

12424



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

**Case Reference** : **CHI/21UD/LAM/2016/0009**

**Property** : **Marina Heights, 63 West Hill Road  
St Leonards on Sea East Sussex  
TN38 0NF**

**Applicant** : **Mr K Hayes**

**Applicant's  
Representative** : **In person**

**Respondent** : **Marina Heights St Leonards Ltd (1)  
Ms R Akorita (2)  
63 West Hill Road RTM Company Ltd  
(3)**

**Respondents'  
representatives** : **Mr J Sandham of Counsel  
DAC Beachcroft (for First  
Respondent only)  
Ms R Akorita on her own behalf and  
for the Third Respondent.**

**Type of Application** : **Section 24 Landlord and Tenant  
Act 1987**

**Tribunal Members** : **Mrs F J Silverman Dip Fr LLM  
Mr N I Robinson FRICS**

**Date and venue of  
hearing** : **22 May 2017 (Hastings) , and 27 and  
28 July 2017  
Havant Justice Centre .**

**Date of Decision** : **21 August 2017**

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**DECISION AND ORDER**

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## ORDER

- 1 It is ordered that the application dated 07 July 2017 be conjoined with and treated as a part of the Applicant's application dated 05 August 2016.
- 2 It is ordered that 63 West Hill Road RTM Company Ltd is joined as a party to these proceedings.
- 3 It is ordered that GARY PICKARD of Jacksons, 193 Church Road Hove East Sussex BN3 2AB is appointed as Manager of the property known as Marina Heights 63 West Hill Road St Leonards on Sea East Sussex TN 38 0NF for a term of three years with effect from and including 21 August 2017.
- 4 The Manager's terms of appointment are as set out in Appendix A. The Manager's proposed management plan was discussed with the Manager and approved during the hearing.

## REASONS

- 5 This Order and Decision is supplemental to and is to be read in conjunction with the Order and Directions previously issued in this case on 24 May 2017 (the May Order) following the first tranche of the hearing.
- 6 Details of the Tribunal's inspection of the property are set out in the May Order and are not repeated here.
- 7 For the reasons cited in the May Order the Tribunal had been unable at the first tranche of the hearing to deal with some preliminary jurisdictional issues which had been raised by the First Respondent. Broadly, these related to whether the relevant notices and application had been served correctly and whether the correct parties had been served. During the period of the adjournment the Applicant had re-issued and re-served the relevant notices and further, had issued a fresh application (the second application) with the Tribunal. As at the date of the resumed hearing no Directions had been issued by the Tribunal in relation to the second application.
- 8 The First Respondent conceded that both the First and Third Respondent had now been served with notices under s22 of the Landlord and Tenant Act 1987 but maintained that jurisdictional problems remained because the third Respondent had not been joined as a party to the first application and it was averred that the Third Respondent had not been served with the second application.
- 9 The Tribunal considered that any remaining defects in the service of notices or applications could be cured by joining the two applications and by making an order to join the Third Respondent as a party to the first application. Mrs Akorita was the sole Director and officer of both the First and Third Respondent companies and her lengthy witness statement filed before the first

tranche of the hearing indicated that she was fully aware of the notices, application and issues in this matter and had the benefit of legal advice. Paragraph 16 of the May Order records that Ms Akorita, on behalf of herself and the first Respondent had filed no statement in reply to the first application and had not raised any jurisdictional issues in her witness statement.

