

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL
Case No 0005/06

Decision of the Leasehold Valuation Tribunal on application(s) under Sections 24 of the Landlord and Tenant Act 1987

Applicant:	Carolyn Smith
Respondent:	Gary Tempary - First Respondent June Tempary – Second Respondent Carolyn Smith – Third Respondent
Re:	Stourwood Court, 17 Stourwood Avenue, Bournemouth
Date of Application	9 th July 2006
Date of Amended Application	20 th September 2006
Date of Inspection	22 nd February 2007
Date of Hearing	22 nd February 2007
Venue	Town Hall, Bournemouth
Appearances for Applicant	In person
Appearances for Respondents	In person

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Lawyer Chairman
T E Dickinson BSc FRICS	Valuer Member
J Mills	Lay Member

Date of Tribunal's Decision:	2 nd	March	2007
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Decision

IT IS HEREBY ORDERED that:-

Joan Lesley Franklin, Property Manager, of House and Son, Lansdowne House, Christchurch Road, Bournemouth be appointed manager and receiver of Stourwood Court, 17 Stourwood Avenue, Bournemouth (the Property) with effect from 14th March 2007.

1. Each of the parties to this application shall hand over to Mrs Franklin forthwith any of the following in their possession or control, namely all books, records, counterpart leases, balance of service charge monies held.
2. Save as set out below, she shall manage the property in accordance with:-
 - (a) The respective obligations of the Landlord and the Tenants under the various leases by which the flats at the property are demised and, in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services to and insurance of the property and
 - (b) The duties of a manager set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
3. She shall not be required to collect or account for ground rents payable under the leases of the flats in the Property.
4. Other than ground rents, she shall receive all sums whether by way of insurance premiums, payment of service charges or otherwise arising under the said leases and shall pay such sums into a separate bank account.
5. She shall apply the amounts received by her (other than those representing the fees of the managing agent) in the performance of the Landlord's covenants contained in the leases.
6. She, or her firm, shall be entitled to management fees (all exclusive of VAT), as follows:-
 - (a) an annual fee of £1000 for all standard services set out in House & Son's management agreement reviewable annually on the anniversary of her appointment according to the increase in the Retail Prices Index last published in the preceding month as against that published in the month 12 months earlier
 - (b) in addition, a maximum of 7½% of the cost of any works or services where it is necessary to invoke the Section 20 procedure, and
7. She shall forthwith arrange and maintain professional indemnity insurance cover (through House & Son) in the sum of £1,000,000
8. This order shall remain in force until varied or revoked by further order of the Tribunal.

9. The Applicant and the Respondents shall each have liberty to apply to the Tribunal for further directions.

Reasons

Introduction

1. This was an application made by the Applicant under Section 24 of the Landlord and Tenant Act 1987 (the Act) for appointment of a manager in respect of the Property.
2. The lessees of the flats comprising the Property are, as to Flat 1, the Second Respondent, of Flats 2, 3 and 5 the First Respondent and of Flat 4 the Applicant. All three parties also jointly own the freehold of the Property.
3. The Applicant had served notice dated 23rd March 2006 under Section 22 of the Act on the First Respondent and on 9th July 2006 made the original application to the Tribunal.
4. The First Respondent had submitted that the original application should be dismissed on the ground that the Section 22 notice and ensuing application had not also be served on the Second Respondent.
5. Under direction of the Tribunal, the Applicant amended her notice and application to include the Second Respondent and copies of the Amended Notice and Amended Application dated 20th September 2006 were served on both Respondents.
6. In her reply to the Amended Application, the Second Respondent did not challenge the validity of the either of the Notices or the Applications. However, the First Respondent originally submitted that a Section 22 notice on which the amended proceedings were based had not been duly given and so the proceedings should be dismissed.

Inspection

7. The Tribunal inspected the Property in the presence of all parties.
8. The Property is an Edwardian house set in a good residential area of Southbourne, converted into three self-contained flats, Flats 1 and 2 on the ground floor, 3 and 4 on the First Floor and 5 on the Third Floor. They are served by a common entrance hall and staircase.
9. The Property is set in garden grounds to the front and rear. It is in fair condition for its age and character but the Tribunal noted externally there had been attempts to patch rendering some of which was losing its keying, some rot to joinery, rot to Flat 4 sills, slipping tiles and lack of gutter maintenance. Internally there was no mains fire detection system (there were battery units only) and no fire extinguishers were evident. It appeared that the common parts did not comply with the Regulatory Reform (Fire Safety) Order 2005 although that had come into force on 1 October 2006.

Hearing

10. The Tribunal had received substantial files of papers concerning the issues between the Applicant and both Respondents. It was evident to the Tribunal that there had been very significant issues between them which had resulted in a breakdown of relationships and trust between them; this was likely to continue to prejudice the proper management of the Property for which they were collectively responsible and in respect of which, as co-Trustees, they had to be unanimous on decisions. It appeared to the Tribunal on those papers, there was no likely prospect of the parties being able to reconcile their differences in the foreseeable future for the benefit of the Property.
11. Notwithstanding the First Respondent's written submission that the amended application should be dismissed, at the hearing he decided to withdraw that aspect of his case. The Second Respondent had made no similar submission. The Tribunal was satisfied, on the basis of available documentary evidence and because of the close family relationship between the two Respondents, that the original Notice and the original Application had in fact both come to the notice of the Second Respondent very shortly after they had been served on the First Respondent.
12. Accordingly the Tribunal made a formal finding that there was no procedural impediment to its consideration of the substantive issues.
13. The parties accepted that it would not assist for each of them to give oral evidence concerning the substantive issues.
14. The parties all submitted that Mrs Franklin of House and Son should be proposed for appointment as manager. The Tribunal heard evidence from her in person. She also provided evidence of her and her firm's compliance with Codes of Practice, Professional Indemnity insurance, management provisions and charges and accounting arrangements.

Consideration

15. The Tribunal considered all of the case papers and their inspection and the evidence from Mrs Franklin.
16. The Tribunal found that
 - 16.1. the Property is already showing signs of lack of proper management as referred to above
 - 16.2. the continuing difficulties between the parties as outlined above were likely to continue to have an adverse effect on the proper management of the Property unless a manager were to be appointed
 - 16.3. there was some doubt about whether the Property was adequately insured

17. The Law.

18. The relevant law is set out in Section 24 of the Act as follows.

Section 24 Appointment of manager by the court.

(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 court thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the court 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

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

(ab) where the court 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;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration 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 court 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

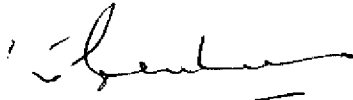
(ii) that it is just and convenient to make the order in all the circumstances of the case;

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

19. The Tribunal made no determination of the issues in the case save that its findings set out in Paragraph 16 above satisfied the provisions of Section 24(2)(b) of the Act i.e. that "other circumstances exist which make it just and convenient for [a manager to be appointed]".

20. The Tribunal found that Mrs Franklin had appropriate knowledge and experience to be appointed manager and she would also have the benefit of other staff and systems provided by House and Son.

21. Accordingly the Tribunal appointed Mrs Franklin as manager.

A handwritten signature in black ink, appearing to read 'J. B. Smith', written over a horizontal line.

Chairman

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor