



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HN/LAM/2014/0008

Property : Tralee Penthouse Apartments, St Michaels Road,
Bournemouth, Dorset. BH2 5DS

Applicants : Ms M Stahnke (Flat 1)
Ms Tinsley & Mr Casey (Flat 2)
Mr & Mrs D Davis (Flat 3)
Mr T Reed & Ms L Swatton-Reed (Flat 4)
(the Tenants)

Representative : Coles Miller LLP

Respondents : Tralee Bournemouth Limited and
Tralee Penthouse Apartments Limited

Representative : Gateley LLP

Type of Application: Application under Section 24 Landlord and Tenant Act
1987 for the appointment of a manager

Tribunal Members : Judge P J Barber
Mr A J Mellery-Pratt FRICS Valuer Member
Mr J Mills Lay Member

Date and venue of Hearing : 7th November 2014 Court No.8, Bournemouth
Combined Courts, Deansleigh Road,
Bournemouth, Dorset. BH7 7DS

Date of Decision : 26th November 2014

DECISION

Decision

1. The Tribunal determines that the Respondents are in breach of their obligations under Section 24(2)(a)(i) and Section 24(2)(ac)(i) of the Landlord and Tenant Act 1987 ("the 1987 Act") and that a manager, namely Mr Tim Townsend MRICS, be appointed to carry on in relation to the Property, functions in connection with the management thereof in accordance with the attached management order submitted to the Tribunal on behalf of the Applicants for a period of 2 years commencing on 25th December 2014, subject to the amendments referred to in paragraph 20 of this decision.
2. The Tribunal further determines in accordance with the provisions of Section 20(C) Landlord and Tenant Act 1985 that none of the costs incurred by the Respondents 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.

Reasons

BACKGROUND

3. The application in this matter is dated 11th July 2014, and is for the appointment of a manager under Section 24(1) of the 1987 Act, in respect of the Property, comprising 4 residential flats situate at and known as Flats 1, 2, 3 & 4, Tralee Penthouse Apartments, St Michaels Road, Bournemouth, Dorset BH2 5DS ("the Flats"). The Flats are located on the top floor of a building believed to have been constructed around 1900; the floors up to and including the third floor are currently occupied and used as a Travelodge Hotel. The Flats are accessible separately from the remainder of the building and are subject to a separate headlease.
4. The leases of the Flats were granted variously between August 2011 and May 2013 and the Applicants advise that they are all in similar form; a copy of the Lease of Flat 1 dated 7th February 2013 was included in the bundle at Pages 22-67.
5. As required by Section 22 of the 1987 Act, the Applicants served a notice on the Respondents by hand, with a letter dated 28th January 2014, setting out the grounds for the application. The notice set out the grounds of complaint in Schedule 3 and gave the Respondents warning of the Applicant`s intention to make an application to the First-Tier Tribunal for the appointment of a manager, unless the remedial action and/or steps set out in the notice were satisfactorily resolved within the periods stated in Schedule 4. It is the Applicants` case that the required steps and/or remedial action have not been taken by the Respondents.
6. By letter dated 8th September 2014 sent by the Respondents` jointly appointed solicitors, Gateley LLP, to the Tribunal, Gateley LLP advised that the Respondents do not propose to file any written evidence in opposition to the application and indicated that the first Respondent, Tralee Bournemouth Limited had agreed terms with the Applicants, for the sale to them of its headleasehold interest in the Flats. However Gateley LLP further explained that the proposed assignment of the headleasehold interest had been delayed owing to the fact that there existed a certain right of pre-emption, in favour of Aviva Staff Pension Trustee Limited.

Gateley LLP expected that the right of pre-emption was unlikely to be exercised but a formal response was still awaited as at the date of the hearing.

THE LAW

7. Section 24 of the 1987 Act provides that the Tribunal may, on an application for an order under that section, appoint a manager to carry out in relation to the relevant premises, (a) such functions in connection with the management of the premises, or (b) such functions of a receiver, or both as the Tribunal thinks fit.

In summary, by virtue of Section 24(2) of the 1987 Act the Tribunal may make an order in circumstances which include the following :

1. Where the Tribunal is satisfied that :

- (a) The landlord is in breach of any obligations owed by him to the tenant under his/her tenancy and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case.

Where the Tribunal is satisfied that :

- (ab) Unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case.

Where the Tribunal is satisfied that :

- (ac) The landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and that it is just and convenient to make the order in all the circumstances of the case.

