

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL AT A HEARING ON APPLICATIONS UNDER  
SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985**

**Premises:** Flats at Queens Court and Bentley Court Nuneaton Warwickshire CV11 5NF

**Applicants:** Mr. M. Moyers and Others (tenants)

**Respondent:** MAC Developments & Construction Limited (landlord)

**Date of hearing:** 16 November 2006

**Appearances:**

The Applicants were represented by Mr. G. Harrison (Counsel).

The Respondent was represented by Mr. S. Chaudry (Company Secretary) and Miss. K. Knight (Administrator).

**Members of the tribunal:**

Mr. A. P. Bell MA LLB  
Mr. D. J. Satchwell FRICS  
Mr. M. H. Ryder

**Date of the tribunal's decision:**

**18 DEC 2006**

**Background**

1. This is an application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 (the 1985 Act) to determine whether a service charge is payable and, if so, the amount which is payable in respect of two blocks of flats at Queens Court and Bentley Court Nuneaton Warwickshire built in 1999 and containing sixteen flats (the Courts). There is also an application under section 20C of the 1985 Act.
2. There are eleven individual applicants (the Applicants) who are all tenants at the Courts and members of the BCQA Residents Association.

3. The service charges in dispute, as stated in the six Applicants' Application Forms to the Tribunal, relate to gardening, professional and administrative fees for the years 2000 to 2005 inclusive, the insurance for the years 2000, 2001 and 2003, the repairs for the years 2002 and 2004 and the electricity for the year 2000.

#### **Inspection**

3. The Tribunal inspected the car park, grounds and the common parts of the Courts prior to the hearing.

#### **Hearing**

4. The hearing was held at Nuneaton and Bedworth Museum Riversley Park Nuneaton CV11 5NF at 11 a.m. on 16 November 2006. The Applicants were represented by Mr. G. Harrison of Counsel. MAC Developments & Construction Limited (the Respondent) was represented by Mr. S. Chaudry and Miss. K. Knight.
5. The Tribunal declined to grant the Respondent an adjournment on the ground that they had only received the Applicants' bundle of evidence on the morning of the hearing. Both parties had failed to comply with the deadline given in the Directions of providing a bundle not later than five days prior to the hearing as required by the Directions of 19 June 2006. The bundle of the Applicants was received by the Residential Property Tribunal Office on 10 November 2006 and that of the Respondent on 13 November 2006, three days and two working days respectively prior to the hearing. However, the Tribunal made it very clear to the parties at the beginning of the hearing that they would not be considering at the hearing on 16 November 2006 the evidence provided in the bundle of either party relating to the extent and standard of the services with the consequence that the Respondent would not be prejudiced by not having received the bundle earlier. The Tribunal explained that the evidence of the parties in respect of these issues would only be addressed at a reconvened hearing if the Tribunal were satisfied that the statutory requirements and contractual obligations imposed on the Respondent had been complied with, which would have the consequence that it would be necessary for such evidence to be considered by the Tribunal.
6. The Tribunal then explained to the parties that their thorough examination of all the papers received by them from the parties raised very serious doubts as to whether the Respondent had complied in respect of its claims for service charges both with various statutory requirements and also its contractual obligations under several contractual provisions in the Applicants' leases, compliance with which the Tribunal considered was likely to amount to a condition precedent to the Applicants' liability to pay the service charges. The Tribunal pointed out that it was necessary to make a determination on these issues before considering whether the service charge costs were reasonably incurred and the services were of a reasonable standard (in accordance with Section 19 of the 1985 Act) since these issues would not arise for determination if the Tribunal found that the Applicants were not liable to pay the service charges.

7. The representatives of the Respondent were told that the Tribunal (as an expert tribunal) required as a preliminary issue for evidence to be produced to them that showed that at the date of the hearing the Respondent had complied with the following requirements, namely that:

(a) reasonable estimates had been provided to the Applicants to enable them to make equal half yearly installments in advance on 1 January and 1 July in every year in dispute of such sum as the Respondent reasonably estimated was the likely amount of the Applicants' contribution to the service charges for each year in dispute in accordance with paragraph (3) in of the Second Schedule to the leases.

