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**HM Courts  
& Tribunals  
Service**



**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: CHI/21UD/LVM/2012/0001**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATION UNDER SECTION 24(9) OF THE LANDLORD & TENANT  
ACT 1987**

Applicants: (1) Mr J McArdle (2) Mr E Holland (3) Mrs E Anderson  
Respondents: (1) G & O Rents Ltd (2) Mr J D A Sheilds  
Address: 24 Warrior Square, St Leonards-on-Sea, East Sussex, TN37  
6BG  
Application: 11 January 2012  
Date of hearing: 11 May 2012

Members of the Tribunal  
Mr I Mohabir LLB (Hons)  
Mr A O Mackay FRICS

### *Introduction*

1. By an application made in 2004, the First and Second Applicants had (together with other lessees) jointly applied under section 24 of the Landlord and Tenant Act 1987 (as amended) (“the Act”) to appoint a manager in place of Urbanpoint Property Management in respect of 24 Warrior Square, St Leonards-on-Sea, East Sussex, TN37 6BG (“the property”).
2. By an order dated 6 December 2004, the Tribunal appointed Mr J Shields of Drawflight Estates to be the Manager and Receiver of the property for an indefinite period commencing on 1 January 2005 (“the order”). A copy of the said order is annexed hereto and set out the other terms of appointment.
3. The Applicants are respectively the long leaseholders of Flat 2, rear basement flat and Flat 3 in the property. The First Respondent is the present freeholder.
4. It seems that, at some point in 2007, Drawflight Estates was acquired by Countrywide Residential Lettings trading as Countrywide Estate Management (“CEM”). Both Mr Shields and CEM then proceeded on the (mistaken) belief or assumption that the latter had, by succession, had acquired the right to manage the property.
5. The Applicants complained that CEM had not undertaken any management of the property since 2008. In 2005, Mr Shields had particularly identified the need to carry out urgent works to rectify the dangerous conditions in which the electrical meters were located in the building. In addition, the Applicants asserted that major works to the building were 3 years overdue and its physical condition had been allowed to deteriorate badly by CEM. They further asserted that the leaseholders had in the interim had to fund various internal and external repairs and redecorations themselves. Had the building been properly maintained, those costs would not have arisen.
6. Apparently, CEM had not corresponded with the leaseholders until July 2011, when it served individual service charge demands for £4,200 in respect of expenditure incurred in the preceding 3 years. Correspondence then ensued

between the Applicants and CEM regarding the failure to effectively manage the property. By a letter dated 28 November 2011, CEM then purported to serve a section 20 notice pursuant to the Landlord and Tenant Act 1985 (as amended) in relation to proposed works. Subsequently, the Applicants sought legal advice about the status of CEM. The Applicants' solicitors, EDM Law, wrote a letter dated 16 December 2011 to CEM confirming that they had no basis for acting as the Manager of the property unless and until the order had been varied in those terms. They also repeated the complaint that, in any event, there had been no effective management by CEM.

7. Eventually, the Applicants made this application to the Tribunal seeking to vary the order appointing their proposed Manager, Mr G Okines AIRPM of Arko Property Management Ltd trading as Arko Property Management.

#### ***The Relevant Law***

8. Section 24(9) of the Act provides:

*"A leasehold valuation tribunal may, on an application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the Tribunal may by order direct that the entry shall be cancelled.*

*(9A) The Tribunal shall not vary or discharge an order under subsection (9) on the application of the relevant person unless it is satisfied –*

*(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and*

*(b) that it is just and convenient in all circumstances of the case to vary or discharge the order."*

#### ***Hearing and Decision***

9. The hearing in this matter took place on 11 May 2012 following the Tribunal's inspection of the property earlier that morning. Each of the Applicants appeared in person. They were accompanied by Mr Okines, their proposed manager. None of the Respondents appeared nor were they represented.

