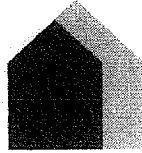


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/OOAW/LAM/2010/0014

**THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 24 of the Landlord and Tenant Act 1987**

Applicant: Nexus Holdings Inc.

Respondent: Consort House Management Ltd

Premises: Consort House, 45 – 48 Queensgate, London SW7 5HR

Date of Application: 7 April 2010

Date of Oral Pre-Trial Review: 11 May 2010

Date of hearing 6, 7 and 9 July 2010

Appearances for Applicant Mr Kharlamov
Mr Leonides

Appearances for Respondent Mr Strang of counsel
Mrs E. Stock - Director:
Mr C. Brandt – Developol Ltd.

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr P.S. Roberts Dip Arch RIBA
Mr L. G. Packer

Date of Tribunal's Determination 20 July 2010

1. This is an application dated 7 July 2010 made by the applicant under Section 24 of the Landlord and Tenant Act 1987.
2. The applicant had been the respondent in two previous applications under Section 27A and 20ZA of the Landlord and Tenant Act 1985 made by the respondents to this application.
3. Directions were issued on 17 May 2010 and the hearing of these this application took place in conjunction with the other two applications.
4. At the hearing Mr Strang conceded that it had been established, as a result of the Tribunal's determination to refuse to grant a dispensation under Section 20ZA in connection with major works, that circumstances existed which would enable a Tribunal to appoint a manager, but he argued that such a course would not be just and convenient as was also required by the legislation.
5. Mr Strang said that it was accepted by the respondents that there was a need for a professional manager to get the company, Consort House Management Ltd, 'back on track'. However, he argued that the fact that no other leaseholder had joined the applicant in making this application indicated that they trusted the directors and supported the company.
6. The company had, since the hearing of the 20ZA application, approached Knight Frank and were in negotiation with them to become the managing agents of the property for one year less one day. The balance of the reserve fund had already been transferred to them whilst the remaining monies in the service charge account were being held in escrow by their solicitors, Hunters. During the course of the year it was proposed to consult and obtain estimates from other companies with a view to entering into a long term agreement with a managing agent.
7. He said that the applicant's expressed fear that he would always be out voted at company meetings was untested since he had never attended any. He opined that the applicant was seeking to resolve issues he had with the management company through landlord and tenant legislation and that even were a manager appointed company issues would remain. He considered that, in these circumstances, the applicant would be applying constantly to the LVT.
8. The applicant said that it was important that a balance should be struck because the four directors of the company acted as one and the other leaseholders took no part in decisions made. There was a rift and it was necessary for him to have a voice. He pointed out that he had served a preliminary notice on the respondents under Section 22 of the Act on 21 February 2010 but it had taken the directors some four months to action the appointment of managing agents and, yet again, no consultation had taken place. The time for interim measures was over.
9. The applicant was of the opinion that the company would not be prejudiced by the appointment of a manager. He said that he was not a vexatious applicant and had commenced the proceedings only after proceedings had been commenced against him and as a precautionary measure since he wanted to prevent further failures and violations of the law by the management company.
10. In support of his application the applicant had obtained quotations and terms from some eight possible managing agents.. His preferred choice, Mr Strong of Atlantis Holdings, attended the hearing, as required by the Directions dated 17 May 2010

and was questioned by the applicant and the Tribunal. He expressed a willingness to be appointed by the Tribunal.

