

10607



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

Case Reference : **MAN/00BY/LAM/2014/0009**

Property : **Various@Crompton Court, Shaw Street, Liverpool L6 1HL**

Applicants : **Mr Ian Monro
Mr Trevor Wylie**

Represented by : **Woodcocks, Haworth & Nuttall**

Respondent : **Middleton Trading Limited**

Type of Application : **Landlord and Tenant Act 1987 – section 22 and 24**

Tribunal Members : **K M Southby (Judge)
J Faulkner (Expert Valuer Member)**

Date of Decision : **27 January 2015**

DECISION

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DECISION

1. Service of a notice pursuant to Section 22 of the Landlord and Tenant Act 1987 is dispensed with.
2. It is just and reasonable to appoint a manager of Crompton Court, Shaw Street, Liverpool, Merseyside ('the Property') under s24 of the Landlord and tenant Act 1987 in terms of the Order attached to this Decision appointing Block Property Management Limited as manager of the Property for a period of three years from date of this order.

REASONS

BACKGROUND

1. The Tribunal received an application from the Applicant for an order dispensing with the need to serve a notice under s22 Landlord and Tenant Act 1987 and also an application for an order appointing a manager of the Property under the Landlord and Tenant Act 1987 Section 24(1)
2. The Applicants entered into leases dated 26 July 2006 for terms of 125 years (less 10 days) with Magnieus Ltd as Landlord and Crompton Court Shaw Street (Management Company) Ltd (the 'Management Company'). The Landlord's interest was acquired by Middleton Trading Ltd on 27 April 2011.
3. All of the leases follow the same form.
4. The Landlord is a dormant company, with its last annual return being filed on 3 December 2012.
5. The Management Company was dissolved on 25 August 2009.

THE PROPERTY

6. The Property is a two storey purpose built block of brick construction under a double pitched slate-covered roof built around 2006. The building comprises 14 flats, 7 to the ground floor, and 7 to the first floor, accessed by a steel staircase and walkway.
7. Access to all flats is from the rear of the site, fronting onto Haigh Street. The flats are reached through an archway with electrically operated security gates which lead into a car park and yard area. There are no communal gardens.

8. Upon inspection the Tribunal observed the exterior side of the Property which fronts onto Haigh Street to be in good, presentable condition. The electric security gates were in working order, however, the yard of the Property was observed to be severely littered with a substantial area of fly-tipping and other waste deposits. In addition the exterior walkway and staircase was observed to be suffering from a sustained lack of cleaning and maintenance. The communal meter cupboards exhibited signs of forced entry with broken locks throughout.
9. The Tribunal observed there to be no signs of active management of the Property.

THE LAW

10. The Applicants apply for an order pursuant to section 22(3) of the Landlord and tenant Act 1987 to dispense with the requirement to serve a notice under this section.
11. The grounds upon which the Applicants seek appointment of a manager is Section 24(2) of the Landlord and Tenant Act 1987:

'The appropriate tribunal may only make an order under this section in the following circumstances, namely:

(a) Where the tribunal is satisfied-

(i) That any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give the appropriate notice, and

(ii) ...

(iii) That it is just and convenient to make the order in all the circumstances of the case;"

THE DETERMINATION

9. This matter was determined by way of a paper determination in the absence of a request for a hearing by the Applicants and in the absence of any correspondence or response from the Respondent.
10. The Tribunal had the benefit of written representations, correspondence and photographs from the Applicants, and a witness statement from Mark Habib of Block Property Management, together with its own knowledge gleaned from the inspection. The Tribunal must determine the applications on the evidence which it has before it.

