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

Case Reference : LON/00AG/LVM/2015/0014

Property : 47 Compayne Gardens, London,
NW6 3DB

Applicants : (1) Mr J Zausmer (Flat 2)
(2) Ms C Haworth (Flat 4)
(3) 47 Compayne Gardens Ltd

Representative : In person

Respondents : (1) Ms C Benzie (Flats 1 & 6)
(2) Mr B Preko – Tribunal
Appointed Manager

Representative : In person

Type of Application : Variation of management order

Tribunal Members : Judge I Mohabir
Mrs S Redmond BSc (Econ) MRICS

**Date and venue of
Hearing** : 18 January 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 24 March 2016

DECISION

Introduction

1. The Applicants seek an order under section 24(9) of the Landlord and Tenant Act 1987 (“the Act”) to vary an order made by the Tribunal on 2 March 2015 appointing Mr Preko as the Manager for a term of 3 years from 3 March 2015 by replacing him with their proposed Manager, Mr John Nitka.
2. The First Respondent has made a cross application to vary the earlier management order by having Mr Preko replaced with Mr Darren Powell.
3. The factual background to the applications is as follows. The somewhat long and troubled relationship between the parties is set out in some detail in the Tribunal’s earlier decision dated 2 March 2015 appointing Mr Preko as the Manager of the property.
4. It seems that neither party, for various reasons, was satisfied with the performance of Mr Preko in the discharge of his duties as Manager and made these applications to have him replaced with their respective proposed managers.

The Relevant Law

5. Section 24(9) of the Landlord and Tenant Act 1987 provides:

“[A leasehold valuation tribunal] may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) and order made under this section....

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.”*

Decision

6. The hearing took place on 18 January 2016. The First and Second Applicants appeared in person and also in their capacity as the officers of the Third Applicant. Both Respondents appeared in person.
7. It was common ground between the parties that Mr Preko should not continue as the Manger for the property. The reasons for this were set out in the witness statements filed by the First and Second Applicants and the First Respondent respectively¹.
8. In his witness statement dated 1 December 2015² set out the particular difficulties he had encountered since his appointment and the reasons why he should continue as the Manger. However, at the hearing, the Tribunal indicated that, given the vehement and joint opposition by both parties to his continued appointment, his position was untenable and he should be replaced by another Manager. He, therefore, abandoned his stance and withdrew from the hearing.
9. The Tribunal then heard evidence from the Applicants' proposed manager, Mr Nitha. He said that he had purchased the firm of "Frederick George Property Management Services Ltd" in 1977 and now managed about 60 estates. He had two separate contractors who carried out repairs on his behalf. Call outs were generally attended to within 2 hours and his firm also provided an out of hours service as well. His firm consisted of seven other employees.
10. Mr Nitha said that previously he had been an estate agent and was not a Surveyor. He did not have any professional qualifications and was not a member of any professional bodies, save for the NAEA. Indeed, when asked by the Tribunal, he said that he chose not to become a member of any other professional body because of the strict

¹ see Tab A at pages 38-43 and Tab B at pages 1-6 of the hearing bundle

² see Tab C at pages 4 of the hearing bundle

requirement to provide 6 monthly accounts. Despite, this he followed the RICS Management Code.

11. Mr Nitha said that he had not been appointed by the Tribunal as a Manger before. He had viewed the property externally and had not considered any of the leases. As to the future management of the property, he said that he would initially convene a meeting and prepare a budget after carrying out an inspection. He preferred to keep a reserve fund of £1,000 per flat to meet such matters as the external refurbishment of the property, which would be required in the coming years. Mr Nitha confirmed that his basic management fee was £250 plus VAT per flat and would cover the menu of services set out in his firm's terms and conditions, although those were not before the Tribunal.
12. The Tribunal then heard evidence from the First Respondent's proposed Manager, Mr Powell. His professional experience, charges and his firm's appointments as a Manager by the Tribunal (currently 7) was set out in a detailed CV³.
13. Mr Powell confirmed that he would initially have a survey of the property carried out at a cost of approximately £500 plus VAT. Each of the lessees would be required to pay an initial service charge contribution of £500 to provide a "float". He said that his firm's charges would vary between 6.5-12% and these reflected the history between the parties. An appointment for a term of 3 years was being sought. He confirmed that he would personally be managing the property together with a Property Manager.
14. Mr Powell said that the out of hours telephone service was manned by 2 people at all times. His firm's level of PI cover for each claim was five million pounds. It currently managed about 330 blocks of flats, with

³ see Tab B at pages 45-63 of the hearing bundle

about 9,000 units in total. It was a member of the professional bodies of RICS and ARMA.

15. Having carefully considered the evidence in this case, the Tribunal was satisfied that the requirements of sections 9A(a) and (b) are variously satisfied for the following reasons:

(i) materially, both parties opposed the continued appointment of Mr Preko and it was clear, for a number of reasons, there had been little or no effective management of the property since his appointment.

(ii) the Tribunal was satisfied that Mr Powell possessed the requisite knowledge and experience to competently manage the property because:

- He demonstrated an understanding of the role as his firm currently had 7 such appointments.
- His firm was a professionally qualified firm of Chartered Surveyors and was also a member of RICS and ARMA with the appropriate professionally imposed safeguards.
- He demonstrated that he would be robust in resolving issues between the parties, for example, on proposed works and recovery of outstanding service charge arrears. Indeed, his firm had a sister company that would deal with any debt recovery.
- The Tribunal was satisfied that Mr Powell would act impartially.

16. On balance, the Tribunal did not consider that Mr Nitha's appointment was appropriate because:

- He was not professionally qualified and was not a member of any professional bodies. The Tribunal considered that the level of public protection imposed by

membership of such bodies was essential to this appointment.

- He did not appear to fully understand the role involved given that he had never held such an appointment before and his lack of awareness that he would in fact be the Tribunal's appointee.
- His answers to resolving the ongoing disputes between the parties' were not sufficiently robust in these circumstances.

17. Accordingly, the Tribunal does vary the terms of the management order dated 2 March 2015 as follows by:

- (a) Appointing Mr Powell of Ringley Chartered Surveyors in place of Mr Preko with immediate effect including the transfer of any management responsibilities.
- (b) The term of Mr Powell's appointment will be for 3 years from the date of this decision.
- (c) Mr Powell's basis remuneration shall be £550 plus VAT (£3,000 plus VAT) per annum payable quarterly.
- (d) An on account service charge payment of £500 per flat shall be paid not later than 3 weeks from the date of this decision by each of the lessees to Mr Powell in respect of any future service charge liability.

18. Save for these variations, the terms of the order dated 2 March 2015 shall continue unamended.

Judge I Mohabir
14 March 2016