

H.M.COURTS & TRIBUNALS SERVICE**LEASEHOLD VALUATION TRIBUNAL****LANDLORD AND TENANT ACT 1987 – SECTION 24
LANDLORD AND TENANT ACT 1985 – SECTION 20C****DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
In respect of
Sunningdale Court, Kensington Grove, Manchester M34 3GW**

- Applicants:** Ms.L.Metcalf (Flat 4) and Mr.J.Kinsey (Flat 27)
- Respondents:** As detailed in the list attached to the Application being the leaseholders of Flats 1-3 (inclusive), Flats 5-15 (inclusive), and Flats 17-26 (inclusive)
- Date of decision:** 30 October 2012

1. Background

- 1.1 By an application dated 20 February 2012 ("the Application"), the Applicants sought an order pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") for the appointment of a manager in respect of the premises known as Sunningdale Court, Kensington Grove, Manchester M34 3GW, ("the Property"), together with an order pursuant to section 20C of the Landlord and Tenant 1985 ("the 1985 Act") prohibiting any of the Respondents acting as officers of Sunningdale Court (Denton) Limited ("the Company") from treating any costs incurred by them on its behalf in connection with the proceedings before the Tribunal as expenditure to be charged by way of service charge.
- 1.2 Attached to the Application was a copy of the preliminary notice issued by the Applicant, Ms.Metcalf, pursuant to section 22 of the 1987 Act addressed to the Respondent.

- 1.3 Directions were issued to the parties dated 30 March 2012. The Applicants complied with the Directions by submitting a bundle of documents to the Tribunal and to each Respondent as required under paragraph 1. No statement in response was made by any of the Respondents.
- 1.4 An initial hearing took place on 25 May 2012 ("the First Hearing") attended by the Applicants. Many of the Respondents also attended and were represented by Mrs.C.Scott, the Company Secretary of the Company, (assisted by Mr.D.Turner), and Mr.C.Cartwright, Treasurer of the Company. Also in attendance was Mr.C.Guthrie of The Guthrie Partnership, the manager proposed by the Applicants in the Application.
- 1.5 Following the hearing, the Tribunal was requested not to make its determination pending the outcome of further discussions between the parties and with Mr.Guthrie with a view to a negotiated resolution. The Tribunal was subsequently advised by both parties that negotiations had failed and the matter was referred back to the Tribunal.
- 1.6 A further hearing was held on 10 September 2012 ("the Second Hearing"), following an inspection of the Property on the same date. The Applicants again attended the hearing; the Respondents were again represented by Mrs.Scott and Mr.Cartwright.

2. Inspection

- 2.1 The Tribunal inspected the Property at 10.00 am on 10 September 2012. Ms.Metcalf and a number of the Respondents were present during the inspection.
- 2.2 The Property comprises three separate blocks of 9 flats, each with its own entrance. Built in or about 1973, each block has a flat roof which parties attending the inspection confirmed had been re-covered 17-20 years previously. It was also stated that the roofs on Blocks 1 and 3 leaked.
- 2.3 The internal communal areas were very well-maintained and belied that they had not been decorated for 7 years. New carpets were laid some 3 years previously. Ms. Metcalfe asked the Tribunal to note how the work done to enclose the electric meters behind fire retardant doors on the ground floor of what was referred to as Block B had left insufficient room for the storage of bins in that area, as had previously been the case. The Respondents' representatives explained that this had been done as a fire precaution measure. Other fire precaution measures – eg smoke detectors, emergency lighting – were being considered by the Company whilst the fire extinguishers presently on each floor were to be removed as it was not recommended that residents were "encouraged" to try to fight a fire.

- 2.4 The Tribunal noted that the existence of banisters/stair railings which would no longer be considered as safe as they constituted a fall hazard, particularly for children.
- 2.5 Communal grounds to the rear of the blocks are maintained by contract gardeners and also by Individual leaseholders, and are well-maintained. The parking area comprises 15 garages (maintained by individual leaseholders), 12 resident parking spaces and 8 visitor spaces. The tarmac surface is in poor condition.

