



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

<b>Case Reference</b>	<b>CHI/21UC/LVM/2014/0002</b>
<b>Properties</b>	<b>85/87 South Street Eastbourne BN21 4LR</b>
<b>Applicant</b>	<b>Mr JK Ross (Existing Manager)</b>
<b>Proposed New Manager:</b>	<b>Mr John Butler</b>
<b>Respondent</b>	<b>The Residential leaseholders of the Properties</b>
<b>Freeholder</b>	<b>Mrs V Valliammai</b>
<b>Type of Application</b>	<b>S.24 (9) of the Landlord &amp; Tenant Act 1987 (Variation of a management order)</b>
<b>tribunal Members</b>	<b>Judge RTA Wilson (Lawyer Chairman) Mr R Wilkey FRICS (Surveyor Member)</b>
<b>Date and Venue of Hearing</b>	<b>7th July 2014 &amp; 20th August 2014 Eastbourne Combined Courts &amp; Best Western Hotel, Eastbourne</b>
<b>Date of Decision</b>	<b>11<sup>th</sup> September 2014</b>

**Decision**

## **Introduction and background facts**

1. This is an application made by the Applicant manager under S.24(9) of the Landlord and Tenant Act 1987 (as amended) ("The Act") to vary a management order previously made by the Leasehold Valuation Tribunal under this section.
2. The order in question is dated 13<sup>th</sup> October 2003 and appointed the Applicant, Mr Ross as a manager of the Property ("The Management Order").
3. The grounds of the application are that the existing manager has retired from practice and is therefore no longer in a position to manage the Property.
4. Directions were issued on 6<sup>th</sup> March 2014 providing for a hearing of the application to take place on the 7<sup>th</sup> July 2014. The directions provided that if the Freeholder or any of the Respondents objected to the application they must write to the tribunal giving their reasons for objecting. The directions further provided that if any party wished to apply to the tribunal to appoint a new manager then they were to do so on the appropriate tribunal form by the 27<sup>th</sup> March 2014. Neither the Freeholder nor any Respondent filed a reply opposing the application and no party had applied to the tribunal for the appointment of their own choice of manager.
5. The papers before the tribunal included a letter dated the 10<sup>th</sup> June 2014 from Messrs Cramp and Mullaney Solicitors acting for the three tenants of 87 South Street. The solicitors confirmed that their clients had no objection to the application. They did however request that the question of Mr Ross's replacement should be adjourned generally as the tenants were in discussion with the Freeholder with a view to acquiring the freehold.
6. A hearing of the application took place on the 7<sup>th</sup> July 2014 attended by Mr Ross, Mr Valliammai the freeholder's husband, and several of the leaseholders. No substitute Manager had been put forward by any party. In these circumstances the tribunal was not minded to discharge Mr Ross as it could not be satisfied that an order of discharge would not result in a reoccurrence of the circumstances which led to the Management Order being made in the first place.
7. After hearing from all parties, the tribunal granted an adjournment of the application to allow the parties an opportunity to put forward a suitable candidate willing to be appointed in his place.
8. After the first hearing the tribunal issued further directions which provided for Mr Ross to file evidence relating to the proposed substitute manager to include his name, professional qualifications, experience, insurance arrangements and back office support. The directions required Mr Ross to serve on the Freeholder and the Respondents a statement and evidence in support. The directions gave the Freeholder and lessees a further opportunity to respond to the application and object to the proposed substitute manager. These directions were posted to the Freeholder and the lessees or their appointed solicitors on the 8<sup>th</sup> July 2014. These directions provided for a further and final hearing date of the 20<sup>th</sup> August 2014.

9. After the first hearing Mr Ross proposed Mr Butler of Countrywide Estate Management as a substitute manager. By a letter dated the 11th July 2014 the Freeholder also had written to the tribunal responded by confirming that she had no objection to Mr Butler being appointed provided that any appointment would cease as and when the freehold was sold.
10. By the final hearing date none of the Respondents had filed any objections and none had submitted an application to the tribunal for the appointment of their choice of manager.

