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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/OOAG/LAM/2013/0010**

Property : **Hillside Court, 409 Finchley Road, London
NW3 6HG**

Applicant : **Ms Margaret Allen and 9 other leaseholders**

Representative : **Ms Allen represented herself
Accompanied by Miss M Farmer, Solicitor
and Miss M Kulkarni**

Respondent : **Hillside Court Property Company Limited**

Representative : **Mr Howard Lederman - Counsel
Mr Michael Lee, Solicitor with Lee Pomeranc
Solicitors
Miss P Gostyn of DeFries & Associates
Limited, the present managing agents
Mr P Mistry
Mr D Rothberg
On 4th November 2013 Mrs F Wyse**

Type of Application : **Section 24 Landlord and Tenant Act 1987**

Tribunal Members : **Mr A A Dutton (Judge)
Mr K M Cartwright MRICS
Mr A D Ring**

**Date and venue of
Hearing** : **14th August and 4th November 2013 at 10
Alfred Place, London WC1**

Date of Decision : **4th December 2013**

DECISION

DECISION

The Tribunal dismisses the application made by Ms Allen for the reasons set out below.

The Tribunal determines that the Applicant has acted in a manner which is vexatious and abusive and unreasonable within the provisions of Schedule 12 paragraph 10 of the Commonhold Leasehold Reform Act 2002 and orders that she should pay to the Respondents the sum of £500 in respect of their costs.

The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985

BACKGROUND

1. This application was made by Ms Allen on behalf of herself and a number of other leaseholders whose names are annexed to her application which is dated 15th April 2013. The application is for the appointment of a manager pursuant to Section 24 of the Landlord and Tenant Act 1987 (the Act). Under the heading track preferences where Ms Allen has indicated the matter required to be dealt with as a matter of urgency, she says the following:- *“The landlord company is under unconstitutional control that is incompetent and self-serving. This has led to a complete breakdown of trust and fosters insidious litigation. Members are being denied the right to be consulted and to objective independent advice. Effective resolution is being prevented with two cases already relying on this application and at least two others being held in abeyance by contractors. Furthermore the structural integrity and value of the building amongst others are at high risk.”* The grounds for the application are as follows:
 - Incompetence of the managing agents Defries and Associates Limited (D&A).
 - Non-compliance with consultation procedures.
 - Complete breakdown of trust between members and the landlord company.
 - Breaches of covenants of the lease.
 - Unreasonable service charges.
 - Breach of covenant not to cause lessees loss of enjoyment of their homes and property.
 - Unconstitutional management of the landlord company.
2. In a Section 22 notice dated 20th February 2013 where Ms Allen and Miss Kulkarni are the named tenants, the grounds for the appointment of a manager runs to some 39 pages. The matters relied upon by the tenants (Ms Allen and Miss Kulkarni) are numerous and wide reaching. It is not necessary for us to go into great detail on the various allegations raised in the notice and supporting documents.
3. In the bundle of papers provided at the start of the hearing on 4th August 2013 we had four bundles running to some 987 pages of documentation. These included the application form, the preliminary notice, to which we have referred,

the directions, correspondence passing between Ms Allen and the Tribunal and others and witness statements of Ms Allen and Miss Kulkarni, with exhibits. On behalf of the Respondents there were witness statements from David Rothberg, Faye Wyse, Pragnesh Mistry and Lynne Rothberg all leaseholders and Penny Gostyn of D&A the managing agents. In addition we had copies of some of the leases, a statement from the proposed manager Mr Stephen Elman of Rendall Rittner with a draft order. In addition, there was a bundle of documents containing various emails and other pieces of paper thought to be relevant by the Applicants.

4. On the morning of the hearing we received a skeleton argument prepared by Mr Lederman on behalf of the Respondents.
5. The matter was initially listed for a one day hearing but as a result of the Applicants' presentation it was not possible to complete the hearing in one day and the matter was adjourned until 4th November 2013 when the Respondent's case was advanced. On the morning of the 4th November Ms Allen lodged a further substantial bundle which she had bought with her, but had not disclosed to the Respondent's in advance of the hearing, notwithstanding the period of time that had elapsed from the first day. We were reluctant to admit the late paperwork and did so on the basis that if a document was put to a witness, that they had not had the chance to consider, we would not allow it to be put into evidence. In fact this was not an issue which raised its head.
6. It is appropriate to record at this point that having heard two days of "evidence," speeches and statements by Ms Allen and Miss Kulkarni and having also heard the evidence of the Respondents in the form of Mr Rothberg, Mr Mistry, Mrs Gostyn and Mrs Wyse, we were satisfied that the Applicant had not established that there were grounds for the appointment of a new manager. We advised Ms Allen, at the conclusion of the hearing, that her claim was dismissed as we were not satisfied that the provisions of Section 24 of the Act had been made out and even where there was any ground in respect of that Section, it was not in our view just and convenient for there to be yet another managing agent appointed. We indicated at that time that we would issue written reasons for our decision.
7. Accordingly it does not seem necessary nor indeed appropriate to recount in great detail the evidence that we received from the parties. We will, however, briefly set out the cases made by both sides and also set out some of the procedural issues that were raised by Ms Allen at the start of both days' hearings. On 14th August 2013 Ms Allen requested that the hearing be recorded. This is not a request that she had made earlier, so far as we were aware and in any event the facilities were not available in the hearing room in which this case was to take place. Accordingly that was denied. She also made application for the witness statements of the Respondents not to be admitted as they had not been sent to her until a week or so before the hearing. She did not, however, wish to make an application to adjourn although she felt she had been prejudiced by the late delivery. Nonetheless, she said that she intended to proceed with the case and try and present the matter as best she could with the documents produced. Given that the case was part heard on 14th August 2013 and did not return before us until 4th November, she clearly had ample time to acquaint herself with the Respondent's statements in support.

