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CAM/26UG/LVL/2010/0006

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**1- 8 Reed Place Bloomfield Road Harpenden Herts AL5 4DE**
Applicant	:	**Denis Healy**
Respondents	:	**John Rafferty David Synnott**
Case number	:	**CAM/26UG/LVL/2010/0006**
Date of Application	:	**12th May 2010**
Type of Application	:	**Application for a appointment of a Manager and Variation of the lease pursuant to sections 24 and 35 of the Landlord and Tenant Act 1987**
Date of Hearing	:	**28th October 2010**
Venue	:	**The Holiday Inn Luton South Markyate Luton**
Tribunal	:	

Mrs. Joanne Oxlade — **Lawyer Chairman**
Mr. David S. Brown FRICS MCI Arb — **Surveyor Member**
Mrs. Indira Butcher — **Non-Legal Member**

Attendees :

Applicant	Respondent
Tim Hammond, Counsel	Andrew Dymond, Counsel
Denis Healy (flat 7)	Chris Hall, Solicitor, Taylor Walton
Jo Langwell	John Rafferty (Lessor)
Sue Langwell	David Synnott (Lessor)
Bruce Maunder Taylor FRICS MAE	Mr. and Mrs. Dollimore (executor flat 4)
	Ray Chappel (flat 5)
	Mr. Jones FRICS

DECISION AND REASONS

For the reasons given below we:

(a) appoint Bruce Maunder Taylor FRICS MAE as Manager and Receiver of 1-8 Reed Place, such appointment to begin on 4th January 2011, on the terms and subject to the Directions set out at Appendix A

(b) make no order on the application for variation of the lease.

REASONS

Background

1. The Applicant is the Lessee of 7, Reed Place, Bloomfield Road, Harpenden, a first floor flat in a building comprising 6 flats and 2 houses, which lease he bought in 2003.

2. On 12th May 2010 the Applicant made two applications: an application for an appointment of a Manager pursuant to s 22 Landlord and Tenant Act 1987 ("the Act"), and a variation of the lease pursuant to s 35 of the Act (both set out in full in the Appendix).

3. Attached to the application for an appointment of a manager was a copy of the s. 22 preliminary notice served on the Lessors, John Rafferty and David Synnott. The grounds for making the application were set out in Schedule 2 of the notice: namely, that the building suffers from subsidence, that major structural works were required by either repair or reinstatement, but that the Landlord was in breach of an obligation to take steps to remedy the problems despite a reasonable period of time having elapsed. The Lessee relied on the following: deprivation of his right to quiet enjoyment by reason of the premises being boarded up; the Lessors had failed to (though asked to) commit in writing their proposals for carrying out works and specifying costs; the Lessors failed to comply with the terms of the lease in requiring all Lessees to comply with their covenants; it was the Lessors obligation to arrange for collective repairs to take place; the Lessors owned or controlled all of the flats except his. Schedule 4 of the notice specified the remedial steps to be taken by the

Lessors which were to instigate the necessary works of repair or reinstatement as a matter of urgency.

4. The application for variation of the lease was made on the basis that the lease imposed no positive repairing covenants, and proposed a draft which gave rise to a positive obligation on the Lessor to do so and to insure the building, the corollary of which was a provision that the Lessee would pay service charges. The current lease of the flat is for a term of 999 years and provides that the Lessee will insure, maintain and repair the flat (and any subsequent building in its place) and contribute towards the expenses of maintaining and repairing roofs, party wall structures and easements. The Lessor has no obligation to maintain or repair those parts of the building not demised to the Lessee, except on request made by a Lessee (coupled with an agreement to indemnify the Lessor against the costs incurred) he will enforce the Lessees covenants.

5. Directions were made for the filing of evidence, and in due course further directions were issued and extensions of time were given.

6. The application was listed for hearing on 28th October 2010, prior to which we undertook an inspection of the premises in the presence of all interested parties.

Inspection

7. By the date of hearing the first floor of that part of the building which had been demised as the living accommodation of flats 6 and 7 had been demolished, and flat 8 which comprised the accommodation below flats 6 and 7 was uninhabitable, having been exposed to the elements in the process of demolition. There was hoarding around that part of the building which fronted the highway and where flats 6, 7, 8 stood or had stood.

