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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

Case reference: LON/00AN/LAM/2012/0007

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

Property:	**Romney Court, Shepherd's Bush Green, London W12 8PY**
Applicants:	Lauren Lorenzo (Flat 39) Joanna Howard (Flat 61) Isabelle Sethurajan (Flat 37) Rajkumar Sethurajan (Flat 48) S Sinnadurai (Flat 18) Seth Raijkymar (Flat 48) Hasker Street Properties (Flats 9, 57 and 69) Antonella Lasta (Flat 55) David Parry and Peter Cook (Flat 51) Ravi Kapoor (Flat 63) Robert Waterhouse (Flat 68) Catherine Walker (Flat 7) E Heller (Flats 8 and 70) Ledda Lopez Mitchell (Flat 22) Martin Dole Wasilka (Flat 50) Stephane Antin (Flat 13) Jennifer Johnston (Flat 30) Shor Properties Limited (Flat 45) Dusica Starcevic (Flat 41)
Respondents:	Treeview Trading Limited Daejan Properties Limited
Date heard:	18 February 2013
Appearances:	Rajkumar Sethurajan in person

Stuart Armstrong, counsel, instructed by Teacher Stern, solicitors, for Treeview Trading Limited

Carl Fain, counsel, instructed by Radcliffes Le Brasseur, solicitors, for Daejan Properties Limited

Tribunal: Margaret Wilson
Peter Roberts Dip Arch RIBA
Lorraine Hart

Date of decision: 19 February 2013

Introduction

1. This is an application by a number of leaseholders of flats in Romney Court under section 24 of the Landlord and Tenant Act 1987 ("the Act") for the appointment of a manager to manage the block. The first respondent, Treeview Trading Ltd ("Treeview") is the freehold owner of the block. The second respondent, Daejan Properties Ltd ("Daejan"), was the freehold owner until 1995, when it sold the freehold to Treeview. Daejan holds long leases of 28 flats in the block, one of which (Flat 63) is let on a long underlease and the others let on assured shorthold tenancies.

Background

2. Romney Court was built in 1928. It has commercial premises on the ground floor and 70 flats on five upper floors, all, we understand, held on long leases. The leases are essentially in common form.

3. By an order dated 27 January 2009 a tribunal appointed Rendall & Rittner Ltd as manager and receiver of the block pursuant to section 24 of the Act. The order was made on the application of 26 leaseholders of flats in the block and the tribunal's reasons for the decision, given on 12 February 2009, record that the respondent, Treeview, did not oppose the making of the order. The decision set out in detail the very poor condition in which the tribunal had found the block to be. The appointment was expressed to be for a period of three years commencing on 2 February 2009.

4. Within a relatively short time after Rendall & Rittner had started to manage the block it appears that the relationship between Matthew Rittner, the person responsible for the management, and the leaseholders who had proposed his appointment, broke down. During the period of its appointment Rendall & Rittner commenced proceedings in the county court against a number of leaseholders for the recovery of unpaid service charges. Some of them counter-claimed in respect of alleged breaches of Rendall & Rittner's

obligations towards them. Those proceedings remain unresolved. In January 2012, shortly before Rendall & Rittner's period of management was due to end, Mr Rittner submitted a report to the tribunal explaining some of the challenges which he had faced, which included, despite the "general consensus among lessees that the building had been neglected for many years ... resistance from a small number of lessees who vehemently opposed funding any of the proposed works". The report continued: "despite countless discussions on the matter, this small group of lessees' refusal to contribute their share has prevented many of the items on the capital expenditure plan from proceeding". The report listed outstanding service charges, which, in the case of one leaseholder, were said to amount to over £18,000 and, in the case of each of two leaseholders, over £14,000. Mr Rittner concluded: "despite the poor condition of the building and the limited resources available, the management of Romney Court should have been a fairly straightforward task. Unfortunately we continue to spend an unacceptable amount of time dealing with a small group of lessees who refuse to pay their service charges, deceive their fellow residents and generally impede any real progress. We are therefore unwilling to renew the appointment as receiver manager."

5. On 1 February 2012, the last day of the three-year period of the manager's appointment, 17 leaseholders gave to Treeview and to the Freshwater Group of companies, of which Daejan is one, a preliminary notice under section 22 of the Act of their intention to apply to the tribunal for an order appointing a manager. Most of the matters on which reliance was placed in the notice were criticisms of the performance of Rendall & Rittner, and some were the alleged failings of County Estate Management ("CEM"), the managing agent which had managed the block prior to the appointment of Rendall & Rittner. Treeview sent a detailed response to the section 22 notice which included the assertion that it was invalid for reasons which included that it failed to require Treeview to remedy the alleged breaches of its obligations within a reasonable period, that many of the alleged breaches were attributable to Rendall & Rittner for which Treeview was not responsible, and that complaints

about CEM were historic and had already been addressed by the tribunal in its decision dated 12 February 2009.

