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**LONDON RENT ASSESSMENT PANEL**

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

**Case Reference:** LON/00AM/LAM/2012/0017

**Premises:** THE TIMBER YARD,  
DRYSDALE STREET,  
LONDON N1 6ND

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**Applicant(s):** Mr ALEXANDER SAVIC

**Representative:** FAIRWEATHER STEPHENSON SOLICITORS

**Respondent(s):** THE CROWN ESTATE

**Representative:** BURGESS SALMON

**Date of Receipt of Application:** 21<sup>ST</sup> June 2012

**Date of Directions:** 22<sup>nd</sup> June and 26<sup>th</sup> July 2012

**Date of Hearing:** 6<sup>th</sup> September 2012

**Appearance for Applicant(s):** Ms TAMSIN COX (of Counsel)  
THE APPLICANT IN PERSON  
Mr PAUL CLEAVER MA (Oxon) MIRPM (URANG  
PROPERTY MANAGEMENT)

**Appearance for Respondent(s):**

**Leasehold Valuation Tribunal:** Mr S. Shaw LLB (Hons) MCI Arb  
Mr S Mason FRICS FCI Arb  
Mr P Clabburn

**Date of Decision:** 11<sup>th</sup> September 2012

## DECISION

### Introduction

1. This case involves an application made by Mr Alexander Savic ("the Applicant") in respect of the property known as The Timber Yard, Drysdale Street, London N1 6ND ("the Property"). The application is for the appointment by the Tribunal of a manager and Receiver in respect of the property pursuant to the provisions of section 24 of the Landlord and Tenant Act 1987 ("the Act"). The application is made, in circumstances which will be explained below, against the Crown Estate ("the Respondent").
2. Directions were given in this matter on the 22<sup>nd</sup> June 2012 by the Tribunal and those directions were amended on the 26<sup>th</sup> July 2012. A hearing of the matter took place before the Tribunal on 6<sup>th</sup> September 2012. At the hearing, the Applicant appeared in person and was represented by Ms Tamsin Cox of Counsel. In addition, pursuant to the directions given, Mr P Cleaver of Urang Property Management Limited (the proposed manager) also attended. There was no appearance by or on behalf of the Crown Estate, although a letter to which reference will be made was written to the Tribunal on its behalf by its solicitors, namely Burges Salmon LLP. There was no appearance by any other party having an interest in these proceedings.
3. The application comes about in slightly unusual circumstances and the Tribunal is grateful to Ms Cox for her lucid explanation of the law applying in this particular case.

4. The situation in this case is that the property is a mixed use building comprising 38 residential units and 18 commercial units. The property is divided horizontally at third floor level and, as understood by the Tribunal, the accommodation above the third floor and including that floor is exclusively residential. Below the third floor level the building includes commercial elements as well as residential elements. The arrangement at the development is that a company called City Lofts (Drysdale Street) Limited is the freehold owner of the property. That company granted a head lease to the company called Drysdale Street Management Limited. However that head lease which is for 999 years applied to the residential part of the property only. The commercial element therefore remained with City Lofts (Drysdale Street) Limited, which granted 18 commercial leases directly to the commercial occupiers on the lower floors of the property. Drysdale Street Management Limited, the intermediate head lessee, in turn granted underleases to the 38 residential occupiers. The situation therefore is that the residential occupiers have underleases from the management company, but the commercial occupiers have leases directly with the freehold owning company.
5. By a process which was explained to the Tribunal, but which need not be elaborated upon in great detail herein, the underleases and leases dovetail with each other so as to ensure that provision is properly made for the repair and maintenance of the building in its entirety. The freeholder referred to has the obligation to insure the property, and to collect in service charges from the commercial occupiers to cover the upkeep of the property. The provisions from

a contractual point of view work well (as explained to the Tribunal) save that there was an occurrence in 2009, which has created problems.

6. The occurrence referred to is that the landlord freehold owning company, that is to say City Lofts (Drysdale Street) Limited as referred to above, was dissolved on 22<sup>nd</sup> September 2009. The effect of that was that by virtue of section 1012 of the Companies Act 2006, the head lease vested in the Crown as bona vacantia.
  