8. We inspected the rear of the building from the rear car park, from which we could appreciate the lie of the land - particularly the uneven landmass between flats 4/5 and 6/7/8 - and the manner of construction employed so that the roofline of the building appeared to be level from the front

Hearing

Preliminary Matters

9. At the commencement of the hearing we clarified the following: that Mr. Dymond was representing (a) Mr. Synott in his capacity as both Lessor, and as Director of S&D Luton Limited (which owns flats 6 and 8), and (b) Mr. Rafferty in his capacity as Lessor, Director of Myertor Limited (which

owns flats 1 and 3) and co-Director of S &D (which owns flats 6 and 8). On enquiry made by the Tribunal as to the current ownership of flat 5 (in view of the documents referring to Myertor Limited having exchanged contracts to buy it with a completion due in October 2009) Mr. Synott said that the purchase of flat 5 was not proceeding.

10. Mrs. Dollimore (Executor of flat 4), and Mr. Chappel (flat 5) attended to represent their interests in the building. Mr and Mrs Muller (house 2) did not attend, were not represented, and did not file a response to the application.

11. We invited submissions on the following: that the lease variation would only become relevant if and when flats 6, 7 and 8 had been rebuilt, and so the appropriate time for considering that application would be then. After giving some time for the Applicant and Respondent to consider this, they agreed that this was sensible. Accordingly we make no order on the application.

12. We also noted that the lease made no specific reference to the foundations, and so it would need to be determined who should maintain and who should pay for their maintenance. We invited the parties to consider the point.

13. Mr. Hammond confirmed that he did not need to ask questions of either Mr. Carr or Mr. Jones or who had both provided structural reports in 2006 and 2007 respectively.

14. Mr. Dymond advised us that on 12th October 2010 DJ Field had made an interim charging order against 7 Reed Place, in view of an unpaid judgement debt of £23,211.89 owed by the Applicant to Mr. Synnott and Mr. Rafferty. The matter would be reconsidered on 13th December 2010. It would be his argument that in considering the words used in s24(2)(b) "just and convenient", it would not be just to appoint a manager at the behest of the Applicant who was so indebted.

Oral Evidence

Bruce Maunder Taylor

15. We heard oral evidence from Bruce Maunder Taylor FRICS MAE, whom the Applicant proposed as a Manager of the premises, and who had filed a statement dated 23rd July 2010. This detailed his management experience, fees, and proposals.

16. In evidence in chief he said that his firm began managing property in 1938, in the mid-80's they began to concentrate on blocks of flats, that in

1998 he was first appointed as a manager and by coincidence that appointment (14-16 Hyde Park Gardens W2) was discharged the day before the hearing. That appointment was highly contentious, but he has also experience of cases which ran very smoothly. In this case the building suffered from obvious physical problems that had been present for a number of years, and there was clearly some contention between the parties. Either the parties will resolve it or a management plan will have to be imposed, because otherwise time and money will be wasted – including public resources. Although he had spoken several times to the Applicant his first task would be to meet with both parties to try to find a constructive way forward, and in the alternative to impose a solution. He would obtain reports, gather in money and seek to get the building rebuilt.

17. In cross-examination he said that he has seen the report of Mr Carr, and heard that there was no conflict between the experts. The question was whether the whole site was redeveloped or just flats 6,7,and 8. He had not seen all the leases but thought that the costs of rebuilding 6-8 could be shared equally between the 3 flats, but that it would be for the manager to determine what were the proper proportions. If in any doubt the Manager would get legal advice or go back to the Tribunal for a ruling. It would of course work if the parties co-operated, but they have not done so, but he was geared up to running mediation-style meetings. His position requires that he remains neutral, and so he would rather not dig into the history but focus on the future. He was surprised to hear that the foundations were not specifically included in the lease, but that it could be argued that the right to support is an easement, and so clause 3(g) would determine the relative contributions. Again, where necessary he would seek legal advice. He had not previously turned his mind to the possibility of rebuilding 3 flats as distinct from redeveloping the whole site. He had not seen the building before demolition and it seems that was a sensible option but could not say if opposing it was a sensible course. His task is to try to bring the parties together, to look to the future, and not to look at how they arrived at this point and he was not to be drawn on whether or not the parties could resolve this if they cooperated because his job is to say what he would do if appointed. His task was to remain neutral.

