



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

Case reference : **LON/00AG/LVM/2019/0017**

Property : **Frognal Estate Finchley Road
Hampstead London NW3 5HG**

Applicant : **Michael Anson and Marie Garside**

Representative : **Edward Denehan of Counsel**

Respondent : **RYFC Limited (1) Frognal Ground
Rents Limited (2) The Lessees of
the Frognal Estate (3) and Martin
Kingsley (4)**

Representative : **Gary Cowen of Counsel for (1) and
Agnes Kory a lessee in person (of 3)**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Judge Professor Robert Abbey
Luis Jarero FRICS (Chartered
Surveyor)
Alan Ring (Lay Member)**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date of hearing and
decision** : **27 November 2019
11 December 2019**

DECISION

1. The applicant made an application dated 26 April 2019 (“the Application”) for an order under Part II of the Landlord and Tenant Act 1987 continuing the appointment of the fourth respondent, Mr Martin Kingsley (“the manager”), as manager in relation to the premises known as the Frognal Estate and situate on the Finchley Road, London NW3 5HG (“the Estate”).
2. The applicants are the owners of long leases of flats on the Estate. Michael Anson, the first applicant, is the owner of flat 36 Frognal Court

which he holds under a lease dated 21 July 1975. The second applicant, is the owner of flat 15 Frogmal Court, which she holds under a lease dated 27 October 1975. The first respondent (RFYC) is the applicants' immediate lessor, and the immediate lessor of all the other tenants of flats on the Estate. The first respondent's title is registered under title number NGL856825. Mr Norman Freed is the sole director of RFYC.

3. By a lease dated 21 May 2015, RFYC granted the second respondent, Frogmal Ground Rents Limited ("Ground Rents), a lease of the following parts of the Estate: (1) the first, second and third floors, 1 to 12 Frogmal Court, (2) the ground, first, second and third floors 14-45 Frogmal Court, (3) the first, second and third floors, 1 to 6 Warwick House, (4) the first and second floors, 1 to 4 Midland Court. This lease created a term of 120 years (less 5 days) from 24.6.69. By the lease dated 21 May 2015, all the flats on the Estate were demised by RFYC to Ground Rents. RFYC remains the tenant in possession of the grounds of the Estate including the area referred to as the Car Park.
4. The third Respondents are the owners of leases of residential flats on the Estate. The fourth Respondent is the Manager, who was made a respondent pursuant to the Directions dated 1 August 2019. These Directions also required any of the lessees who wished to oppose the re-appointment to do so in writing to the Tribunal. Only one did being Agnes Kory who was heard at the time of the hearing. The Tribunal decided that nothing in Ms Kory's statement of case went to the core of the re-appointment but rather dealt with some of the minutiae of the process of management and might therefore be the subject of matters elsewhere.
5. RFYC did have concerns but at the outset indicated that they did not object to the continuation of the management order and for the most part agreed with the terms of the draft order. However RFYC objected to the extension of powers set out in paragraph 34 of the grounds in support of the application. In that regard, at the start of the hearing the applicants confirmed that they would not pursue the ground in paragraph 34 and in the light of this concession the concern fell away.
6. However, Counsel for the first respondent then indicated that his client had raised further issues about the terms of the draft management order and specifically paragraphs 3.3 and 3.6 to 3.9. Counsel for the applicant objected to this late set of issues as they had not been pleaded or raised before 4pm on the day before the hearing. Nevertheless Counsel for the applicant was able to provide a robust defence of these provisions. Consequently the Tribunal decided to allow in consideration of them as the Tribunal could not see any prejudice to any party by doing so.
7. The Tribunal carefully noted the objections raised but on close consideration of the provisions in dispute decided that they were all reasonable, proportionate and appropriate powers that should accrue to a manager of this estate.

8. Decision

9. In accordance with section 24(1) Landlord and Tenant Act 1987 the fourth respondent is re-appointed as manager of the property at the **Frognal Estate Finchley Road Hampstead London NW3 5HG** ("the Property") as it is just and convenient to make the order in all the circumstances of the case.
10. The order shall continue for a period of five years from the date of this Decision. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
11. The manager shall manage the Property in accordance with the terms of the Management Order within this Decision: and
 - (a) The directions and schedule of functions and services attached to this order, if any;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the first respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('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 Leasehold Reform Housing and Urban Development Act 1993.
12. The manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

DIRECTIONS

1. By no later than one year from the date of this Decision, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
2. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the

case of dispute, as decided by the Tribunal upon application by any interested party.

3. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Accounts

- (i) Prepare and submit an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

MANAGEMENT ORDER

Ref.: LON/00AG/LVM/2019/0017

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Property: FROGNAL ESTATE, FINCHLEY ROAD, LONDON NW3 5HG

BETWEEN:

- (1) DR MICHAEL ANSON
- (2) MS MARIE GARSIDE

Applicants

-and-

- (1) RFYC LIMITED
(2) FROGNAL GROUND RENTS LIMITED
(3) THE LESSEES OF THE FROGNAL ESTATE
(4) MR MARKING KINGSLEY

Respondents

MANAGEMENT ORDER

1. Martin Kingsley, of K & M Property Management Limited, The Studio, 63 Darlands Drive, Barnet, Hertfordshire EN5 2NE (“the Manager”) is hereby and until further order appointed as manager and receiver of the Frogmal Estate, Finchley Road, London NW3 5HG (“the Estate”) pursuant to section 24 of the Landlord and Tenant Act 1987 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the leases of the flats on the Estate (“the Flat Leases”) to carry out the management functions of the First and/or Second Respondent in relation to the Estate, and in particular:
 - 1.1. The right to receive all service charges, interest and other moneys payable under the Flat Leases, save for rent, subject to the duty to account quarterly to the First and/or Second Respondent for all moneys so received and, with the exception of service charges, on account service charges (however so defined) and interest accruing thereon, to pay to the First and/or Second Respondent all such moneys received, and is therefore given the right:
 - 1.1.1. To receive all services charges and other moneys payable by the tenants of the flats on the Estate (“the Tenants”)

and the Tenants' service charge contributions shall be shown on the schedule attached to this Order.

- 1.1.2. To recover from the Tenants any arrears of any such sums properly due whether arising before or after the date of his appointment.
 - 1.1.3. To recover the proportion of the service charge and (if applicable) insurance premiums payable by the landlord under the sub-lease made between Long Acre Limited and the First Respondent dated 18th July 2005.
- 1.2. The right to treat the service charge financial year as commencing on the date of this Order and ending on 31st December 2019 and thereafter as running from 1st January to 31st December in each year this Order is in place.
- 1.3. The right to demand and receive from the Tenants half-yearly payments of service charges on account of actual expenditure incurred by the Manager, the first half-yearly payments to be made to the Manager in such sum as the Manager shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year.
- 1.4. The right to demand and receive from the Tenants and from the First and/or Respondent, as the owner of any flat on the Estate, and their successors in title to any flats on the Estate service charge contributions in the appropriate and proper percentage proportions.
- 1.5. The power and the duty to carry out the obligations of the First and/or Second Respondent contained in the Flat Leases, and in particular, and without prejudice to the generality of the foregoing:

- 1.5.1. The First and/or Second Respondent's obligation to provide services.
 - 1.5.2. The First and/or Second Respondent's repairing obligations.
 - 1.5.3. The First and/or Second Respondent's obligation to arrange insurance of the buildings on the Estate ("the Buildings") with a reputable insurer, PROVIDED that the Manager shall neither determine nor vary the existing contract for the insurance of the Buildings without the consent of the First-tier Tribunal (Property Chamber).
- 1.6. The right to manage and control the car parking areas on the estate, having regard to the order made against the First Respondent by HHJ Marshall Q.C. on 11th April 2007, so as to ensure (inter alia) that such rights as the Tenants have over the said car parking areas are capable of being exercised without any unlawful interference, disturbance or disruption and for the avoidance of any doubt the right to manage and control the car parking areas on the Estate shall not entitle the Manager to grant any rights of any nature to any person or persons to park vehicles in the car parking areas on the Estate that do not subsist at the date of this Order and nothing in this Order shall prevent the First Respondent granting rights of parking in the car parking areas of the Estate to the Tenants and to the Tenants of any further flats that may hereafter be built on the Estate provided the grant of any such rights does not interfere, disturb or disrupt the rights of Tenants over the car parking areas of the Estate.
- 1.7. The power to appoint solicitors, accountants, architects, surveyors, managing agents and other such professionally qualified persons as may be reasonably required to assist him in the performance of his functions.

- 1.8. The power to appoint any agent or servant to carry out such functions or obligations which the Manager is unable to perform himself or which can be more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- 1.9. The power in his own name on behalf of the First and/or Second Respondent to bring, defend or continue any action or other legal proceedings in connection with the Flat Leases or the Estate including but not limited to proceedings against any Tenants in respect of arrears of rent, service charges or other moneys due under the Flat Leases, and to make any arrangement or compromise on behalf of the First and/or Second Respondent, save that the Manager shall not have the right to continue any such action or other legal proceedings or to make any arrangement or compromise on behalf of the First and/or Second Respondent in relations thereto, as shall have been commenced before the date of his initial appointment which the First and/or Second Respondents shall be at liberty to pursue.
- 1.10. The power to enter into any contract or arrangement and/or to make any payment which is necessary, convenient or incidental to the performance of his functions.
- 1.11. The power to open and operate bank accounts in his own name a separate bank account for each of the six costs centres identified by the Manager together with any other bank accounts in relation to the management of the Estate and to invest moneys received pursuant to his appointment in any manner specified in Parts I and II of the First Schedule to the Trustee Investment Act 1961 and to hold those funds received from the Tenants of the flats on the Estate pursuant to section 42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between moneys paid as contributions towards a reserve fund (whether or not the Flat Leases provide for the

establishment or maintenance of a reserve fund) and all other moneys received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose moneys paid and received on account of the reserve fund.

1.12. The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any Tenants owing moneys due under his or her lease.

1.13. The power to receive, consider, refuse, grant or otherwise deal with:

1.13.1. Applications for consents or licences of whatever nature as to dealings, alterations or any other matters requiring the consent of the First and/or Second Respondent which relate to the Tenants or as to their flats or commercial premises on the Estate. In relation to such applications the Manager shall where applicable use his best endeavours to secure a reasonable open market premium and shall account to the First and/or Respondent therefore. Where the Manager has confirmed that such consent or licence shall be granted the First and/or Second Respondent shall execute all necessary documents to give effect thereto without delay or request for payment.

1.13.2. The provisions of 1.13.1 shall be subject to an obligation on the part of the Manager to give reasonable notice to the First and/or Second Respondent of any applications received by him for consents or licences referred to therein and of any consents (and the terms thereof) that he proposes to grant, with the intent that the First and/or Second Respondent shall have the opportunity of making observations to the Manager on such applications and proposed consents.

- 1.14. The power to r from the service charge fund his management fees as hereinafter described, such fees to be paid half yearly, the first payment to be made on 25th December 2019 and thereafter to be deducted from the service charge fund as they fall due.
- 1.15. The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being arrears, or other shortfalls, of service charge contributions due from the Tenants, or in the event of there being arrears, or other shortfalls, of other sums due from the Tenants, such borrowing to be secured (if necessary) on the interests of the First and Second Respondent in the Estate or any part thereof PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the First and/or Second Respondent (not to be unreasonably withheld), or in default of the First and/or Second Respondent's consent, without further order of the First-Tier Tribunal (Property Chamber).
- 1.16. Without prejudice to the generality of the power described in paragraph 1.15 hereof, and without prejudice to any further Order of the First-Tier Tribunal (Property Chamber), the Manager may use as security any interest which the First and/or Second Respondent acquires in a flat or flats on the Estate after the date of this Order, and which is not demised to an occupying tenant (not being a person, corporation or otherwise, associated with or connected to the First and/or Second Respondent) on a long lease PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the First and/or Second Respondent (not to be unreasonably withheld), or in default of the First and/or Second Respondent's consent, without further order of the First-Tier Tribunal (Property Chamber).

- 1.17. The power to recover from the Second Respondent service charge contributions in respect of each and every flat on the Estate, the ownership of which is retained by the Second Respondent and which is not demised to an occupying tenant (not being a person, corporate or otherwise associated with or connected to the Respondent) on a long lease, on the assumption, if it not be a fact, that the flats are demised on leases in the same terms, *mutatis mutandis*, as the lease of the first named Applicant's flat, namely the lease of flat 36 Frogal Court.
2. The First and/or Second Respondent and its servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his functions, and his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties or powers.
3. Without prejudice to the generality of paragraph 2 hereof:
 - 3.1. The First and/or Second Respondent shall forthwith make available to the Manager all such books, papers, memoranda, records, computer records, minutes, correspondence, facsimile correspondence, electronic mail and all other documents and records as are necessary for the management of the Estate and are within its custody, power or control or the custody, power or control of any of its servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
 - 3.2. The First and/or Second Respondent shall allow the Manager all reasonable access to those parts of the Estate retained by them in order that the Manager might conveniently perform his functions and duties, and exercise his powers under this Order.
 - 3.3. Without prejudice to the generality of clause 3.2 of this Order, the Manager shall be allowed reasonable access to the 8 flats

constructed, and/or in in the process of being constructed, in the airspace above existing flats 14 to 29, and existing flats 30 to 45 on the Estate (“the Development”), and the Second Respondent shall allow such reasonable access to all flats on the Estate which are within the Second Respondent’s ownership (including any porter’s flat), whether held on leases or otherwise, and to the gardens and grounds of the Estate.

- 3.4. The First and/or Second Respondent, and its servants shall permit the Manager and assist him as he reasonably requires to serve upon any Tenants any notice under section 146 of the Law of Property Act 1925.
- 3.5. The First and/or Second Respondent shall deliver to the Manager forthwith copies of all documents and instruments (including heads of terms, draft leases and leases) which the First and/or Second Respondents have, or which come into the power, control or custody of the First and/or Second Respondents concerning or arising out of or in connection with the Development or which are in the power or control or custody of any of the First and/or Second Respondent’s servants or agents, in which last case the First and/or Second Respondent shall take all reasonable steps to procure such delivery from its servants or agents.
- 3.6. The First and/or Second Respondent shall give the Manager not less than one month’s notice in writing of any works which the First and/or Second Respondents propose to carry out as part of the Development which notice must provide full particulars of the proposed works.
- 3.7. The First and/or Second Respondent shall also give the Manager not less than one month’s notice in writing of any works in preparation for, and/or as part of, any future schemes of development on the Estate (including any development of airspace above buildings on the Estate) (“Future Developments”)

which notice must provide full particulars of the proposed works.

- 3.8. The First and/or Second Respondent shall deliver to the Manager as soon as reasonably practicable copies of all contracts, methodology, statements, health and safety files, risk assessments and other documents and instruments concerning any Future Developments which are in, or come into, the power, control or custody of the First and/or Second Respondent, or which are in the power, control or custody of any of the First and/or Second Respondent's servants or agents, in which case the First and/or Second Respondent shall take all reasonable steps to procure such delivery from its servants or agents.
- 3.9. The First and/or Second Respondent shall have regard to the Manager's comments and observations in respect of any such Future Developments, and will put in place such safeguards, and take such steps, as the Manager shall reasonably require in order to protect the amenity and quiet enjoyment of the Tenants, and in default of agreement between the Manager and the First and/or Second Respondent as to what are reasonable safeguards and/or steps, the Manager shall have liberty to apply to the First-tier Tribunal (Property Chamber) for further directions.
- 3.10. During the continuance of this Order, the Manager shall have liberty to apply to the First-tier Tribunal (Property Chamber) for directions and/or orders concerning the contributions to be made by the tenants or other owners of the flats constructed, or in the course of construction, on the Estate as part of the Development and/or any Future Developments, to the costs, expenses, fees, charges, insurance and other premiums and other items of expenditure incurred or to be incurred (including reserve fund contributions) in respect of the Estate, and for the purposes of this clause, and where otherwise relevant, the phrase "the Estate" is a reference to the Estate as constituted

after the completion of the Development and after the completion of any Future Developments.

4. The Manager shall at not less than quarterly provide the First and/or Second Respondent with such information relating to the management of the Estate as the First and/or Second Respondent shall reasonably require.
5. As remuneration for his services the Manager will be paid a fee of £120.00 per hour with a cap of 6 hours each calendar month to the intent that the maximum amount payable per month shall be equal to not more than six hours work. The Manager's fees shall be the subject of annual review.
6. The Manager shall in the performance of his functions and duties, and in the exercise of his powers under this Order, exercise all the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and duties and the exercise of the said powers and shall indemnify the First and/or Second Respondent in respect of any loss occasioned by any negligent act or omission of himself his servants or agents.
7. The Manager shall maintain, for so long as may be necessary and for so long as the same shall continue to be available in the insurance market at reasonable premium rates, a policy of insurance to cover his obligations and liabilities under or in connection with his appointment with limits of indemnity of not less than £2,000,000.00 for any one occurrence or series of occurrences arising out of one event in respect of any negligence, omission or default on the part of the Manager in the performance of his functions. Such policy shall be with a well established insurance office or reputable underwriter and as and when he is reasonably required to do so by the First and/or Second Respondent the Manager shall provide the First and/or Second Respondent with documentary evidence that the policy is properly maintained.

8. If the Manager ceases to maintain the said policy in accordance with this Order or fails to produce such documentary evidence to the First and/or Second Respondent, the First and/or Second Respondent may take out and maintain such policy and may recover from the Manager the costs thereby incurred by the First and/or Second Respondent.
9. The Manager shall act fairly and impartially in his dealings with the Tenants.
10. No grant to a Tenant or a new lease or completion thereof under Chapter I of Part I of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) or any subsequent enactment shall be withheld by the First and/or Second Respondent by reason of any dispute between the First and/or Second Respondent and the Tenant with regard to any service charges outstanding as at the date of this Order, but such service charge shall be dealt with under the provisions of section 56(3) of the 1993 Act.
11. The Manager, the Applicants and Respondents shall have liberty to apply to the First-Tier Property Tribunal (Property Chamber) for further or other Orders and/or directions.

Name: Judge Professor Robert
Abbey

Date: 11 December 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).