UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – appointment of manager – whether refusal to postpone hearing unfair - whether appropriate tribunal may confer power for manager to disclaim lease of commercial premises — s. 24, Landlord and Tenant Act 1987 – appeal allowed in part

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF A
Leasehold Valuation Tribunal for the
London Rent Assessment Panel

BETWEEN

SENNADINE PROPERTIES LIMITED

Appellant

and

MR TOBY HEELIS

Respondent

Re: 94 New Kings Road,
London, SW6

Determination on written representations

The following cases are referred to in this decision:

Maunder Taylor v Blaquiere [2003] 1 EGLR 52

Cawsand Fort Management Co Limited v Stafford [2007] 1 EGLR 85

DECISION

Introduction

1. This is an appeal against an order of a Leasehold Valuation Tribunal for the London Rent Assessment Panel dated 12 November 2012 by which it appointed Mr Corin Jenkins as manager of premises at 94 New Kings Road, London SW6 for a term of three years. The building in respect of which Mr Jenkins was appointed comprises three occupational units, being a commercial retail unit on the ground and lower ground floors and two residential flats on the upper floors. At the time of the management order the retail unit was let on a lease for a term of 10 years from 15 September 2010 and each of the flats was let on a long lease for a term of 105 years from 25 September 2012. The appellant, Sennadine Properties Limited is the owner of the freehold interest in the building and immediate reversioner to each of the three leases. The respondent, Mr Heelis, is the lessee of one the two flats. The lessee of the other flat, Mr Jose Jouveia, was a party to the proceedings before the LVT but has played no part in this appeal.

2. By paragraph 12 of the management order Mr Jenkins was empowered to exercise all of the right of the landlord and to discharge all its responsibilities in respect of the leases of the two flats and the lease of the commercial premises. By paragraph 14(b)(iv) the manager was directed:

> "To disclaim the lease of the commercial unit, to market the commercial unit and let it on commercial terms. To demand and receive rent and service charges under any new lease."

3. The substance of the appellant's case is that the LVT exceeded its powers by making a management order in such wide terms. It also appeals against the LVT's refusal of a request that the hearing at which the management order was made should be postponed because the appellant had been unaware that it was due to take place.

4. On 29 July 2013 the Tribunal granted permission to appeal against the management order so far as it empowered the manager to disclaim the lease of the commercial unit and required it to re-let the unit, and in relation to the allegation of procedural irregularity. The parties subsequently agreed, in circumstances which I will explain, that the appeal should be determined on the basis of their written representations only.

The power to appoint a manager

5. Part II of the Landlord and Tenant Act 1987 makes provision for the appointment of managers by appropriate tribunals.

6. By s. 21(1) the tenant of a flat contained in any premises to which Part II of the 1987 Act applies may apply to the appropriate tribunal for an order under s. 24 appointing a manager to act in relation to those premises. Subject to exceptions described in subs. (3), s. 21(2) provides that Part II of the Act applies to premises consisting of the whole or part of the building if the building or part contains two or more flats.

7. By s. 21(7) references in Part II of the Act to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies; in other words, tenants who occupy premises for the purposes of a business are not entitled to make an application for an order for the appointment of a manager.

8. Before an application for an order for the appointment of a manager may be made in respect

of any premises, s. 22(1) of the Act requires that a preliminary notice be served by the tenant on the landlord. The notice must provide certain information about the tenant, it must inform the landlord of the intention to make an application and specify the grounds on which the tribunal will be asked to make an order and the matters on which the tenant proposes to rely to establish those grounds. If the matters complained of by the tenant are capable of being remedied the notice must also require the landlord within a reasonable period to take steps specified in the notice for the purpose of remedying them. By s. 22(3) the appropriate tribunal may dispense with the requirement to serve a preliminary notice in a case where it is satisfied that it would not be reasonably practicable to serve such a notice. No application may be made to the tribunal for the appointment of a manager until after any time specified in a preliminary notice for the taking of steps to remedy the matters complained of has expired without those steps having been taken (s. 23(1)).

