covenants contained in the said leases.

5. That he shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the under-leases and/or leases of the property) in accordance with the Schedule of Functions and Services attached.

6. That at the expiry of three months from the date of this order, the manager shall prepare a brief written report for the Tribunal on the

progress of the management of the property up to that date and shall submit the same to the Tribunal by no later than 4pm on 1st April 2014.

7. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
 - (c) in the event that there are insufficient sums held by him to pay the manager's remuneration.

SCHEDULE OF FUNCTIONS AND SERVICES

A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of under the terms of their under-lease.
- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the under-lessees in the manner laid out in the terms of the lease. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the landlord upon the landlord's instructions.

- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.
- 1.4 Ensure that the buildings are insured for their reinstatement value with an insurance company of repute.

B. ACCOUNTS

- 2.1 Prepare and submit to the landlord an annual statement of account detailing all monies received and expended on its behalf. The accounts to be certified by an external auditor in accordance with the guidance on accounting and reporting as issued by the Institute of Chartered Accountants of England and Wales (ICAEW).
- 2.2 Produce for inspection, receipts or other evidence of expenditure.
- 2.3 All monies collected on the landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, with funds being held in an account specifically for this property and no others. Any reserve fund monies to be held in a separate client account with interest accruing to the landlord.

C. MAINTENANCE

- 3.1 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 building.
- 3.2 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 landlord and the under-lessees.

3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts are and other.

3.4 In respect of any works, the cost of which, is £2,500 or more, the works should be supervised by a Chartered Building Surveyor or other similarly qualified surveyor.

D. FEES

4.1 Fees for the above mentioned management services would be a basic fee of £174 per annum per unit for the flats within the property. Those services to include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS.

4.2 Major works carried out to the property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees informing them of the works and supervising the works) will be subject to a charge of 10% of the cost (subject to a minimum fee of £250.00). This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.

4.3 If required to act in the capacity of Company Secretary an additional fee of £250 per annum will be charged.

4.4 An additional charge for dealing with solicitors enquires on transfer will be made on a time related basis payable by the outgoing lessee.

4.5 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

4.6 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed.

E. COMPLAINTS PROCEDURE

5.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.