7. Accordingly, one might have thought that the Crown steps into the shoes of the company in dissolution from which it has received the freehold title. However, this is not the position as explained by the Treasury Solicitor's office in a letter dated 28<sup>th</sup> March 2012 to the Applicant's Solicitors and appearing at page 33 in the hearing bundle. In that letter the Treasury Solicitor confirms that when a registered company is dissolved its beneficial property and rights vest in the Crown as bona vacantia pursuant to the Companies Act 2006; however it is only the assets of the company which vest in the Crown, and the liabilities are extinguished. In the letter referred to, the Treasury Solicitor declines to undertake any management responsibilities in respect of this or other bona vacantia properties, nor does the Crown insure such properties. Again in that letter the Treasury Solicitor reserves the right to disclaim the Crown's interest in the property at any stage. If such a disclaimer takes place the result of that is that the freehold interest is in fact extinguished and the land then "*escheats*" to the Crown.

8. In the event the Treasury Solicitor on behalf of the Crown did indeed disclaim the lease and there is notice to this effect in the hearing bundle, the Notice of Disclaimer being dated 5<sup>th</sup> July 2012 and appearing at page 41 in the bundle. When this happened the result was, apparently by long-standing convention, that properties subject to escheat fall to be dealt with by the Crown Estate. As indicated above the firm of solicitors acting for the Crown Estate in this case is Burges Salmon LLP, and that firm wrote to the Applicant's Solicitors by letter dated 20<sup>th</sup> July 2012 appearing at pages 43-45 in the bundle. That letter contains an interesting discursus on the somewhat arcane area of law which is of application in cases of this kind, but the upshot of the letter and the equally helpful exposition given by Ms Cox is that the Crown Estate declines to insure or manage the property in any way, notwithstanding the fact that it is, in some albeit unconventional way, the entity with overall control of the property. Indeed, the Crown Estate has refused to accept service of notice of the application. Ms Cox explained to the Tribunal that the freehold in conceptual terms ceases to exist, in the sense that it reverts back to the Crown, which holds the land free of any obligations at all. An offer is made in the context of the letter dated 20<sup>th</sup> July 2012 to consider disposal of the land to a willing buyer if such a buyer can be found.
9. The result of all these developments is highly unsatisfactory, and can be understood, so far as the Applicant is concerned. As will be appreciated, he is one of the residential underlessees and he has an obligation to the head lessee to pay service charges for the upkeep of the property. However the obligation to insure and the obligation to maintain the commercial element of the property

was with a company which is in dissolution and whose interest has been disclaimed by the Crown. Strictly speaking therefore there is no entity which is taking responsibility for the insurance of the building nor any entity to which contractually the commercial leaseholders are bound to pay any service charges.

10. It is in these circumstances that the application has been made to the Tribunal for the appointment of a manager to ensure that the property is properly insured and maintained in an equitable and fair way. The attraction from the point of view of the residential occupiers of a Tribunal appointed manager, is that firstly such a manager would derive his authority from the Tribunal appointment, made pursuant to the statute, and therefore would be unaffected by the disclaimer of the lease. Secondly, there is in fact a de facto manager who has been managing the property since approximately 2006 and who is very familiar with the property.
11. A section 22 notice was served in this case dated 28<sup>th</sup> March 2012 on the Treasury Solicitor's office, spurring the letter from that office referred to above. Strictly speaking there should have been service also on the head lessee, the management company to which reference is made above. However the Applicant is himself a Director of that company and thus the company through its Director has full knowledge of this application. Moreover the other Directors (of whom there are three) are also aware of the application. The Tribunal received confirmation of this from the Applicant at the hearing and the Applicant also showed the Tribunal email correspondence from those other Directors

confirming that not only are they supportive of the application but they are willing to cover a proportion of the costs on behalf of the company in the making of the application.

12. In addition, following the amended directions, notice of this application was displayed on the communal notice board at the building in late July or early August of this year for those using the building to view, and inviting anyone who wished to do so to make application to the Tribunal or attend at the hearing for making any representations. In fact, as understood by the Tribunal, nobody has objected to this application and indeed the Applicant informed the Tribunal that, perhaps not surprisingly, the residential occupiers are all highly supportive of the application.
13. The section 22 notice referred to relies on breaches of obligation on the part of the freehold landlord in that it has failed to insure the building, to contribute to the costs of maintaining the car park or maintaining and managing the residential structure or the commercial structure. The order is sought on the basis that these breaches are likely to continue unless some order is made and the underlessees will suffer detriment if the position is not remedied. It is asserted that it is just and convenient for the order to be made because *“there is no other practical way to ensure compliance with the freeholder landlord’s covenants.”*
14. By virtue of section 24 of the Act the Tribunal has power to appoint a manager if any of the grounds set out in section 24(2) of the Act apply. Breaches of

obligation of the kind referred to come within section 24(2) and there is an all-embracing provision under section 24(2)(b) for the Tribunal to appoint a manager if *"it is satisfied that other circumstances exist which make it just and convenient for the order to be made."*

