



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/180G/LAM/2014/0013

Property : The Pottery, Warfleet Creek Road,
Dartmouth, Devon TQ6 9GH

Applicant : Jeremy Peter Chalmers

Representative :

Respondents : (1)
Roger England
Paul Kirk
Adrian Leopard
Jason Elder
Veronica Griffiths
Archie Mesgian
Mark Rowberry
David Arrow

(2)
Angel Property (Dartmouth) (Limited)
(dissolved)

Representative :

Type of Application : Appointment of manager

Tribunal Member(s) : Judge D. Agnew

Date and venue of determination : 16th December 2014
The Tribunal offices, Chichester

Date of Decision : 17th December 2014

DECISION

Background

1. The Applicant applied to the Tribunal under section 24 of the Landlord and Tenant Act 1987 ("the Act") for the appointment of a manager for The Pottery, Warfleet Creek Road, Dartmouth, Devon ("the Property") on 29th September 2014. The Applicant is a long leaseholder at the Property. The Respondents are also long leaseholders of flats at the Property save for Angel Property (Dartmouth) Limited. That company was the freeholder and it granted the long leases but it was subsequently dissolved and its assets escheated to the Crown.
2. In such cases, as the Crown's legal representatives in such matters, Burges Salmon, solicitors, have explained in correspondence, the Crown cannot be regarded as the owner of the freehold of the property in the usual sense and it cannot become involved in the management of property. The Crown cannot be, in effect, the guarantor of last resort of companies and individuals who have failed financially. Consequently, the Property is currently without any entity to perform the functions of freeholder or manager. Hence the application to the Tribunal to appoint such a manager. The Applicant's nominee for manager was Mr Jonathan Edwards whose position is that of National Director of Countrywide Estate Management who were the Landlord's managing agents and who continued to act as manager for a period after the demise of the landlord but who, very sensibly, advised the lessees that they could not continue to do so for any length of time thereafter.
3. Directions were issued by the Tribunal on 16th October 2014. These provided, inter alia, for any lessee who opposed the appointment of Mr Edwards as Tribunal-appointed manager to file and serve a statement of case setting out their reasons for their opposition. None did so. Indeed, five out of the eight lessee Respondents returned forms to the Tribunal supporting the application, which, together with the Applicant, meant that a majority of the lessees had positively consented to the application.
4. The Directions also contained an order dispensing with the need for a section 22 notice to be served on the basis that it was impractical to do so in this particular case where the freehold had escheated to the Crown.
5. Further, the Directions required the nominee manager to file a statement setting out his experience, details of his insurance cover and other matters with regard to his suitability to be appointed as manager by the Tribunal. This was duly done.
6. Finally, the Directions provided that the matter would be determined on the basis of written submissions rather than an oral hearing unless any party objected within 28 days. There was no objection to this procedure being adopted.

The Law

7. By section 24(1) of the Act a [First-tier Tribunal (Property Chamber)(Residential Property)] 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 –
 - (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver or both, as the tribunal thinks fit”

8. By section 24(2) of the Act it is provided that:-

“A...tribunal may only make an order under this section in the following circumstances, namely –

 - [(a) to (ac) not relevant to this application]
 - (b) where the tribunal is satisfied other circumstances exist which make it just and convenient for the order to be made.”

The Applicant’s case

9. The Applicant’s case for the appointment of a manager was set out in a statement in which he set out the history of the development. The Pottery itself is a Grade 11 listed building forming part of a small development of leasehold apartments and eight freehold cottages. The Pottery itself is a four storey building converted into nine apartments spread over three floors with three “commercial” units on the top floor which are in the process of being converted into apartments. The landlord became insolvent and in June 2014 the Treasury Solicitor disclaimed the Property which escheated to the Crown as Bona Vacantia. At that stage, Countrywide estate management, who had been the landlord’s managing agents advised the lessees that they could not carry on managing the building and suggested that the lessees apply to the Tribunal for the appointment of a manager.

The proposed manager for appointment by the Tribunal

10. In addition to supplying the information requested by the Tribunal in its Directions, the nominee manager, Mr Edwards, answered some supplementary questions of him raised by the Tribunal. In particular, the Tribunal had a query as to his proposed fee which, on the face of it seemed high, but was explained as including the three top floor units currently being converted.

The Tribunal’s decision

11. The Property evidently is currently without anyone responsible for managing the building, placing buildings insurance or giving consents

for assignments and other dealings with the property due to the fact that the freehold has escheated to the Crown. The Tribunal therefore finds that "other circumstances exist making it just and convenient for an order to be made" under section 24(2)(b) of the Act. The Tribunal therefore makes the order for the appointment of a manager. It is also satisfied that Mr Jonathon Edwards of Countrywide Estate Management is a suitable person to be appointed as manager and so appoints him on the terms set out in the documentation issued by the Tribunal and appended to this decision.

12. The Applicant requested as part of his application that clauses LR3 and LR13 of the leases be amended to replace the name of the lessor and the person to give a certificate to the Land Registry with the nominee manager. It is not possible for the Tribunal to do this under this application. Under the appointment of manager the appointed manager does not replace the landlord under the lease but is given separate and distinct powers by the Tribunal. His authority derives from the Tribunal and not from the lease. However, as part of the management order the tribunal has provided for notifications of assignments and other dispositions to be received by the manager and have authorised him to give the appropriate certificate to the Land Registry. The Tribunal considers that this should be sufficient to enable the Land Registry to register any assignments or other dispositions.

Dated the 17th December 2014

Judge D. Agnew

Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –
 - (a) identify the decision of the Tribunal to which it relates
 - (b) state the grounds of appeal; and
 - (c) state the result the party making the application is seeking.
4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –
 - (a) The application must include a request for an extension of time and the reason why the application was not received in time; and
 - (b) unless the Tribunal extends time for the application the Tribunal must not admit the application.

**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

MANAGEMENT ORDER DATED 17th December 2014

Re: The Pottery, Warfleet Creek Road, Dartmouth, Devon TQ6 9GH

Case Number CHI/180G/LAM/2014/0013

BETWEEN:

Jeremy Peter Chalmers

Applicant

and

Roger England

Paul Kirk

Adrian Leopard

Jason Elder

Veronica Griffiths

Archie Mesgian

Mark Rowberry

David Arrow (1)

Angel Property (Dartmouth) (Limited) (dissolved) (2)

Respondents

1. In this order:
 - A. "The property" includes all those parts of the property known as The Pottery, Warfleet Creek Road, Dartmouth, ("the Property") and, for the avoidance of doubt including the parking area, the fourth floor of the Pottery apartment block and the parts of the Estate as defined in the leases of the apartments used in common by the said lessees.
 - B. "The landlord" means Angel Property (Dartmouth) Limited; alternatively, the person in whom the freehold title is lawfully vested.
 - C. "The manager" means Mr Jonathan Edwards of Countrywide Estate Management of 4, Northleigh House, Thorverton Road, Matford Park, Exeter EX2 8HF.
2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager is hereby appointed to carry of the functions of a receiver and manager of the Property.
3. The order shall continue for a period of 3 years from the date of this order.
4. That the manager shall manage the property in accordance with:
 - (a) The Directions attached to this order.
 - (b) The Schedule of Functions and Services attached to this order.

- (c) The respective obligations of the landlord in the leases by which the flats at the property are demised and in particular (but without limitation) with regard to repair, maintenance, decoration, provision of services to and insurance of the property and the receipt of notifications with regard to assignments or dispositions under the Fifth Schedule Part 1 paragraph 20 of the leases of the apartments and the provision of certificates to the Land Registry that such notifications have been given.
- (d) The duties of a manager set out in the Service Charge Residential Management Code (2009) ("The Code") or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

5. No order as to costs.

DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the landlord or the Tribunal.

2. The rights and liabilities arising under any contracts of insurance, shall upon 14 days from the date of this order become rights and liabilities of the manager.

3. That the manager shall apply any amounts received by him (other than those representing his fees) in the performance of the landlord's covenants contained in the said leases but for the complete avoidance of doubt, nothing herein contained shall require the manager to demand ground rent.

4. That the manager shall be appointed and shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the leases of the property) in accordance with the Schedule of Functions and Services attached.

(a) That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following:

in the event that there are insufficient sums held by him to pay the manager's remuneration or to otherwise comply with his obligations herein contained.

5. For the complete avoidance of doubt nothing herein shall require the manager to take any steps unless he is first adequately in funds to do so (after payment of his fees, disbursements and any VAT properly owing to him) and nothing shall require the manager to apply his own funds towards so complying.
6. The manager shall apply to the Land Registry to register this order against the freehold title to the property in accordance with section 24(8) of the Landlord and Tenant Act 1987 and all costs and expenses incurred by him in respect thereof shall be charged to the service charge account of the Property.

SCHEDULE OF FUNCTIONS & SERVICES

A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees as per the percentage share under the terms of their respective leases.
- 1.2 Demand and collect service charges, insurance premiums and any other payments due from the lessees (with the exception of ground rent). Demand and collect when necessary a reserve fund separately to the sums payable by the leases and to administer that reserve fund. Instruct solicitors to recover unpaid monies in either case.
- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.

B. ACCOUNTS

- 2.1 Prepare and submit an annual statement of account detailing all monies received and expended by the manager and to instruct a suitably qualified accountant for the purpose.
- 2.2 Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
- 2.3 All monies collected by the manager will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the manager receiving and being entitled to all interest on the monies whilst they are in his client account.

C. MAINTENANCE

- 3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the building. Instruct suitably qualified experts and other professionals for that purpose including, but without limitation, solicitors, barristers, surveyors and architects.
- 3.2 The consideration of works to be carried out to the property in the interest of good estate management.

3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts.

D. FEES

4.1 Fees recoverable by the manager for the above mentioned management services will be in accordance with his letter to the Tribunal dated 30th October 2014 as further explained in his letter to the Tribunal of 15th December 2014 or such other fee as may be agreed from time to time between the manager and the lessees. The services included within that include the services set out in the said letter of 15th December 2014.

4.2 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed or, in default of agreement, authorised on application to the Tribunal

E. RIGHT TO PROSECUTE CLAIMS

5.1 The manager shall be entitled to (but may not be compelled to) bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.

5.2 Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge attributable to any

of the flats in the building and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the First-Tier Tribunal (Property Chamber) under s.27A Landlord & Tenant Act 1985 or s.168(4) Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

- 5.3 The manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT payable to any solicitors, accountant, counsel or expert on a full indemnity basis.

F. COMPLAINTS PROCEDURE

- 6.1 The manager shall operate a complaints procedure in accordance with the requirements of ARMA. Details of the procedure are available from the institution on request.

G. INSURANCE

- 7.1 The manager shall be entitled (but may not be compelled) to arrange for the current insurance policy to be continued.
- 7.2 Should the manager wish to effect a new policy, he shall be entitled to do so.

7.3 In either case the manager shall be entitled to conduct an insurance valuation with the costs of the same being recoverable as if they were a service charge item within the leases and/or under leases.

H. COMPLIANCE WITH STATUTE

8.1 The manager shall comply with all /any statutory requests and with any notice or order served in accordance with or pursuant thereto.