(b) service charge demands (if any) served by the Respondent on the Applicants for each of the years in dispute contained the information required by Section 47 of the Landlord & Tenant Act 1987 (the 1987 Act) by containing the name and address of the landlord.

(c) service charge demands (if any) for each of the years in dispute did not include costs incurred more than 18 months before the relevant demands which would render such costs irrecoverable under of Section 20(B) of the 1985 Act

(d) proper books of account were kept in accordance with paragraph (2) of the Fifth Schedule up to 31<sup>st</sup> March in each of the years in dispute, audited by a qualified accountant and then certified by the accountant for each of the years in dispute in accordance with paragraph (3) of the Fifth Schedule.

(e) notices in writing stating the certified figure for the total amount of the services charge costs and the tenant's individual contribution for each of the years in dispute were served on the Applicants within two months of the date of the accounts referred to in (d) above in accordance with paragraph (4) of the Fifth Schedule.

(f) all the details in respect of the insurance policies for each of the the years in dispute were supplied to the Applicants in compliance with paragraph 2(4) of the Schedule to the 1985 Act following the requests made by Applicants' solicitors, Cocks Lloyd, in their letters of 28 October 2004 and 21 July 2005 to the Respondents' solicitors at that time, Lester Dixon Jeffcoate

(g) the service charge monies collected by the landlord for all the years in dispute were held in a single trust fund or two or more separate trust funds as required by section 42 of the 1987 Act.

The Tribunal reiterated that these seven issues were all questions of fact which needed to be answered as a preliminary issue, and that the answer to these questions would not be based on the evidence of either party contained in their respective bundles of evidence since this evidence did not provide an answer to the questions raised by the Tribunal.

8. The Respondent's representatives were asked as seven separate questions if they were able to produce evidence that the statutory and contractual requirements referred to in paragraph 7 above had been complied with. The Respondent admitted that the service charges paid to them by the Applicants under the Applicants' leases had not been paid into a separate account, but apart from

this they were not able to provide an answer to any of the other questions, except to say that they needed time to consider the issues raised by the Tribunal. The Respondent did admit that the Courts were the only leasehold development that it owned. Influenced by the fact that both parties had been late in providing their bundles, in accordance with the Tribunal's directions, and recognizing the need to give the Respondent a fair opportunity to show that it had complied with the requirements identified by the Tribunal, the Tribunal allowed the Respondent fourteen days (and subsequently a further period of seven days) from the date of the hearing to provide written evidence to the Tribunal that it had complied with both the statutory and contractual requirements referred to in paragraph 7 above, and then allowed the Applicants a further fourteen days to respond in writing to any evidence provided by the Respondent.

## Determination

10. No evidence of compliance with the statutory and contractual requirements referred in paragraph 7 above was produced by the Respondent to the Tribunal either at the hearing or following the hearing within the time limit of fourteen days referred in paragraph 9 above. In consequence the Tribunal determine that, while the failure of the Respondent to provide evidence that formal estimates were given within the prescribed time limits and containing the prescribed information would very probably have resulted in the Applicants not being liable to pay the service charges claimed by the Respondent, the two most serious failures on the part of the Respondent were firstly their failure to provide the insurance details requested by the Applicants and secondly their failure to have the service charge accounts prepared and audited by a qualified accountant, certified by him and the requisite notice served on the Applicants within two months of the date of the accounts.