15. For the reasons and in the circumstances referred to above, the Tribunal is in no doubt that there have been breaches of the kind referred to, and that in any event it is just and convenient for the order to be made. Indeed unless the order is made it will be impossible properly to manage and maintain this property and, just as importantly, to ensure that it is properly insured. The only other result would be that the property is insured and maintained exclusively by the residential owners who would be sponsoring the commercial owners through the circumstance that the freehold owner, to whom they owe direct obligations rather than to the management company, is now in dissolution and the Crown has disclaimed any interest. Such a result would neither be "just" nor "convenient" for the purposes of the Act. Accordingly, in principle, the Tribunal is satisfied that this is an appropriate case for a manager to be appointed.
16. The remaining issue is whether or not the proposed manager, namely Mr Paul Anthony Cleaver of Urang Property Management Limited is an appropriate person to be so appointed.
17. Mr Cleaver appeared before the Tribunal and gave evidence in accordance with his written statement appearing at pages 138/139 of the hearing bundle. He is a member of the Institute of Residential Property Management and is the sole



Director of Urang Property Management Limited. He has operated that company since 2001 and the company now manages some 300 properties. The company is a full corporate member of the Association of Residential Managing Agents. Mr Cleaver himself has been appointed a Tribunal Manager on four previous occasions and in three of those instances he remains the manager of the relevant property. The Tribunal saw a copy of the company's professional indemnity insurance cover and also a copy of the company's terms and conditions upon which it is proposed that the company will carry out management functions. The particular situation here, again unusually, is that Urang Property Management Limited, through Mr Cleaver has in fact been managing this property for several years and the appointment by the Tribunal of Mr Cleaver as a Tribunal Manager would in a sense be regularising the existing situation and enable him with authority to seek contributions from the commercial element in the property, deriving as indicated above, his authority from the appointment and the Act itself, independent of the disclaimed freehold interest from which the commercial leases were carved.

18. Mr Cleaver has banking arrangements through his company, a database of local and other contractors who are available both within and outside office hours and altogether the Tribunal was satisfied on the material before it that he is a proper and responsible manager to be appointed by the Tribunal.
19. The Tribunal was presented with a proposed form of order which was considered at the hearing and with which it is further satisfied. The Tribunal therefore appoints Mr Cleaver as manager and receiver of the property for a

period of two years from the date of this Decision and order in accordance with the order which is attached to this Decision and the terms and conditions of Mr Cleaver's firm which are also attached to this Decision. It should be made clear that Mr Cleaver is himself personally the Tribunal Manager and Receiver rather than his company, although obviously he will discharge his duties through the personnel at his company.

20. The only other matter arising is that the Tribunal was asked by the Applicant's Counsel to confirm that this application was reasonably made in all the circumstances, which the Tribunal is content to confirm. A request was made to express a view as to the reasonableness of the costs incurred in making the application, but the Tribunal does not consider that in the context of this application it is appropriate to do so and declines to make any further comment.

**Legal Chairman: S. Shaw**

**Dated: 11<sup>th</sup> September 2012**

**ORDER FOR APPOINTMENT OF MANAGER IN RELATION TO  
THE TIMBER YARD, 7-51 AND 57-117 DRYSDALE STREET,  
LONDON, N1 6ND  
UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987**

