



**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AE/LAM/2006/0018

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION MADE UNDER SECTION 24 OF THE LANDLORD AND
TENANT ACT 1987 FOR A MANAGER AND RECEIVER TO BE
APPOINTED**

Applicants: John Webb (Flat 246A); Marcia Todd (Flat 248A);

Olakitam Rotimi (Flat 252A); Hitesh Chavda (Flat 254A)

Suresh Mistry (Flat 256A); Atul Mehta (Flat 258A)

Respondent: Criterion Estates Ltd

Premises: Church Lane, Kingsbury, Middlesex NW9 8SL

Date of Application: 26 September 2006

Date of Hearing: 24 January 2007

**Appearances for Applicant: Mr H Chavda; Mr S Mistry; Mr J Webb
Mr P Cleaver – Managing Agent
Ms M Kiruga**

**Appearances for Respondent: Respondent did not attend and was not
represented.**

Also in attendance:

**Leasehold Valuation Tribunal: James Driscoll, LLM, LLB, Solicitor
Michael Mathews, FRICS
Gerda Barrett, JP**

Date of Tribunal's Decision: 14 February 2007

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**APPLICATION MADE UNDER SECTION 24 OF THE
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Applicants: John Webb (Flat 246A)
Marcia Todd (Flat 248A)
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Suresh Mistry (Flat 256A)
Atul Mehta (Flat 258A)

Respondent: Criterion Estates Ltd

Premises: Church Lane Kingsbury Middlesex NW9 8SL

Representations for the Applicants: Mr H Charda, Mr S Mistry and Mr J Webb

Respondent: No attendance

Date of Hearing: 24 January 2007

The Tribunal: James Driscoll, LLM, LLB, Solicitor
Michael Mathews, FRICS
Gerda Barrett, JP

Preliminary

- 1 This is an application for the appointment of a Manager and Receiver for the subject premises. The Applicants are leaseholders of flats at the subject premises of which the Respondent is the freehold owner and landlord. This application is supported by six of the leaseholders of the flats four of whom are also lessees of commercial premises on the ground floor. The subject Premises consists of eight flats, seven of which are held on long leaseholds. The eighth is owned by the Respondent. All of the flats are situated on the first floor of the Premises. The ground floor consists of eight shops, one of which is currently vacant. Of these, four of the shops are held by four of the Applicants on long commercial leases. Two others are held by tenants under long leases of the shops. Two are owned by the Respondent landlord. One of those shops is currently empty. It appears that all of the occupied shops are held on commercial tenancies.
- 2 On 26 September 2006 the Applicants applied to the Tribunal for an appointment of a Manager and Receiver under the provisions in Section 24 of the Landlord and Tenant Act 1987 (the **1987 Act**). This followed the giving of a preliminary notice under Section 22 of the 1987 Act which was served on the Respondent on the 15 August 2006.
- 3 On 11 October 2006 the Applicants attended a pre-trial review at the Tribunal. The Respondent did not attend and was not represented. At the hearing of the pre-trial review the Applicants explained that their application under s 24 of the 1987 Act followed an earlier decision of the Tribunal in respect of service charges and general complaints of mismanagement of the Premises in applications made under s 27 ZA of the Landlord and Tenant Act 1985 (the **1985 Act**). This decision (LON/00AE/LSC/2005/0246) is examined in more detail in paragraph 9 below.
- 4 At the pre-trial review held on the 11 October 2006, the Tribunal made a number of directions. These included a direction that if the Respondent failed to comply with other directions of the Tribunal that the application seeking an appointment of a Manager and

Receiver should be determined without a hearing (pursuant to Regulation 13 ('Determination without a hearing') of the Leasehold Valuation Tribunals Regulations 2003). It was also directed that there could be no Determination without a hearing before the 15 November 2006. The Tribunal also directed that either party could request that a hearing be arranged before a Determination was made.

- 5 A further hearing was held on 22 November 2006. The Applicants attended but there was again no attendance by the Respondent. Further directions were made at this hearing. The Tribunal also decided that in the absence of any response from the Respondent, and on the basis of the information in the preliminary notice given under section 22 of the 1987 Act, that it was provisionally satisfied that it was just and convenient to make an order appointing a Manager and Receiver under section 24 of the 1987 Act. However, the Tribunal did not make a final decision on the substantive application. This was because some of the information relating to the subject Premises was not available. The Tribunal also wanted to hear representations by the proposed Manager and Receiver in order to satisfy itself that the company which the applicants proposed would be suitable for the appointment. Accordingly, additional directions were given and the Tribunal directed that the application under section 24 of the 1987 Act be heard at 10 Alfred Place London WC1 E7LR on 24 January 2007.