8. It may be helpful to give some background to this dispute. Ms Allen is a lessee and by all accounts a non-practising barrister. In addition also it appears from her witness statement, that she is an experienced mathematician, statistician and project manager with senior management experience. She told us that she had risen to the rank of HEOD in the Ministry of Defence, that in 2001 she'd moved to the Lord Chancellor's Department and that from 2003 she had been the Head of Judicial Training until 2006. At that time she became a consultant in project management with her company Allen and Allen, where she had, it appears, managed refurbishment works at Hillside Court and generally looked after the block.
9. Hillside Court Property Company Limited (HCPC) is the freehold owner of Hillside Court, 409 Finchley Road, London NW3 6HG. In the period 2006 to 2008 there had been a collective enfranchisement and of the 61 lessees 41 are members of HCPC. Some lessees are effectively managing on behalf of all and Ms Allen had a major role in the management of the property until she resigned in 2012. The current directors of HCPC include Mr Rothberg, Mrs Wyse and Beryl Moss who has in fact asked Mr Mistry to stand as her proxy. Another director, Mr Yudkin had unfortunately died on 8th June 2013.
10. Since May of 2012 D&A have been the managing agents and their principal director is Penelope Gostyn who provided a witness statement in these proceedings. As we have indicated above, Ms Allen resigned as Director on 2nd August 2012, it appears as a result of HCPC being unwilling to make immediate payment for a number of invoices by Allen and Allen for services which were alleged to have been rendered under an agreement Ms Allen claimed had been reached with the previous directors of HCPC. A dispute followed her resignation and HCPC took proceedings in an attempt to recover a laptop computer. This point appears to have been resolved but a counter claim has been brought by Ms Allen seeing the recovery of the monies she said are owed to her for her consultancy work.
11. Although a number of lessees are named in the application, only Ms Allen and Miss Kulkarni provided witness statements or attended the hearing. In contrast on the 4th November the Respondents produced a summary of the list of lessees who opposed Ms Allen's application which appeared to run to some 31 names.
12. Ms Allen's witness statement contained in the bundle runs to some 22 pages. It seeks to address the issues raised in the Section 22 notice and the application itself. It makes what proved to be unsubstantiated and unproven allegations against a number of directors that they had acted in their own personal interests against the overriding interests of HCPC. As we have indicated there is little to be gained by recounting in detail the various matters raised in the witness statement. Although she made various complaints concerning the structure of the board of directors of HCPC, she did accept that the Tribunal had no power to alter the directors of the company. It was put to her during the course of her giving evidence that she appeared to run the property as her own fiefdom. Although she responded with a smile, she nonetheless accepted that that was an accurate description, although subsequently sought to resile from such assertion. Much was made by her of an apparent Thames Water leak which was

discovered in 2012 and which is still the subject of ongoing correspondence and investigation as well as other allegations concerning the breakdown of the hot water system and the apparent alteration to the system made by Mr Rothberg which was never satisfactorily shown to be the case. It became apparent during the course of questioning that she was herself some £3,000 in arrears with the service charges but she told us that she had no intention of paying those until the bills that she believed were due to her have been settled. She denied that she had brought the Section 24 application to put pressure on the Respondents to settle. When asked why there had been so many managing agents in the last four or five years, she was not able to give a particular reason. It appears that a company called Mellersh had been appointed but had resigned. Brickman Yale had also been appointed but they themselves had declined to continue to act and Rendall Rittner had been appointed in the past but had also removed themselves. D&A started in 2012 and were the incumbent managing agent at the time of this application.