3. The Hearings

- 3.1 As indicated to the parties at the commencement of the Second Hearing, had the Tribunal made its determination at the conclusion of the First Hearing, on the basis of the evidence presented, it would have granted the Application and made an order under section 24 of the 1987 Act as it was satisfied that:
- (i) there had been breaches by the Respondents and/or the Company of obligations owed to the Applicants under their leases and relating to the management of the Premises, (section 24(2)(a)(i)), and it was just and convenient in all the circumstances to make the order, (section 24(2)(a)(ii));
 - (ii) there had been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of the 1987 Act (service charge contributions to be held in a designated trust account), (section 24(2)(abb)(i)), and it was just and convenient in all the circumstances to make the order, (section 24(2)(abb)(ii));
 - (iii) the Respondents and/or the Company had failed to comply with any relevant provision of an applicable code of practice, (section 24(2)(ac)(i)), and it is just and convenient to make the order in all the circumstances, (section 24(2)(ac)(ii)); and,
 - (iv) other circumstances exist which make it just and convenient for the order to be made, (section 24(2)(b)).
- 3.2 Nonetheless, the Tribunal was concerned as to the efficacy of an order in such circumstances where the overwhelming majority of the Respondents were antagonistic to what they saw as the imposition of an external manager upon them.
- 3.3 It was for this reason that the Tribunal agreed to the request from the parties to allow them time to see whether a resolution could be agreed. As reported to the Tribunal, it appears that the negotiations were limited and ultimately abortive, resulting in the need for the Second Hearing.

- 3.4 In the interim between the First and Second Hearings, the Respondents submitted further documentation to the Tribunal including minutes of the AGM held on 26 June 2012, copy Fire Risk Assessment carried out by Mr.S.Hutchinson following a site visit on 12 June 2012, proposed 5 Point Fire Plan, and copy correspondence sent to leaseholders regarding building and re-pointing works to be carried out week commencing 11 June 2012. The Applicants subsequently filed their comments and response to this information, ("Response"). In particular, in the letter dated 25 July 2012 from Mrs. Metcalfe, she confirms that The.Guthrie Partnership remains willing to accept an appointment as a manager of the Property on the terms proposed at the First Hearing, although Mr. Guthrie was unable to attend the Second Hearing due to previous commitments.
- 3.5 The Applicants confirmed that they were happy to rely on the Response and to permit the Respondents to make their submissions to the Tribunal and to comment on them as appropriate. Before doing so, the Tribunal commented that, having now had the benefit of inspecting the Property, their initial impression was that it was being well-maintained on a day-to-day basis by the Company/the Respondents but that there is a distinction between maintenance and management.
- 3.6 Mrs.Scott and Mr.Cartwright, for the Respondents, confirmed that since the First Hearing, they had taken the following action:
- (i) Affiliation: they had downloaded the RICS Code of Practice, but had decided not to join ARMA;
 - (ii) Client money: an application had been made in July to set up a trust account with Lloyds Bank but this had proved very difficult to do;
 - (iii) Summary statement of rights and obligations: there had been a vote at the last AGM not to bother with sending out the Statement. In response to the Tribunal's comment that this was a statutory requirement, and that failure to comply would entitle any leaseholder obliged to pay service charge to withhold payment pending compliance, Mrs.Scott confirmed that the Statement would be sent out in the future;
 - (iv) Health & Safety: the carpets had been replaced in 2010; work had recently been completed to the external communal paths to address a number of identified trip hazards; "no smoking" signs had been put up. The safety issue regarding the stair balustrades noted by the Tribunal during the inspection had not been recognized/addressed to date;
 - (v) Fire Risk Assessment: a fire risk assessment had been carried out which had identified the Property as low risk. The fire extinguishers which were presently on every floor were to be removed and every leaseholder was to be given a copy of a 5 point plan in the event of fire. Doors and letterboxes were to be painted with fire retardant paint;
 - (vi) The cost of the recent works was c£6000 which was below the level which required the Company to undertake a consultation procedure under section 20 of the 1985 Act, although, following questioning of the Respondents by

the Tribunal, the Tribunal was not convinced that the Respondents were aware of the statutory requirements and/or procedure.

