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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**LON/00AT/LAM/2006/0006**

**LANDLORD & TENANT ACT 1987 S.24**

**Property:** Thornbury Court, Church Road, Isleworth, Middlesex TW7 4PP

**Applicants:** Peter Gibbons, Susan Gibbons, Mrs E.M. Dutton, Mrs P. Gaines,  
Mr J. Brewster, Mr J.C Mullin **Tenants**  
Represented by Mr P. Gibbons

**Respondent:** Thornbury Court RTM Company Limited **Management Company**  
Represented by Mr F. Faizi, Director and Company Secretary

**Present on 7<sup>th</sup> June:**

For the Applicant - Mr P. Gibbons, Mr L.J. Read (Castlebar Management Ltd)  
For the Respondent – Mr Howard Russell, Solicitor

Also present: Mr O’Neil, (proposed new manager)

**Present on 11<sup>th</sup> July:**

For the Applicant - Mr P. Gibbons, Mr L.J. Read (Castlebar Management Ltd)  
For the Respondent – Mr F. Faizi Director and Company Secretary

**Present on 12<sup>th</sup> September 2006:**

For the Applicant - Mr P. Gibbons, Mr L.J. Read (Castlebar Management Ltd)  
For the Respondent – Mr F. Faizi Director and Company Secretary

Also present: Mr Miller (proposed new manager), Mr Barkway, Gracemiller & Co

**Tribunal:**

Mr L. W.G. Robson LLB(Hons) MCI Arb  
Mr D. N. Huckle FRICS  
Mrs S. E. Baum JP

**Decision and Reasons**

**Preliminary**

1. The Applicants applied on 17<sup>th</sup> March 2006 for the appointment of a manager pursuant to Section 24 of the Landlord & Tenant Act 1987 (as amended), and limitation of the landlord’s costs in the proceedings under Section 20C of the Landlord & Tenant Act 1985. Directions for hearing were given on 19<sup>th</sup> April 2006. The hearing commenced on 7<sup>th</sup> June 2006, with the Tribunal giving further Directions on 8<sup>th</sup> June 2006. After an inspection of the property at the request of the Respondent’s representative on the afternoon of 10<sup>th</sup> July 2006, the hearing continued on 11<sup>th</sup> July 2006, after which a Preliminary Decision and further Directions were made, and on 12<sup>th</sup> September the Tribunal examined the proposed new manager.

2. The Tribunal notes that it has had to deal with this matter in the absence of an agreed bundle, and has had to work with three inadequately numbered bundles of documents, (referred to as the blue bundle, the red bundle and the plain bundle). The copies within each bundle were not identical.

### **Hearing**

3. On the morning of 7<sup>th</sup> June 2006, Mr Faizi telephoned the Tribunal office to say that he was assisting the police with certain enquiries. Mr Russell applied for an adjournment on the basis that documents and evidence vital to the case were in the possession of Mr Faizi. Mr Gibbons initially opposed the application, but eventually withdrew his opposition as he wished to consider documents only recently produced by the Respondent. Mr Russell requested the Tribunal to inspect the property. The Tribunal then adjourned the hearing and gave further agreed Directions for the resumed hearing and inspection.
4. The Tribunal directed that it would hear evidence on the following matters raised by the application:
  - a) Service charge demands allegedly made in breach of the Lease and/or relevant statutes
  - b) Mismanagement of the collection and holding of service charge money.
  - c) Failure to properly account, and to properly certify the service charge accounts
  - d) External plumbing works done to a poor standard
  - e) Failure to pay contractors
  - f) Failure to properly communicate with residents
  - g) Failure to provide details of insurance cover and summaries of cover
  - h) Failure to properly respond to leaseholders relating to enquiries before contract