Where the Tribunal is satisfied that :

- (b) Other circumstances exist which make it just and convenient for the order to be made.

INSPECTION

8. The Tribunal's inspection took place in the presence of Mr Howard & Mr Lewis of Coles Miller LLP, Mr Townsend the proposed manager, and Mr Rittoo, the partner of Ms Stahnke of Flat 1. The Respondents were not represented at the inspection.
9. The Flats are located on the top floor of the building formerly known as the Tralee Hotel and the lower floors of which are all currently operated as a Travelodge Hotel. There is a separate ground floor entrance leading to the Flats from a few

steps below pavement level on St Michaels Road; the Flats appear to have been added in the original roof structure of the building only in recent years, and appear to be of a steel framed construction, clad externally and with large areas of glazing. The lower parts of the building comprise a combination of light yellow face bricks and rendered elevations, variously with bay and flat sash windows and an extension apparently added recently at the rear or northern end, comprises a communal entrance lobby and staircase leading to the Flats; there are also emergency escape route doors connecting from the hotel onto the ground level of the lobby area and on each landing. The walls were emulsion painted with a metal staircase and corded carpets. There were some water stains visible close to the communal entrance door, possibly resulting as a result of leaks from the adjacent exterior downpipe. The gutters to the top floor area were visibly overgrown with grass. A lift is located towards the rear of the entrance lobby and serves only the Flats. The communal phone entry system was not working and there were no obvious signs of inspection records for the lift and fire protection equipment or "no smoking" signs; the carpet was not very clean. The lift was working and a maintenance contractor's label was attached to the lift entrance frame. A metal vent was visible in the ceiling at top floor level in the stairwell, apparently an emergency smoke escape vent, but visibly tied in a fixed position. A long narrow corridor leads from the top of the stairwell area to each of the Flats.

10. The Tribunal inspected part of the interior of Flat 1, namely the lounge, and also inspected the exterior balcony leading from that room. The grass growing in the external gutters was noted and also some ponding of water to exterior flat roof areas although there had been very heavy rainfall during the previous night.

HEARING AND REPRESENTATIONS

11. Mr Howard of Coles Miller LLP represented the Applicants, assisted by his colleague Mr Lewis and the proposed manager Mr Townsend who was also in attendance. No appearance was made for either of the Respondents and they were not legally represented.

Breach of Covenant & RICS Code of Practice

12. Mr Howard informed the Tribunal that it had originally been the intention for the four lessees of the Flats to be registered as shareholders of the second named Respondent management company; however he said that had never happened and that the management company has now been dissolved. Mr Howard stated that the first named Respondent landlord was nevertheless liable in default under the leases of the Flats; Mr Howard handed to the Tribunal a chronology which he had prepared and also a copy of the letter sent by Coles Miller LLP to the Respondents dated 28th January 2014 and to which the Section 22 Notice had been attached.
13. Mr Howard referred to various breaches of obligation by the Respondents including a failure to provide services including lack of maintenance to communal areas, defective door entry phone, lack of accounts and failure to employ a managing agent all as provided for in the leases. Mr Howard added that no end of year service charge certificates were provided nor any interim service charge demands or budgets.
14. In regard to the RICS Code of Practice Mr Howard referred to the appropriate parts of the Code and mentioned that the matters mentioned in paragraph 13

above also represented breaches of the Code. Mr Howard further submitted that there were circumstances in existence such as to make it just and convenient for the order to be made; he said that negotiations had been ongoing between the Applicants and Tralee Bournemouth Limited since about February 2014 and that the Applicants had the feeling they were being strung along in those negotiations, such that by July 2014 they felt it necessary to make the application to the Tribunal. Mr Howard submitted that the issue of the Section 22 Notice should have resulted in a response from the landlord which he said, could easily have appointed a managing agent or arranged the outstanding works, but had in reality done nothing. Mr Howard said that at one stage the lift had been switched off owing to a lack of standard or routine recurrent maintenance and safety checking and that the Applicants had had to arrange and pay for re-activation of the lift. Mr Howard said that the Applicants are more than willing to pay for services; they simply want such services to be carried out.