- 10 The Tribunal proceeded to make such an Order to join the two applications and to add the third Respondent as a party to the first application (see paragraphs 1 and 2 above) and adjourned briefly to allow Mr Sandham to take his client's instructions. Following that adjournment Mr Sandham informed the Tribunal that he was instructed by and would be speaking on behalf of only the First Respondent and asked that that point should be put on the record. Ms Akorita would be representing the Third Respondent herself. Mr Sandham anticipated that the responses of the Third Respondent would be mainly the same as those of the First Respondent because of the association between the two companies. No application was made to adjourn the proceedings further.
- 11 A number of documents had been added to the supplementary bundle by the First Respondent after the deadline specified in paragraph 8 of the May Order. An application was made by the First Respondent to admit those documents but was refused by the Tribunal firstly, because no valid reason for the failure to comply with the May Order was given and secondly, because the contents of the additional documents was not compliant with paragraph 8 of the May Order.
- 12 The Applicant made an application to the Tribunal asking the Tribunal to exercise its powers under s 24 Landlord and Tenant Act 1987 following a series of incidents connected to the running and management of the property which the Applicant considered were indicative of bad management or mismanagement. None of the seven apartments in the property is permanently owner occupied. The Applicant owns one flat which is tenanted, Mr & Mrs Cooper who are not members of the freehold company, own one flat which is tenanted and Ms Akorita owns the remaining five flats one of which she uses as a holiday home.
- 13 The freehold company (the First Respondent) has a sole Director/officer who is Ms Akorita. Ms Akorita formed the RTM company (the Third Respondent) because she was unhappy with the management of the block and has at all times been the sole Director/officer of that company. The Applicant, as a shareholder in the freehold company asked to be made a Director of the RTM company but Mrs Akorita, as sole Director, refused to consent to his appointment. She felt that the RTM company no longer served a useful purpose and sought to dissolve the company. Her witness statement (para 49 page 280) states that 'a vote was held to wind up the RTM company. That vote was passed.' Since Mrs Akorita was the sole member and Director of that company the Tribunal assumes that she made that decision alone without regard to any other leaseholders. She had then transferred money belonging to the RTM company to a sole account in the name of the freehold company. The Applicant objected to the winding up of the RTM company and took steps to prevent its dissolution. He also asked Mrs Akorita to keep moneys belonging to

the two separate companies in separate accounts and this was subsequently done although the accounting procedures do not distinguish between the two entities.

- 14 It is clear to the Tribunal that Mrs Akorita, as the owner of five of the seven flats in the property considered that she had the right to make all decisions relating to the block to suit her own interests. Mr and Mrs Cooper, as owners of Flat 2, were not members of the freehold company (the First Respondent) and would not therefore have the right to participate in the management of the property and the Applicant had been denied the right to participate by Mrs Akorita's refusal to nominate him to become a Director.
- 15 Ms Akorita had brought a previous Tribunal case against the First Respondent where the Tribunal's decision had ruled that part of the service charge paid by the leaseholders was irrecoverable because of non-compliance with s20B Landlord and Tenant Act 1985. The present Tribunal did not explore whether compliance with the 1987 Act would have been possible in order to retrospectively validate those elements of the service charges which had been affected by the section. Ms Akorita then sued the first Respondent and obtained a default judgement against the company to recover her money (£37,079.79). There is no evidence that Ms Akorita, in her role as company director (as opposed to her role as Claimant in the proceedings) made the shareholders aware of the proceedings she was bringing against the first Respondent to recover her service charge nor of the judgement she obtained against the company. No record of the debt owed by the company to Ms Akorita in her personal capacity appears in the company's accounts. It would not therefore have been discoverable by a leaseholder in the normal course of events and would not have been revealed to a prospective buyer of the leasehold interest. The Applicant had been unaware of it when he bought his flat. That debt was in fact satisfied by Ms Akorita, in her capacity of company director, recovering the amount owing by making a claim on a directors' negligence insurance policy. However, in 2014 she then in her personal capacity proceeded to issue further proceedings against the first Respondent seeking to recover some £48,000 which allegedly represented the costs incurred by her in previous proceedings in the (then) Leasehold Valuation Tribunal. That summons was served on the first Respondent at the property address where it was found and opened by the Applicant and Mr Mackie (a leaseholder at that time) who jointly took legal advice and were successful in their application to strike out the proceedings (page 116). Ms Akorita recognises that this claim was unsustainable (Para 42 page 278/9) but has failed to explain why she brought the claim or how she intended to recover an unrecoverable sum from the insurers. Without the Applicant's intervention into those proceedings there would have been nothing to prevent Ms Akorita from obtaining a default judgment for the full amount claimed (as she had done previously) which would have driven the company into an insolvent liquidation.
- 16 Ms Akorita said that she owned/managed other property and that her tenants were satisfied with her management. Her evidence to the Tribunal included witness statements from Mr and Mrs Cooper who, as noted above, are leaseholders of Flat 2 in the property but do not live at the property nor are they members of the freehold company. Mrs Cooper gave brief oral evidence at

the hearing confirming her statement. She had no first-hand experience of the management of the property and was not resident there. None of the other witnesses whose statements were included in the hearing bundle on Ms Akorita's behalf gave live evidence at the hearing. Their evidence was therefore not subjected to cross-examination and the Tribunal can place little reliance on it. Further, none of the other statements came from persons who would have first-hand knowledge of Ms Akorita's management of the subject property. Statements made by Ms Akorita's sub-tenants, Mr Page and Ms Cattle, were considered by the Tribunal to be of little value since those persons make no contribution to the service charge and are not concerned with the management of the property. Similarly, a statement from Mr Oram, a director of another management company relating to an entirely different property had little relevance to the issues before the Tribunal.