The Hearing on 24 January 2007

- 6 The flat leaseholders who represented the Applicants at the hearing were Mr J. Webb ((the leaseholder of the flat No. 246A Church Lane, Kingsbury, London NW9), Mr H. Chavda (the leaseholder of the flat No. 254A Church Lane, Kingsbury, London NW9) and Mr S. Mistry (the leaseholder of the flat No. 256A Church Lane, Kingsbury, London NW9). They were accompanied by Mr Paul Cleaver, a managing director of Urang Limited, who the applicants proposed to be appointed the Manager and Receiver and Miss M. Kiraga, an employee of Urang Limited who would be the person responsible for the day-to-day management of the Premises if the

Tribunal decided to make an appointment under section 24 of the 1987 Act.

7 Section 24 of the 1987 Act provides:

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

(a) such functions in connection with the management of the premises, or 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 is either 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 such obligation but for the fact that it has not been reasonably practicable for the tenant to give the appropriate notice and

(3) that it is just and convenient to make the order in all the circumstances of the case where the tribunal is satisfied –

(i) that unreasonable service charges have been made, or imposed 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*

(abb) where the tribunal is satisfied that –

- (i) *that there has been a failure to comply with a duty imposed by virtue of section 42 or 42A of this Act, 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 is 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.

The application made under sections 27A and 20C of the 1985 Act

- 8 The Applicants told the Tribunal that they had a series of complaints against the Respondent going back for several years. In short the Applicants stated that the Respondent rarely took any action at all in relation to the subject Premises. It was left to the Applicants to manage the subject Premises between themselves. As noted in paragraph 1, the subject Premises consists of eight flats, seven of which are held on long leaseholds and the eighth which is owned by the Respondent. Six of the leaseholders of these flats are the Applicants in this matter. All of the flats are situated on the first floor of the Premises. The ground floor consists of eight shops, one of which is currently vacant. Of these, four of the shops are held by four of the Applicants on long commercial leases. Two others are held by tenants under long leases of the

shops. Two are owned by the Respondent landlord. One of those shops is currently empty.

- 9 The Applicants drew the Tribunal's attention to the matters raised before the Tribunal at a hearing of applications made under section 27A and section 20C of the 1985 Act which was heard by the Tribunal on 20 February 2006. The Tribunal's decision was given on 17 March 2006 (LON/00AE/LSC/2005/0246). The Tribunal found that certain service charges made by the Respondent were unreasonable as they accepted the Applicants' evidence that the Respondent had not carried out any maintenance works and had taken little or no interest in relation to the management of the Premises. In these circumstances the Tribunal concluded that none of the annual charges of £390 made of the Applicant leaseholders since 1999 were reasonable.
- 10 The Tribunal also found that the Respondent had behaved unreasonably in failing to disclose information relating to the sinking fund that has according to the Applicants been established in relation to the Premises.
- 11 The Tribunal also found that the Respondent had behaved unreasonably in refusing to pass on insurance claims to the Royal Sun Alliance Company even though many of the Applicant leaseholders had been paying insurance premiums.
- 12 The Tribunal also made a determination under section 20C of the 1985 Act that the Respondent should not recover out of future service charges any costs occasioned before the Tribunal. The Respondent was also directed to reimburse the Applicants for the fees paid in relation to their applications and the fee payable for the hearing, a total of £500.

Representations made in connection with the application under section 24 of the 1987 Act

- 13 At the hearing on the 24th January 2007, the Applicants relied on these findings by the Tribunal in the earlier proceedings and also argued an additional basis for which an order should be made under section 24 of the 1987 Act appointing a Manager and

Receiver. This was because the Applicants complained that the Respondent has been consistently in breach of the terms of the Code of Management Practice approved by the Secretary of State under powers contained in section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (*Approval of Codes of Management Practice (Residential Property) Order 2004, SI 2004/1802*). Specifically the Applicants complain that the Respondent fails to respond to their communications, fails to carry out its responsibilities under the flat leases, has consistently failed to notify insurers about claims and has failed to notify the Applicants about the sinking fund relating to the subject premises. The Tribunal found that these contentions were made out.

The Decision on the application for a Manager to be appointed under section 24 of the Landlord and Tenant Act 1987

14 The Tribunal is satisfied that the Applicants have made out a case for the appointment of a Manager and Receiver under section 24 of the 1987 Act. This decision is based primarily on the earlier decision of the Tribunal in the decision given on 17 March 2006 which found the Respondent had consistently made unreasonable service charges and was also in breach of other responsibilities in the leases. The Tribunal also noted that the Respondent had failed to respond to the decisions made by the Tribunal in the earlier application and also that the Respondent had failed to respond to this application.