10. The Tribunal had before it a letter from Mr Shields dated 5 February 2012 expressing his surprise at still being named as the Manager for the property, as he assumed the CEM had “attended to the situation when he sold the business to them in 2007”. The Tribunal also had a letter from the First Respondent dated 12 March 2012 confirming that it, as the freeholder, had no objection to Mr Shields being replaced by Mr Okines as the Manager. The only stipulation it made was that Mr Okines provided each year copies of the audited service charge statements together with full insurance details for the property.
11. By way of submission, the Applicants repeated the chronology and factual history of the management carried out by Mr Shields during his tenure and the lack of effective management by CEM later on.
12. The Tribunal then heard evidence from Mr Okines. He said that he did not hold a current appointment as Manager by the LVT. He is an Associate of the Institute of Property Managers. He is also the Principal of his firm, which he had established 9 years ago, and it is regulated by ARMA.
13. Mr Okines said that his firm managed approximately 700 units. He had not internally inspected the property. The office administration was dealt with by two ladies and his son dealt with the maintenance of the properties. He was seeking to recruit a new member of staff to assist with administrative duties. The out of hours service was provided by means of a virtual telephone number that diverted any call to one of three mobile numbers from 5pm to 9am.
14. Mr Okines confirmed that all of the properties managed by his firm had separate bank accounts. His professional indemnity cover was £500,000 per claim. There were no claims pending against his firm. He said that he had some experience of taking over the management from CEM. This had proved to be difficult and can take up to 4 months.
15. In answer to questions from the Tribunal, Mr Okines said that the electrical work of concern to the Applicants would cost several thousand pounds and it would require payments on account and in advance to fund this. He would

initially commission an electrical report and then act on its recommendations. As to the overall maintenance of the property, Mr Okines said that he would prepare a 5-year programme of works, but in this instance he would commence any outstanding works immediately, as they were long overdue.

16. As to his management charges, Mr Okines said that he would seek an RPI increase annually on his basic management fee of £170 plus VAT per flat. He confirmed that the property would be insured on a block policy for which his firm retained a commission of 12.5% of the premium. In relation to other charges, he said that his firm charged £30 per unit for any section 20 statutory consultation. Any further additional charges were set out at page 10 of his specimen management agreement. He also confirmed that he would charge a fixed set up fee of £150 plus VAT. He said he would prefer a 5-year appointment, but would accept an initial appointment of 2 years, if the Tribunal was so minded.
17. It is perhaps important in the context of this case for the Tribunal to clarify the position in relation to the appointment and CEM. As the Applicants' solicitors had correctly stated, the appointment of Mr Shields as the Manager under the order was a personal appointment and not capable of being assigned, as he and CEM had believed when the latter acquired his practice. Unless the order had been varied, Mr Shields remained the Manager. The belief by CEM that it had succeeded him as the Manager was a mistake in law and in fact. In reality, CEM was not entitled to manage the property, as it had purported to do.
18. It was common ground that Mr Shields had since retired from practice. This was confirmed by Mr Okines in evidence who said that he now managed two properties owned by Mr Shields. At present, therefore, there was no effective management of the property unless and until the order was varied replacing Mr Shields. From the evidence given by the Applicants and its own inspection, it was clear to the Tribunal that the fabric of the building had deteriorated as a result of the absence of such management since on or about 2007. Of particular concern to the Tribunal, was the obvious and immediate requirement for remedial electrical works to be carried out to the meters. The

Tribunal was, therefore, satisfied that both of the tests under section 29(9A) of the Act had been met and it was appropriate to vary the order to remove Mr Shields and appoint another Manager in his place.

19. The remaining matter for the Tribunal to consider was the suitability of Mr Okines as the proffered Manager. Having carefully the evidence given by him, the Tribunal was satisfied that he possessed the requisite experience and competence to be appointed as the Manager in place of Mr Shields.
20. Accordingly, the Tribunal made an order in the following terms:
  - (a) that the LVT order dated 6 December 2004 be varied so that Mr G Okines AIRPM of Arko Property Management Ltd trading as Arko Property Management be appointed as the Manager of the property in place of Mr Shields of Drawflight Estates for an initial term of 2 years from the date this order is served upon him.
  - (b) that paragraph 1(b) of the said order be varied to include (and not limited to) those services set out in the Schedule of Services annexed hereto.
  - (c) that paragraph 4 of the said order as to the management fees be varied as follows:
    - (i) the basic management fee shall be £170 plus VAT per flat per annum and shall increase annually by the rate of RPI, if appropriate.
    - (ii) that Mr Okines shall be entitled to charge a single setting up fee of £150 plus VAT in total.
    - (iii) that Mr Okines shall be entitled to make additional charges in accordance with the Schedule of Additional Charges annexed hereto.

*Section 20C & Fees*

21. The Applicants withdrew their section 20C application and did not seek an order for the reimbursement of fees they had paid to the Tribunal to have this application issued and heard.

Dated the 11 day of June 2012

Signed

Mr I Mohabir LLB (Hons)

Chairman