- 17 The Applicant voiced a number of concerns relating to the handling of financial matters by Ms Akorita. Among these were the fact that none of the company accounts had been certified as required by the lease (Clause 4.21, page 44) and that Ms Akorita had failed to maintain separate bank accounts to deal with the assets of the two separate companies. Ms Akorita admits in paragraph 40 of her statement that 'the money was not always separated'. Page 177 demonstrates Ms Akorita's failure to distinguish between the freehold company and the RTM company in that she had compiled an account which related to both companies on the same page and under one heading, that of the freehold company. A similar example exists on page 405. Such accounts as do exist are brief, lacking in detail and in places, inaccurate (see page 410 where an annual return fee is variously costed at £13 and £27). In one case the accounts were drawn up in the name of the wrong companies and were only corrected after the Applicant drew the error to Ms Akorita's attention (page 40). Ms Akorita also filed dormant accounts at Companies House until the Applicant complained, at which point live accounts were prepared and filed. Ms Akorita admits that it had been incorrect to file dormant accounts (page 285).
- 18 Ms Akorita had engaged managing agents to manage the property but dismissed them because she was unhappy with their conduct in relation to major works which required the service of a s20 notice. She proceeded to manage the property herself, charging a fee for doing so. She prepared and served a s20 notice herself, for which she charged a fee, oversaw the major works herself, for which she charged a fee and signed off the works herself although she has no professional, managerial, building or surveying qualifications. No surveyor was involved in the major works project. The Applicant considered this was unsatisfactory. He also questioned the fact that although Ms Akorita was acting as a managing agent, she had no management agreement with the RTM company so that neither the extent of her duties nor of her fees were specified.
- 19 The Applicant was also concerned at Ms Akorita's management style and cited as examples her demand that the Applicant's tenant remove a satellite dish and supporting pole from the outside of the property and make good any damage. This was, as now admitted by Ms Akorita, an over-reaction because Ms Akorita had failed to appreciate that the structure which she was asking to be removed supported the communal television aerial which served the entire property and was not an unlawful addition made by the Applicant's tenant (page 362).

Similar examples exist in relation to Ms Akorita's handling of an incident concerning a bicycle which had been stored inside the building.

- 20 In her lengthy witness statement Ms Akorita makes no serious attempt to answer the allegations made by the Applicant and in her oral cross-examination of the Applicant she concentrated on what she viewed as the Applicant's own breaches of covenant (eg his alleged failure to provide deeds of covenant for his sub-tenant). Such allegations were unsubstantiated and not within the jurisdiction of the Tribunal under the present application. Additionally, Ms Akorita's written witness statement contains a number of misleading assertions. For example, she implied that she was resident at the property (page 274) whereas in fact she visits it on a monthly basis and uses it as a holiday home. Notably all correspondence addressed to her gives a London SE23 address as her residence. Ms Akorita said she had a portfolio of properties but did not specify how many were in her sole control and how many were managed by or in conjunction with a third party. In paragraph 78 (page 286) of her witness statement Ms Akorita asserted that the accounts were always audited. This is patently untrue as the accounts all contain a statement which expressly says that they have not been audited.
- 21 The Applicant pointed out to the Tribunal that Ms Akorita had previously applied to the Tribunal to be appointed as manager and that the Tribunal had refused to appoint her on the grounds of a potential conflict of interest and that it was undesirable to appoint as manager a person who had been in more or less continual litigation with the Respondent for some years. The Applicant suggested that Ms Akorita's actions in seeking to dissolve the RTM company was an attempt to become the manager by a circuitous route. He also suggested that there were a number of examples of conflict of interest in Ms Akorita being the only director of both the first and third Respondents as well as the leaseholder of five of the flats. The Tribunal agrees that there is a possibility in that situation in that there would be a temptation for a person in that position to act to protect their own financial interests over and above those of other leaseholders or sub-tenants or of the property itself.
- 22 In his application the Applicant sets out a number of examples of Ms Akorita's failure to follow the RICS Code of Practice (pages 3-12). The most serious of these relate to handling of client money and accounting practices. It is clear from the evidence as outlined above that Ms Akorita has failed to follow the RICS Code in her management of the property and her own witness statement contains admissions of errors in handling money. The Tribunal does not accept the first Respondent's submission that the Code of Practice is mere 'guidance' and that there is no obligation to comply with it. Any property professional who had breached the Code in the manner in which Ms Akorita has so blatantly done would be facing serious disciplinary action. Ms Akorita holds herself out as a property professional and the Tribunal expects her to act accordingly having regard to the rights and needs of other leaseholders and respecting her position of trust in relation to the holding and spending of money belonging to third parties. The fact that she is the majority flat owner and has procured a position as sole director of both the freehold and RTM companies creates a conflict of interest situation in which it is almost impossible for her to both act and to be seen to be acting independently in the best interests of all leaseholders.