18. His costs would be £300 per hour(+ vat), and the final costs could be relatively reasonable if the parties cooperate. They could be substantial if the parties do not cooperate.

19. In answer to the Tribunal's question he said that his report contained an error in saying that flat 5 had been demolished, because he had not understood the layout of the building. He estimated that his costs over 2 or 3 years could be in the region of 50 hours. He ran through the list of properties that he currently managed and specified the time spent on each: the second one involved 2-3 hours per week; the 3rd may require

nothing for a month and then suddenly a whole day; the eighth was highly contentious, and took ½ a day a week, but he was in the process of applying to discharge his office. He thought that the premises here could be rebuilt in a year, but first there would need to be reports (including considering the stability of the piling that supported flat 5), and 3-4 months to raise funds, there would be s20 consultation (taking legal advice about whether or not it required s20 procedure to be engaged in view of the lease). He usually offered a temporary overdraft facility of £10,000 which would enable the first lot of reports to be obtained and Solicitors engaged. He would wish to get legal advice on interpreting the lease, and where necessary he would go to the County Court to obtain forfeiture where monies had not been received from a party, and in the absence of ready funds the land would still have a notional value and a saleable commodity.

20. No questions were asked in re-examination.

Mr. Chappel

21. We heard evidence from Mr. Chappel, who said that he bought his flat in 1995 when there was some subsidence, after which the insurance company excluded subsidence as an insurable risk. He is living in the flat, and there are substantial cracks in his flat, allowing birds and rats to get in. He was concerned with the extent to which flats 1-5 should become involved with rebuilding. Initially he said that he had granted to the company an option to purchase, and a deposit had been agreed but not paid, and the matter is reviewed annually. Then he clarified that he has signed a contract with a delayed completion, that the sale price was fixed. The contract contained nothing about responsibilities for repairs to the building in the meantime. When asked the identify of the buyer Mr Rafferty said that he had exchanged in the name of his company Myertor Limited - but had the option to complete in any name. In cross-examination he said that to his knowledge Mr. Healy had not lived at the Property. He did not want a Manager to be appointed, as he did not believe that it was necessary.

Mr. Synott

22. Mr. Synott adopted as true his witness statement dated 15th September 2010. In examination-in-chief he said that when Mr Healy bought his flat the auction particulars referred to the fact that there was structural movement, a copy of which was exhibited to his statement, and so he must have known that there had been movement. He disputed the allegations made by Mr. Healy (p 211), that he had been aggressive (p144).There was a Solicitor's letter dated 8th June 2007 in which they had made an offer to meet to try to resolve matters, and on 28th June 2007 proposed to move matters along to implement a schedule of works. He

reiterated paragraph 23 of his witness statement in which he said that he and Mr Rafferty had always been willing to discuss a way forward with Mr Healy, and would happily bear 2/3 of the costs.

23. In cross-examination he said that the costings so far produced are provisionals only and do not include piling. They had not wanted to incur the costs on that having been paid for other things, and with other ongoing proceedings. He agreed that subsequent to March 2008 they had not sent any further correspondence saying that they were willing to work with Mr. Healy. Mr. Synnott considered the chain of correspondence at pages 149-153. He did not agree that their correspondence was unnecessarily hostile, because Mr. Healy was non-compliant, they had difficulty in making contact with him, and he failed to respond to their correspondence. He was asking them to do the works and to be paid later, and their interpretation was that he wanted them to rebuild and pay later. He accepted that it was a legitimate interpretation of their letter containing the words - "if your client requires our client to proceed against the other lessees under clause 6(1) of the Lease our client will require substantial security for costs" – that Mr. Healy was being asked to indemnify the Lessors against costs which they would be incurring in their capacity as Lessees. However, it was the Solicitor who had drafted the letter and this was not drafted on the client's specific instructions. He said that since 2008 the only method has been adversarial way, but this was not their choice but the only way. He accepted that there had been a total breakdown of trust, and the only communication was an unreasonable demand from Mr. Healy to pay £157,000 within a few days. They had incurred costs of £40-50,000 because of Mr. Healy.