9. The power to appoint a manager is conferred by s. 24(1) of the 1987 Act, which is in the following terms:

> "24. Appointment of manager by a tribunal
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> (1) The appropriate 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 –
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> (a) such functions in connection with the management of the premises, or
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> (b) such functions of a receiver,
>
> or both, as the tribunal thinks fit.
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> ...
>
> (3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
>
> (4) An order under this section may make provision with respect to –
>
> (a) such matters relating to the exercise by the manager 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) For 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 tenant of the premises in respect of which the order is made or by all or any of the those persons;

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

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

…"

The Facts

10. It is common ground that, as there are two flats at 94 Kings Road, the building as a whole comprises premises to which Part II of the 1987 Act applies, even though it also contains a commercial unit. The building is configured in such a way that the flats on the upper floors have their own communal entrance and do not share common parts with the commercial premises on the ground floor.

11. In its written representations to the LVT the appellant had explained that the commercial unit on the ground floor of the premises was let but that the tenant had run into financial problems in 2011 and was trying to assign its lease, and, in the meantime, was not paying rent.

12. The application under s. 24 of the 1987 Act was made by the respondent, the lessee of flat 2, on 9 May 2012. The application could have been confined to the upper floors on which the flats are situated, but the applicant chose to include the whole of the building. The LVT itself could have made a more restricted order, under its power contained in s. 24(3), but for reasons which it explained, it appointed Mr Jenkins as manager of the whole of the building.

13. In his application the respondent asserted that on 18 January 2012 he had given a preliminary notice to the appellant under s. 22 of the Act. This was disputed by the appellant and at a hearing for directions on 16 August 2012 the LVT stayed the application to allow the appellant the opportunity to address the grounds relied on in the preliminary notice (which by this time it had received). The respondent was given permission to apply to restore the application for hearing after 13 September 2012. The LVT directed that any application to restore should be accompanied by a witness statement by the respondent dealing with the service of the preliminary notice and directed that the application to restore and accompanying documents should be served on the appellant at its registered address in Jersey and at the address of its managing agent, Bingham & Elliot in London.

14. On a date which is not apparent from the LVT's decision but was presumably after 13 September 2012, the respondent applied to restore the proceedings for hearing. The LVT directed that the hearing of the application to appoint a manager would take place on 18 October 2012.

15. On 27 September 2012 the LVT received a letter from the appellant complaining that the respondent had failed to comply with the directions of 16 August 2012 in that no copy of a witness statement of the respondent concerning service of the preliminary notice had been provided and no copy of the application to restore had been served at either its registered office or the London premises of its managing agents. The appellant asked for the proceedings to be stayed pending the

respondent's compliance with the directions and that the hearing on 18 October be vacated.

16. The request to vacate the hearing does not have appeared to have been considered by the LVT until the morning of 18 October. At paragraphs 8 to 10 of its decision the LVT dismissed the application on the following grounds:

> "8. The application of the landlord to postpone the hearing was considered by the tribunal on the morning of the hearing and refused, since it found it was not reasonable further to postpone the hearing of this application in the circumstances. The tribunal, having heard evidence from Mr Heelis, is satisfied that he served the application to restore together with his witness statement on the respondent at both the Jersey and London addresses in the manner required by the tribunal's directions of 16 August 2012. He served no other documentation because he does not rely on anything other than that already served on the landlord in July (receipt of which has been acknowledged).
>
> 9. The respondent has had notice of this hearing date and in the absence of the decision to postpone by the tribunal could not have assumed that the hearing would not go ahead. The respondent's letter of 27 September 2012 requesting a postponement was not served on the applicants as required by the tribunal and advised in its letter to the respondent of 24 September 2012 (and is not marked to indicate that it was copied to them).
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> 10. The tribunal directed that the hearing would commence at 12 noon and the respondent was notified at 10.39am by email that the tribunal would consider any written submissions or questions concerning the proposed manager that the respondent wished to submit. At 12.31 by email the respondent denied receipt of the tribunal's email."

17. Having refused the application to adjourn the hearing the LVT proceeded to consider the evidence and argument presented by the applicants and made the management order.

The decision and the management order

18. The grounds on which the respondent sought the making of a management order were summarised in the preliminary notice, and in paragraph 18 of the LVT's decision. They were, first, that the appellant had failed to maintain the property, in spite of written notice of works being given to it by the respondent to which no response had ever been received; secondly, that there was no satisfactory evidence that the building was insured; thirdly, that service charges had been levied for cleaning and repairs when no such services had been provided, and that no service charge accounts or demands had been presented for at least 2 years; finally, the respondents complain generally that there had been no communication at all by the appellant with them.

19. The grounds of which the LVT was satisfied seem to have been more limited. The LVT heard evidence of the difficulties which the respondents had in communicating with the appellant concerning repairs and other matters. It was satisfied that the appellant had been in breach of its repairing obligations in the flat leases and that there were therefore grounds on which a manager could be appointed.

20. At paragraph 26 of its decision the LVT reflected that as this was a small building it should be relatively straightforward for the landlord to manage but, nonetheless, "in spite of the landlord's expressions of willingness to appoint a managing agent, given the tenants experiences to date and the landlord's lack of meaningful participation in these proceedings, the Tribunal is not

persuaded an alternative solution is likely to be successful at this time."

21. The LVT then considered the powers which should be conferred on the manager. At paragraph 27 of its decision it said this:

> "In order to carry out works of repair to the premises, the landlord would be required to contribute a proportion of the cost in respect of the commercial premises (though some repairing obligations may fall on the commercial leaseholder depending on the terms of that lease, which the tribunal has not seen). If such contribution is not forthcoming on demand, the job of the Manager will be impossible unless he is also empowered to exercise all of the landlord's powers in respect of the commercial lease, and to receive rents from the commercial tenant to apply to building maintenance and other services before accounting for the balance to the landlord.
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> 28. The tribunal determined that it would be appropriate to grant those powers to the Manager after six months from the commencement of the Order appointing him. This period of time would serve two functions – firstly, it would allow the Manager a period of time to assess the condition of the building, draw up a schedule of works and demand payment from the landlord and residential leaseholders. Since it is assumed that the Manager would not necessarily be in sufficient funds at that time to adopt full management duties in respect of the premises, the Order confers powers upon the Manager for that period of six months, not duties. Secondly, it would allow the landlord ample opportunity to apply to the tribunal to vary the Order, if it is able to demonstrate it is willing and capable of managing the building properly and ensuring that the appropriate contribution to the expenses of maintaining the building are made available for that purpose."

22. In accordance with this explanation, the Order appointing Mr Jenkins as Manager for a period of 3 years was divided into three parts. Part 1 conferred immediate powers which were to continue from the date of the order for six months, until 13 May 2013. Part 2 conferred additional powers which were then to apply until the expiration of the order on 12 November 2015. Part 3 conferred ancillary powers and dealt with the manager's remuneration and the duty of cooperation.

23. Part 1 of the order conferred specific powers in relation to the commercial unit: a right of access for the purposes of inspection and marketing; a power to change the locks; a power to market the unit for letting; and a power to request a copy of the lease of the unit from any person in possession of it.

24. The powers in Part 2 of the order gave the manager all of the rights, responsibilities, covenants and duties of the landlord in respect of the lease of the commercial unit, including the power to collect and receive any monies payable by any of the lessees of the property (including lessees of the commercial unit). The very wide powers of management intended to be conferred were spelled out in detail in paragraph 14(b) in which included the following:

> "(iv) … to disclaim the lease of the commercial unit, to market the commercial unit and let it on commercial terms. To demand and receive rent and service charges under any new lease.
>
> (v) … to receive, consider, grant or otherwise deal with all applications for consent of whatever nature arising as to dealings, alterations or any other matters requiring the consent of the landlord."

The suspension of the order

25. Before considering the appellant's grounds of appeal it is relevant to note that on 20 May 2013 the appellant applied to the LVT for the suspension of the management order or, in the alternative, for its variation including by the substitution of a different manager. That application was the subject of a hearing on 26 July 2013 and a further decision of the LVT (differently constituted) on 5 August 2013. Although by the date of the LVT's second decision this Tribunal had granted permission to appeal against the first decision, the LVT was not yet aware of that fact. The application to vary the order was made by the appellant without prejudice to its intended appeal.