6. On or about 1 February 2012 Stephen Gayer MRICS FIRPM of Hallmark Property Management Limited ("Hallmark") informed the leaseholders by letter that, with effect from 3 February 2012, it was to be appointed as Treeview's managing agent for the block. Hallmark has managed the block since that date. Until 18 January 2013 the property manager chiefly responsible for the management was Mr Gayer, and since then the property manager has been Gordon Ferguson ARPM.

7. On 5 March 2012 19 leaseholders, including the 17 leaseholders who had given the section 22 notice, applied to the tribunal under section 24 of the Act, naming Treeview and Daejan as respondents. (We ought to add that there is a degree of confusion about precisely who are the applicants and whether each of them was a leaseholder at the date of the application, although we believe that the list attached to the application is broadly correct.) The application did not name the proposed manager.

8. At the first pre-trial review on 9 May 2012, at which Lauren Lorenzo, the leaseholder of Flat 39, represented all the applicants with the exception of Antonella Lasta and Shor Properties Ltd, Stuart Armstrong of counsel represented Treeview and Carl Fain of counsel represented Daejan, the applicants were directed, no later than 13 July 2012, to send to the respondents and to the tribunal the name, qualifications and details of the experience of their proposed manager, together with the proposed manager's management plan and the applicant's amended statement of case.

9. A second pre-trial review was held on 25 July 2012. Ms Lorenzo again represented all but two of the applicants and Treeview was represented by Mr Armstrong. The directions recorded that the manager whom the applicants had approached had declined to act and that Mr Armstrong had asked the tribunal to consider dismissing the application as an abuse of the tribunal's process on the ground that the applicants had not yet identified their proposed

manager but that the tribunal did not consider that the application was an abuse of process because, in the opinion of the tribunal, it would inevitably be difficult to find a manager willing to act given the history of the block. The applicants were ordered to provide the name of their proposed manager no later than 25 October 2012.

10. A third pre-trial review was held on 6 December 2012. Directions were then made for the hearing of the application on 18 and, if necessary, 19 February 2013. The directions recorded that a possible manager had been identified by the applicants and required them to send to the respondents by 21 December details of the proposed manager's experience, management plan and other relevant information. The directions also recorded that Daejan's solicitors had asked that Daejan should cease to be a party to the application and that they had been asked by the tribunal for further information to support the request but that it had not been supplied.

The inspection and hearing

11. We inspected the block in the morning of 18 February 2013 in the presence of Rajkumar Sethurajan, the leaseholder of Flat 48, Mr Armstrong, Paul Rayden, a director of Treeview, Mr Ferguson, and John Hatch, the resident caretaker of the block. The tribunal's case officer had been informed by telephone that morning by Jennifer Johnston, one of the applicants, that Ms Lorenzo would not be attending the inspection or the hearing and that Mr Sethurajan would attend instead.

12. At the hearing which took place that afternoon, Mr Sethurajan appeared in person. He said that he had attended at the request of other applicants because Ms Lorenzo was unable to attend. Treeview was represented by Mr Armstrong, who called Mr Ferguson to give evidence and tendered Mr Rayden as a witness. Daejan was represented by Mr Fain, who tendered Vicky Hawkins, a credit control manager employed by the Freshwater Group of Companies. The applicant's proposed manager, Marea Young-Taylor,

head of block management for Sinclairs Block Management Ltd ("Sinclairs"), gave evidence.

The statutory framework

13. Section 22 of the Act provides that, before an application for an order for the appointment of a manager is made, a notice specifying the matters set out in section 22(2) must, unless it is not reasonably practicable to do so, be given to the landlord and any other person responsible for managing the premises. Section 22(d) provides that where the matters complained of are capable of being remedied within *such reasonable period as is specified in the notice* the notice must require the person served with the notice to remedy such matters.