11. The Tribunal, in coming to their decision, took into consideration not only the evidence they heard in connection with this application but also that which had been given, and their determinations thereon, in connection with the related applications under Sections 27A and 20ZA.
12. From all of this they were satisfied that it would be just and convenient to appoint a manager. There had been serious failures by the management company over a long period of time and it was necessary that proper procedures should be put in place. The Tribunal noted that whilst arrangements were now in place for managing agents to be appointed, this appeared as a somewhat late response to the application rather than an admission by the directors that it was necessary to change their ways in the proper management of the property.
13. The Tribunal accepts that the appointment of a manager is a draconian step but they were persuaded that, in all the circumstances of this case, the short term involvement of the LVT would provide the necessary balance between the applicant and respondents that would allow the procedures of the company to be put on a proper footing, the necessary trust and confidence of all parties to be restored and the building to be appropriately managed and maintained.
14. Having determined that it was just and convenient to appoint a manager the Tribunal considered that it was faced with choosing either an employee of Knight Frank, whom the respondents were proposing to appoint as a managing agent or Mr Strong of Atlantis whom the applicant preferred as a manager.
15. From questioning it had emerged that Mr Strong had only limited experience of dealing with prime central London property and that he was proposing only quarterly visits to the property. In his favour was the fact that his charges were considerably less than those of Knight Frank and the Tribunal was impressed by his understanding of the task with which he would be involved.
16. However, the Tribunal was persuaded that, on balance, in all the circumstances of this case, it would be preferable to appoint Knight Frank. They were the choice of the respondents and since the applicant had been successful in his application the Tribunal hoped that a concession on the identity of the manager would help to promote the harmony that was so necessary for the appointment to be effective.
17. Therefore, because the Tribunal had undertaken at the hearing to communicate their decision, without reasons, as quickly as possible to enable the respondents, if it were appropriate, to continue with their appointment of Knight Frank, the clerk telephoned the parties on the day following the hearing. She informed them that the Tribunal had determined to appoint a manager and was minded to appoint Knight Frank but could not do so until their proposed manager had been interviewed.
18. With the co-operation of all parties a hearing was set up for 10am on 9 July 2010. It was attended by the applicant and his friend Mr Leonidov, Mr Strang and Mrs Stock, and Ms Katrina Downham, a senior property manager with Knight Frank.
19. Ms Downham explained that she had worked for Knight Frank for over a year having previously worked for over five years in property management with two

other firms. She had passed Parts 1 and 2 of the Institute of Residential Property Management.

20. She worked as a day to day property manager within a structured, specifically central London, team that included a partner, a facilities manager, two assistants, a dedicated accounts team and a building surveying team. There was also an out of hours help desk which provided contractors from an approved list. She said that the property would be visited on a weekly basis. Questioned about this she said that the visits would be on an ad hoc basis in conjunction with other visits in the area but that a visitors' book could be maintained. Leaseholders would be provided with a quarterly newsletter.
21. She envisaged that, initially, during the set up period, she would be spending a day a week on the property but that subsequently half a day a week would be sufficient.
22. She said that she had previously visited the subject block on some three or four occasions and confirmed that the company had signed a letter of intent and that the set up stage of management had commenced.
23. She saw as the main issue proper accounting systems and the need to ensure that all service charges payments were properly invoiced, paid and accounted for. She confirmed that they had already received the balance of the reserve fund in the sum of £127,500 and that Hunters were holding some £6000 of service charge monies.
24. She was aware that external repairs and redecoration were a priority. She explained that such major works would be organized by their in house RICS qualified building surveying team who would charge at the rate of £100 -£150 per hour. However, required Section 20 procedures, which she rehearsed, would be covered by their annual management fee of £650 per unit. In view of the time of year she said that advice would be sought as to whether the works should be scheduled for the following year and were Knight Frank not to be successful in obtaining the long term contract to manage the property their surveyor could still oversee the scheduled works.
25. Because of the short notice of the hearing Ms Downham did not have with her a draft management order but she undertook that it would be provided to the Tribunal by 13 July and Mr Strang undertook to help with its drafting.
26. The draft management order having been received (attached at Annex 1) the Tribunal appoints Ms Downham of Knight Frank as the manager and receiver of Consort House for a period of twelve months with effect from 20 July 2010.
27. The Tribunal will require a report to be provided within two months of the start of the order detailing the steps taken and the progress made in the provision of proper and effective management of the subject property. A copy of this communication is to be provided to the respondents. Having considered this report the Tribunal will determine whether any further reports are required.
28. Under Regulation 6 of the Residential Property (Fees) (England) Regulations 2006 the applicant requested, at the hearing on 6 July 2010, the reimbursement by the respondents of his application and hearing fees in connection with this application and the Tribunal is satisfied that such reimbursement is appropriate in all the circumstances.

R. P. H. Walker

20/7/10

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

CASE REFERENCE [ref] LON/OOAW/LAM/2010/0014

IN THE MATTER OF [property] CONSORT HOUSE, 45-48 QUEENSGATE
LONDON, SW7 5HR

DATED THE 20 DAY OF JULY 2010

ORDER FOR THE APPOINTMENT OF A MANAGER

Section 24 of the Landlord and Tenant Act 1987

1. In this Order the singular includes the plural and vice versa, any reference to a statute means that statute as modified or re-enacted at the relevant time and the following expressions have the following meanings:

“Act”	means the Landlord and Tenant Act 1987
“Landlord”	means Consort House Management Limited including its successors in title
“Lease”	means any lease of a flat or any other area at the Property
“Leaseholder”	means the holder of any Lease including their successors in title
“Manager”	means Knight Frank LLP incorporated and registered in England under limited liability partnership number OC305934 whose registered office is at 55 Baker Street London W1U 8AN
“Property”	means Consort House, 45-46 Queens Gate, London SW7 5HR
“Rents”	includes all rent and insurance rent payable under the terms of any Lease.

2. The Manager is hereby appointed as the manager and receiver of the Property pursuant to Section 24 of the Act and is given for the duration of the appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Landlord including in particular but without limitation the authority:
 - 2.1 to receive all Rents, profits, service charges, interest and other monies payable under the Leases including any arrears (which the Manager may, but shall not be obliged to, take steps to recover);
 - 2.2 to carry out the obligations of the Landlord contained in the Leases (subject to receipt by the Manager under the preceding paragraph of sufficient funds for the same and with discretion for the Manager as to which obligations are to be carried out where partial funds are received from time to time) including in particular but without limitation (a) the Landlord's obligations to provide services and (b) the Landlord's repair and maintenance obligations;
 - 2.3 to appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as the Manager may reasonably require to assist the Manager in the performance of its functions;
 - 2.4 to appoint (and to dismiss) any agent or servant to carry out any such function or obligation which the Manager is unable to perform itself or which can more conveniently be done by an agent or servant;
 - 2.5 in the name of the Manager or on behalf of the Landlord to bring, defend or continue any legal action or other legal proceedings in connection with the Leases and/or the Property including without limitation proceedings against any Leaseholder in respect of arrears of Rents, service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Landlord in such matters;

- 2.6 to enter into any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of the Manager's functions;
 - 2.7 to open and operate client bank accounts in relation to the management of the Property, to administer the service charge account, the reserve account and any rent deposit, to hold sums received as such pursuant to Section 42 of the Act and (if the Manager determines, in its discretion, that it is appropriate to do so) to create or alter a reserve fund and to invest monies received pursuant to the Manager's appointment in any manner specified in Parts I and II of the First Schedule to the Trustee Investment Act 1961;
 - 2.8 to claim in the bankruptcy, insolvency, administration, sequestration, voluntary arrangement or liquidation of or relating to any Leaseholder owing any sum under their Lease; and
 - 2.9 to charge remuneration in accordance with the attached "Knight Frank Management Fee Proposal" and to recover (or demand on account in advance) the costs and expenses in respect of any and all of the above matters, all of which such fees, charges and costs shall be recovered as part of the service charges under the Leases.
3. The Manager shall manage the Property in accordance with the directions of the Tribunal, the obligations of the Landlord under the Leases (with particular regard to the buildings insurance, the provision of services and the repair of the Property, subject always to the qualification set out in paragraph 2.2 of this Order) and the duties of managers as set out in the Service Charge Residential Management Code or such replacement code as may be published by the Royal Institution of Chartered Surveyors and approved pursuant to Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
 4. The Manager shall act fairly and impartially in its dealings with the Landlord and the Leaseholders and shall in the performance of its functions under this Order exercise the reasonable skill, care and diligence to be expected of a new manager appointed for

the duration of this Order with reasonable experience of carrying out work of a similar scope to that required by the performance of those functions but shall not be liable for any indirect or consequential loss or damage save in the event of (a) fraud, (b) death or personal injury caused by the negligence of or breach of contract by the Manager or (c) any liability which by law cannot be excluded.