15. In regard to the proposed appointment of Mr Townsend as manager, Mr Townsend gave evidence as to his qualifications and experience and confirmed that he is willing to accept appointment. Mr Townsend said that his firm manages approximately 260 separate blocks ranging in size from 3 to 132 units. Mr Townsend said he had not yet had any discussions with the hotel or its agent but would do so promptly in the event of his appointment being confirmed. Similarly Mr Townsend said he had not yet prepared any budget but envisaged that it should cover matters such as lift maintenance, cleaning, health & safety, fire risk assessment, contracts and insurance. Mr Townsend said candidly that there was a limit to the amount of time he was willing to put in to the matter until his appointment was confirmed.
16. Mr Howard said that no draft management order as such had been prepared; the Tribunal expressed the view that it may be beneficial for a draft to be forwarded and Mr Howard undertook to send the same to the Tribunal offices by 17th November 2014 and which was subsequently received.

CONSIDERATION

17. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of both parties.
18. The Tribunal is satisfied that the Respondents are in continuing breach of obligations owed by them under the leases for the Flats, relating to the management thereof and the provision of services and that such breaches may be likely to continue. The Tribunal is further satisfied that the landlord has also failed to comply with the relevant provisions of the RICS Code of Practice. In particular the Tribunal noted the failure to provide covenanted services such as cleaning and maintenance / repair and/or service charge accounts. Accordingly the view of the Tribunal is that it would be just and convenient in all the circumstances of this case to make a management order. In summary, the Tribunal is satisfied that the Applicant has established the grounds required in Section 24 of the 1987 Act for the appointment of a manager.
19. The Tribunal considered the suitability of the proposed manager nominated by the Applicants, being Mr Tim Townsend of Hamilton Townsend. Mr Townsend advised the Tribunal that he had owned his business since 2000 and had many years of experience in leasehold property management matters. A copy of the

firm's Professional Indemnity Insurance (PII) policy was provided in the Applicants' bundle and Mr Townsend confirmed that a dedicated client bank account would be maintained for all service charge funds received for the Flats.

20. The Tribunal further considered the draft management order provided by Mr Howard and approves the same subject to the following amendments; the order shall be for a period of 2 years commencing on 25th December 2014 :

- (1) The whole of paragraph 4 to be deleted on the basis that the manager is primarily responsible to the Tribunal in the matter.
- (2) The following words being added at the end of numbered paragraph 5(m) "*(RICS) and any RICS regulations in force from time to time in regard to client accounts*".
- (3) The following words being inserted after "15 working days" in numbered paragraph 6(b) "*or such other period or periods as may be required by statute*".
- (4) The following being inserted after the words "The Respondents" in numbered paragraph 8 "*and the Applicants*".
- (5) The following being inserted after the words "reasonably practicable" also in numbered paragraph 8 "*and in any event by 15th December 2014*".

The Applicants also applied for an order under Section 20(C) Landlord and Tenant Act 1985 that the Respondents should not be able to recover any of their costs incurred in relation to these proceedings by way of service charge. The Respondents had had opportunity to make representations in regard to the Section 20C costs application since it had formed part of the substantive application in this matter and they had said through their solicitors that they did not propose to file any written evidence in the matter. In the circumstances as we found them, we decided to make an order that none of the costs incurred by the Respondents are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees of the Flats.

We made our decisions accordingly.

Judge P J Barber

PERMISSION TO APPEAL

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.

**HM COURTS & TRIBUNALS SERVICE
First Tier Tribunal Property Chamber**

Case No: CHI/00HN/LAM/2014/0008

Re: Tralee Penthouse Apartments St Michaels Road Bournemouth Dorset BH2 5DS

("the Property")

BETWEEN

M Stahnke, L & C Casey, M & E Davis and T & M Swatton-Reed

("the Applicants")

and

Tralee Bournemouth Limited

("Respondent 1")

and

Tralee Penthouse Apartments Limited

("Respondent 2")

("the Respondents")

[DRAFT] ORDER

RECITAL:

1. The Property means Tralee Penthouse Apartments and common areas as more fully defined within the Headlease
2. The Headlease means a lease dated 1st April 2010 between Aviva Staff Pension Trustee Limited (1) and Tralee Bournemouth Limited (2) as varied by a lease dated 24th April 2013 between Aviva Staff Pension Trustee Limited (1) Tralee Bournemouth Limited (2) and Travelodge Hotels Limited (3) and registered under title number DT400515
3. Respondent 1 is the registered proprietor of title number DT400515, being the Headlease
4. The Lessor means Respondent 1 and its successors in title

5. The Lessees means the registered proprietors of the Leases from time to time

6. the Leases means leases:
 - a. dated 7th February 2013 between the Landlord (1) and the Management Company (2) and Michaela Stahnke (3) in connection with flat 1

 - b. dated 20th December 2011 between the Landlord (1) and the Management Company (2) and Louis Anthony Tinsley and Christopher Raymond Casey (3) in connection with flat 2

 - c. dated 31st August 2011 between the Landlord (1) and the Management Company (2) and Michael David Davis and Eva Elizabeth Davis (3) in connection with flat 3

 - d. dated 9th May 2013 between the Landlord (1) and the Management Company (2) and Terence Michael Reed and Lynne Marie Swatton-Reed (3) in connection with flat 4

The First Tier Tribunal Property Chamber orders that:

1. In accordance with the provisions of this Order, Timothy Townsend of First Floor, 1-3 Seamoor Road, Westbourne, Bournemouth, Dorset, BH4 9AA (the Manager) be appointed as receiver and manager of the Property pursuant to the provisions of Section 24 of the Landlord and Tenant Act 1987 for a period of 2 years from and including 25th December 2014

2. 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 policy documentation upon request being made by any of the Lessees or the Tribunal

3. Using his reasonable endeavours, being afforded the rights and responsibilities of the Lessor, the Manager shall have the powers and duties of the Lessor as specified below and as provided for in the Leases in connection with all matters relevant to the management, maintenance and repair of the Property, including, without limitation thereto, such matters as insurance, repair, decoration, cleansing and accounting including provision by way of contingent expenditure in a reserve account, and if necessary enforcement of such powers and duties
4. In exercising his powers and duties, the Manager shall first consult and use his reasonable endeavours to comply with the wishes of the Lessees, before exercising his powers as if the Manager were a conscientious Lessor
5. The Manager's powers shall include (but not be limited to), amongst other matters:
 - a. administering, varying, extending or canceling any existing contracts relating to the management of the Property
 - b. liaising with the owner of the Freehold interest in the Property
 - c. after consultation with all the leaseholders preparing an annual service charge budget including sinking fund provision
 - d. demanding and collecting service charges from the Lessees and the Lessor as appropriate
 - e. preparing and carrying out a maintenance plan for the repair of the common parts and the decoration thereof
 - f. taking such steps as it considers appropriate in respect of the regular cleaning of the common parts
 - g. dealing with routine repairs
 - h. dealing with enquiries as to service charges and costs from vendors and purchaser's solicitors (at the cost of the enquirers)

- i. dealing with receipting notices concerning the assignment of any of the Leases (at the cost of those serving any such notices)
 - j. dealing with applications for consents under the provisions of the Leases in accordance with paragraph 6 hereof
 - k. enforcing the mutuality of covenants between the Lessor and/or the Lessees and taking such steps as it considers appropriate to achieve compliance by both the Lessees and the Lessor with their respective covenants, subject to compliance with the indemnity contained within the Leases concerning any costs and expenses in connection with any such enforcement
 - l. maintaining a client account for any unexpended sums and any sinking fund
 - m. complying with all statutory requirements and the duties of the manager set out in the second edition (and any further edition thereof) of the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors
6. On receipt of any applications for consents under the provisions of the Leases:
- a. the Manager shall forward the same to the Lessor for consideration
 - b. following this, the Manager shall allow a period of 15 working days in which to receive a response from the Lessor
 - c. whether or not the Manager receives a response within 15 working days, the Manager shall, in his absolute discretion, having regard to all of the information before him either grant or refuse the consent
7. For the avoidance of doubt any ground rent due under the Leases shall be collected by the Lessor and not the Manager

8. The Respondents, shall, as soon as reasonably practicable deliver to the Manager all documents held by them which are or may be necessary for the proper management of the Property and shall furnish to the Manager all such information as he shall reasonably require throughout the duration of this Order
9. The manager shall be remunerated at an annual rate of £1250 plus VAT recoverable as part of the service charges and to receive such other remuneration as may be agreed between him and a majority of the Lessees (each having one vote per flat)
10. Pursuant to section 24(5)(c) of the Landlord and Tenant Act 1987 the Lessor is obliged to pay that part of the Manager's remuneration under paragraph 9 hereof not recoverable from the Lessees and pursuant to section 24(5)(b) of the same Act the Manager is entitled to claim from the Lessor that part of the total expenditure (as defined in the Leases) not recoverable from the Lessees
11. Pursuant to Section 20C of the Landlord and Tenant Act 1985 Respondent 1's costs before the Tribunal shall not be added to the service charges
12. There be liberty to the parties and to the Manager to apply to vary the terms of this Order. Such application to be made to the Tribunal and Notice given to all other relevant parties

Made this

day of

2014

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