- 23 The Applicant proposed that Mr G Pickard should be appointed as Manager of the property. No written objections to his appointment or to his character were filed on behalf of the Respondents.
- 24 Mr Pickard attended the resumed hearing and was interviewed by the Tribunal and questioned by Mr Sandham on behalf of the first Respondent.
- 25 The Tribunal considers that Mr Pickard is a fit and proper person to be appointed to act as manager in this case. He has considerable experience of property management including having been appointed by the Tribunal in previous cases. Mr Pickard is appointed on the terms of the management order attached which subject to minor adjustment reflects the draft prepared by Mr Pickard for the Tribunal.
- 26 For the first Respondent, Mr Sandham submitted that the Tribunal should strike out the Applicant's first application because it made only one reference to a breach of the lease which had not been pursued in evidence and further, the Applicant had not chosen to exercise his rights under s27A. He conceded that Ms Akorita had 'sailed bit close to the wind by suing herself and taking the proceeds' but almost all the Applicant's allegations had come to nothing and it was not just and convenient to make an order appointing a manager. For the third Respondent, Ms Akorita said that there was no reason to appoint a manager. The Applicant submitted that the existing situation created a major conflict of interest. The Applicant's defence of the freehold company against Ms Akorita's litigation had resulted in an atmosphere of enmity in which it was impossible for her to be an independent arbiter. Her own application to be appointed manager had been refused on the grounds of conflict and previous litigation. He referred the Tribunal to the many accounting irregularities. He said that Ms Akorita's track record of litigation was a problem, she was not a professional and had no back up. He asked the Tribunal to grant his application to appoint a manager.
- 27 The Tribunal finds that there has been and remains a breach of duty under the lease in that the First and Third Respondent have jointly and severally failed to provide certified accounts in accordance with Clause 4.21 of the lease. This provides grounds for appointment under s24 (2)(a)(i).
- 28 The Tribunal finds that there are grounds for appointment under s24 (2)(ac)(i) in that there exist numerous breaches of the RICS Code and in particular those relating to the handling of client money and accounting which the Tribunal regards as serious and pervasive of Ms Akorita's management style.
- 29 The Tribunal finds that there are grounds for appointment under s24 (b) (other circumstances) in that there appears to be a major conflict of interest between Ms Akorita's dual roles as Director and as leaseholder which potentially prevent her from exercising an independent judgment in a managerial role. The Tribunal is also concerned by her actions in suing or attempting to sue the freehold company for a spurious debt and her lack of professional expertise in overseeing major works at the property. Her attitude to fire safety issues was also of concern in relation to the obstructions in the lower hallway which the Tribunal observed during inspection of the property.
- 30 Having considered the evidence the Tribunal concludes that it is just and convenient to appoint a manager under s24 and that Mr Pickard is an appropriate person to be appointed Mr Pickard has already signified his willingness to accept such an appointment.
- 31 No application for costs was made by any of the parties.

**Landlord and Tenant Act 1987 s24 ( as amended)  
Appointment of manager by the court.**

(1) A leasehold valuation 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) A leasehold valuation 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;

(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).

(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 1925 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) 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.
- (9A) the court 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 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.
- (11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

## Orders for costs, reimbursement of fees and interest on costs

### Rule 13. Tribunal Rules of Procedure

13(1) The Tribunal may make an order in respect of costs only –

- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
  - (i) an agricultural land and drainage case,
  - (ii) a residential property case, or
  - (iii) a leasehold case; or
- (c) in a land registration case.

Judge F J Silverman as Chairman  
**Date 21 August 2017**

#### **Note:**

##### Appeals

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.