### **Inspection**

5. Mr Gibbons and Mr Faizi were present at the inspection. The property is a two/three storey block of 16 flats with modest communal grounds, built in the 1930s on the corner of Osterley Road and Church Road, with school playing fields at the rear. The site includes a smaller block of flats built in the 1960s, and 8 lock up garages at the side, but these properties do not form part of the subject property. The block is of a conventional brick construction with a flat roof, upper floor balconies, and UPVC double glazed windows. Two communal entrance doors controlled by entry phones give access to the internal stairs and common parts.
6. The block appeared to have been neglected for some time, with cracked rendering in places, broken and badly patched down pipes, rotten external door cills and poor external decorations, but it appeared structurally sound. The flat asphalt/felt roof was bubbled in places, and there were signs of some repointing of the brickwork at high level. The boundary wall rendering was dislodged in many places. The communal areas were somewhat utilitarian but were generally tidy, and the grass had been cut recently. The door to the bin store was swinging loose on its frame. There were no bins, only black sacks, and there were signs of vermin habitation. The fire extinguishers in the common parts had not been inspected since 2004.

7. At the resumed hearing on 11<sup>th</sup> July, both parties had produced written submissions which they supplemented with oral submissions. The parties' submissions are summarised under each head of complaint below for convenience.
8. The Respondent's written submissions effectively raised a preliminary point that the Tribunal had no jurisdiction to appoint a new manager under Section 24 of the 1987 Act after an RTM Company had acquired the right to manage. The Tribunal decided that the terms of Schedule 7, and particularly paragraph 8, make it quite clear that an RTM Company is subject to Section 24, and thus the Tribunal has jurisdiction in this case.

a) Service charge demands made in breach of the terms of the lease/and or relevant statutes

9. Mr Gibbons noted that there had been various earlier court and LVT hearings relating to this property. On 30<sup>th</sup> March 2006 another Tribunal (Case LON/OOAT/LIS/2005/0100) had found that a service charge demand for major works had not been served in accordance with Section 20 of the Landlord and Tenant Act 1985. Mr Gibbons said that it appeared that the original demand had only been made on Flats 9 and 11, although other Flats had been served with the demand later.
10. Since the Respondent took over management of the block it had issued service charge demands in December 2005 and June 2006. There had been some disagreement within the Respondent Company and at one stage Mr Faizi had been dismissed. Mr Gibbons had still not seen satisfactory evidence that Mr Faizi had authority to make demands on behalf of the company. When pressed, Mr Gibbons could not point to any specific breach of the lease or statute relating to the service of these particular demands.
11. Mr Faizi disputed Mr Gibbons' interpretation of the decision of 30<sup>th</sup> March 2006. He also referred us to items 237 and 242 to 245 which were handed in during the hearing which he said showed that the Respondent had obtained estimates for the works and that the Respondent was contemplating the service of Section 20 notices. Paragraph 37 of the Lease showed that the sum was payable.
12. The Tribunal considered the decision made in the earlier case. It decided that there was clear evidence that the demand had not been made in accordance with Section 20 of the 1985 Act. The Tribunal considered that there was evidence of some poor management practice relating to the Major Works demand and a breach of Part 14 of the RICS Management Code for Residential properties.

b) Mismanagement of the collection and holding of Service Charge money

13. Mr Gibbons stated that during the period of its management the Respondent had not complied with various requests to see the accounts. The service charge money should have been placed in a specific client account in accordance with the 1985 Act. It had never been shown that the money was in any account. The

collection of service charges had been mismanaged because the accounts produced had not been audited. There were discrepancies in the accounts, for example legal expenses of £4,674.30 had been charged which were not referred as a service charge item in the lease. Cleaning and gardening amounts charged were significantly in excess of the figures previously charged, and an unexplained amount of £7,110 had been charged as an Adjustment for Flats 1 and 10.

14. Mr Faizi stated that this was the only valid point made by the Applicants. However when the Respondent took over the management on 13<sup>th</sup> October 2004 it had no funds. It had expected the previous freeholder (controlled by the Applicants) to transfer the funds it held, but it had refused to do so. The Applicants had started complaining about the services within 3 days of the takeover but had deliberately tried to delay paying over the funds, for a period of 14 months.
15. In answer to questions and on consideration of the documents in the bundles, Mr Faizi agreed that £9,886 of the funds had been transferred by the freeholder in November 2004. Mr Faizi confirmed that the funds had not been held in a client account. He said that the Respondent had planned to appoint a managing agent but had not done so. He also agreed that he had prepared and signed the accounts without an audit. He denied that this was contrary to the Lease. He referred to the lease dated 16<sup>th</sup> November 1978 relating to Flat 1 in the bundle. At this point there was a dispute between the parties as to the correct lease to be used. The result of this exchange was that the Tribunal was made aware that new forms of lease had been granted to some flats in 1981, and to other flats in 1986. Specimen copies of the lease to Flat 11 dated 20<sup>th</sup> December 1984 and of Flat 1 dated 9<sup>th</sup> December 1986 were subsequently provided to the Tribunal by the Applicants, and it was clear from clauses 2(xv)b(i) and 2(ix)b(i) respectively of those leases, that the accounts should have been certified by a qualified auditor. The Tribunal decided that a breach of Part 12 of the RICS Code had been made out
16. In response to questions from the Tribunal, Mr Faizi agreed that he had no management experience, and had never seen the RICS Code for Management of Residential Properties. In response to a question about Part 12 of the Code relating to certification of accounts he stated that as there were only 6-7 items of expenditure in the accounts, he did not consider it necessary to have them certified. He stated that he was fully authorised on behalf of the Respondent and referred to a copy of a letter apparently signed by a Director of the Respondent, Mr Rafiq, dated 7<sup>th</sup> May 2006 confirming that Mr Faizi's dismissal by the Respondent had been retracted.
17. Mr Faizi stated that the expenditure noted in the accounts had been paid out. The cleaning and gardening figure related not just to work done but included an advance deposit paid to the gardener. He agreed that he had not provided invoices but said he could produce some. The sum for legal expenses related to the costs of defending and pursuing the demands for major works against the Applicants. The Adjustment related to Flats 1 and 10 and was due to him as a refund in respect of a Major Works demand made by the previous

Freeholder (effectively the Applicants). He claimed that this had been done pursuant to a recent court decision, but produced no evidence of it. He was also unable to point to a provision for charging these expenses through any of the Leases produced to the Tribunal.

18. The Tribunal decided from Mr Faizi's admissions and the evidence that there were clear breaches of Section 21(4) the Landlord & Tenant Act 1985, the Leases and the RICS Code.

d) External plumbing works done to a poor standard

19. Mr Gibbons referred to photographs at page 26 in the bundle. He stated that parts of some metal downpipes had been removed in November 2004 during internal works to Flats 7 and 8. These sections had been replaced with plastic down pipes and connected to the remaining metal pipework with Terry Clips. Since then they had leaked continuously. As a result the paintwork was stained on the walls and downpipes. Mr Faizi had been made aware of the problem, and he had suggested that the leaseholder concerned should see to the repairs. The problem had not been rectified. Mr Gibbons stated that Mr Faizi should have supervised the work and ensured it was done properly.
20. Mr Faizi stated that the work complained of had been done during the previous management. The work to Flat 8 had been done in 2003, and the work at Flat 7 was done in early 2004. Nevertheless Mr Gibbons had started to complain about this item on 20<sup>th</sup> October 2004, within days of the new management taking over. He agreed that there were damp and plumbing problems, but the new management intended to renovate the building.
21. The Tribunal had seen unsatisfactory connections on the downpipes on inspection, and noted that the problems with the plumbing had been outstanding since 2004. While there was a dispute as to when the problems had started, it was clear from the inspection that remedial action was needed. Despite having acquired the right to manage in November 2004, in July 2006 the present management still had no timetable for carrying out the work, either on its own, or as part of a larger contract for renovation. It appeared to be totally distracted by the ongoing legal disputes, and had no satisfactory management plan. This was unsatisfactory and in breach of Part 14 of the Code

e) Failure to pay contractors

22. Mr Gibbons referred to two particular items of concern which were minuted in the Directors Meeting of the Respondent dated 31<sup>st</sup> October 2005 and related to general maintenance and also repairs amounting to £483.50. The query was about the authenticity of the invoices and the nature of the works, rather than failure to pay the money.
23. Mr Faizi stated that there had been no failure to pay the gardening and cleaning contractors. The problem had been caused by Mr Gibbons interfering with the contractor, and as a result the contractor had started to charge VAT. Mr Faizi refused to pay the VAT because it was not in the contract. He therefore sacked the contractor. Mr Gibbons also interfered with the next

contractor who demanded £300 in advance. He then refused to tend his area and he sacked him. Mr Faizi stated that he still had to recover £58 from that contractor. The third contractor had been working since then. He came every week. There was a contract but Mr Faizi said that he did not have a copy. When it was put to Mr Faizi that his account of the problem with the contractors was at variance with the letters from two of the contractors at pages 19 to 23 in the bundle (complaining about short payment), he said that he had shown Mr Whelan (one of the contractors) what the previous contractors had charged and he had agreed to do the work for £3,250 per year. He said that it was only the VAT that had been a problem.

24. The Tribunal saw only one invoice from the contractor Tic-A-Dee-Boo amounting to £314.88, and Mr Faizi admitted that he had no copy of the current contract. The Tribunal decided that a breach of Part 4 of the RICS Code had occurred.

f) Failure to communicate with Residents

25. Mr Gibbons referred us to Items 42-52 of the blue bundle, being a series of letters from Mr Faizi. Items 44 and 46 in particular expressly refused to deal with points Mr Gibbons had raised in correspondence.
26. Mr Faizi referred us to items 83-87 of the blue bundle. He agreed that he had not been polite in his replies, and that he had written to say that he was refusing to co-operate. He stated that they had refused to respond because the Applicants were deliberately corresponding through the solicitors on small things to build up the bill. There had been hysteria about rats, but the Respondent had taken action to deal with it.
27. The Tribunal noted that a number of the letters written on behalf of the Respondent were very offensive in their terms, and fell well short of the standard expected of a reasonable property manager. Further, the letters expressly stated a refusal to co-operate and even to ignore the Applicants. Whatever the assumed provocation, this was quite unreasonable. On the evidence before us, it seemed clear that the Respondent was in breach of Part 4 of the RICS code.

g) Failure to provide Insurance Details

28. Mr Gibbons referred us particularly to item 10 of the blue bundle, a letter dated 4<sup>th</sup> July 2005 from the Respondent to Infields, the solicitors acting for one of the Applicants, Mrs Dutton. Infields stated that no copy of the insurance had been attached to that letter.
29. Mr Faizi stated that he had given copies of the insurance policy to Freshwaters. The property was currently insured with Norwich Union Insurance through the brokers Lansdowne Insurance. He referred us to item 39 (actually 40) of the red bundle, being a summary of cover for the year commencing 1<sup>st</sup> April 2005. In answer to questions he agreed that there was no copy of the endorsement for the current period, but he said he had a copy of

the bank statement relating to the standing order, although he did not have it with him.

30. The Tribunal noted that Mr Gibbons had requested copies of the insurance policy on several occasions, notably a letter dated 7<sup>th</sup> October 2005, but apparently no copy had been supplied to him. On the face of it, the letter dated 4<sup>th</sup> July 2005 to Mrs Dutton's solicitors had included a copy of the insurance details, and a copy for the relevant period had been produced to the Tribunal. On the other hand the Respondent had no copy of the current endorsement for the hearing so there was no evidence of current insurance. This was an important omission. The Tribunal decided that a breach Section 30A of the 1985 Act, and of Part 16 of the RICS Code had occurred.

#### h) Failure to reply to Pre-Contract Enquiries

31. Mr Gibbons referred us again to the terms of item 10 of the blue bundle. The Respondent had specifically refused to reply to the enquiries of Mrs Dutton's solicitors. Mr Gibbons stated that he had also lost a sale because of the non-co-operation of the Respondent.
32. Mr Faizi did not answer this point directly. He referred to items 92 and 153 of the red bundle, (the latter being a long letter ostensibly urging the Applicants to co-operate with the Respondent, but also containing a justification of the Respondent's position and threats of legal action). Mr Faizi said that the crux of the matter was that the Applicants had resisted the Respondent attempting to recover service charges due to "age and bitterness".
33. The Tribunal decided that from the evidence, the Respondent had clearly refused to answer the Pre-Contract enquiries of the solicitors acting for Mrs Dutton, and there was evidence of delay in respect of Mr Gibbons' sale. There were several letters of complaint from his solicitors to the Respondent in early 2005 in the blue bundle. Mr Gibbons had also referred to this matter in his letter to Mr Faizi of 19<sup>th</sup> October 2005 (item 18 of the blue bundle). On the evidence before it, the Tribunal decided that a further breach of Part 4 of the RICS code had occurred.

#### **Decision**

34. After hearing the evidence on the adequacy of the present management, the Tribunal decided that the management had very serious shortcomings. The Respondent was in very serious breach of the RICS Code in respect of at least 10 matters. There were numerous breaches of the 1985 Act. Further, Mr Faizi's attitude at the hearing gave no indication that the situation would improve. The Tribunal decided that it would be just and convenient to appoint a new manager pursuant to Section 24. The parties were informed orally of the decision on 11<sup>th</sup> July (without reasons), and that the Tribunal would issue reasons later, as it was then 4.40pm, and it had not yet been able to examine the proposed new manager.
35. The Applicant's representative informed the Tribunal that the proposed new manager, Mr O'Neil, had decided to withdraw. The Tribunal decided it would

adjourn the hearing until a date to be advised to the parties in September 2006 to allow the Applicants to find and propose a new manager, who could be examined at the adjourned hearing. The Tribunal discussed proposed Directions with the parties and gave further Directions both orally and in writing for evidence relating to the accounts to be produced by the Respondent. The Chairman pointed out to Mr Faizi that it was open to him to suggest a suitably qualified manager to the Applicants.

36. At the resumed hearing on 12<sup>th</sup> September, the Tribunal examined a new Manager proposed by the Applicants on the basis of a written submission, Mr Jonathan Miller of Gracemiller & Co. Mr Faizi also made a further written submission in which he complained about the earlier decision and asked to reopen matters decided previously. The Applicant, the Respondent and the Tribunal had the opportunity to question Mr Miller. When asked, Mr Faizi said he had no questions for Mr Miller, stated that he was refusing to comply with the Tribunal's Directions given at the previous hearing to produce accounts, that he would refuse to co-operate with the new manager, that there was no point in the Tribunal appointing one as it was the Respondent's intention to replace him as soon as possible, because the Respondent was in the process of enfranchising and purchasing the freehold. The Chairman pointed out that good independent management was in the interests of all parties, not just one group. Mr Faizi then decided to leave the hearing, indicating that he would take no further part.

37. Mr Gibbons also submitted at the end of the hearing that it was open to the Tribunal to find that the application of the Respondent claim had been "deemed to be withdrawn" which would enable the Freeholder to obtain costs against the individuals who brought the application, in accordance with the 2002 Act. Mr Gibbons was rather vague on the statutory basis for his submission on the point, but the Tribunal agreed to rule on this matter in its decision.

#### **Appointment of Manager**

38. The Tribunal was satisfied from its examination that Mr Jonathon Miller was a properly qualified and experienced property manager, and suitable for appointment. It duly appoints him for an initial period of two years from the date of this decision after discussing and agreeing with him a number of amendments to his draft letter of appointment attached to his letter of 18<sup>th</sup> August 2006, as follows:

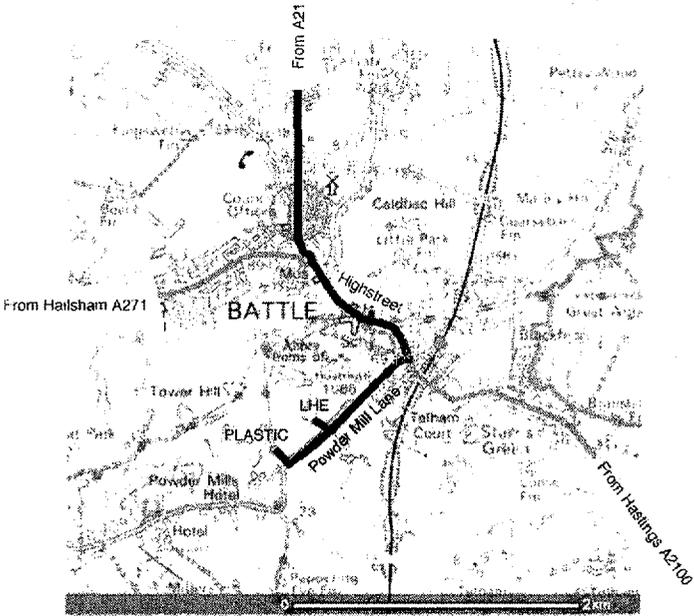
- a) Generally to include a reference to compliance with the RICS and ARMA management codes
- b) Paragraph 1.2 should clarify that inspections would be made at more frequent intervals than 3 months if works required inspection.
- c) Paragraph 1.5 should clarify that the reference to staff does not relate to office staff.
- d) Paragraph 5.2 should clarify that out of pocket expenses are intended to cover photocopying, bulk mailings, and postage thereof
- e) Paragraph 5.4 of the Terms of Appointment to be amended to clarify that only 50% of the fee would be charged if after the tender stage the works contract did not proceed

- f) Paragraph 5.5 should make provision for Annual General Meetings and leaseholder consultation
- g) Generally that the Appointment was to commence with effect from the date of this (written) decision

### Costs

39. Mr Gibbons renewed his application for the costs of the hearing, made in his original written submissions on 19<sup>th</sup> July 2006. The Tribunal pointed out that the Tribunal's jurisdiction on costs was limited to reimbursement of the fee (under Regulation 9 of the Leasehold Valuation Tribunals (Fees) Regulations 2003) and to the award of a sum of a maximum £500 (under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002). As Mr Faizi on behalf of the Respondent had chosen to leave the hearing, the Tribunal considered this application in his absence.
40. The Applicants have been substantially successful in their application. From the evidence presented it seemed clear that there had been no reasonable alternative to making the application. Thus the Tribunal decided that the application fee should be reimbursed by the Respondent.
41. The Tribunal also concluded from the evidence that the Respondent and its representative in this case had been very unreasonable. Not only had Mr Faizi obstructed the Applicants, but he had also taken a highly aggressive, vindictive and offensive attitude towards them. He had caused considerable expense to the Applicants over several years. Further he had unreasonably refused to comply with successive Directions of the Tribunal made on 7<sup>th</sup> June 2006 and 19<sup>th</sup> July 2006 relating to production of accounting documents and other matters. Thus the Tribunal decided to exercise its discretion and order costs against the Respondent in the maximum sum of £500. The Respondent will pay the Applicants £500 towards their costs of this case.
42. On the question of the deemed withdrawal of the Respondent RTM Company's claim notice, the Tribunal noted that the relevant sections are sections 86-89 of the Commonhold and Leasehold Reform Act 2002. While Section 89(1)(a) refers to a claim notice given by the RTM company which "*is at any time withdrawn or deemed to be withdrawn*" and later in 89(1)(b) "*or... at any time ceases*", the Tribunal decided that it was quite clear from the provisions of Section 86 that "withdrawal" refers to an event which occurs before the RTM acquires the right to manage the premises. Section 87 (dealing with deemed withdrawal) is of no further assistance in cases where the event occurs after the right to manage has been acquired.
43. In this case the Respondent acquired the right to manage on 13<sup>th</sup> October 2004 pursuant to an order of another Leasehold Valuation Tribunal. The Tribunal accordingly decided that it had no jurisdiction to consider an application under

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Sections 87-89 of the 2002 Act relating to any event occurring after 13<sup>th</sup> October 2004. The Applicant's application on this particular point was therefore refused.

Signed:  Chairman

Dated: *10th October 2006*