

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE**  
**AND LEASEHOLD VALUATION TRIBUNAL**  
**THE LEASEHOLD VALUATION TRIBUNAL**

**Case Number: CHI/24UP/NMV/2003/0005**

**IAN J LEE**

**Applicant**

- and -

**M25 GROUP**

**1<sup>st</sup> Respondent**

- and -

**BRAMBRIDGE HOUSE RESIDENTS ASSOCIATION**

**2<sup>nd</sup> Respondents**

**Property:** **Brambridge House, Kiln Lane  
Eastleigh**

**Tribunal:-** **Mr D Agnew, LLB, (Chairman)  
Mr D M Nesbitt, FRICS FCIArb  
Mr P D Turner-Powell, FRICS**

**Hearing:** **5<sup>th</sup> April 2004**

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**DECISION OF THE TRIBUNAL**

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**1. Background**

- 1.1 On 17<sup>th</sup> December 1999 the Applicant, Mr Lee, was appointed Manager of Brambridge House, Kiln Lane, Eastleigh ("the property") by a differently constituted Tribunal. That Tribunal had found that "the management and maintenance of the property were out of hand". There had been "clearly a breach of the terms of the lease by the Landlord in that it had clearly failed to maintain the structure of the property as required by the Lease". The

accounts had been unsatisfactory and there had been many breaches of The Service Charge Management Code approved by the Secretary of State with regard to the management of the property. The landlord at the time was not the current landlord. The M25 Group acquired the freehold after Mr Lee's appointment.

- 1.2 At the time of his appointment as manager by the Tribunal, Mr Lee was the employee of the McAndrew Martin Partnership, a firm of surveyors based at Cosham in Portsmouth.
- 1.3 In February 2003 Mr Lee left that firm to join Beale's, a firm of estate agents and surveyors, and was employed as a residential valuation surveyor.
- 1.4 By an application dated 16<sup>th</sup> October 2003 Mr Lee applied to the Tribunal for the order appointing him as manager to be discharged on the basis that he was no longer in a position to undertake the role of manager.
- 1.5 His application first came before the Tribunal on the 27<sup>th</sup> November 2003. His application was supported by the current landlord, the M25 Group, but opposed by the Brambridge House Residents Association, comprising four of the tenants.
- 1.6 For the reasons set out in the written Reasons for this Tribunal's decision of 27<sup>th</sup> November 2003 Mr Lee's application was adjourned for four months. In the meantime he was required by the Tribunal to collect all his papers and records relating to his management of the property from the McAndrew Martin Partnership and produce as soon as possible audited annual financial statements setting out all income and expenditure from the date of his appointment.

## **2. The Adjourned Hearing**

- 2.1 The matter came back before the Tribunal on 5<sup>th</sup> April 2004. Those present were as follows:

The Applicant, Mr Lee.

The First Defendant, the M25 Group, represented by Mr Steven Woolf of Counsel and Mr Murphy, Chairman of M25 Group.

(Mr Woolf also represented 9 of the lessees).

Mr Simon Jones, solicitor for M25 Group.

Mr N Faulkner of Labyrinth Properties.

Mr Stephen Cross, Hampshire Director of M25 Group and representing Flats 1 and 12.

Mr John Sullivan of Mountheed Ltd for Flats 4, 6, 9 and 11.

Mr Gary Rumbell of Rebelprime for Flats 1a, 5 and 14.

Mr Chris Beasley of Williams Lester (architects).

Mr Tudor (Secretary of Brambridge House Residents' Association).  
Mr Richard Earlam (acting Treasurer of the Residents' Association).