14. Section 24 sets out the tribunal's powers to appoint a manager. Section 24(2) lists the grounds upon which an order may be made, which include, at section 24(2)(a), *where any relevant person* [ie persons on whom the section 22 notice was served] *is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises.* In respect of each possible ground for making an order, section 24 provides that the tribunal must be satisfied that it is *just and convenient to make an order in all the circumstances of the case.* Section 24(2)(b) enables the tribunal to make a management order not only in the circumstances listed in section 24(a) but also *where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.* Section 24(7) provides that, in a case where the application was preceded by a notice under section 22, the tribunal may, if it thinks fit, make a management order notwithstanding that any period specified in the notice was not a reasonable period or that the notice failed in any other respect to comply with the requirements of section 22.

The issues

15. The issues for determination are:

i. whether the section 22 notice was valid;

ii. whether grounds exist for the making of a management order;

iii. whether it is just and convenient for a management order to be made;

iv. whether Sinclairs is a suitable manager;

v. costs.

Whether the section 22 notice was valid

16. Mr Armstrong submitted that the notice was invalid because all the matters complained of either pre-dated the previous management order or related to the conduct of Rendall & Rittner, and that no allegations relating to the conduct of Hallmark could be relied on because they were not set out in the notice.

17. It is correct that the majority of the complaints in the notice related to the conduct of Rendall & Rittner for which Treeview were not responsible, and that complaints against CEM have already been considered and answered by the appointment of a manager in 2009. However we are satisfied, first, that it is appropriate to take a generous view in considering the contents of the section 22 notice given that the applicants are in person and that their notice was prepared at a time when Rendall & Rittner was managing the building and with a view to an application to vary the order of appointment by the appointment of a different manager. We are satisfied, too, that the question whether an order should be made despite defects in the preliminary notice should be answered only after the substantive application has been

considered because only then can the tribunal decide whether it is satisfied that a manager should be appointed, despite any failings in the preliminary notice. That was the view of the President of the Lands Tribunal when in November 2003 he refused permission to appeal in *Canary Riverside Development PTE Ltd re Berkeley Tower, Belgrave Court, Hanover and Eaton House* (reference number not given in the decision) and we respectfully agree.

18. It is our view that, notwithstanding that the majority of the complaints outlined in the notice are directed at Rendall & Rittner or CEM, the preliminary notice is sufficient and valid in that it includes a complaint that Treeview is in breach of an obligation owed to the leaseholders under their leases, namely the covenant in the sixth schedule to *maintain repair redecorate and renew* various elements of the block. It is also our view that the notice includes a relevant complaint that, at least in the opinion of the signatories to the notice, Treeview is untrustworthy and that it is for that reason just and convenient for a manager to be appointed. Those complaints, whether justified or not, relate to the conduct of Treeview and are sufficient in our opinion to found a valid notice. We are accordingly satisfied that the preliminary notice was valid.

Whether grounds exist for the making of a management order

19. Mr Armstrong submitted that the application was premature because it was made not because of any failings by Treeview or its agent Hallmark but because the applicants were not willing to give Treeview or Hallmark a reasonable opportunity to manage the block. Mr Fain said that Deajan's only concern was that the block should be well managed, and that, on balance, it favoured allowing Hallmark to continue to manage the building in the interests of stability.

20. In our view, on balance, a ground exists in principle to make a management order in that, as our inspection revealed, Treeview is in breach of its repairing obligations to the leaseholders and that is a ground for making

an order, notwithstanding that there are, we are satisfied, reasons for that failure which include the refusal of a number of leaseholders to pay service charges.

Whether it is just and convenient for a management order to be made

21. We are not satisfied that it is just and convenient for a manager to be appointed. In our view it has not been established that Hallmark has acted inappropriately during the period of its appointment as managing agent and we can see no reason for not allowing it to continue to manage the building. We accept the evidence of Mr Gayer that he tried to open a dialogue with the leaseholders and that he took a number of steps to ensure the proper management of the block. Those steps included issuing a budget of estimated charges for the year ended 31 March 2013, attempts to collect outstanding service charge arrears, reviewing the contracts put in place by Rendall & Rittner, and implementing planned maintenance. We had the benefit of oral evidence from Mr Ferguson, the current property manager, who appeared to us to be competent to manage the building. Mr Sethurajan, who was the only leaseholder to attend the hearing, said that he was content for Hallmark to continue to manage the building and that he had joined in the application only because he had found Mr Rittner to be aggressive. He said that he disagreed with Ms Lorenzo's complaints about Hallmark, which he had found to be helpful and approachable, and that he found Mr Hatch, the caretaker, about whom complaints had been made by the applicants in their written statements of case, to be both helpful and pleasant.

22. We have no reason to suppose that Hallmark is not up to the daunting challenge of managing this block and we have no reason to suppose that Treeview is not to be trusted to give Hallmark reasonable instructions for that purpose. We expect that Mr Ferguson will have to take steps to recover arrears of service charges which, though they may be unwelcome to some leaseholders, will be justified and necessary.

Whether Sinclairs is a suitable manager

23. Mr Armstrong submitted that Sinclairs was too small and too inexperienced to be a suitable manager. He also submitted that it was not open to the tribunal under section 24 of the Act to appoint a company as manager, but only an individual.

24. We reject those arguments. We have no reason to suppose that if Sinclairs, or Mrs Young-Taylor, were appointed as manager of this block, they would not be adequate to the task. However Mrs Young-Taylor told us that she had not been made aware of much of the history of the management of the block. In particular, she said that she had not been made aware that Rendall & Rittner, which she acknowledged to be a highly regarded management company, had found the block extremely difficult to manage and had found it necessary to inform the tribunal that it was not prepared for its appointment to be renewed. She said that in the circumstances she was unable to confirm that she, or Sinclairs, would be willing to accept the appointment before she had had the opportunity further to investigate the relevant circumstances of which she had not been made aware by the applicants. We also reject the submission that it is not open to us to appoint a limited company, such as Sinclairs, as manager. Although section 24 refers in various places to a manager as "he" or "him", we are satisfied that the expression is apt to include a company, which is, in law, a person. We observe in this connection that the tribunal's previous management order named Rendall & Rittner as the manager.

Costs

25. Mr Armstrong said that Treeview conceded that the leases did not permit it to recover as a service charge its legal costs incurred in connection with these proceedings. In view of that concession we make no order under section 20C of the Landlord and Tenant Act 1985 to prevent Treeview from recovering such costs.

26. Both Mr Armstrong and Mr Fain invited us to make an order against each applicant under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. That paragraph provides that a tribunal may determine that a party to proceedings shall pay the costs incurred by another party, up to an upper limit of £500 from each party to each party, where (so far as is relevant) the person who is asked to pay such costs:

> *(b) ... has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

27. Mr Armstrong and Mr Fain said, and we accept, that the legal costs of both Treeview and Daejan exceeded the amount which would be produced by multiplying the number of applicants by £500, and they therefore asked us to determine that each of the applicants should be ordered to pay £500 to each of the respondents.

28. They said that the requests for costs were made because, in their submission, the applicants had acted unreasonably in connection with the proceedings in that they had failed to provide the name of the manager in response to Treeview's requests for details of the proposed manager made in a letter from its solicitors dated 1 August 2012 and had not identified their proposed a manager until very shortly before the hearing. They submitted that the applicants had also acted unreasonably in not providing their proposed manager with any or sufficient information upon which she could make an informed decision as to whether to accept the appointment. They submitted that the applicants had also acted unreasonably in that they had issued the preliminary notice on the day on which the previous management order ceased, without giving Treeview or Hallmark a reasonable opportunity to show whether they could manage the block efficiently.

29. We accept that the applicants have acted unreasonably in connection with the proceedings in the respects outlined by counsel and summarised in the previous paragraph. We also bear in mind that the only representative of

the applicants who appeared at the hearing said that he was content for Hallmark to continue to manage the block. However, bearing in mind that it was not until the hearing that we were informed that Treeview and Daejan proposed to ask for orders for costs from each applicant under paragraph 10 of Schedule 12, and, furthermore, because we are not completely clear as to the identity of the applicants, we have, on balance, decided not to make any such orders without giving each of the named applicants the opportunity to make written submissions to us as to whether we ought to make orders against them under paragraph 10 of Schedule 12 and, if we do make such orders, as to the amount which each of them should be ordered to pay. At present, and because each applicant appears to have authorised Ms Lorenzo to act for them, and has not, as far as we are aware, withdrawn such authority at any stage, we do not have it in mind to differentiate between the applicants in respect of any order for costs we may make. In other words, if we make orders under paragraph 10 we presently, and subject to the applicants' submissions, propose to make the same order against each applicant.

30. Accordingly, each applicant should, if he or she wishes to oppose the making of an order under paragraph 10 of Schedule 12 to the 2002 Act, submit to the tribunal, with copies to the solicitors for Treeview and Daejan, written submissions on the question whether such an order should be made. Such submissions should be received by the tribunal and copied to the solicitors for Treeview no later than three weeks after this decision has been sent to them.

CHAIRMAN.....

DATE: 18 February 2013