CLAIM NO: CHI/21UD/LAM/2016/0009

IN THE FIRST TIER TRIBUNAL (PROPERTY  
CHAMBER) Residential Property

LANDLORD AND TENANT ACT 1987 (SECTION 24(1))

KEVIN HAYES  
Applicant

MARINA HEIGHTS (ST LEONARDS) Ltd  
63 West Hill Road RTM Company Ltd  
Respondents

Premises: MARINA HEIGHTS, 63 WEST HILL ROAD,  
ST. LEONARDS-ON-SEA, EAST SUSSEX TN38 0NF

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MANAGEMENT ORDER

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## Interpretation

In this Order:

- a) "The Act" means the Landlord and Tenant Act 1987
- b) "Functions" means functions in connection with the management of the Premises and this Order including any obligations and powers of the Respondents under the Leases
- c) "Landlord" means the Respondents and any successor in title to all or part of the freehold title of the Premises
- d) "Leases" means the leases vested in the Lessees
- e) "Lessee" means a tenant of a flat at the Premises holding under a long lease as defined by section 59(3) of the Act
- f) "the Manager" means Gary Pickard, of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB
- g) "the Premises" means all that property known as Marina Heights, 63 West Hill Road, St. Leonards-on-Sea, East Sussex TN38 0NF freehold title to which is registered under title number HT4222
- h) "the Respondent" includes any successors in the freehold title of the Premises or the proprietor of any interest derived from or created out of the said freehold title or any Right To Manage company.
- i) "Tribunal" means the First Tier Tribunal (Property Chamber) Residential Property

## **Preamble**

UPON the Applicant having applied to the Tribunal for the appointment of a manager under Part II of the Landlord and Tenant Act 1987

AND UPON the Tribunal being satisfied that the conditions specified in Section 24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a manager

## **IT IS ORDERED THAT:**

### The Manager

1. Gary Pickard of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB is appointed as the Manager of the Premises pursuant to Section 24 of the Act.
2. For the duration of his appointment the Manager shall have the power to raise demands of the Lessees on account of the service charges payable for the current year in addition to any estimated contributions to any reserve fund and any annual balancing charges. Demands are not required to be raised in accordance with the Lease. Until 30 June 2018, demands may be raised quarterly on account for such sums as the Manager thinks fit; from 30 June 2018 an annual budget shall be prepared by the Manager. The budget and accounting information required under Clause 4.2(1) of the Lease does not require certification by a surveyor unless the Manager thinks fit. Demands may continue to be raised quarterly or half-yearly as the Manager thinks fit.
3. For the duration of his appointment, the Manager shall collect all reserved rents, service charges, interest and any other monies payable under the Leases. The Manager shall also use reasonable endeavours to collect arrears other than ground rent of any of the foregoing.
4. For the duration of his appointment the Manager shall carry out the management obligations of the Respondent in accordance with the provisions of the Leases and in particular and without prejudice to the generality of the foregoing.

- i. The Respondent's obligations to provide services;
- ii. The Respondent's repair and maintenance obligations
- iii. The Respondent's obligations to perform duties and to make payments as provided in any of the Leases; and
- iv. The Respondent's powers to grant consents.

5. The Manager is entitled to appoint the firm of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB and such solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions and he will be entitled to recover the cost thereof from the Lessees through the service charge or under this Order, provided that such costs are reasonably incurred.
6. For the duration of his appointment the Manager shall have the power:
  - i. In his own name or in the name of the Respondent to bring any legal proceedings for the recovery of arrears of service charges, or other monies due under the Leases or to enforce the Lessees' covenants (being covenants other than for the payment of ground rent) under the Leases;
  - ii. To open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to s.42 of the Landlord and Tenant Act 1987.
  - iii. To investigate and to take such action as may be appropriate to manage the service charge accounts and reserve funds including without prejudice to the generality of the foregoing to commence and pursue such claims as are appropriate in his own name or otherwise and if considered by the Manager to be appropriate to instruct accountants or auditors to audit the service charge accounts and/or reserve funds.
7. The Manager shall manage the Premises in accordance with:
  - i. The Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
  - ii. All statutory requirements, including those set out in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987;

iii. The Accounts Regulations as issued by the Royal Institution of Chartered Surveyors.

8. The Manager shall operate a complaints procedure in accordance with the requirements of the Association of Residential Managing Agents (ARMA).

9. For the duration of the Manager's appointment, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order, save where the same has been lawfully delegated by the Manager in accordance with the terms of the lease.