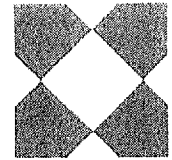
5. The Landlord shall give all reasonable assistance to and co-operate with the Manager in pursuance of its duties and powers under this Order. The Landlord shall not interfere or attempt to interfere with the exercise of any of the said duties and powers of the Manager. In particular but without limitation, the Landlord shall as soon as practicable:

5.1 deliver to the Manager all subsisting contracts, books, bank statements, papers, notes, records, correspondence, communications and other documents (whether hard copy or electronic) which may be required for the management of the Property and are held by (or are in the control of) the Landlord; and

5.2 give full details to the Manager of all sums of money it holds in any service charge account, any reserve fund and any rent deposit in relation to the Property and forthwith pay all such sums to the Manager in the manner directed by the Manager.

6. If the Landlord (or its agent) receives any sum which falls within paragraph 2.1 of this Order the Landlord shall (or shall procure that its agent does) pay such sum to the Manager forthwith.

7. The Manager shall be appointed (and the above rights and duties shall apply) for the term of one calendar year from the date of this Order (unless subject to earlier termination or variation by the Tribunal upon notice to the Manager). The Leaseholders, the Landlord and the Manager remain entitled to apply to the Tribunal for further or other directions in connection with the appointment of the Manager including without limitation the replacement of the Manager with an alternative manager for the Property.



**45-46 Queens Gate
London SW7
Revised Fee Proposal
4th June 2010**

Please see below the Knight Frank Management Fee Proposal for 45-46 Queens Gate which details the service we can offer to you.

Day to Day Management - £9,100 pa

- Ongoing accounting which includes quarterly reporting
- Pay all bills relating to the management of the property
- Oversee repairs and maintenance issues associated with the property
- Access and use of the Knight Frank approved suppliers listing
- Instruct for a Preventative Planned Maintenance / five year maintenance program to be drawn up at the instruction of the client
- Oversee Health & Safety procedures
- Weekly site visits from the Property Manager/Facilities Manager
- Provide emergency support and access to the 24 hour Help Desk
- Any other routine management issues
- Liaison with residents and board members
- Provision of web-enabled accounts package

Additional Work

- Building consultancy involvement for project management work (interior design, external works etc), defects and snagging issues, and preparation of a Planned Preventative Maintenance plan over 5-10 year period.
- Employment support of the caretaker including payroll and training at 15% of the salary.
- Company secretary support to be charged based on the fees from the outsourced company, with an additional 15% fee for Knight Frank for administration, reporting and coordination.
- Fees chargeable to individual residents in accordance with their leases, this may be applications for consent such as alterations, assignments or sub lettings, but could also entail dealing with ongoing disputes. Please note that funding for these items may need to be paid on account from the service charge but wherever possible if recovery can be made under the terms of the lease this would be charged back to an individual resident's account.
- Review of advisors to the management company, if required, and work on the structure of the management company itself would be viewed outside of the property management aspect and will be charged on the basis of hourly rates subject to agreeing with you beforehand a reasonable cap on these rates.
- Resolving any historic issues relating to the service charge accounting and reserve fund (and for the avoidance of doubt if required any input into historic issues on statutory notices) would be charged on the basis of hourly rates subject to agreeing with you beforehand a reasonable cap.

Hourly rates as at May 2010

- Departmental Head - £350 per hour
- Salaried Partner - £200 per hour
- Associate/Senior Property Manager - £150 per hour
- Assistant Property Manager - £120 per hour
- Graduate/Administrator - £75 per hour

Please note all figures are exclusive of VAT and disbursements