26. In its second decision the LVT suspended the management order on condition that the appellant appoint its own preferred manager, and that a survey of the premises be carried out (funded by the appellant). By that stage the lessee of the commercial premises had vacated and they were being offered for letting on a new lease by the appellant. The LVT confirmed in its second decision that it intended that the appellant should be free to dispose of the commercial premises as it wished without interference by the tribunal appointed manager. In the order made to give effect to the second decision the LVT provided that on satisfaction of the conditions it had laid down, the original management order would remain suspended until further order or until agreement by the parties. The LVT directed that there should be a further hearing before it after 1 August 2014 to determine whether the management order should be suspended for a further period, discharged, implemented or otherwise varied.

27. It was confirmed to the Tribunal at an early stage of the appeal that the conditions for the continuation of the suspension of the management order had been satisfied and that the appellant's preferred manager, Chelsea Property Management Limited, had assumed responsibility for the management of the premises from Mr Jenkins. The Tribunal initially enquired whether in those circumstances there was any purpose in the appeal continuing but the appellant is concerned that the original management order remains in existence and creates practical difficulties for it in dealing with its interest in the premises.

28. The Tribunal has not been informed whether any further order has been made by the LVT since 1 August 2014 as contemplated in the variation order, and I assume that none has.

Issue 1: procedural irregularity

29. In its statement of case the appellant challenges, on grounds of procedural irregularity, the LVT's decision not to postpone the hearing and to make a management order in the appellant's absence.

30. The appellant explains that the first point which it had intended to take in opposition to the application for the appointment of a manager was that no preliminary notice under s. 22 had been served on it. That issue remained live, notwithstanding the receipt of a copy of the preliminary notice after the application had been made to the LVT, since the service of a preliminary notice (or a decision dispensing with service) is a necessary pre-condition to the making of an application under s. 24, by reason of s. 23(1). The LVT, in its directions given on 16 August 2012 had made the restoration of the application for hearing conditional on the respondent providing a witness statement explaining the circumstances in which he claimed to have served a preliminary notice. The appellant contends that it did not receive the application to restore or the witness statement which was supposed to have accompanied it. It did receive notice from the LVT on 24 September

that the hearing of the application would take place on 18 October. It then applied for the stay to be reinstated and for the impending hearing to be postponed on the grounds of the respondent's alleged failure to satisfy the conditions imposed by the order of 16 August.

31. The appellant suggests in its statement of case that on the morning of 18 October 2012 an unnamed representative spoke to a member of staff at the LVT "who implied that the appellant's letter of 27 September 2012 had never been received." There is no suggestion in the LVT's decision that the application for reimposition of the stay and postponement of the hearing had not been received, although the LVT was critical of the appellant's failure to send a copy of that letter to the respondents.

32. The appellant's statement of case continues as follows:

> "23. The tribunal then proceeded to determine the matters raised in the appellant's letter of 27 September 2012, in the absence of the appellant but in the presence of the respondent, and after having heard evidence from the respondent but none from the appellants.
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> 24. The tribunal's determination was that it would proceed to hear this substantive application at 12pm; and it appears to have reached this decision on the basis that it believed the appellant was notified of the decision by an email sent at 10.39am that day (see paragraph 10 of the substantive determination). The implication is that the tribunal considered that an hour or so was sufficient time for the appellant to appear at the tribunal and make representations on the substantive application.
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> 25. In fact, however the email from the tribunal, notifying the appellant of its decision to proceed with the hearing, was not sent by the tribunal until 12.39pm that day, not 10.39am. It was not sent, therefore, until after the hearing had already begun; and the tribunal was aware (see, again, paragraph 10) that, at 12.31pm that day, the appellant had sent an email to the tribunal complaining that it had still not received any email from the tribunal notifying it of the outcome of the application in its letter of 27 September 2012.
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> 26. The practical effect of this was that the hearing proceeded in the absence of the appellant; in circumstances where the decision to proceed with the hearing had not been communicated to the appellant until after the hearing had begun, and the tribunal mistakenly thinking it had been communicated an hour or so earlier. Moreover, the decision to proceed was based on the tribunal's rejection of the truth of the matters stated in the appellant's letter of 27 September 2012, that decision in turn being based on the tribunal's rejection of the appellant's case, after hearing evidence from the respondent but none from the appellant.
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> 27. These were substantial procedural irregularities, the effect of which was to deprive the appellant of the ability to oppose both the application to restore the proceedings and the substantive application.
>
> 28. The procedural decision should therefore be set aside, with the result that the management order made on the substantive determination must also necessarily be set aside."

33. I reject the appellant's complaint that the hearing on 18 October was procedurally irregular or unfair, substantially for the reason given by the LVT in paragraph 9 of its decision.

34. The appellant was informed in good time that the hearing of the respondent's application for the appointment of a manager would take place on 18 October. The opportunity to make its case was available to it at that hearing. Rather than attend the hearing and submit to the LVT that the

stay imposed by the order of 16 August remained in force, or that the application was premature, the appellant elected to absent itself. It made that election in the knowledge that its application for a postponement had not yet been acceded to, and therefore necessarily that it might be refused. The appellant having raised the issue of compliance with the order of 16 September in its application to postpone, it was to be expected that the LVT would require the respondent to establish that he had served the necessary documents. By absenting itself from the hearing the appellant took the risk that the respondent would be able to satisfy the LVT of those matters, as indeed he was. In those circumstances there are no grounds on which the appellant can complain that what it said about service of the application and the witness statement was not accepted by the LVT.

35. Nor do I consider there is any justification in the implied criticism in paragraph 24 of the appellant's statement of case that the LVT considered that "an hour or so was sufficient time for the appellant to appear at the tribunal and make representations on the substantive application." The appellant was given notice of the application in accordance with the normal rules of procedure, and it was clearly on that basis that the LVT considered that the appellant had sufficient time to appear and make representations.

36. Assuming that what is said in paragraph 25 of the appellant's statement of case about the time of transmission of e-mails is correct, I nonetheless consider that it provides no legitimate ground of complaint by the appellant. The fact that the LVT delayed hearing the substantive application until 12 noon was an indulgence to the appellant which it had no right to expect. Whether the LVT appreciated that the appellant had not in practice had any notice of the dismissal of its application to postpone the hearing or not, the only matter of significance is that the appellant had been given notice of the hearing itself. Where a party has applied in writing for the postponement of a hearing and, not having been informed of the outcome of its application, has decided not to attend the hearing, fairness does not oblige the tribunal, if it dismisses the application, nonetheless to allow a further opportunity for the absent party to attend before continuing with the hearing. Fairness required only that the appellant be given notice of the hearing itself.

37. As the appellant observes in paragraph 26 of its statement of case, the practical effect of the LVT's dismissal of its application to postpone the hearing was that it proceeded in the absence of the appellant. That was the consequence of the appellant's own choice not to be present or to be represented. No additional disadvantage was inflicted on the appellant by the hearing taking place in its absence than it had already knowingly exposed itself to by its decision not to attend.

38. I therefore reject the suggestion that the decision to proceed in the appellant's absence, whether or not the appellant was aware of that decision, was in any way procedurally irregular. I accordingly dismiss the first ground of appeal.

Issue 2 - The scope of the management order

39. In its statement of case for the appeal the appellant accepts that the premises were within the scope of Part II of the 1987 Act and that, in principle, the LVT had had jurisdiction under s. 24(1) to appoint a manager. The appellant also accepts that the power to appoint a manager goes beyond simply directing that the manager step into the shoes of the landlord. As Aldous LJ explained in *Maunder Taylor v Blaquiere* [2003] 1 EGLR 52:

> "… the purpose of Part II of the 1987 Act is to provide a scheme for the appointment of a manager who will carry out the functions required by the court. That manager carries out

> those functions in his own right as a court-appointed official. He is not appointed as a manager of the landlord, or even of the landlord's obligations under the lease."