13. Miss Kulkarni complained mainly about the condition of her flat and the lack of action to curb what she considered to be a lack of attention to the problems that her flat was suffering from. She had apparently instructed a builder to inspect in 2013 when he thought that the problem may be to do with movement. At that time, she raised the difficulties at a meeting but was herself reluctant to instruct a surveyor to investigate the matter further. In truth her complaint was she felt that the D&A should have investigated the problem more assiduously than they did. For her part she did not start living in the property until April 2012.
14. At the conclusion of the first day, Ms Allen said that she intended to limit the case to the matters which had been set out in the witness statements and the evidence that she had given to us.
15. We think probably we can do no better than to paraphrase Mr Lederman's skeleton argument in respect of the evidence that we heard from Miss Allen and Miss Kulkarni. Ms Allen's application and witness statement made a number of allegations of dishonesty against various persons including Mrs Wyse, Mr Rothberg and Mrs Gostyn as well as Mr Mistry. In the County Court proceedings she had included an allegation of discrimination, harassment and breach of covenant, but it seems that following an attendance before the court prior to the reconvene on 4th November 2013, this part of the counter-claim had been struck out albeit by consent. Ms Allen, however, did tell us that she was not expecting us to make any findings in respect of the harassment discrimination or breach of covenant matter. Mr Lederman's view was that a number of the complaints advanced by Miss Allen, were in reality complaints regarding her position as a Director or shareholder of HCPC and that she had in some way been disadvantaged or prejudiced because her views on management had not been followed. Both Ms Allen and Kulkarni made serious allegations of corruption, abuse of position, dishonesty and improper actions by the directors. We accept that Mr Lederman's assertion that the burden falls on them to make out those allegations. We have to say that having listened to two days of evidence both from Ms Allen and Ms Kulkarni as well as the witness statements for the Respondents, we are wholly satisfied that Ms Allen has not made out any of those allegations that were in her witness statement, the application or the section 22 notice. It seems to us that much of the allegations raised by Miss Allen stem from her "disappointment" at resigning from her position as a

director of HCPC and the subsequent refusal of the directors to make payments to her in respect of various invoices that she had rendered. We make no comment as to the correctness of those invoices and whether sums are due and owing. That is a matter that will be no doubt ventilated before the County Court in due course.

16. We did hear from Mr Rothburg, Mrs Wyse, Ms Gostyn and Mr Mistry. All struck us as honest people. Mr Rothburg explained the position with regard to the alleged alteration of the heating system, which was no such thing and such works as had been undertaken had, in any event, been approved by the previous managing agents. The allegations against Mrs Wyse and Mr Mistry of some perceived misdoings were unproven and the attack against both unsubstantiated. Mr Mistry, contrary to the assertions made by Ms Allen appears to have been the one person who highlighted the misfeasance of previous directors during the enfranchisement process. Ms Gostyn struck us as a competent managing agent trying her best to resolve issues and to manage the building in an appropriate manner. She appeared to have the confidence of the existing board.

FINDINGS

17. We are satisfied from hearing from the various witnesses and having considered their witness statements, that Ms Allen has not been able to satisfy us that we should make an order under Section 24 of the act. We have no doubt that to make the appointment of Rendell Rittner as the new managers would not solve the problem and would not be just and convenient. We have no doubt that Ms Allen, although the appointment might be a Tribunal one, would seek to influence any appointed manager with a view to resurrecting her 'fiefdom'. In those circumstances therefore we have no hesitation in dismissing Ms Allen's application. We decided to make the decision at the conclusion of the hearing as we were told that a number of residents were willing to step forward to be directors of HCPC, but not until we had made our findings known.
18. In so far as the Respondents assertions that the provisions of section 20C of the 1985 should not be applied we have considered the written submissions made after the hearing. It seems to us that we need to consider whether it would be just and equitable in the circumstances to prevent the Respondent seeking to recover its costs as a service charge. It is not necessary for us to consider whether the lease allows such recovery, which is better considered under the provisions of sections 19 and 27A of the 1985 Act. Given our findings we conclude that it would not be just and equitable to make an order under section 20C and therefore decline so to do.
19. We have given consideration also as to whether or not an order for costs should be made against Ms Allen pursuant to the provisions of Schedule 12 paragraph 10 of the Commonhold Leasehold Reform Act 2002. Such a power should be used sparingly. In this case, however, we think there is reason to find that Ms Allen has indeed acted in a manner as set out in Schedule 12 paragraph 10. The allegations made against the various directors of HCPC and Miss Gostyn seem to have no foundation in reality and were, we believe, nothing more than a result of Ms Allen's anger that her request for payment of invoices had not been met positively. Also, although she resigned as a director in 2012 we cannot help but

feel from the evidence we did hear that she was unhappy that the control of HCPC appeared to have passed from her. It seems to us that this was an unmeritorious application. Although it took two days it was necessary for us to give Ms Allen the chance to submit her application and to cross examine the witnesses provided by the Respondents. However, the more that she did present her case and cross examine, the more convinced we became that there was no merit to the application. Matters were not helped by her late submission of papers on the second day of the hearing, despite having over two months to have produced this bundle. In those circumstances we think that Ms Allen's conduct does fall within that provided for in the 2002 act and we order that she should pay the sum of £500 in costs to the Respondents within 28 days.

Judge: *Andrew Dutton*
A A Dutton

Date: 4th November 2013