- 3.7 The Tribunal commented that, whilst the Respondents had taken some steps to address the issues raised by the Applicants in the Application, there remained unresolved issues of management. In some instances, the Respondents did not appear to understand the legal significance of the issue, and nor had they taken the opportunity, in the period between the First and Second Hearings, to seek appropriate professional advice. In response, Mr.Cartwright commented that a manager "imposed" on the Respondents, against the wishes of the majority of the leaseholders, would be faced with a difficult task.
- 3.8 The Applicants confirmed that their proposed nominee as manager of the Property remained Mr.Guthrie of The Guthrie Partnership. Information regarding the fees to be charged by The Guthrie Partnership, the work to be carried out by them and evidence of their professional indemnity insurance was not available to the Tribunal at the Second Hearing and the Applicants were requested to obtain such information and submit it to the Tribunal within 14 days of the date of the Second Hearing. The Tribunal confirmed that the making of this request was not an indication of any decision made by it to appoint The Guthrie Partnership as manager of the Property.
- 3.9 In the circumstances, the Tribunal considered that it was appropriate to invite the Respondents to nominate a manager, submitting the same information as requested from the Applicants in respect of their nominee within the same period.
- 3.10 The following further information was received from the parties:
- (i) copy letter dated 14 September 2012 from The Guthrie Partnership to "The Residents at Sunningdale Court" together with copy professional indemnity and employer's liability insurance details ("the Guthrie proposal");
 - (ii) letter dated 16 September 2012 from Mrs.C.Scott attaching proposal document from Revolution Property Management Limited together with details of professional indemnity insurance ("the Revolution proposal");
 - (iii) response from the Applicants to the Revolution proposal.

4. Decision

The Tribunal determines as follows:

- 4.1 that, on the grounds detailed in paragraph 3.1 above, it is just and convenient for a manager to be appointed in respect of the Property;
- 4.2 that, having considered the Guthrie proposal and the Revolution proposal, Mr.L.Birkett of Revolution Property Management Limited is appointed as

manager of the Property. The order detailing the terms of his appointment is attached;

- 4.3 that, in accordance with regulation 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 the Respondents are to reimburse to the Applicants the fees paid in relation to these proceedings.

Catherine Wood.

Mrs.C. Wood
Chair

30 October 2012

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

MANAGEMENT ORDER

In relation to

Sunningdale Court, Kensington Grove, Manchester M34 3GW

1. Mr. Lee Birkett ("the Manager") of Revolution Property Management Limited of First Floor, 121, Princess Street, Manchester M1 7AG is hereby appointed manager of the Property with effect from 12 November 2012 ("the Effective Date") for an indefinite period subject to :
 - 1.1 the Manager's satisfactory compliance with the terms of this Order; and
 - 1.2 the right of any party to apply to the Tribunal to vary or discharge the appointment in accordance with paragraph 8 of this Order.
2. The Manager shall manage the Property in accordance with the leases, the RICS Service Charge Residential Management Code for the time being approved by the Secretary of State, and the relevant legislation, and is authorized to carry out all of the functions as set out on pages 10-11 of the Revolution proposal.
3. The Company and such of the Respondents who are officers of the Company shall transfer to the Manager all the accounts, books, records and funds relating to the Property within its/their possession and/or control so that there shall be an orderly transfer of responsibilities to the Manager with effect from the Effective Date.
4. The rights and liabilities of the Company arising under any contract of insurance and/or any contract for the provision of services to the Property shall become rights and liabilities of the Manager with effect from the Effective Date.
5. The Manager shall be entitled to annual remuneration of £80 (plus Vat) per unit per annum as set out in the Revolution proposal which shall be recoverable as service charge.
6. The Manager shall ensure that professional indemnity, public liability and, as appropriate, employer's liability insurance cover shall be maintained at all times during his appointment at no less than the levels of cover notified to the Tribunal prior to the date of this Order, and shall, on the Tribunal's request, provide copies of the current certificates together with evidence of payment of the premium relating thereto.
7. At any time after 12 November 2013, the Manager may submit a report to the Tribunal setting out the reasons why he considers that his appointment as manager of the Property should be varied to a full management role, rather

than the more limited role set out in the Revolution proposal as incorporated in this Order. Such report shall include details of the additional functions that it is proposed the Manager would carry out and details of any proposed increase to the Manager's annual remuneration to reflect such additional duties.

8. Any party may apply to the Tribunal for an order to vary or discharge this Order at any time after the earlier of (i) 2 years from the Effective Date and (ii) the date of submission to the Tribunal of a report by the Manager in accordance with paragraph 7.
9. The Manager shall register this Order against the title to the Property in accordance with Section 24(8) of the 1987 Act.
10. The Manager shall have liberty in accordance with Section 24(4) of the 1987 Act to apply to the Tribunal for directions at any time during the subsistence of this Order.

Christine Wood.

Mrs.C.Wood (Chair)

Dated 30 October 2012