15 The Tribunal also found that it is just and convenient to make an order appointing a Manager and Receiver. The reason for this is that the Respondent has failed to take any of its responsibilities under the terms of the flat leases so far as the maintenance and repair of the building is concerned, failures to pass on claims made under an insurance policy maintained for the block to which individual leaseholders contribute towards the cost and failure also to respond to leaseholders' requests for information about the sinking fund. There is little or no prospect of the subject premises being properly managed without the appointment of a Manager and Receiver for a substantial period or time.

The Appointment of the Manager and Receiver

- 16 Mr Paul Cleaver, a managing director of Urang Limited told the Tribunal that the company was set up in 2000. The company has two wings, a building team and the property management team which he leads. At present the property management part of his company manages some 600 units contained in 60 different buildings mainly blocks of flats but including some mixed use buildings.
- 17 On 8 May 2006 the Tribunal made an order appointing a Manager under section 24 of the 1987 Act and appointed Mr Paul Cleaver as that manager (see case no. LON/00BG/LAM/2005/0026). This appointment concerns mixed residential and commercial use premises in Brick Lane, London E1 with a restaurant on the ground floor with flats above held on qualifying leases. His company has been managing those premises since their appointment by the Tribunal in May 2006.
- 18 He told the Tribunal that he has not yet carried out an inspection of the subject Premises but that he has seen photographs of them.
- 19 As to his personal experience, his previous post was as a financial adviser with Rothschilds. Although he has no formal training in property management he has successfully managed properties since 2000. His team includes three property managers, a part-time financial adviser and a receptionist which he shares with the building team. He has the responsibility for the overall supervision of the team.
- 20 He has set up training for his team who are being trained for qualifications which are given by the Institute of Residential Property Managers (supported by ARMA, the Association of Residential Managing Agents). His company is a member of a complaints procedure which meets ARMA's standards. His company sets up bank accounts for each of the properties which it maintains. Most of these accounts are held with the bank HSBC. His company has full professional indemnity insurance cover. They maintain an out of hour's service and can, therefore, be contacted by leaseholders in cases of emergencies.

21 The Tribunal having decided that a Manager and Receiver should be appointed under section 24 of the 1987 Act is also satisfied that Mr Paul Cleaver should be appointed that Manager of Urang Limited for a period of three years, starting with the date of this decision. Such a period is needed to ensure that the subject Premises are property managed in accordance with the terms of the residential leases and that steps are taken also to remedy the historic neglect to the Premises. These steps may include the Manager and Receiver taking action in relation to the sinking fund and dealing with the uncertainties over the current position regarding the insurance of the subject premises.

22 The terms of the appointment are governed by section 24(4) of the 1987 Act as follows:

Section 24(4): an order under this section may make provision with respect to –

- (a) such matters related to the exercise by the management of his functions under the order, and*
- (b) such incidental or ancillary matters as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.*

(5) Without prejudice to the generality of subsection (4), an order under this section may provide –

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;*
- (b) the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;*
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;*

- (d) *for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.*

23 As an appointed Manager and Receiver, it is Ordered that Mr Cleaver shall manage the premises in accordance with:

- a The respective obligations of the Respondent landlord and the tenants under the leases of the flats and the commercial units respectively and in particular (but without prejudice to the generality of this) with regard to the repair, decoration, maintenance, provision of services to and insurance of the property, and
- b In accordance with the duties of the manager set out in the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

Without prejudice to the generality of this it shall be the duties of the Manager and Receiver to:

- a Maintain appropriate building insurance of the Premises,
- b To collect and receive all sums whether by way of ground rent, insurance premium, paying of service charges or others arising under the leases,
- c To maintain on trust an interest bearing account or accounts at such bank or building society as the manager shall from time to time decide into which ground rent, service charge contributions and all other monies arising under the leases shall be paid,
- d To maintain efficient records and books of account which will be open to inspection by the tenants or their duly authorised agents together with the relevant vouchers or receipts at all reasonable times,

- e To enter into contracts for and supervise all items of repair and maintenance,
- f To enter into contracts for the maintenance and supply of goods and services,
- g To deal with enquiries, requests, reports, complaints and correspondence with tenants and solicitors, accountants and other professional persons in connection with the management of the property,
- h To take such legal action as the manager shall see fit to recover any arrears of ground rent, service charges or other monies due under the leases.

Remuneration

- 24 The manager shall be entitled to remuneration which will be recoverable as a service charge at an annual fee of £2,880 plus VAT.

IT IS FURTHER ORDERED THAT

- 25 The appointed Manager and Receiver, the Applicants and the Respondent (or their successors in title as landlord) shall have liberty to apply to the Tribunal in respect of this Order.
- 26 This Order shall remain in force for a period of three years from the 14 February 2007.
- 27 The Manager and Receiver shall have liberty to apply to the Tribunal for further directions.

Chairman

James J. Smith

Date

14 February, 2007