- 2.2 Mr Lee had written to the Tribunal before the hearing (a copy of which letter had been sent to the other parties) asking for an adjournment for four months. He had been unable to complete the task given to him at the previous hearing and he required further time to do so. Mr Earlam had written to the Tribunal to say that the Residents' Association thought that Mr Lee was making good progress and that they wished him to remain as manager on a permanent basis. Solicitors for the M25 Group had written to the Tribunal opposing an adjournment of the application to withdraw. At the hearing Mr Lee at first changed his request for an adjournment for four months to one of twelve months as he thought he would need that time.
- 2.3 Mr Lee was pressed as to whether his true application was one to withdraw his application or to apply for an adjournment for twelve months. After some prevarication he decided to apply to withdraw his application.
- 2.4 The first question was therefore whether Mr Lee should be allowed to withdraw his application.
- 2.5 In support of that application Mr Lee said that his position had changed since the first hearing. He had given the matter 100% commitment and he had the support of the parties of his new firm. He felt that the management had gone well and he had started to achieve things. He needed further time to extract more information from the McAndrew Martin Partnership to enable him to prepare accounts. He was supported in this application by Mr Tudor and Mr Earlam.
- 2.6 Mr Woolf submitted that Mr Lee should not be permitted to withdraw his application. If he were allowed to withdraw the M25 Group would make an immediate application on the spot for a landlord's application to discharge the order. What the Tribunal had to consider was whether there would be a recurrence of the circumstances which led to Mr Lee's appointment in the first place. He submitted that this was more likely if Mr Lee were to remain as manager than if the order were discharged. He asked how did Mr Lee now feel able to do the job satisfactorily when he had failed in his duties as manager to-date? On the other hand the M25 Group was a substantial company with extensive experience of properties of this nature. They had a considerable vested interest in putting the property into good order and manage it well as they owned 9 out of 14 leases. Labyrinth Properties would be appointed as managing agents but the specification for major works needed substantial revision and it was necessary to get on with those works urgently. Annual accounts would have to be produced. The

information already supplied by McAndrew Martin would be the starting point but, if necessary, court action might have to be taken to obtain the information and documentation.

- 2.7 In response to questioning from the Tribunal Mr Lee said he would keep trying to get the necessary information from McAndrew Martin. His relationship with Mr Martin and the circumstances under which he left that firm, where he considered that he had been badly treated, had not helped the situation and had made his task more difficult, he felt. When he had been with that firm all the day-to-day decisions and management of Brambridge House had been carried out by Mr Martin. He had had very little involvement at that time. He acknowledged that he had failed to carry out his duties as manager properly at that time. He accepted that there was a problem in establishing the financial situation in respect of Brambridge House because he could not get the information. Only 18 out of 48 computer sheets of monthly information had been supplied. He had written to McAndrew Martin three weeks ago and had not received a reply. He acknowledged that he had no experience of working on a building of the size and nature of Brambridge House (a Grade II listed building) – he would need to bring in a Building Surveyor. He had taken no steps to check whether the specification for intended works was still appropriate and had not taken any steps to put in hand major items of repair. He said that a fund (originally £200,000 but depleted by the sum of £17,500 paid to McAndrew Martin without Mr Lee's approval) for repairs had now been retrieved from McAndrew Martin Partnership and was now in an account with HSBC in the names of partners in Beale's who are signatories on that account.
- 2.8 Mr Tudor said that he would be very concerned if the order were discharged and the M25 Group took over control of the management of the property. There had been several disputes with that company, some of which were still in the process of litigation. He was concerned about them trying to vary their leases and was concerned about the huge increase in the costings for the specification of required works.
- 2.9 Mr Earlam enlarged upon these concerns. He said that the Residents' Association had been engaged in constant warfare with M25 Group since they purchased the freehold in December 2001. There have been four court cases. One concerning the right to have the opportunity to purchase the freehold is to be heard later this year. The landlord is talking about a huge increase in the cost of works of repair in one lump sum compared with the Residents' Association spreading the cost of repairs over a number of years. They were looking for stability from, as Mr Earlam put it, "the only honest person we have round us". They wanted someone independent as manager.
- 2.10 Mr Faulkner stated that his company had no financial connection with the landlord. He gave details of properties under his company's management.

### **3. The Consideration**

3.1 The matters for the Tribunal to decide were:

- (a) whether or not Mr Lee should be allowed to withdraw his application for the order appointing him as manager to be discharged;
- (b) if not, whether the application should be adjourned for a further period;
- (c) if not, whether or not the order should be discharged.

### **4. The Law**

4.1 Section 24(9) of the Landlord & Tenant Act 1987 states:-

"A Leasehold Valuation Tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ....".