24. Mr. Synott was asked to explain how they would find a way forward in view of the breakdown in trust and lack of communication, and on the third time of asking said that they would achieve it with negotiations – but did not know how they would move it forward.

25. In re-examination he said that the Applicant had acted in person since 19th December 2007, that he now takes and listens to professional advice, and if he was prepared to work with his professional advisors, then they could act for Mr Healy. It meant that a Manager would not need to be appointed. In any event they had previously used the services of an (unnamed) Manager, who costs £150 per hour.

26. In answer to the Tribunals questions, Mr Synott said that he had not been aware that the purchase of flat 5 was going ahead. In respect of flat 4, the statement at page 9 was inaccurate because they had not reached any agreement as to demolition and reconstruction of the flat, and he has said that because he had become confused between the two flats. Mr and Mrs Muller who own flat 2 have no agreement with Mr Synott or Rafferty. He

confirmed that he and Mr. Rafferty between them owned 2/3rds of that which had been demolished. Although their letter asked for a substantial indemnity for enforcing covenants against themselves, they did not want Mr. Healy to pay 2/3 rds of the costs, they wanted him to pay 1/3rd and they would pay 2/3rds. He confirmed that he did not know until today that Myertor (owned by his business partner) had exchanged contracts for the purchase of flat 5, as he is not involved with that business.

27. In re-examination he said that the building had been boarded up in 2007, Mr Healy had broken in and had been taken away.

Mrs. Dollimore

28. Mrs. Dollimore is the Executor of Mrs. Cope's will, her grandmother, and the will provides that the flat should be sold and proceeds distributed in the family. They had not received an offer for the flat , although there were some discussions 3-4 years ago about paying a proportion of costs. She did not think that the way forward was to appoint a Manager, and was concerned about incurring unnecessary costs. In answer to questions from the Tribunal she said that her daughter lives there at the moment, and that the flat is damp and has been damp – but could not say for how long. In answer to questions asked by Mr Dymond she said that she would like to see things move forward.

Closing Submissions

29. Prior to closing submissions being made Mr. Hammond said that on behalf of the Applicant he conceded that the right to support has been reserved as an easement, and that foundations would fall within that definition, so that costs would fall to be apportioned in accordance with clause 3(g).

Respondent

30. Mr. Dymond submitted that the grounds for appointing a Manager in section 22 are dependant on fault-based findings, the application was made on that basis, and yet the judgement of Coulson J given on 28th September 2009 made it clear that the Lessors were not at fault. It is not open to the Tribunal to look behind that and so the application was therefore without merit. Further, it is clear from the evidence that the Lessors have always been able and willing to put it in repair.

31. The remaining ground is "just and convenient", which has not been given a judicial interpretation, and on which the Applicant now relies. He set out the history of the matter, and submitted that "just" cannot be applied to the Applicant in light of his conduct in disputing every matter and preventing progress. It is the Applicant's unwillingness to cooperate which has

prevented the moving forward of this project. He has sought to portray the Lessors as predatory, yet the Applicant bought the premises at an undervalue at auction knowing that it had inherent problems. There is no need for a Manager – the Applicant simply needs to take advice. He has begun to do so now, and if he continues to engage them then the matter could be progressed. He suggested that a better course than appointing a manager would be for Mr Healy to appoint a professional adviser but he accepted that the Tribunal cannot compel Mr Healy to make such an appointment or to follow advice given by such an adviser.

32. The thrust of his argument was that it cannot be considered to be just and convenient to appoint a Manager on the application of the very person whose conduct had caused the climate in which one might be appointed.

33. Further, the costs of appointing one would be borne by all, and so the decision is both far-reaching and costly.

34. Finally, the appointment of a Manager would be completely undermined if the charging order was made absolute, because the Applicant's interest would be sold and the need for a Manager would fall by the wayside.

35. Mr Dymond made submissions about the management proposals in the event that he was unsuccessful in his opposition to the application.

Applicant

36. The words "just and convenient" suggest that the focus should be to look forward in contrast to the other grounds which require an examination of fault, and that the words should be given their widest meaning.