(Since that decision the power of appointment under Part II of the 1987 Act has been transferred from the court to the appropriate tribunal.)

40. The appellant also accepts that an order under s. 24 might appropriately provide for the manager to be entitled to recover an appropriate share of the costs incurred in managing the premises either from the landlord, or from the occupier of a commercial unit which was to benefit from the services performed by the manager.

41. The appellant contends that the management order made by the LVT was in terms which went unlawfully beyond the proper scope of an order under s. 24. The proper scope of such an order ought, the appellant submits, to be constrained by the purpose for which the power to make an order exists. The appellant relies on the description of that purpose by Mummery LJ in *Cawsand Fort Management Co Limited v Stafford* [2007] 1 EGLR 85 at [31]:

> "The practical purpose of Part II is to protect the interests of the lessees of premises which form part of the building, by enabling them to secure, through the flexible discretionary machinery of the appointment of a manager, the carrying out of the management functions which they are entitled to enjoy "in relation to" the premises of which their flats are part."

With those constraints in mind, the appellant submits that a tribunal making a management order ought first to identify the management functions which the tenants are entitled to enjoy under their leases in relation to the premises and then to fashion an order which provides the machinery reasonably necessary for the manager to deliver those management functions to the tenants. Section 24 does not confer a general power to expropriate the building from the landlord or to make an order which goes beyond what is reasonably necessary to secure for the tenants performance of the management functions there are entitled to under their leases. The appellant contends that an order which goes beyond what is reasonably required for that purpose is unlawful.

42. The relevant management functions which the respondents were entitled to expect, and which might legitimately been the subject of a management order, were, the appellant submitted, the repair, maintenance and insurance of the building, the recovery of the costs of those functions from the tenants and from the occupiers of the commercial unit (to the extent that they benefited from the performance of those functions).

43. The appellant makes four criticisms of the original management order.

44. First, the LVT could not confer on the manager a power to "disclaim" a commercial lease vested in a third party. Disclaimer is an exceptional statutory process resulting in the extinguishment of a lease and the power to disclaim is exercisable only in prescribed circumstances.

45. Secondly, the power conferred on the manager to market the commercial unit, to let it, to receive the rent under any such letting and to exercise all of the functions of the landlord in relation to the commercial unit were not reasonably necessary to secure for the residential tenants the management functions which they were entitled to receive under their leases.

46. Thirdly, the form of order made by the LVT was disproportionate to the harm which it sought to remedy, identified by the tenants as being the failure of the appellant to keep the building in a satisfactory state of repair.

47. Fourthly, the appellant alleges that the order contravened its rights under the Human Rights Act 1998 and specifically under Article 1 of the first protocol which entitles it to the peaceful enjoyment of its possessions and prohibits deprivation of those possessions except in the public interest. The effect of the LVT's original order was, the appellant suggests, to expropriate its possessions, namely, the commercial unit and its ability to let it and to exercise the rights of a landlord over it. The LVT had been obliged by s. 3 of the Human Rights Act to give effect to its power under s. 24 of the 1987 Act in such a way as to avoid expropriation of the appellant's property.

48. In his statement of case the respondent emphasises the practical difficulties he and his fellow lessee Mr Jouveia had in communicating with the appellant and its agent in relation to the maintenance and repairs of the building (which eventually Mr Heelis took into his own hands) and in relation to the attempt by Mr Jouveia to sell his leasehold interest. The respondent suggests that they had had no alternative but to seek the appointment of a manager in those circumstances. The respondent considers that in light of the LVT's decision to suspend the management order, the appeal serves no purpose.

49. I begin by considering the compatibility of the management order with the LVT's powers under s. 24 of the 1987 Act. The appellant is clearly correct in its primary complaint that by directing the manager to "disclaim" the lease of the commercial unit on the ground floor of the premises, the LVT exceeded its jurisdiction. As the appellant points out, a liquidator of a company in the course of a winding up has power to disclaim leases under the Insolvency Act 1986. The Crown also has power to disclaim after the dissolution of a limited company where a lease has vested in the Crown as *bona vacantia*. Disclaimer is not a procedure otherwise available and the LVT had no power to confer the right to disclaim a lease on the manager.