4.2 Section 24(9A) states:-

"The Tribunal shall not vary or discharge an order under Sub-Section (9) on a landlord's application 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 the circumstances of the case to vary or discharge the order".

### **5. The Decision**

5.1 After having given all the representations careful consideration the Tribunal decided:-

- (i) For reasons that will become apparent hereafter that it was not in the best interests of the building, the tenants or the landlord to allow Mr Lee to withdraw his application. Even if he were so allowed the Tribunal was satisfied that the landlord would immediately apply for the discharge of the order.

- (ii) The Tribunal did not agree to adjourn the application for a further period of up to twelve months. It considered that there was little likelihood of Mr Lee being able to acquire the necessary information to produce audited accounts within that period and at the same time carry out the necessary management of a large and difficult building.
- (iii) The Tribunal did agree to discharge the order of the 17<sup>th</sup> December 1999 appointing Mr Lee as manager of the property as from 1<sup>st</sup> May 2004 for the reasons set out hereafter. Mr Lee is to hand over all documents and records concerning the property in his possession to the landlord or his appointed agent by that date together with a statement of moneys received and in hand and showing details of expenditure. He must also arrange for any funds appertaining to the property within his control or disposable at his direction to be transferred to the landlord or his appointed agent by the said date to hold in trust for the tenants less any reasonable fees and expenses properly due to Mr Lee at that date.

5.2 The Tribunal's reasons for reaching these conclusions are as follows:-

- (a) The Tribunal considered that the adjournment period of four months should have been sufficient to have enabled Mr Lee to obtain the necessary documents and records from McAndrew Martin to produce audited accounts as ordered. He had not achieved that. By his own admission his own poor relationship with Mr Martin may well have contributed to the lack of co-operation on the part of McAndrew Martin. The Tribunal has not heard evidence from Mr Martin and does not have sufficient information to attribute blame for the state of that relationship but the Tribunal considered that someone other than Mr Lee is more likely to have better success in enlisting the co-operation of McAndrew Martin.
- (b) The Tribunal considered that Mr Lee could and should have done more to assert his authority to obtain documents and information from McAndrew Martin in the four month adjournment period, making an application to court if necessary for an order for the delivery up of the documents and records. Whilst the Tribunal acknowledges that he made some progress since the previous hearing it was in fact quite limited.
- (c) The Tribunal was concerned that substantial funds which should have been under Mr Lee's control had been transferred from McAndrew Martin (where the account was not under his control) to an account in the name of the partners in Beale's who were the authorised signatories on the account, again not Mr Lee. The Tribunal considered that Mr Lee had still not fully grasped the extent of his duties and responsibilities as manager in this respect.

- (d) Mr Lee had not, in the two years since the money had been raised to carry out repairs, taken any step whatsoever in the furtherance of those repairs. Prior to his leaving McAndrew Martin this was no doubt because Mr Martin was effectively handling that matter, whereas it was Mr Lee's duty to do so. He had not reviewed the specification of required works since November 2003 and had only engaged himself in day-to-day management matters.
- (e) The Tribunal was sure that Mr Lee had tried hard to do his best since November 2003, particularly to produce audited accounts as required, but considered that the scale of the task and the difficulties associated with this particular building were beyond his experience, expertise and facilities. The Tribunal felt that the management of this property required management by someone of considerable experience of the management of buildings of this type.

To be fair to Mr Lee he had not asked for the appointment in the first place. It had come as part of his job with McAndrew Martin. He was not present when the Tribunal appointed him and the members of the Tribunal at that time did not have the opportunity of questioning him as to his understanding of the role of a Tribunal-appointed manager and of assessing his suitability for the appointment.