11. The Tribunal accept from the Companies House entries provided to them in the Applicants' bundle that it is not reasonably practicable to serve a notice on the Landlord or the Management Company given that they are dormant and dissolved respectively. The Tribunal notes that correspondence which was sent to the Landlord in 2013 was returned undelivered.
12. The Tribunal therefore determines that the requirement to serve a notice under s22(3) of the Landlord and Tenant Act 1987 should be dispensed with.
13. The Applicants rely upon breaches of clauses 8, 8.2, 8.3, 8.8, 8.9, 8.10 and 8.11 of the leases and assert that the obligations under these clauses (or indeed any services at all) have not been performed since 31 January 2011. In particular the Applicants assert that the walkway serving the Property is in a state of disrepair.
14. Further to its inspection and in the absence of any assertions to the contrary the Tribunal accepts all of these submissions and concludes that the neglect apparent in the maintenance and upkeep of the Property is entirely consistent with a suggestion of an absence of management for the last four years. The Tribunal therefore concludes that the obligations set out in the clauses referred to above have not been performed since 31 January 2011.
15. By reason of the Landlord and the Management Company being in breach of the obligations owed to the tenants under the lease, and also due to their dormant and dissolved status respectively, there is no prospect of either the Landlord or the Management Company performing the obligations in the lease. As a result the Tribunal concludes that it is just and convenient to make an order for the appointment of a manager. Having considered the terms of the draft order, and in the absence of any submission being put before it to the contrary, the Tribunal is satisfied for the appointment of manager to be on these terms.

IN THE FIRST-TIER TRIBUNAL

CASE REFERENCE: MAN/00BY/LAM/2014/2009

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

BETWEEN:-

(1) MR IAN MONRO
(2) MR TREVOR WYLIE

Applicants

and

MIDDLETON TRADING LIMITED

Respondents

DRAFT ORDER

UPON considering the Application dated 22 September 2014 pursuant to section 24(1) of the Landlord and Tenant Act 1987.

AND UPON it being recorded that Wei Shao Wen (Apartments 2 and 10), Melvyn Gray (Apartment 8), Phillip Murphy (Apartments 9 and 14), and Eamonn Slevin (Apartment 12) consent to the Application.

IT IS ORDERED:

1. Service of a notice pursuant to Section 22 of the Landlord and Tenant Act 1987 is dispensed with.
2. Block Property Management Limited ("the Manager") be appointed as manager of Crompton Court, Shaw Street, Liverpool, Merseyside ("the Property"), which is the area edged yellow on the plan annexed to this Order.
3. In performing the functions of its appointment, the Manager must comply with all statutory requirements and the provisions of the Royal Institute of Chartered Surveyors (RICS) Service Charge Residential Management Code.
4. The Manager shall be authorised to carry out the following functions and duties:
 - a. to receive any rents, service charges or any other monies payable by the tenants of the Property under the lease of each flat (an example lease is annexed to this Order).

- b. to recover any arrears of any such sums due.
 - c. to hold all sums received from the tenants in two separately designated client bank accounts. (one being a current account and the other being a higher interest deposit account).
 - d. to carry out the obligations of the Management Company contained at clauses 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10 and 8.11 of the lease of each flat and expend sums in a manner as set out in the Second Schedule to the lease of each flat.
 - e. to carry out the powers of the Landlord and Management Company contained at clauses 7.5, 7.6 and 7.7 of the lease of each flat.
 - f. to receive, consider, grant or otherwise deal with all applications for consents of whatever nature arising as to dealings, alterations or any other matters requiring the consent of the Landlord or Management Company as far as such consents relate to the tenants or their flats.
5. The remuneration of the Manager shall be governed by the Manager's Standard Management Agreement, a copy of which is annexed to this Order.
6. The Applicants, Respondent, tenants of the Property and the Manager shall have the liberty to apply to the First-Tier Tribunal Property Chamber (Residential Property) for further directions.