10. The Respondent and the Lessees and any agents or servants thereof shall give reasonable assistance and co-operation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his duties and powers.

11. Without prejudice to the generality of the foregoing hereof:

i. The Respondent whether by itself, its agents, servants or employees, shall use its best endeavours within 14 days of the date of this order or as soon thereafter as reasonably practicable deliver to the Manager all such accounts, books, papers, memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence, contracts and other documents as are relevant to the Premises as are within its custody, power or control together with any such as are in custody power or control of any of its respective agents, servants or employees in which last case it shall respectively take all reasonable steps to procure delivery from such agents, servants or employees including paying such fees as such agents, servants or employees may be entitled to have as a condition for the release thereof; to include all of the information set out in Appendix 3.

ii. Within 21 days of compliance with paragraph 11(i) above the Manager shall decide in his absolute discretion which (if any) contracts he will assume the rights and liabilities under;



- iii. The Respondent shall whether by itself, its agents, servants or employees use its best endeavours within 14 days of the date of this order or as soon thereafter as reasonably practicable deliver to the Manager all keys to electricity, gas, water and any other utility meters located in the Premises that are within its custody power or control. To this end and in so far as they are able, the Respondent shall give the Manager full access to the electricity, gas and water meters fuse board and any other utility meters located in the Premises;
  - iv. The Respondent shall whether by itself, its agents, servants or employees provide within 14 days of the date of this order full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Premises, including copies of all relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive any such sums under the Leases it shall forthwith pay such sums to the Manager without deduction or set-off;
  - v. The rights and liabilities of the Respondent arising under any contracts of insurance relating to the Premises shall from the date of this Order become rights and liabilities of the Manager; and
  - vi. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services (and appendices) attached.
12. The Manager shall in the performance of his functions under this Order exercise reasonable skill, care and diligence and shall ensure he has personal and appropriate professional indemnity cover in the sum of at least £5,000,000.00 providing copies of the current cover note upon written request to any Lessee, Respondent or the Tribunal.
13. This Order shall remain in force for three [3] years from the date it is made or (if earlier) any variation or discharge by the Tribunal on the application of any person interested under Section 24(9) of the Act.

14. The Respondent is directed forthwith to register this Order against its freehold estate registered under title number HT4222.
15. The obligations contained in this Order shall bind any successor in title to the Lessees or the Respondent and the existence and terms of this Order must be disclosed to any person seeking to acquire either a Lease (whether by assignment or fresh grant) or freehold interest.

**Permission to apply**

16. The Manager may apply to the Tribunal for further directions, in accordance with s.24(4), landlord and Tenant Act 1987. Such directions may include, but are not limited to:
  - i. Any failure by any party to comply with an obligation imposed by this Order;
  - ii. For directions generally; and
  - iii. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.
  - iv. For directions in relation to the discharge of any obligation of any party or Lessee.

**SCHEDULE**  
**FUNCTIONS AND SERVICES**

**Financial Management**

- 1 Prepare a service charge budget (consulting with the Lessees and Respondent as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees under the terms of the Leases and to the Respondent.
- 2 Produce an account from the date of his appointment to 30 June 2018 and thereafter annually.
- 3 Demand and collect service charges, insurance premiums and any other payments due from the Lessees in accordance with the terms of the Leases.
- 4 Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent under the terms of the Leases.
- 5 Create and maintain a service charge reserve fund.
- 6 Produce for inspection, within a reasonable time of any year end following a written demand by the Lessees or the Respondent relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
- 7 Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
- 8 Deal with all reasonable enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day management of the Premises, raising additional charges where appropriate e.g. in relation to the sale of any flat or part of the premises.

## **Insurance**

9. Take out and in accordance with the terms of the Leases an insurance policy in relation to the Premises and the contents of the common parts of the Premises and such other liabilities as the Manager reasonably determines with a reputable insurer and provide a copy of the cover note to all Lessees and the Respondent on request.
10. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

## **Repairs and Maintenance**

11. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.
12. Administer contracts entered into on behalf of the Respondent in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
13. Manage the common parts and service areas of the Premises, including the arrangement and supervision of maintenance.
14. Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the common parts as can be inspected safely and without undue difficulty, to ascertain for the purpose of day-to-day management only the general condition of those common parts.

## **Major Works**

15. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange for the supervision of major works which are required to be carried out to the Premises (such as extensive interior or exterior redecoration or

repairs required to be carried out under the terms of the Leases or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and Respondent and supervise the works in question).