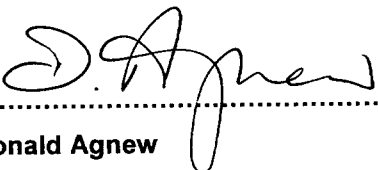
- 5.3 The Tribunal hopes that the Residents' Association will give Mr Faulkner, of Labyrinth Properties, the landlord's choice of manager, a fair chance to manage the property with their co-operation because it will be in the interests of everyone concerned with the building for this to work. Mr Faulkner confirmed to the Tribunal that he understood that if the order were to be discharged and his company appointed by the landlord, he would manage the property with the interests of all the tenants (not just the majority) and the landlord in mind. If Mr Faulkner fails to do that the tenants have certain remedies and safeguards at their disposal. Their concerns about the possible cost of repair work can be catered for in the consultation process. If they consider that work has been done unnecessarily or poorly they can challenge the service charge. Mr Murphy gave assurances that he did not want to force through changes to leases if the tenants did not wish it and, indeed, there can be no compulsion unless a Tribunal so orders. If the landlord (or his managing agent) fails to comply with its obligations under the lease the tenants can apply for the appointment of their own suggested manager or seek the right to manage. As yet this landlord has not been given the opportunity to show that it can manage this property well. It was not responsible for the circumstances leading to the appointment of a manager in 1999. It now has the opportunity to prove that the Residents' Association's concerns are unfounded and the Tribunal hopes that it will manage

the property well in the best interests of all the tenants. If it does not then the parties will no doubt be back before another Tribunal in the future.

- 5.4 The Tribunal was satisfied that on present evidence there is no reason to suppose that the discharge of the order will result in a recurrence of the circumstances which led to the order being made and that it is just and covenant in all the circumstances of the case to vary the order.

Dated this *22<sup>nd</sup>* day of *April* 2004

Signed:

  
.....  
Donald Agnew  
Chairman



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**ORDER AND REASONS**

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**1. Application**

- 1.1 On 5<sup>th</sup> May 2004 the Tribunal Office received a letter from the Hon Secretary of the Second Respondent seeking permission to appeal the Tribunal's Decision of 22<sup>nd</sup> April 2004 and a stay of the Order pending hearing of the appeal. By a letter dated 12<sup>th</sup> May 2004 the Second Respondent set out the grounds of appeal.

- 1.2 A copy of the application and grounds was sent to the other parties.
- 1.3 Following receipt of the said application Mr Lee contacted the Tribunal Office to say that he did not wish to act as Manager pending any appeal.

## **2. Decision and Order**

- 2.1 The Tribunal, having considered the said grounds of appeal, hereby refuses permission to appeal and stay the Order of 22<sup>nd</sup> April 2004.

## **3. Reasons**

- 3.1 The references to paragraphs hereafter are to the unnumbered paragraphs of the aforesaid letter of the 12<sup>th</sup> May 2004.
- 3.2 Paragraph 2:
  - 3.2.1 The date of 22<sup>nd</sup> April 2004 is incorrect. The Order referred to was in fact dated 27<sup>th</sup> November 2003.
  - 3.2.2 The facts stated in this paragraph were fully taken into account by the Tribunal – see in particular paragraph 5.2(a) and (b) of the Tribunal's Decision of the 22<sup>nd</sup> April 2004 and paragraph 2.1.2 of the Tribunal's Reasons of the 30<sup>th</sup> December 2003.
- 3.3 Paragraph 3. The Tribunal had been made aware of the facts referred to but did not consider that they provided sufficient ground to justify the retention of Mr Lee specifically as Manager and to outweigh the reasons why it was considered in the best interests of all the parties for Mr Lee to be discharged.
- 3.4 Paragraph 4. This is noted by the Tribunal but it does not consider that this constitutes a ground of appeal.
- 3.5 Paragraph 5. The suggestion that the Tribunal should postpone the discharge of the Manager had been specifically considered by the Tribunal (see paragraph 3.1(b) of the reason for the Decision dated 22<sup>nd</sup> April 2004) and rejected (see paragraph 5.1(ii) of the said Reasons.
- 3.6 The letter of the 12<sup>th</sup> May 2004 does not allege any error or law on the part of the Tribunal.

**4. Conclusion**

- 4.1 The Tribunal considers that for the above reasons the proposed appeal had no reasonable prospect of success and that the application for permission to appeal and to stay the Order of 22<sup>nd</sup> April 2004 should be refused.

**Dated this 24th day of May 2004**

**(signed)**

**Signed:** .....

**Donald Agnew**

**Chairman**