



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

Case Reference : CHI/00MW/LVM/2015/0003

Property : Providence Corner, 37 Pyle Street,
Newport, Isle of Wight PO30 1JA

Applicants : Providence Corner Residents Association

Representative : Mr David Orlik

Respondent : Island Securities Limited

Representative :

Type of Application : Appointment of a Manager

Tribunal Member : Mr D Banfield FRICS

**Date and venue of
Hearing** : Determination on the papers

Date of Decision : 18 May 2015

DECISION

Decisions of the Tribunal

The Tribunal determines that the Management Order appended to its decision dated 19 November 2012 be varied as follows;

The period of the appointment is extended to 8 years from 1 January 2013.

The management fee to be £2,556.00 per annum including VAT at 20% and drawn 6 monthly in arrears.

To make an order under Section 20C of the Landlord and Tenant Act 1985 preventing the Respondent from recovering any of the cost of these proceedings (if any) by way of the service charge.

Background

1. Mr David Orlik was appointed manager of the property by the then Leasehold Valuation Tribunal on 19 November 2012. The order was for a period of 3 years from 1 January 2013.
2. On 16 February 2015 The Tribunal received an application from Providence Corner Residents Association requesting that the appointment be extended for a further 3 years on the grounds that the issues that caused the original appointment had not been addressed by the Respondent.
3. An application was also made under section 20C of the Landlord and Tenant Act 1985 limiting the costs that the Landlord may charge to the service charge
4. Directions were made on 20 February 2015 and sent to both parties indicating that the matter would be determined without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days. No such objection has been received and the matter is therefore determined on the papers.
5. The Directions also set out a timetable for the exchange of documents by the parties and the provision of a hearing bundle to the Tribunal.
6. By a letter from David Orlik dated 10 March 2015 the Tribunal were asked to consider an extension of 5 years rather than the 3 years proposed in the application.
7. On 30 March 2015 the Tribunal received an email from Mr Tony Murley stating that he was a Director of Island Securities Limited and

had received a copy of the application and the Tribunal's Directions. He said he had previously been unaware of the situation that had resulted in Mr Orlik's original appointment and was trying to sort matters out with the company's accountants. He did not object to the re-appointment of Mr Orlik but would want the extension limited to 3 years.

The Law

8. Landlord and Tenant Act 1987 section 24

- i. *(9) A leasehold valuation 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 1925, the tribunal may by order direct that the entry shall be cancelled.*
- ii. *(9A) the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—*
- iii. *(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*
- iv. *(b) That it is just and convenient in all the circumstances of the case to vary or discharge the order.*
- v. *(10) An order made under this section shall not be discharged by a leasehold valuation 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.*
- vi. *(11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.*

Evidence

9. Within the bundle received are copies of the service charge accounts and Managing Agents Reports for 2013 and 2014 together with the budget for 2015. Also included is a report to the members dated 6 March 2015 together with various lessees' emails from which it seems

that 9 lessees have expressed support of the application to extend the appointment by 5 years.

10. Also in the bundle are a copy of a draft RICS Management Agreement and an up to date schedule indicating that Mr Orlik has Professional Indemnity insurance.

Decision

11. This matter satisfies the requirements set out in paragraph 7 of the Practice Statement "Composition of Tribunals in the Property Chamber on or after November 2013" this determination is consequently made by a Member of the First- tier Tribunal sitting alone.
12. This application has the support of the majority of the lessees and the Landlord does not object to the appointment save as to its duration.
13. From the Managing Agents' reports it appears that a number of the issues raised during the initial application have been or are being tackled apparently to the satisfaction of the lessees. However it is also clear that where information such as service charge accounts should have been forthcoming from the Respondent nothing has been produced.
14. It seems clear that the Respondent landlord has had little or no contact with the lessees or the Manager since Mr Orlik's appointment until Mr Murley's recent email indicating that he was "trying to sort things out"
15. The Applicant has not given reasons to justify their requested length of appointment and although Mr Murley has asked for the period to be limited he gives no reasons for the request. Mindful that either party can apply to vary the terms of the appointment in the future the Tribunal determines that it is just and convenient to grant the 5 year extension requested.
16. The Tribunal therefore determines that the Management Order appended to its decision dated 19 November 2012 be varied as follows;
 - a. The period of the appointment is extended to 8 years from 1 January 2013.
 - b. The management fee to be £2,556.00 per annum including VAT at 20% and drawn 6 monthly in arrears.
 - c. All other terms remain as stated.

17. The Applicant has applied for an order under Section 20C that the Respondent should not be able to recover its costs by way of service charge. No submissions have been made by either party on the matter and from the Respondent's minimal involvement in the proceedings the Tribunal cannot imagine that costs could have been incurred. Nevertheless the Tribunal makes the order as requested on the grounds that it is the Respondent's inaction that has caused the Applicant to take action as it has and that the Applicant has been wholly successful.

Mr D Banfield FRICS

18 May 2015

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Practice Statement

Composition of Tribunals in the Property Chamber on or after 15 November 2013

A decision that disposes of proceedings must be made by a Judge of the First-tier Tribunal or another member of the First-tier Tribunal who has been authorised to chair proceedings sitting alone but in the following circumstances may be decided by a Judge or a Chairman sitting with one or two other members

- a, Where the matter includes a dispute of fact or opinion
- b, Where the matter requires the application of special expertise; and/or
- c, Any other case where, in the view of the Regional Judge, the overriding objective requires there to be more than one member.

Landlord and Tenant Act 1987

24 Appointment of manager by the court.

(1) A 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.

(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.