### **Administration and Communication**

16. Provide the Lessees and the Respondent with telephone, fax, postal and email contact details and complaints procedure.
17. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

### **Fees**

Set up fee: £1,000 plus VAT

Annual fee: £1,750 plus VAT

Additional fees: An hourly rate in accordance with Appendix 2 and disbursements and expenses for the services set out in Appendix 1 and 2

## **Appendix 1 and Appendix 2 to Management Order**

### **Appendix 1**

#### **Set Up Fee**

To cover work in connection with the "setting up" of a new management together with reasonable charges for support staff, accountants etc. as may be required in connection with the setting up of a property including examining the history of the property and historical accounts on the strict understanding that accounts can only be prepared on the basis of information supplied, provided that should the work

entailed exceed the specified fee when calculated on the basis of hourly rates as set out in clause 4 of Appendix 2 the Manager may charge for such additional time at the hourly rates set out in clause 4 of Appendix 2

### **Standard fee for service charge administration**

Property Management of a regular nature:

The Manager shall be entitled to review and increase the said fee in each year in accordance with clause 5 of Appendix 2 below during the continuance of the appointment and upon each anniversary thereof unless directed otherwise by the Tribunal

To include:

- i. Collect service charges to include preparation and sending of initial demand(s) at the frequency required in accordance with the terms of the lease or this Order to include reminder and second reminder.
- ii. Pay for general maintenance out of maintenance charges/rents paid or received for this purpose.
- iii. Produce estimates of expenditure and reserves.
- iv. Administer funds and obtain records in relation to same and to hold such funds within properly constituted accounts according to legislation.
- v. Produce to the appointed Accountant income and expenditure details together with all supporting documents including bank statements for the preparation of annual accounts and circulate the annual accounts when prepared by the appointed Accountant to the Leaseholders/Tenants, and Respondent.
- vi. Administer building and other insurances and retain any commissions received in respect of same to be deducted at source.
- vii. Manage maintenance contracts in respect of such matters as lifts and boilers.
- viii. Inspect the common parts four times per annum (any additional inspections or visits which the Manager considers necessary or reasonably required being charged at the hourly rate set out in clause 4 of Appendix 2 to this schedule) on the strict understanding that such inspections are not intended to result in the preparation of any schedules of dilapidations or

works to the building. Such inspections shall be limited to visual inspections only of the common parts of the building effected from convenient safe positions.

- ix. Deal with reasonable enquiries from Lessees but not to the extent of becoming engaged in extensive correspondence.
- x. Deal with repairs to the common parts, plant, fixtures and fittings up to a maximum cost of £1,750.00 any one event subject to the requirements of s20 LTA 1985 (as amended).
- xi. Maintain tenancy records.

## **Appendix 2**

### **Fees for additional services**

In so far as not covered by the Set Up Fee or Standard Fee set out in Appendix 1, management of a non-regular or non-recurring nature including acting in a Surveyor's capacity including but not limited to:

- i. Revising estimates of service charge expenditure if required more frequently than on an annual basis
- ii. instructing or dealing with a Building Surveyor, Solicitor or Lessees or Lessees Association or Grant Applications or representations to a Local Authority beyond reasonable correspondence and responding to pre-contract enquiries
- iii. Giving evidence at Court on recovery of unpaid rents or other charges or in connection with the property generally to include evidence to a Tribunal and the time expended in preparing any submission or evidence to any person or firm rightly requiring same.
- iv. Advising on rating, planning, improvements, the making of applications for grants, dealing with insurance claims (other than notifying insurers of claims and forwarding estimates in respect of same) and valuations.
- v. Preparing replacement cost/re-building cost assessments for insurance purposes.



- vi. Receiving and considering leaseholders/tenants applications for alterations.
- vii. Giving advice in connection with assignments, sub-letting and change of use.
- viii. Making submissions to Rent Assessment Committees/Valuation Tribunals.
- ix. Preparing schedules of dilapidations.
- x. Arranging lettings, tenancy renewals, negotiating rent reviews and negotiating premiums for lease variations.
- xi. Preparing agreements and checking inventories.
- xii. Copying documents to include insurance policies and accounts.
- xiii. For time expended in working with and employing specialist advisors, Surveyors, Engineers, Solicitors or other Consultants (in so far as not covered by the fee payable under clause 3 below).
- xiv. Any correspondence or time engaged after the process as detailed in paragraph (i) of Appendix 1 has been concluded shall be chargeable by the Manager subject to any determination as to reasonableness and subject to the Manager taking reasonable steps to recover any charges from the defaulting lessee although the Manager shall not be obliged to engage Solicitors for this purpose or to enter into litigation.
- xv. Attending any 'special meetings' or meetings outside of normal business hours and any attendance at the property in excess of those attendances included within the standard fee or any other fee.
- xvi. Responding to Solicitors enquiries of Managing Agents relevant to the proposed sale of a Flat/Property and correspondence at any time beyond the level of what is considered reasonable in the circumstances.
- xvii. Any other functions or services provided under the terms of this Order which are not covered by the Set Up Fee or Standard Fee or any other specific fee in the Order including its schedule and appendices

1. The Manager shall charge hourly rates in accordance with paragraph 4 (below) unless otherwise stated

2. On transfer of a leasehold property to a new lessee or closing existing file and preparing new file and corresponding with solicitors and introduction — hourly rate fees in accordance with paragraph 4 (below).

3. Instructing surveyors architects or other appropriate persons in the preparation of specifications or schedules of work, obtaining tenders and

contract administration for works, fees at the rate of 5% plus VAT and disbursements on any works over £1,750.00 but excluding the fees of any architect, surveyor or other appropriate person instructed in the preparation of specification and schedule of works, such fees to include where required, the preparation and service of any notices pursuant to Section 20 of the LTA 1985 (as amended).

4. The hourly rate shall be £95 plus VAT for the Manager or a Principal, £75 plus VAT for an Associate/Manager and £60 plus VAT for an Assistant Manager. Disbursements shall be paid in addition.
5. All fees herein or any of them may be reviewed annually by the Manager. In default of agreement with the Lessees and Owners of the Freehold Units, the Manager shall be at liberty upon the giving of 14 days written notice to increase the fees by 10% or in line with the relevant annual level of increase in the RPI since the date the previous fees payable were set, whichever is the higher.

### Appendix 3

#### SCHEDULE OF INFORMATION REQUIRED FROM RESPONDENT

1. Copy lease for all flats (or if all of the leases are in identical form a single lease will be sufficient).
2. Details of the lessees, their correspondence addresses together with contact telephone numbers, if possible, and email addresses.
3. Details of any under-lettings with the name of the tenant(s) and contact details if possible together with the names of the letting agents – if applicable.
4. Details of Lessees current maintenance charge positions (i.e. arrears/credits, date and amount of most recent maintenance charge demand).
5. Details of reserve fund balances and details of any arrears of contributions to same.
6. Details of any ongoing contracts such as cleaning, gardening, entry phone, lift or boiler servicing.
7. Copies or originals of all Section 20 Notices relating to previously performed relevant works.
8. Details of any outstanding urgent works.
9. A fully made copy of the current insurance schedule and policy together with the name of the Broker (if applicable).
10.
  - A) Details of any ongoing insurance claims.
  - B) A copy of the most recent insurance valuation for the building.
11. The common parts Risk Assessment.

12.

- A) The common parts Asbestos Survey.
- B) Asbestos Risk Assessment & Method Statement.
- C) Regulatory Reform (Fire Safety) Order 2005– Fire Risk Assessment.
- D) The most recent "Periodic Examination" of the common way electrical wiring installation.
- E) Wiring installation.
- F) A tree management survey and risk assessment.
- G) A planned maintenance programme (if any). Any other relevant surveys or reports.

13. An up to date closing account.

14. The name of the Accountant responsible for the preparation/certification of the service charge accounts.

15. Cheque for credit balances made payable to Jacksons.

16. Details of all accounts in which lessees' service charge monies are, or have been, held.

## Appendix 4 MANAGEMENT PLAN

MARINA HEIGHTS, 63 WEST HILL ROAD, ST LEONARDS-ON-SEA, EAST SUSSEX TN38 0NF

1. Contact Lessees

Write to all lessees to confirm my appointment as soon as possible after the appointment.

2. Inspection

Carry out initial inspection of the building and prepare an assessment of any works/necessary actions to be undertaken.

3. Budget

Develop and finalise a draft "estimated expenditure analysis" to ensure that the percentages utilised properly reflect the lease.

4. Specialist Assistance

In the event of any of the appropriate reports or any other relevant reports not being available these will be commissioned and acted upon accordingly.