1. In this order:
  - a. The "Property" includes all those parts of the property known as **The Timber Yard, 7-51 and 57-111 Drysdale Street, London, N1 6ND**
  - b. The "Landlord" means City Lofts (Drysdale Street) Limited (Dissolved) or its successors in title
  - c. The "Leases" mean the lease of each of the 38 flats and the 18 commercial units (if leasehold) relating to the Property
  - d. The "Lessees" mean the lessees of each of the Leases
2. Mr Paul Anthony Cleaver MIRPM of Urang Property Management Limited, 196 New Kings Road, London, SW6 4NF is hereby appointed the receiver and manager ("Manager") of the Property
3. The appointment shall be for a period of 2 years with effect from the date of the Tribunal Determination whereby this Order is made
4. During this period of this appointment, the Manager shall collect all the various funds reserved and made payable by the lessees including but not limited to :
  - a. Ground rent
  - b. Insurance rent
  - c. Services charges
  - d. Arrears of any of the above insofar as the Manager considers it in his absolute discretion reasonable to do so
5. To ensure the proper management of the property and its service charge account, the Manager shall be entitled to all reports, bank statements invoices, accounts and other documents relating to the property in the possession or control of the Landlord, his solicitors, accountants, employees or agents
6. During the period of appointment the Manager shall carry out the management obligations of the Landlord in accordance with the provisions of the Leases and in particular and without prejudice to the generality of the foregoing;
  - a. He should forthwith ensure the building is fully and properly insured
  - b. He should establish a Service Charge Account for the Property
  - c. He shall observe the landlord's covenants under the leases with regard to insurance, repairs, services and alterations to the Property
  - d. He shall enforce the Lessees' covenants
  - e. He shall comply with all statutory requirements, including those set out in the Landlord and Tenant Act 1985 and 1987 as amended
  - f. He shall comply with all the requirement of (1) the RICS Service Charges Residential Management Code 2<sup>nd</sup> edition 2009 and (2) any other Code approved by the secretary of State from time to time under s.87 of the Leasehold Reform Housing and Urban Development Act 1993

7. The Manager shall be entitled to charge the sums set out in the Schedule in respect of his management of the Property
8. The Manager shall be entitled to appoint, if he thinks fit, any surveyor, architect, engineer and other appropriate persons to assist him in carrying out any of his duties under this Order and will be entitled to recover the cost thereof from the Lessees of the property through the service charge provided that always such costs are reasonably incurred and that the services of such a person are of a reasonable standard
9. The Landlord shall give all reasonable assistance and co-operation to the Manager while acting in accordance with his duties under this Order.
10. The Manager shall have permission to apply to the tribunal or any other body for further directions or orders in relation to the above matters.

#### **SCHEDULE – THE MANAGEMENT FEE**

1. The manager shall be entitled to charge the sum of **£225.00** plus VAT per unit, amounting to the total of **£12,825.00** plus VAT for the Property, and disbursements per year by way of basic management fees to cover those day to day duties referred to in the RICS Service Charge Residential Management Code 2<sup>nd</sup> edition 2009 (with the exception of duties under Clause 2.5 of that Code).
2. For major works carried out to the property (where it is necessary to prepare a specification of works, obtain competitive tenders serve relevant notices on lessees informing them of the works and supervising the works) the Manager shall be entitled to a separate fee on the terms as set out in his terms and conditions.
3. Payment under 1 above shall be made within one month of receipt of the relevant annual invoice.
4. Payment under 2 above shall be made within one month of the receipt of relevant invoice relating thereto.



## **Urang Property Management Limited Terms & Conditions**

### **Urang's Service:**

The core services provided are as follows:

1. The submission of demands for service charges due from Leaseholders in accordance with the lease terms, and ensuring, as far as possible, that accounts are paid up to date, and where appropriate contributions to reserves are made.
2. Dealing with all out-goings from the service charge account in respect of day to day repairs and maintenance to structure, plant, fixtures, fittings and equipment, and making payments of authorised and appropriate bills where funds are available.
3. Employing required cleaning, gardening, portering and other staff (excluding advertising and agency expenses) and effecting appropriate supervision and management of such staff, or retaining such staff as are already employed in these capacities. Such staff to be directly employed and contracted by the Client.
4. The arrangement and supervision of maintenance contracts in relation to all common parts including any entry phones, cleaning, gardening, aerial, fire extinguishers, drain clearance, and maintenance of existing contracts as required by the Client for the benefit of the Leaseholders.
5. Making periodical visits to the property to ensure proper day to day running and to inspect the building's general condition and state of repair and ensure regular maintenance.
6. Attending to normal routine enquiries from the Client and Leaseholders. Urang seeks to respond to all such queries as quickly as possible in order to provide an excellent level of service on behalf of the Client/ Residents' Management Company/Residents Association.
7. Keeping files and records relating to the property, including details of payments made and received, agreements entered into on behalf of the Client and any changes in ownership.
8. Preparation of the annual service charge accounts including, where appropriate, liaising with the Client/Freeholder or Residents' Association's accountants for auditing purposes.
9. Submission to the Leaseholders of a summary of accounts of income and expenditure in accordance with the terms of the lease and statutory requirements, showing details of any under or over expenditure as against the budgeted values, as well as the debits and credits for each Leaseholder.
10. Preparation of the budget for the coming service charge year in consultation with the Client and any recognised Residents' Association where appropriate.

11. Liaising with the Client, Freeholder and Leaseholders, attending meetings as required or agreed under the terms of the contract, including within reason, periodic Resident Association or Client meetings as well as the AGM of any Resident Management Company, where applicable.
12. Administering any reserve funds. Monies collected for reserve funds or major works will be held in an appropriate interest bearing account, with instant, or near instant, access and according to the terms of the lease.
13. Ensuring compliance with terms of leases and other statutory requirements in relation to the Property.
14. Administering appropriate and competitive building and, where appropriate, other insurances including Public Liability for staff, boiler and lift insurance. Urang is registered with the FSA and may earn commission on placing insurance to cover the cost of this registration and the time spent administering claims, but only on the basis that this does not increase the cost of the insurance to the Client.
15. Instructing and providing information to solicitors in relation to unpaid service charges and ground rents, breaches of lease and other matters requiring solicitor's services. The charge for which will be borne by the leaseholder, as specified in the lease, or by the client in any action taken in respect of breaches and recovery of which sum should be applied for during any such action and as directed by a court.
16. Advising generally on management policy. Informing Clients on new legislation in respect of leasehold law, health & safety and employment law.
17. Providing as per the terms of the lease and current requirements of the Landlord and Tenant Acts 1985 and 1987 and Commonhold and Leasehold Reform Act 2002 policies, receipts and other documents or additional copies of accounts as requested. The provision of answers to solicitors' enquiries in the event of a transfer of ownership will generally incur a fixed separate charge, to be borne by the applicant on behalf of the vendor.
18. Putting out to tender, recommending, proposing and supervision of large building works and common parts major works on behalf of the Client, as per the Section 20 requirements of Commonhold & Leasehold Reform Act 2002, as and when required or according to the cyclical nature of the lease terms.
19. General availability on a 7 day basis to assist in sorting out emergency property problems.

#### Services Not Included

Our service does not include items such as preparation of lease plans, re-letting of premises, management of let premises, professional services in relation to rating, applications for Freeholder's consent to assignments, applications for Freeholder's consent to sub-lettings, changes of use, determinations of fair rent under the Rent Act 1977, large insurance claims

relating to the Freeholder, applications for grants, valuations for annual or capital values, attending court hearings and giving evidence if required in relation to recovery of service charges, rent or other charges, preparing schedules of dilapidations or condition, or the consideration of applications by Leaseholders to carry out alterations. All the above are exceptional and may be carried out but on agreement that a fixed fee is applicable and charged to the applicant.

The Clients Agrees:

The Client agrees to assist Urang in the performance of its duties, specifically in enforcing all of the terms of the leases and taking legal action against Leaseholders as required. The Client will allow Urang to put up a plaque outside the property identifying Urang as the managing agent. The Client will also comply with the Client/Freeholder's own obligations under the leases and will provide Urang with copies of the relevant freehold and leasehold documents for the property.

Fees:

Urang will act as Managing Agents for an agreed fee + VAT per annum with an agreed hand-over fee + VAT to cover dealing with issues outstanding at hand-over

For the management of major works costing over £1,000 or where Urang is required to manage complex insurance claims over £1,000, Urang will charge 10 % + VAT of the cost of the works as a management fee, including full Section 20 requirements under the Commonhold and Leasehold Reform Act 2002 or equivalent insurance administration processes as required, which fee may be reduced in proportion to the assistance provided by the Client/Freeholder and Leaseholders. The Managing Agent fee will be reviewed annually in line with inflation and actual management costs.

Notice period

This Agreement may be terminated by either party giving 3 months written notice

Further terms of this agreement

This Agreement shall be governed by and construed in all respects in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts or English Employment Tribunals in respect of this Agreement.

If any provision of this Agreement shall be unenforceable for any reason but would be enforceable if part of it were deleted, then it shall apply with such deletions as to make it enforceable.

Should a legal dispute arise between the Client/Freeholder and the Managing Agent, they shall apply to the Ombudsman Service: Property for a review of the situation and shall abide by the Ombudsman's final decision.

Urang abides by the ARMA and RICS codes of practice. These are available for inspection at the office of Urang Property Management Ltd. The procedure for clients complaints are also available on request.

The Client and the Managing Agent agree to pay their own legal costs associated with this Agreement and any ancillary agreements.

These Terms & Conditions may be amended only by written agreement between the Client and the Managing Agent.