

LON/00AN/LAM/2005/0007

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 24 OF
THE LANDLORD AND TENANT ACT 1987, AS AMENDED

78 CONNINGHAM RD, HAMMERSMITH, W12 8BH

Applicants: CHARLES BG SHIPPAM; STUART CONHEADY;
SCOTT RUSSELL.

Respondents: KATHLEEN DEVEREAUX &
PATRICK DEVEREAUX
(Executors of Michael Devereaux)

Application: 30 March 2005

Inspection: N/A

Hearing: 11 May 2005

Appearances:

Mr Lyons of Counsel For the Applicant
Mr J Yianni – proposed manager

Mr C Shippam

There were no representations from the Respondents

Members of the Tribunal:

Mrs TI Rabin	JP
Mr PS Roberts	DipArch RIBA
Mrs L Walter	MA (Hons)

Decision Date: 19 May 2005

FACTS

1. The Tribunal was dealing with an application for the appointment of a manager pursuant to Section 24(1) Landlord and Tenant Act 1987, as amended ("the Act") to manage the property known as 78 Conningham Road Hammersmith London W.12 8BH ("the Block")
2. The Applicants are long leaseholders of all the flats in the Block which were demised on long leases. The Respondents were the executors of the estate of the deceased registered proprietor, Michael Devereaux

REPRESENTATIONS

3. The First Applicant, Mr Charles Shippam, submitted a statement to the Tribunal outlining the history of the attempts made to ensure that the Respondents complied with their obligations under the various leases in the Block. The Block comprised four flats, three of which were demised to the Applicants on long leases and the fourth was in the basement and, as far the Applicants were aware, was not demised on a long lease. There is no record of a long lease registered at HM Land Registry and the Applicants believe that the basement flat is occupied by a Mr Eddie O'Dowd who has been there as long as any of the Applicants can recall. All attempts to contact Mr O'Dowd have failed and it is believed that he occupies the basement flat on an informal arrangement with the deceased freeholder. He has not responded to letters from the Applicants' solicitors.
4. The First Applicant purchased the second floor flat in the Block in 1993 and at the time, was advised that neither ground rent nor service charge had been paid for some time. He learned that the freeholder had died in early 1993, just prior to the First Applicant acquiring an interest in the second floor flat. The First Applicant was contacted by the First Respondent, shortly after he moved in and efforts were made to try and agree the management of the Block. There were essential works needed to the roof of the Block and the First Applicant made attempts in 1994 to enforce the repairing obligations on the Respondents.
5. There were numerous attempts to come to an agreement with the Respondents in order that the issues surrounding the ground rent, maintenance and insurance could be dealt with. In the absence of insurance cover being arranged by the Respondents, the Applicants arranged their own insurance cover for the Block and for the last two years. The First Applicant has arranged building insurance for the Block himself and recovered contributions from the Second and Third Applicants.
6. The First Applicant described in detail the attempts made to regularise the situation and there are copies of relevant correspondence in the Applicants' bundle. He eventually received correspondence from a firm of solicitors, Procaccini and Co, in May 1995 but this merely demanded the ground rent and did not address the concerns of the Applicants regarding the management of the Block. The First Applicant was concerned about

the poor condition of the roof and obtained a quote which was submitted to Procaccini Farrell and Co in July 1995 with a view to arranging for the roof to be repaired through the Respondents. No response was received to faxes and telephone calls. A letter in vague terms was received from Procaccini & Co in Aug 95, see paragraph 13 Applicants statement. Following this, further letters were sent to the first Respondent and Procaccini & Co in June 1996 without any response. The Applicants were obliged to carry out remedial work to the roof in 1997 in order to prevent further deterioration. Some correspondence was received from the solicitors now Procacinni Farrell and Co in September 1997 promising to obtain estimates for work to the Block and offering to dispose of the freehold. However, despite the First Applicant's eagerness to complete the purchase, the correspondence came to nothing.

7. There was intermittent correspondence between the First Applicant and Procaccini Farrell and Co but nothing was resolved, even though the Applicants had instructed a firm of solicitors to negotiate on their behalf. There was one occasion in 2002 when the First Respondent spoke to the Applicants' representative and was made aware of the problems arising from the lack of management. There has been no management of the Block by the Respondent since 1993 and correspondence has not been dealt with for some considerable time. The decision was made that the Block could no longer be allowed to deteriorate any further and notices under Section 22 of the Act were served on the Respondents on 18th December 2002 and 3rd September 2004. The Applicants proposed Mr John Yianni of Ravenscourt Management Ltd to be appointed Manager of the Block and considered the draft Terms of Appointment to suit their current requirements.