11. The relevant contractual provisions are as follows:

The Fifth Schedule paragraphs (2), (3) and (4) of which reads as follows:

*"(2) The Lessor shall keep .....proper books of account of the Lessor's expenses and an account shall be taken on 31<sup>st</sup> March next and on the 31<sup>st</sup> March in every subsequent year during the continuance of the lease and at the determination of this lease of the amount of the Lessor's expenses incurred since the commencement of this lease or the date of the last preceding moment as the case may be*

*(3) The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a qualified accountant as defined in section 28 of the Landlord and Tenant Act 1985 who shall certify the total amount of the said expenses (including the audit fee of the said account) for the period to which the account relates and the Lessee's contribution*

*(4) The Lessor shall within two months of the date to which the account provided for in paragraph (2) of this Schedule is taken serve on the Lessee a notice in writing stating the total amount and Lessee's contribution certified in accordance with the last preceding paragraph."*

The Second Schedule paragraph 3(b) imposes an obligation on the Applicants which reads as follows:

*"Within 21 days after the service by the Lessor on the Lessee of a notice in writing stating the Lessee's contribution for the year to which the Notice relates (certified in accordance with the Fifth Schedule) to pay to the Lessor the amount by which the certified contribution exceeds the said payments on account".*

12. The Tribunal determine as a matter of construction of the Applicants' leases that compliance with the contractual requirements in the Fifth Schedule was a condition precedent to the liability of the Applicants to pay the service charges, which includes the insurance premiums by virtue of the definition of a "service charge" in section 18 of the 1985 Act. The Applicants cannot be liable to pay the service charges under paragraph 3(b) of the Second Schedule since they have never received a certified notice from the Respondent under paragraph (4) of the Fifth Schedule. Further this notice had to be preceded by accounts being prepared, audited and certified under paragraph (3) of that Schedule. These failures by the Respondent to comply with its contractual obligations under the Fifth Schedule amounted to a fundamental breach of its covenant in clause 7 of the leases to perform and observe the covenants owed to the Applicants under the Third Schedule. The Third Schedule in turn imposed an obligation on the Respondent to discharge the obligations and requirements contained in the Fourth Schedule, which in turn imposed an obligation on the Respondent to comply with the requirements of the Fifth Schedule. The Tribunal's determination on these points of construction is supported by Woodall's Landlord and Tenant at paragraph 7.180 which states that "where a lease provides for the amount payable to be certified by the landlord's surveyor or accountant the issue of a valid certificate will usually be a condition precedent to the tenant's liability to pay". The Tribunal find that as a matter of construction of the leases in this case that the failures to comply with the condition precedents referred to in the Fifth Schedule result in the Applicants not being liable to pay the service charges claimed by the Respondent. The representatives of the Respondent gave the Tribunal the distinct impression that they were not aware of, or certainly did not appreciate, the implications of not complying with the various statutory and contractual requirements referred to in paragraph 7 above, despite the majority of these being referred to in the Applicants' Statement of Case dated 2 August 2006. This factor has no bearing on the Tribunal's determination.
13. With regard to the application made by the Applicants under section 20C of the 1985 Act for an order that all costs incurred or to be incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them the Tribunal find that it is just and equitable to make this order in the circumstances of this case having regard to the failure of the Respondent to comply with its statutory and contractual requirements as determined by the Tribunal in paragraph 12 above. The Applicants' application is therefore allowed.

CHAIRMAN ..... *AP Bell* .....

A P Bell

Dated .....

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL AT A HEARING ON APPLICATIONS UNDER  
SECTIONS 24 AND 20C OF THE LANDLORD AND TENANT ACT 1985**

**Premises:** Flats at Queens Court and Bentley Court Nuneaton Warwickshire CV11 5NF

**Applicants:** Mr. M. Moyers and Others (tenants)

**Respondent:** MAC Developments & Construction Limited (landlord)

**Date of hearing:** 16 November 2006

**Appearances:**

The Applicants were represented by Mr. G. Harrison (Counsel).

The Respondent was represented by Mr. S. Chaudry (Company Secretary) and Miss. K. Knight (Administrator)

**Members of the tribunal:**

Mr. A. P. Bell MA LLB

Mr. D. J. Satchwell FRICS

Mr. M. H. Ryder

**Date of the tribunal's decision:**

**18 DEC 2006**

**Background**

1. This is an application to the Tribunal under Section 24 of the Landlord & Tenant Act 1985 (the 1985 Act) to appoint a manager in respect of two blocks of flats at Queens Court and Bentley Court Nuneaton Warwickshire built in 1999 and containing 16 flats in total (the Courts). There is also an application under section 20C of the 1985 Act.
2. There are eleven individual applicants (the Applicants) who are all tenants at the Courts and members of the BCQA Residents Association.
3. The Applicants grounds for seeking the appointment of a manager are fourfold

(a) that the Respondent either is in breach of any obligation owed by him to the tenants under their tenancies and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case;

(b) that unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case;

(c) that the Respondent has failed to comply with the relevant provisions 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 that it is just and convenient to make the order in all the circumstances of the case;

(d) that that other circumstances exist which make it just and convenient for the order to be made in so far as there has been a breakdown of trust between the parties arising from the lack of information regarding the service charges (including the insurance) which has prevented some of the tenants from selling their properties thereby causing them loss.

#### **Inspection**

4. The Tribunal inspected the car park, grounds and the common parts of the Courts prior to the hearing.

#### **Hearing**

5. The hearing was held at Nuneaton and Bedworth Museum Riversley Park Nuneaton CV11 5NF at 11 a.m. on 16 November 2006. The Applicants were represented by Mr. G. Harrison of Counsel. MAC Developments & Construction Limited (the Respondent) was represented by Mr. S. Chaudry and Miss. K. Knight.
6. The hearing for the appointment of a manager was preceded by the hearing of the Applicants' application for a determination under Section 27A of the 1985 Act to determine whether a service charge was payable and, if so, the amount which was payable.
7. The Applicants had submitted a draft order in accordance with the Directions of the Tribunal dated 19 June 2006. Mr. Harrison, on behalf of the Applicants, contended that the terms of the appointment of the manager were the concern of the Applicants as they would be paying their fees. The reasons for seeking the selection of Watson Property Management were stated in Applicants' Statement of Case dated 5 July 2006 and were as follows:
  - (a) They are a professional property management company whose only field of work is property management. They operate on a national scale and have qualified local representatives in the Midlands area.
  - (b) They are members of the Association of Residential Managing Agents.



- (c) They are members of the Royal Institution of Chartered Surveyors.
- (d) They have robust administration, accounting and reporting systems that can provide the Applicants with the confidence that monies handed over can be traced and accounted for at any time. They use computerized accounting systems.
- (e) They have the requisite experience and expertise to ensure that the property will be maintained to the level that will meet the requirements of the Applicants.

The Applicants submitted a copy of the management submission of Watson Property Management to the Tribunal.

8. The Respondent in their letter of 9 August 2006 to Mr. M.T. Moyers (one of the Applicants) confirmed that in principle it had no objection to the Applicants' proposal to appoint Watson Property Management as managers of the Courts, but made several comments with regard to the terms of the draft order which the Tribunal noted. Further by a letter to the Residential Property Tribunal Service dated 10 November 2006 the Respondent made a without prejudice offer to settle the dispute over management by granting the concurrent lease in favour of the management company (Q&B Management Company Limited) ahead of the sale of the remaining flat which had prevented the concurrent lease being granted earlier.
9. In response to a question from the Tribunal to Mr. Harrison whether the Applicants wished to proceed with its application to appoint a manager in consequence of this offer Mr. Harrison stated that the Applicants would prefer to form another company to take responsibility for future management rather than take over the management responsibilities from Q&B Management Company Limited since this would involve taking over that company's liabilities.
10. The Tribunal found that the draft order submitted by the Applicants in accordance with the Directions dated 19 June 2006 did not deal adequately with all the issues referred to in section 24(5) of the 1987 Act.