CASE REFERENCE:
MAN/00BY/LAM/2014/2009

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PROPERTY)

BETWEEN:-

(1) MR IAN MONRO
(2) MR TREVOR WYLIE
Applicants
and

MIDDLETON TRADING LIMITED
Respondents

DRAFT ORDER

Woodcocks Haworth & Nuttall, Solicitors
12 Manchester Road,
Bury,
Lancashire,
BL9 ODX
DX: 20501 - BURY

BLOCK PROPERTY MANAGEMENT LTD
STANDARD MANAGEMENT AGREEMENT

Version 1.0 – LOCATIONS, AGREED SERVICES & CHARGES

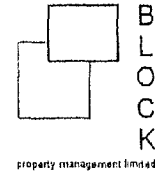
Between: **Crompton Court Lessees**

Hereinafter referred to as 'The Client'

And: **BLOCK PROPERTY MANAGEMENT LTD**
(Company number 6009961)

Having its registered office at:
Atrium House, 574 Manchester Road,
Bury BL9 9SW

Hereinafter referred to as 'The Agent'



Covering: **Service & Estate Charge management**

Property: **Crompton Court, Shaw Street, Liverpool**

Valid from: TBC

PREAMBLE:

All services will be provided with reasonable skill and care in accordance with the principles of good estate management for the term and thereafter until terminated by Notice.

Paragraph 1 – Standard Charges

- 1.1 The Agent will provide those services listed in paragraph 2 of this agreement at the following charges:

Management Company set-up fee

£50.00, per unit + vat (to be collected as a service charge)

Annual Service Charge Management fee

(for standard management services):

£100.00, per unit, per annum + vat (to be collected as a service charge)

- 1.2 The Annual Management fee will be broken down into equal monthly amounts and payable to the Agent monthly, in arrears. The monthly payment will be due on the 30th day of each month and will be debited from the developments respective client bank account.
- 1.3 The Agent will invoice the client property account for those monies owed in respect to the Annual Service Charge Management fee and Estate Charge Management fee.
- 1.4 Dealing with insurance matters, if requested to do so, will be subject to an additional fee amounting to 7.5% of the premium or claim value plus VAT.
- 1.5 In the event of it being agreed that additional work will not form part of the services in paragraph 2, the Agent shall be entitled to make a reasonable additional charge based on the time spent on such additional work, but only on prior agreement from the Client.
- 1.6 The Agent shall be entitled to make a reasonable additional charge for work carried out for the Client outside normal office hours but only on prior agreement from the Client.
- 1.7 The Client shall be responsible for ensuring that The Agents invoices are settled within 30 days of receipt.
- 1.8 Fees will be fixed for a minimum period of 12 months and will be subject to an annual review thereafter based on the UK retail price index (RPI).
- 1.9 All other charges will be in accordance with the Agents standard tariff at that time but only charged on prior agreement from the Client.
- 1.10 All charges will be subject to VAT.

Paragraph 2 – Standard Services

- 2.1 Using best endeavors to collect current installments and any arrears of rent, service charges, contingency and future expenditure fund contributions, and any other payments due from the leaseholders/tenants of the property, holding such sums until disbursement. (All cheques must be cleared before any monies can be transferred, which can take up to 10 days). All monies to be held in 2 separately designated client bank accounts, one being a current account and the other a higher interest deposit account. Interest will accrue to each bank account and will be retained by the client. Payments from each account will be authorised by The Agent.
- 2.2 Inspecting without the use of equipment, at appropriate regular intervals, such of the common parts of the Property that can be inspected safely and without undue difficulty, to ascertain for the purpose of day to day management the general condition of those common parts. Investigating any defects which come to the notice, or are brought to the attention of The Agent, reporting when necessary to The Client for instruction on appropriate action.
- 2.3 Preparing, if required, an annual estimate of future expenditure, administering any service charge or contingency and future expenditure funds and preparing and distributing appropriate service charge accounts.
- 2.4 Instruct competent contractors on behalf of the client and administer the work of such contractors, checking demands for payments for goods, services supplied, plant and equipment supplied for the benefit of the Property. Where the cost falls within a maximum expenditure of £250.00, per property, the Agent will ensure appropriate consultation is carried out, except in emergencies where the Agent should take such reasonable measures and expenditure as considered appropriate. The Client will determine how many quotations are necessary for individual works as it requires.

To expend any sums considered necessary by The Agent to ensure compliance with any statutory provision affecting the Property, The Client or The Agent with regard to the Property.

All expenditure is to be recovered from Client's monies held by The Agent. Expenditure cannot be authorised in excess of money held in the Client's account, a minimum working balance (termed the float) of £1000 + VAT may therefore be held by The Agent in The Client's account for this purpose.

- 2.5 Engaging, instructing and paying the fees, other charges and disbursements from funds held, of any contractor or other professional or consultant engaged with the prior consent provided in this agreement.
- 2.6 If requested, administering building and other insurance, insofar as instructed and permitted by law to do so arranging the payment of the insurance premium in respect of the Property, in accordance with instructions from the Client and/or the Client's Insurance Broker, such premiums to be paid from Client's monies held by the Agent and/or the Client. The Agent is not authorised by the Financial Services Authority, however, the Agent is included on the Register maintained by the Financial Services Authority so that it can carry out insurance mediation activity which is broadly advising on, selling, and administration of insurance contracts. The Agent will issue a Demands & Needs statement to the Client before any contract of insurance is concluded. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Royal Institution of Chartered Surveyors (RICS). The register can be accessed via the Financial Services Authority website www.fsa.gov.uk/register. Complaints in respect of insurance matters will be dealt with in accordance with the Agents Complaints Handling Procedure, a copy of which is attached. The contact details

of the person appointed to handle general insurance mediation activity and any subsequent complaints are provided within the attached Complaints Handling Procedure. Any valid claim against the Agent for loss arising out of work, including general insurance mediation activity, which is not met in full by the Agent may be met by RICS client Money Protection Scheme.

- 2.7 Keeping files of leases and other documents relating to the Property that have been supplied to the Agent. Including (if the Client is a company and so required by the Client) acting as the Registered Office and maintaining the Company Register.
- 2.8 Attending to routine enquiries from The Client or any tenant, tenants' association, or auditor.
- 2.9 Rendering quarterly statements of account to The Client. The balance of any monies to be held in the designated Client bank account, on account for the purpose of contingencies and future expenditure in respect of the Property.
- 2.10 Providing information to solicitors and others in connection with enquiries on sales (for which fees would be chargeable to those applying for the information).
- 2.11 Producing for inspection, on written demand by The Client, as appropriate, receipts or other evidence of expenditure, and provide VAT invoices (if any) in proper form.
- 2.12 Within a reasonable period of time following each financial year end of The Client, or following the termination of this Agreement, sending to the Client a written statement for that period of:-
 - (a) Income received on behalf of The Client;
 - (b) expenses and other disbursements made on behalf of The Client and any VAT included;
 - (c) reserves held on account and remaining debtor and creditor balances
- 2.13 Advising the Client of any apparent breach of any lease or of any unlawful or suspicious acts relating to use or occupation.
- 2.14 Act as Company Secretary and Registered Office of the Company if so required.

Paragraph 3 – Authorisation

The Client authorises The Agent as follows:

- 3.1 To expend such sums as are necessary to fulfill the Agents obligations detailed in this Agreement.
- 3.2 To reimburse himself for any expenses, disbursements and remuneration properly payable by the Client from moneys received by him for the Client.