37. Since 2008 the much needed works to the building have not taken place, so that in 2 ½ years nothing has been achieved. All accept that trust has broken down but is inaccurate to say that legal proceedings have only been taken as a reaction by the Respondent, because they have taken steps to bankrupt the Applicant and to obtain a charging order. The reality is that the report of Mr Jones written in 2007 made clear recommendations, but these have not been acted upon. Mr. Healy had attempted to require the Lessors to enforce the covenants, but their response in a letter dated 7th September 2007 (page 153) was unnecessarily aggressive – and indeed no indemnity was needed. Mr. Synott was asked and pressed and he could not see the way forward. It is clear that a fresh approach is needed and that Mr Maunder Taylor is able to bring this. The extent of the interests held by Mr Synnott and Mr Rafferty put Mr. Healy at a distinct disadvantage, which is a potential source of conflict, and a separation of interests is necessary because Mr Synnott and Mr. Rafferty were wearing too many hats. There is no term of

the lease which requires payment of the costs "up front", and so in practical terms the appointment of a Manager - who is also a Receiver - is necessary to result in the funds being available. Mr Maunder Taylor is highly experienced, he had all the answers and was interested in looking to the future – in contrast with Mr Synnott who was concerned with the past and had no answers for the future.

38. At the end of the hearing we reserved our determination.

Discussion

39. We have carefully considered the meaning of "just and convenient" and in the absence of any reported determination we have concluded that it must be given a wide interpretation. In contrast to the other grounds, it is not dependant on finding fault. We conclude that we must consider what is "just" to all the persons affected by this situation, not just the parties to this application but also the owners of the other flats, the beneficiaries of the late Mrs Cope and also the owners of surrounding properties whose outlook, amenity and possibly the value of their homes has been blighted by the inaction over the subject site for too long.

40. It is apparent that despite extensive litigation (which continues), despite the passage of time, and despite the extensive involvement of public authorities very little progress has been made over 4 years to achieve the repair, rebuilding or redeveloping of the premises. The effect of this impasse extends beyond those with an interest in the building, but to neighbours, the wider community, and the public purse.

41. It is apparent to us that Mr. Healy, Mr. Synott, and Mr. Rafferty all focus on the past - not the future – and that without independent intervention the prospect of change is poor. Indeed when pressed Mr. Synnott was unable to give any credible explanation as to how progress might be made without the appointment of a Manager.

42. Further, the balance of power is weighted very firmly against Mr. Healy. This coupled with the manifest inability of Mr. Synnott and Mr. Rafferty to separate their interests as Lessees from their responsibilities as Lessors, makes progress unlikely. In considering Mr Synott's evidence we were troubled by his inability to give a straightforward account of the acquisition of flat 5 and whether or not he had reached and agreement in respect of flat 4. Such lack of candour or transparency in matters affecting the building further undermines the chance of progress.

43. We consider that the appointment of a Manager is the only way forward, that it is "just and convenient". This appointment should extend to acting as a receiver of funds.

44. Having heard the evidence of Mr. Maunder Taylor we are satisfied that he is a suitable person to be appointed. We therefore make a Management order and consequential directions (attached) from which it is apparent that at this stage we consider he should be given sufficiently wide powers to be in a position to deal with the whole building (units 1-8) not just flats 6-8. It may be that a decision will be taken to rebuild the whole building, or that in due course his role will be narrowed down, but until he has obtained experts reports so that he is satisfied that units 1-5 are safe and do not need re-building or expenditure, he should have the fullest powers. The detailed costings of redevelopment as against rebuilding flats 6-8 are not yet available, and this may influence the choices that are to be made.

45. However, we are mindful that on 13th December 2010 the County Court is due to hear the application to make the charging order absolute. If that order is made then it is virtually inevitable that a sale will take place of flat 7 and so make redundant the need for appointment of a manager. Accordingly, the appointment of Mr Maunder Taylor will take effect from 4th January 2011. If, in the meantime, the charging order on flat 7 is made absolute, we give leave to either party or to Mr Maunder Taylor to apply for this order to be rescinded.