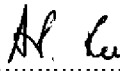
## **Determination**

11. Following an adjournment of the hearing the Tribunal gave an oral decision to make an order for the appointment of a manager subject to the Applicants submitting a revised draft order for the Tribunal's consideration and approval. Following the conclusion of the hearing the Tribunal decided that it might be helpful if they submitted a draft order (setting out the issues that the Tribunal considered the order should address) to both parties for their comments, and this was done. The Tribunal also made an oral decision that the Respondent could not recover as part of the service charge the costs incurred by it in respect of dealing with the Applicants' application for the appointment of a manager.
12. The Tribunal are satisfied that grounds (a), (b) (c) and (d) referred to in paragraph 3 above (which are contained in section 24 of the 1987 Act) have been established by the Applicants' evidence relating to both the appointment of a manager and the service charge dispute for the reasons given in the determination by the Tribunal in respect of the service charge dispute under the same

reference as this decision (namely BIR/44UC/LAM/2006/0001), since the Respondent is in breach of its obligations to the Applicant under the leases, unreasonable service charges have been or are likely to be made by the Respondent, the Respondent has failed to comply with the relevant code of management practice and it is imperative that a manager is appointed so that the Applicants are placed in a position where they can sell their flats which has not hitherto been the case. Under each of the four grounds which the Applicants have established to the satisfaction of the Tribunal the Tribunal find that it is just and convenient for the Tribunal to make the order for the appointment of a manager, as a result of both the direct and consequential loss to the Applicants through the longstanding mismanagement of the service charges at the Courts and the complete breakdown of communication between the parties which has been the outcome of this mismanagement over the period from the year 2000 up to the present time. The Tribunal accordingly confirms its oral decision to make an appointment of a manager, such appointment to be on the terms set out in the attached order having had regard to the comments of the Applicants and the Respondent and the provisions of section 24(5) of the 1987 Act.

13. With regard to the application by the application made by the Applicants under section 20C of the 1985 Act for an order that all costs incurred or to be incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them the Tribunal confirms its oral decision that it is just and equitable to make this order in the circumstances of this case for the reasons given in paragraph 12 above. The Applicants' application is therefore allowed.

CHAIRMAN

  
A P Bell

Dated

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**BIR/44UC/LAM/2006/0001**

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL**

**IN THE MATTER OF:**

**MR. M. MOYERS & OTHERS**

**Applicants**

**-and-**

**MAC DEVELOPMENT & CONSTRUCTION LIMITED**

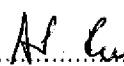
**Respondent**

**Order for the Appointment of a Manager in respect of flats at Queens Court and Bentley Court  
Nuneaton Warwickshire CV11 5NF**

1. Watson Property Management of 11 Bank Street, Wetherby, West Yorkshire LS22 6NQ ("the Manager") be appointed as managers of Bentley Court and Queen's Court Nuneaton, Warwickshire CV11 5NF ("the Property") with effect from 16 November 2006.
2. In performing the functions of its appointment the Manager must comply with all statutory requirements and the provisions of the Service Charge Residential Management Code.
3. The Manager shall be authorised to carry out the following functions and duties:
  - (a) to receive the service charges and any other monies payable by the tenants of the Property other than rent

- (b) to recover any arrears of the service charges and any other monies payable by the tenants of the Property arising on or after 16 November 2006
  - (c) to administer the service charge and reserve fund (if any) accounts for the Property
  - (d) to carry out the Respondent's obligations under the Fourth Schedule to the leases of each flat to provide insurance cover, effect repairs, and provide the services specified in the Fourth Schedule
  - (e) to receive, consider, grant or otherwise deal with all applications for consents of whatsoever nature arising as to dealings, alterations or any other matters requiring the consent of the Respondent as far as such consents relate to the tenants or their flats
4. The remuneration the Manager shall be governed by the standard terms of the management contract provided by Watson Property Management, a copy of the draft budget incorporating the Manager's remuneration having been produced to the Tribunal by the Applicants.
5. The Applicants, the Respondent and the Manager shall each have liberty to apply to the Leasehold Valuation Tribunal for further directions.
6. The Order shall remain in force until varied or revoked by a further order of the Tribunal.

DATED **18 DEC 2006**  
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SIGNED   
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A.P. Bell  
**CHAIRMAN**