Paragraph 4 - Exclusions

The following are not part of the Service to be provided by The Agent. These additional services may be provided by The Agent but will be subject to separate instructions and fees:

- 4.1 Carrying out an inspection of the Property (other than the common parts thereof checking for general maintenance related issues), or a building survey or valuation of the Property as a security or for insurance purposes or preparing any schedule of dilapidations or inventory.
- 4.2 Offering vacant property to let or for sale, advising the Client on the terms of any lease or negotiating the terms of any new or varied lease.
- 4.3 Initiating, conducting, preparing evidence for and attending hearings for and otherwise dealing with any non payment of rent/service charge/insurance premium, rent review, party wall proceedings, application for a grant or for consent, insurance claim, arbitration or litigation.
- 4.4 Dealing with local government matters including council tax valuations, planning permission, building regulation consent and grant applications.
- 4.5 Preparing specifications and tenders for, supervising and measuring works the cost of which exceeds the specified expenditure limits and for non-routine matters on works which would usually be managed by a Chartered Project Management Surveyor. The Agent would initiate Section 20 Consultation and procure the services of a Chartered Project Management Surveyor, if required.
- 4.6 Advising on safety or health. The Agent does however have a duty of care to ensure that safety issues are addressed or reported to The Client.
- 4.7 Any advertising and recruiting of staff on behalf of The Client.
- 4.8 Supplying extra copies of statements of account and copies of any other documents.
- 4.9 If The Client is a company, acting as Director.
- 4.10 Dealing or advising upon applications for assignment of tenancies or leases, sub-lettings, alterations and changes of use.
- 4.11 All matters usually dealt with by a solicitor, accountant (including returns to the Inland Revenue and Customs and Excise) or insurance broker.
- 4.12 Any matters relating to asbestos or other dangerous substances in buildings.
- 4.13 Any matters or grievances whether legal or other relating to the period prior to this agreement.

Paragraph 5 - Termination

- 5.1 The client may terminate this agreement at any time by serving the Agent with three months termination, in writing.
- 5.2 The Agent may terminate this agreement at any time by serving The Client with three months termination, in writing.

Paragraph 6 – Liability and Indemnity

- 6.1 Unless caused by The Agent's gross negligence, The Agent is not liable either in contract or in tort or otherwise for any loss, injury, damage or legal or other expenses sustained by any cause whatsoever, including (without loss of generality):
- (a) The Agent having reasonably relied upon the Client to provide accurately all relevant information;
 - (b) any inaccurate forecast by The Agent of future income or expenditure;
 - (c) any defect or failure to identify any defect in the Property or plant, machinery, equipment, or materials used for the Property whether or not such defect be latent or apparent on examination;
 - (d) the act, omission or insolvency of any person other than the Agent.
- 6.2 The Client shall indemnify The Agent in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses referred to in clause 6.1. above.
- 6.3 The Agent shall not be liable to indemnify The Client in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses referred to in clause 6.1. above.

Paragraph 7 - Arbitration

- 7.1 Any dispute between The Client and The Agent arising out of this Agreement may be referred at the instance of either or both parties and determined by a sole arbitrator to be agreed between The Client and The Agent or, in default of agreement, within 30 days of the dispute being identified, appointed by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors.
- 7.2 Any complaint by The Client will be dealt with in accordance with the Procedure For Complaints Handling.

Paragraph 8 – Clients Obligations

- 8.1 To provide to the Agent all documents requested in order to provide the service and to pay the Agent any additional monies expended for any work occasioned by any failure to do so.
- 8.2 Keep the agent informed of any information relating to the property that is, in the opinion of the Agent, needed to provide the services outlined in this agreement.
- 8.3 To give the agent immediate notice of any legal disputes relating to the management services or any intention by the Client to sell the property or alter or extend the lease conditions.
- 8.4 To pay the Agent, within 7 days of being requested, any monies needed to maintain the amount of the float (sub section 2.4 of this agreement)
- 8.5 The Client shall nominate an individual, or in the case of a limited company two or more individuals, that are authorised to give instructions to the Agent. The Client shall confirm such appointments to the Agent, in writing, within 7 days of each appointment.

8.6 The client will cover any temporary loss in revenues to ensure that the estate is adequately maintained and insured at all times.

Signed on the:

for and on behalf of
THE AGENT

Signed on the:

for and on behalf of
THE CLIENT