



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

Case reference : **LON/00AY/LVM/2020/0009**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Denmark Mansions, 78-96 Coldharbour Lane,
London SE5 9PX**

Applicant : **Mr David Broome (Appointed Manager)**

Representative : **Downs Solicitors LLP**

Respondents : **All Residential Leaseholders
All Commercial Leaseholders
Maryland Estates Ltd
Earl Ltd**

Type of application : **Variation of Appointment of Manager**

Tribunal : **Judge Nicol
Mrs S Redmond MRICS BSc (Econ)**

Date of decision : **20th January 2021**

DECISION

(1) In accordance with section 24(9) Landlord and Tenant Act 1987, the management order made by the Tribunal in respect of the subject property at Denmark Mansions, 78-96 Coldharbour Lane, London SE5 9PX on 11th April 2007, and varied by further orders made on 26th September 2012, 18th September 2017 and 19th November 2017, is hereby further varied so that Mr David Broome is replaced as the manager by Mr Richard Thwaites AIRPM with effect from 25th March 2021.

- (2) The management fee structure shall remain as set out in the Tribunal's decision of 19th November 2017, save that there are now 19 residential units rather than 16.
- (3) All parties remain at liberty to apply to vary or extend the order further prior to the date on which it is currently due to expire, 25th September 2022.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Tribunal first appointed a manager for the subject property under section 24 of the Landlord and Tenant Act 1987 on 11th April 2007. Further orders made on 26th September 2012, 18th September 2017 and 19th November 2017 changed the manager, with the current Applicant, Mr David Broome, being the most recent appointee.
2. The subject property originally consisted of 16 residential and 8 commercial units. The landlord has carried out works to add 3 more residential units, making a total of 19.
3. The lessees have been generally content with Mr Broome's management of this problematic building and Mr Broome himself is sorry to go. However, his firm, HML Andertons, is no longer taking on Tribunal appointments due to issues with their professional indemnity insurance and so he has no choice but to step down. He has conscientiously sought a replacement and alighted on Mr Richard Thwaites of First Port managing agents. He has therefore applied to the Tribunal to vary its order to replace himself with Mr Thwaites.
4. The Tribunal heard the application by remote video conference on 20th January 2021. The attendees were:
 - Mr Alford, counsel for the Applicant
 - Mr Broome
 - Mr Thwaites
 - Ms Suzanne Newton, property manager from HML Anderton
 - Ms Claire Priest
 - Mr Ben Crawley.
5. The Tribunal had the benefit of a bundle prepared on behalf of Mr Broome in pdf format containing statements from Mr Broome, Mr Thwaites and the leaseholders of Flats 11-18 and 20. In particular, Mr Broome's statement reported to the Tribunal on the work he has done and the current state of the building and its management.
6. Mr Thwaites had provided a management plan but the Tribunal asked further questions of in order to assess his suitability for the appointment. Mr Thwaites and his firm, First Port, are new to Tribunal appointments but they are growing and even recruiting further staff during the COVID-19 pandemic. He is the

named manager for a significant part of First Port's portfolio, some of which has been acquired through mergers and acquisitions and includes properties of all sizes, with and without commercial elements. He gave an example of a property which he has managed with a similar level of complexity to the current one due to the existence of an inherent defect.

7. Mr Broome and Mr Thwaites have discussed how the handover would work. Mr Broome would set the budget based on existing arrangements. Mr Thwaites intends to continue the management on the same basis as Mr Broome. The handover would happen at the start of the next financial year, on 25th March 2021. Mr Thwaites inspected the property with Mr Broome and one of his firm's local property managers on 25th November 2020 and met some of the lessees in a virtual meeting on 17th December 2020.
8. The leaseholders are willing to accept Mr Thwaites as the new manager but were concerned that, as they knew little about him and had yet to see how he worked, they wanted the existing order not to be extended beyond its current expiry date on 25th September 2022. The idea would be that his position could be reviewed up to that date with a view to extending his appointment if appropriate. In fact, Mr Broome has not applied to change that date and so the Tribunal cannot do so. If any party wishes to extend the order, with or without Mr Thwaites as manager, they will have to apply to the Tribunal accordingly before that date.
9. In the circumstances, the Tribunal is satisfied that it is just and convenient to vary the order as requested, replacing Mr Broome with Mr Thwaites with effect from 25th March 2021. Denmark Mansions requires careful management and the continuation of the order provides the best opportunity to ensure that problems which caused the order to be made in the first place do not recur.
10. The Tribunal is grateful to Mr Broome for the work he has done since his appointment in 2017 and to both him and Mr Thwaites for their efforts in making the handover as smooth as possible.

Name: Judge Nicol

Date: 20th January 2021

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).

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (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--
 - (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.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely--
 - (a) where the tribunal is satisfied--
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii) . . .
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal is satisfied--
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied--
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (abb) where the tribunal is satisfied--
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied--
 - (i) that any relevant person has failed to comply with any relevant provision 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
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;

or

 - (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section "relevant person" means a person--

- (a) on whom a notice has been served under section 22, or
 - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—
- (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
- In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (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 tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (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.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.