50. It is not clear to me what process the LVT had in mind when it used the language of disclaimer. It may have intended the manager to take steps to determine the lease of the commercial premises on the grounds that the lessee had stopped paying rent. The LVT obviously thought that it was necessary for an income to be generated from the commercial premises to enable the manager to fund repairs, but if it intended the manager to forfeit the lease with a view to re-letting it did not express that intention with precision.

51. I also accept the appellant's general submission that the scope of an order under s. 24 should be proportionate to the tasks which the tenants are entitled under their leases to look to their landlord to perform. I do not rule out that it may be appropriate in some cases for an order to confer power on a manager to collect rents (as opposed simply to service charges) payable by lessees of commercial premises included within the scope of a management order, but the circumstances in which any order directly intervening in the relationship between a landlord and a third party might be appropriate are likely to be exceptional.

52. I am satisfied that the LVT exceeded its authority in this case by granting greater powers to the manager over the commercial premises than were either meaningful or justified. There was little evidence of the extent of the remedial work required to the building, and no attempt had yet been made by the manager to collect an appropriate contribution from the landlord. For the manager to be empowered to let the commercial unit seems to me to have been disproportionate in

those circumstances. It is not possible to be prescriptive in this area but generally it would be preferable before such an order is made for the manager to be granted power to collect an appropriate contribution towards the cost of providing services from the landlord. The extent of that contribution is likely to vary depending on the extent to which the premises are let on terms requiring the payment of a service charge. If part of the premises is vacant or is likely to become vacant it seems to me preferable, initially at least, for the manager to look to the landlord for a contribution in respect of that part, rather than to confer on the manager the responsibility of letting vacant premises in order to secure a further service charge.

53. In this case, the LVT pulled back from the very extensive powers conferred on the original manager when it suspended the management order. Despite that suspension the appellant is entitled, in my judgment, to the removal from the original order of those parts of it which exceed the LVT's jurisdiction or were otherwise disproportionate. The simplest and most satisfactory approach to achieving that objective seems to me to be to confine the premises to which the management order relates to the structure and upper floors of the building and the common parts leading to the upper floors, excluding from the premises the ground floor commercial unit altogether, and to require that, after taking into account the contribution of the lessees, the appellant be responsible for contributing the balance of the cost incurred, or expected to be incurred, by the manager in the provision of all services.

54. It does not seem to me in these circumstances to be necessary to consider the appellant's additional argument that the management order inappropriately deprived it of its possessions contrary to Article 1 of the first protocol to the Convention.

55. I therefore allow the appeal and will vary the management order in the manner indicated. The order currently remains suspended on the terms of the variation order and will in any event expire on 12 November 2015 unless it is extended by the appropriate tribunal in the meantime. It may be that, in those circumstances, the drafting exercise required to vary the original order to give effect to this decision is not a matter of urgency. I therefore give each party permission to submit an amended draft of the management order to reflect the substance of this decision within 28 days. If neither party provides a draft within 28 days the terms of the order will be remitted to the First-tier Tribunal (Property Chamber) to be further considered if any application is made under paragraph 2 of the order of 5 August 2013 to suspend, discharge, implement or otherwise vary the order of 12 November 2012.

56. There is one further point which I ought to mention. A new manager, selected by the appellant, is now responsible for the management of the property. The leases of the flats include a covenant by the lessees that they will not enter into certain transactions, including an assignment of the lease without the landlord's prior written consent, such consent not to be unreasonably withheld. In his submissions on the appeal the respondent invited the Tribunal to confirm or direct that that manager, CPML, has the power to approve the assignment or other dealing with the leases of the two flats if a reasonable request is made for consent.

57. As to that question, I do not think it is within the power of CPML to approve the assignment of a lease without the authority of the appellant. CPML is not a manager appointed by the tribunal under the 1987 Act. It was appointed by the appellant and therefore takes its instructions from the appellant and is not amenable to direction by the tribunal.

Martin Rodger QC,
Deputy President

23 February 2015