### **The Hearing**

11. The second hearing took place in Eastbourne on the 20<sup>th</sup> August 2014. Mr Ross was in attendance to present his case and Mr Butler accompanied him. A number of lessees also attended and they had brought with them Mr Keith Tickner of Venture Lettings who they wanted to put forward as a candidate for the appointment.
12. Mr Ross read out a prepared statement of case. He wished to be discharged on the grounds that he had retired from practice some years back, he was no longer a surveyor, and he had no office or support. He had complied with the tribunal directions and put forward Mr Butler who he considered to be a suitably qualified substitute manager.
13. Mr Butler addressed the tribunal and confirmed that he was an employee of Countrywide managing agents who had been de facto managing the Property on behalf of Mr Ross for some time. Mr Butler told the tribunal that he knew the Property well and was willing to accept the appointment. He accepted that the appointment would be a personal one although in practice he would have the considerable facilities and resources of Countrywide at his disposal. Countrywide was a large firm of managing agents with over 3000 units of residential accommodation under management. Mr Butler referred to his statement to the tribunal dated 18th July 2014 for details of his professional qualifications and experience.
14. He offered up to the tribunal a spreadsheet that he had prepared outlying projected expenditure on the building for the next ten years.
15. Mr Manklow the joint lessee of Flats 2 and 3 at 85 South Street was given the opportunity to address the tribunal and he voiced his objection to the appointment of Mr Butler on the grounds that Mr Butler was in effect already managing the property and he was not managing it well. Neither he nor his colleague Mr Smith had confidence in Mr Butler's ability to resolve the problems that currently affected the Building. He also objected to the appointment on the grounds that there was a strong possibility that the leaseholders would shortly acquire the freehold and at that point they would wish to appoint their own managing agent.
16. Finally he suggested that Mr Ross had been in breach of the tribunal directions in that he had failed to serve his statement of case and evidence on the Lessees. He further claimed that he had not received the directions issued on the 8<sup>th</sup> July

2014 from the tribunal and that the first he had heard of the final hearing date was when he had received the hearing bundle from Mr Ross less than a week before the hearing.

17. Mrs Tickner of Flat 3 at 87 South Street also made the same claims and she too voiced her concerns about the appointment for the same reasons as had been given by Mr Manklow. She told the tribunal that she would like Venture Lettings appointed as the manager.

### **CONSIDERATION.**

18. The tribunal's determination is based on the documentary evidence filed by the parties and the oral evidence adduced at the hearings of the application on the 7<sup>th</sup> July 2014 and 20<sup>th</sup> August 2014.
19. The tribunal first directed itself to the claims made by some of the lessees that they had not received the directions order dated 8<sup>th</sup> July 2014 or the Applicants statement of case and supporting evidence until shortly before the hearing. The tribunal finds this claim at odds with Mr Ross's evidence that his statement of case and supporting evidence had been posted to the Freeholder and each tenant on the 25<sup>th</sup> July 2014. Mr Butler gave evidence that he and Mr Ross had personally attended to the signing of the letters, which had included the statement, the tribunal directions and accompanying evidence. The letters dated the 24<sup>th</sup> July 2014 had been put into envelopes addressed to the Freeholder and the tenants at the addresses that were on his file and then posted. There were copies of these letters in the Applicants hearing bundle. Royal Mail had returned none of the letters.
20. The tenants' claim is also at odds with the tribunal's records, which show that the directions issued on the 8<sup>th</sup> July 2014 were sent by post to the Freeholder and the lessees or their solicitors on the same day.
21. The tribunal notes that no lessee denied having received the tribunal's earlier directions issued on the 6<sup>th</sup> March 2014 and these directions set out clearly what was required if a lessee wished to oppose the application or nominate a manager. For these reasons the tribunal is satisfied, on the balance of probabilities, that the lessees were aware of their rights to nominate their own choice of manager and of their rights to oppose the candidate nominated by Mr Ross and they failed to do either. The tribunal also notes that the Freeholder received her letter from Mr Ross and also the directions order from the tribunal.
22. In summary the tribunal finds that the evidence of Mr Ross, Mr Butler and the tribunal records are sufficient to transfer the burden of proof of non-delivery to the tenants and their bare denial is not sufficient to discharge this burden.
23. The tribunal then directed its attention to the application itself. The relevant law is set out in S.24 (9) of the Act which provides:-

*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 re-occurrence 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.*

24. The Applicant has filed with the tribunal a letter dated 18th July 2014 from Mr Butler an employee and senior property manager of Countrywide. The letter includes details of the professional indemnity cover held by his firm, description of the relevant management experience of Mr Butler and concludes with a signed statement from him confirming his willingness to be appointed by the tribunal.

25. In his letter Mr Butler confirms that he has over 9 years of experience in the field of property management at senior level and in day-to-day management of varied properties. His experience includes managing a wide and varied residential and commercial property portfolio and his firm currently manages some 3,000 units in approximately 200 blocks and estates. His firm has over 5 experienced property managers supported by a finance team and they also have administrative support. His firm's insurance policy provides cover for him acting as a tribunal appointed manager.

26. Mr Butler confirms that he understands the duties and obligations of being appointed a manager by the tribunal, that he has read the Management Order and is prepared to accept these terms subject only to some minor variations relating to the remuneration and his authority to manage the Property.

27. On the evidence before it, the tribunal concludes that the Management Order should be varied by the appointment of Mr Butler in the place of Mr Ross as the tribunal appointed manager. The tribunal is satisfied that the grounds set out in S.24 (9A)(a) and (b) are variously met for the following reasons:

(a) Mr Butler has consented to this proposed appointment and is able to demonstrate considerable experience in the management of comparable residential property. He has demonstrated familiarity with the duties and obligations as a tribunal manager and has stated that he is fully aware of his obligations to the tribunal.

(b) The tribunal is satisfied that Mr Butler's firm has in place the necessary insurance and administrative support to ensure that all service charge and reserve monies will be held in trust for the Respondents in a designated client bank account and that the service charge monies will be regulated under S.42 of the Act.

(c) Mr Butler has confirmed to the tribunal that he is conversant with the latest RICS residential management code and that his firm complies with the code.

(d) There is no evidence that the appointment of Mr Butler will unfairly prejudice any of the parties.

- (e) There is no evidence to suggest that the appointment of Mr Butler will result in a re-occurrence of the circumstances which led to the Management Order being made.
  - (f) If the tenants do acquire the freehold then this order enables them to apply to the tribunal for a variation to the order which could result in the discharge of Mr Butler.
28. For all of the reasons outlined above the tribunal determines that it is just and convenient to vary the Management Order by the appointment of Mr Butler upon the terms set out below.

### **ORDER.**

1. The tribunal orders that Mr Butler shall be appointed as manager of the Property with effect from the date hereof for a term of two years upon the terms set out in the Management Order subject to the following variations:
  - a) The Basic management fee is set initially at £228.85 inclusive of VAT per unit per annum for the years 2014/2015 & 2015/2016 with subsequent increases to be negotiated with the lessees or failing agreement as set by the tribunal upon application to it.
  - b) The fee for carrying out statutory consultation in respect of major works shall not exceed 2.5% of the lowest tender.
  - c) The management of the property shall be carried out in accordance with the Royal Institution of Chartered Surveyors Service Charge Residential Management Code.
  - d) Conditions 6, 10, 11 of the Management Order shall not apply.
  
2. Leave to apply.

Signed

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Judge R.T.A.Wilson

Dated 11<sup>th</sup> September 2014

## **Appeals**

*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.*

*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. 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 the time limit, or not to allow the application for permission to appeal to proceed.*

*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.*

*If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.*