HEARING

8. The Applicants were represented by Mr Lyons of Counsel. The First Applicant also attended as did Mr Yianni, the proposed manager also attended. No representative attended on behalf of the Respondents. Mr Lyons summarised the history of the Applicants' attempts to enforce compliance by the Respondents with their obligations under the various leases. He pointed out that the freehold has as yet not been vested in the Respondents and transferred to the beneficiaries under the will of Michael Devereaux, despite the fact that he had died in 1993. Enquiry agents had been instructed to ascertain the whereabouts of the First Respondent and the Applicants had been advised that the address to which correspondence had been sent and the notices served was visited by the First Respondent on a regular basis and that she did collect her mail. The Solicitors acting for the Applicants had received a letter from solicitors acting for the Second Respondent confirming that the Second Respondent had been served with the notices but that he intended to take no action in the matter.
9. Mr Yianni was the proprietor of Ravenscourt Management Ltd and provided a synopsis of the firm, which is registered with the Association of

Residential Managing Agents and with the FSA Ravenscourt Management managed over 500 units, specialising in small blocks and he put himself forward as the manager to be appointed by the Tribunal. He proposed a charge of £250 per unit per annum for managing the Block. He would appoint outside surveyors for larger building projects but would otherwise administer and supervise smaller contracts himself. He had inspected the Block from the outside and, once appointed, will discuss with the Applicants any urgent work required; he will instruct a surveyor to prepare a survey, report and specification for any necessary works, and advise on the work to be undertaken to the Block as a whole. He understood that his appointment was by the Tribunal and that he would be answerable to the Tribunal.

10. Mr Lyons informed the Tribunal that those instructing him had received a call from a lady who stated that she was a beneficiary under the will of Michael Devereaux and that she was taking action against the Respondents to enforce the terms of the will. This was an encouraging development and may help to clarify the future of the Block. The Applicants would hope to acquire the freehold as soon as the difficulties with the winding up of the estate had been resolved; this they thought would take at least one year.

DETERMINATION

11. Section 24 of the Act provides (inter alia) that a Leasehold Valuation Tribunal may, on an application for an order under this section 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 of a receiver

or both as the Tribunal thinks fit.

An order can be made where the Tribunal is satisfied that the landlord is in breach of any obligation owed by him to the tenant and relating to the management of the premises in question or that the Tribunal find it is just and convenient to make the order.

12. The Tribunal accepted the evidence that the Block had been allowed to fall into disrepair and that strenuous efforts had been made to try and enforce the performance by the Respondents of the obligations on the part of the landlord in the various leases. The Tribunal took the view that there was very little more that the Applicants could have done to try and resolve matters.
13. The parties had proposed Mr Yianni of 68 Dalliing Road London W6 OJA be appointed by the Tribunal as the manager. The Tribunal are satisfied that the Respondents are in breach of their obligations to the Applicants in relation to the management of the Block and that the Respondents have

been given notice of the application for the appointment of a manager. The Tribunal determine that it would be just and equitable in all the circumstances for a manager and receiver to be appointed and determine that Mr John Yianni of 68 Dalling Road London W6 OJA be appointed as Manager and Receiver for a period of one year commencing on 11th May 2005. A copy of the consequent Order is annexed hereto as the Schedule.

THE SCHEDULE

LON/OOAN/LAM/2005/0007

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF AN APPLICATION UNDER s.24 (1) LANDLORD AND
TENANT ACT 1987

BETWEEN

The Applicants

CHARLES BULWER GEORGE SHIPPAM
STUART CONHEADY
SCOTT RUSSELL

- and -

The Respondent

KATHLEEN DEVEREAUX
PATRICK DEVEREAUX
(Executors of the estate of MICHAEL DEVEREAUX)

ORDER

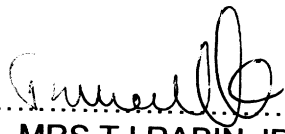
UPON hearing the evidence of the Applicant

IT IS ORDERED THAT

1. Mr John Yianni of 68 Dalling Road London W6 OJA ("the Manager") is appointed Manager and Receiver of the property known as 78 Conningham Road London W 12 8BH ("the Block") for a period of one year from 11th May 2005.
2. For the avoidance of doubt it is declared that no right to substitute another person as Manager may be implied.
3. During the period of his appointment the Manager shall manage the Block in accordance with:
 - (a) the respective obligations of the landlord and the tenants under the various leases by which the flats in the Block are demised and in particular with regard to the maintenance repair decoration renewal provision of services to and the insurance of the Block 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 s. 87 of the Leasehold Reform Housing and Urban Development 1993.
4. That the Manager shall receive all sums whether by way of ground rent insurance premiums service charge payments or otherwise arising under the leases
5. That the Manager shall account forthwith to the freeholder for the time being of the Block for the payments of ground rent received by him and shall apply the remaining amounts received by him (other than his fees as hereinafter specified) in the performance of the landlord's covenants contained in the leases
6. That the Manager shall be entitled to the following remuneration which shall be recoverable as part of the said service charges in accordance with Clause 5 (g) and the Schedule of the leases, namely:
 - (a) A basic annual fee of £250 per flat for performing the duties set out in Paragraph 2.5 of the Code
 - (b) in the case of works exceeding £1000 and requiring supervision the Manager shall be further remunerated at the rate of 12.5% for the first £25,000 net cost of the works and 10% thereafter

7. Value Added Tax shall be payable in addition to the remuneration mentioned in the preceding paragraph
8. The Manager, the Applicants and the Respondent shall be at liberty to apply to the Tribunal for further directions.

Dated: 19th May 2005

Chairman
MRS T I RABIN JP