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Joanne Oxlade

Chairman

22nd November 2010

APPENDIX A

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**1- 8 Reed Place Bloomfield Road Harpenden Herts AL5 4DE**
Applicant	:	**Denis Healy**
Respondents	:	**John Rafferty David Synnott**
Case number	:	**CAM/26UG/LVL/2010/0006**
Date of Order	:	**11th November 2010**

ORDER

1. In this Management Order, the Directions, the Schedule of Rights, Functions, and Services attached to this Management Order the following expressions shall have the meanings set out below:

   (a) "the property" shall mean and include the buildings, outhouses, gardens, amenity space, drives, pathways, road, parking spaces, landscaped areas, passages, bin stores, attics, common parts and all other parts of he property known as and situated at 1-8 Reed Place, Bloomfield Road, Harpenden, Herts, AL5 4DE,
   (b) "the building" shall mean the original 3-storey building comprising flats 1-8 Reed Place
   (c) "the Landlord" shall mean Mr Rafferty and Mr Synnott, two of the Respondents to the application, or in the event of the vesting of the reversion of the residential leases of the property in another, the Landlord's successor in title

reversion of the residential leases of the property in another, the Landlord's successor in title

(d) "the leases" shall mean the long leases and/or under-leases of the flats in the property and "Lease" shall be construed accordingly

(e) "the tenants" shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and the "Tenant" shall be construed accordingly

(f) "the Applicant" shall mean Denis Healy

(g) "the Manager" shall mean Bruce Roderick Maunder Taylor of Maunder Taylor Chartered Surveyors, 1320 High Road, London, N20

2. It is hereby ordered that:

(a) in accordance with section 24(1) of the Landlord and Tenant Act 1987 the Manager shall be appointed as receiver and manager of the property with effect from 4th January 2011

(b) the order in paragraph 2(a) herein shall continue until further order.

(c) the Manager shall manage the Property in accordance with:

(i) the Directions and Schedule of rights, functions, and services attached to the Management Order

(ii) the respective obligations of the Landlord under the Leases by which the flats at the property are demised by the Landlord, subject to the terms of this Management Order in so far as those terms effectively vary or supplement the terms of the Leases. In each and every respect in which the terms of this Management Order differ from or are in conflict with the terms of the Leases, the terms of this Management Order shall take precedence.

(d) Liberty to Apply

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Joanne Oxlade

Chairman

22nd November 2010

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

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DIRECTIONS

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1. The functions and duties of the Manager shall be to secure the rebuilding and repair of the building to restore it to sound structural condition and to the original accommodation. The Manager shall have no general management functions.

2. That from the date of appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of £2,000,000 and shall provide copies of the current cover note upon request being made by the Tenants, the Landlord or the Tribunal.

3. That the Manager in the performance of his functions and duties, and in the exercise of his powers under this Management Order, shall exercise all the reasonable skill, care and diligence to be expect of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and duties and the exercise of the said powers and shall indemnify the Landlord in respect of any loss occasions by any negligent act or omission of himself, his servants, or Agents.

4. That the Landlord and its servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties, and powers under this Management Order and shall not interfere or attempt to interfere with the exercise of any of his rights, duties, or powers save by due process of law.

5. That the Landlord shall deliver to the Manager forthwith copies of all specifications, tenders, planning permission and any other consents, permission, documents, and instruments which the Landlord has, or which come into the power, control or custody of the Landlord after the date of this Management Order concerning or arising out of ay major works, extensions, rebuilding or other constructional matters at the Property or which are in the power, control, custody of any of the Landlord's servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.

6. That the rights and liabilities of the Landlord and/or the former managing agent arising under any contracts or insurance, and/or any contract for the provision of any service to the property shall upon a date 4 weeks from the date on which Management Order takes effects become rights and liabilities of the Manager.

7. That the Manager shall be entitled to remuneration of his fees and reasonable costs, including legal, accountancy, and any other professional service costs in accordance with the Schedule of Functions and Service attached.

8. That at the expiry of 12 months from the date of the Management Order, the Manager shall prepare a brief written report for the Tribunal on the progress of the management of the Property up to that date and shall submit the same to the Tribunal no later than 31st October 2011.

9. That the Manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the 1987 Act, with particular regard (but not limited to) the following events:

   (a) a failure by any party to comply with any of these directions and/or
   (b) in the event that there are insufficient sums held by him to pay the manager's remuneration.

SCHEDULE OF RIGHTS, FUNCTIONS AND SERVICES

A. Service Charges

1.1. The Manager shall have the right to demand and receive from the Tenants as the proprietors of any flats in the Property and their successors in title

to any flats in the property, contributions to the cost of the performance of his functions and duties in such reasonable and proper proportions to be determined by the Manager in accordance with clause 3(g) of the Lease, to include payments in advance which shall reasonably be required.

1.2 The Manager shall have the power in his own name on behalf of the Landlord to bring and defend any action or other legal proceedings in connection with his functions and duties including but not limited to proceedings against any Tenants in respect of moneys due under the Leases.

1.3 In the event that the Tenants shall be in breach of their obligations as provided in this Management Order, the Manager shall be entitled to recover from any such Tenant on a full indemnity basis any costs, fees, charges, expenses and/or disbursements incurred or occasioned by him in the appointment of any Solicitors, Counsel, Surveyors, or any other professional reasonably retained by the Manager for the purpose of enforcing such covenants or obligations whether or not the Manager brings any proceedings in Court of before any Tribunal.

1.4 The Manager shall place, supervise, and administer contracts and check demands for payment for goods, services, and equipment supplied for the purpose of his functions and duties

1.5 The Manager shall have the power to appoint Solicitors, Accountants, Architects, Surveyors, and such other professionally qualified persons as may reasonably be required to assist him in the performance of his functions.

1.6 The Manager shall have the power to appoint any agent or servant to carry out such functions or obligations which the Manager is unable to perform himself or which can be more conveniently done by an agent or servant and he power to dismiss such agent or servant.

1.7 The Manager shall have the power to open and operate bank accounts in his own name in relation to the performance of his functions and duties and to invest moneys received pursuant to his appointment in any manner specified in parts I and II of the First Schedule of the Trustee Investment Act 1961 and to hold those funds received from the Tenants of the Flats in the Property pursuant to section 42 of the 1987 Act.

1.8 The Manager shall have the power to claim in the bankruptcy, insolvency, sequestration, or liquidation of any Tenant owing moneys due under this Order.

1.9 This Manager shall have the power to borrow all sums reasonably required by the Manager for the performance of his functions and duties and the exercise of his powers under this Management Order in event of there being:

(a) arrears or other shortfalls of contributions due from the Tenants; or
(b) arrears or other shortfalls of other sums due from the Tenants, such borrowing to be secured (if necessary) on the interest of the Respondents and/or Applicant Tenant, or anyone of them, in the Property or any part thereof.

PROVIDED THAT the Manager shall not secure any such borrowing without the prior written consent of the Respondents or Applicant Tenant (such consent not to be unreasonably withheld or delays) or in the default of that consent or those consents, without further order of the Tribunal.

B. Accounts

2.1. The Manager shall prepare and submit to the Tenants an annual statement of account detailing all monies received and expended on their behalf. The accounts may be certified by an external auditor if required by the Manager.

2.2. The Manager shall upon request produce for inspection receipts or other evidence of expenditure.

2.3. All monies collected for the purpose of the Manager's functions and duties will be accounted for in accordance with the Accounts Regulations as issued by the RICS subject to the Manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the Landlord.

C. Maintenance

3.1 In regard to Major Works which need to be carried our to the Property the Manager will (where necessary) prepare a specification of works, obtain competitive tenders, serve relevant notices on Lessees informing them of the works and supervising the works.

D. Fees

4.1. The Manager's fees will be calculated at £300 per hour plus VAT.

4.2. The Manager shall be entitled to recover from the Tenants all costs, fees, expenses, and disbursements properly and reasonably incurred in

employing any Solicitors, Counsel, Surveyors, Architects, Accountants or any other professional.

4.3. VAT to be payable on fees quoted above, where appropriate, at the rate prevailing at the date of invoicing.

E. Complaints Procedure

5.1.1 The Manager shall operate a complaints procedure in accordance with the requirements of the RICS. Details of the procedure are available from the Institution upon request.

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Joanne Oxlade

Chairman

22nd November 2010

APPENDIX B

24. Landlord and Tenant Act 1987

"(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) A leasehold valuation 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 him the appropriate notice, and

(ii) . . . . . .

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

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made"

35. Landlord and Tenant Act 1987

"(1) Any party to a long lease of a flat may make an application to the court for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure".