



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

Case reference : **LON/00BK/LAM/2017/0031**

Property : **22/23 Hyde Park Place, London W2
2LP**

Applicant : **Mr David Renton (1)
Mrs Giulia Renton (2)
Mahnaz Malik (3)**

Representative : **Ms Hormaeche of Counsel**

Respondent : **22/23 Hyde Park Place Freehold
Limited**

Representative : **Mr Cohen of Counsel**

Type of application : **For the appointment of a manager**

Tribunal members : **Judge O’Sullivan
Mr C Gowman**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **11 June 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal finds that the preliminary notice served under section 22 of the Landlord and Tenant Act 1987 (the “1987 Act”) is invalid;
- (2) The tribunal declines to exercise its powers under section 24(7);
- (3) In the alternative the tribunal finds that no circumstances exist which make it just and convenient to appoint a manager under section 24 and therefore declines to do so; and
- (4) The tribunal declines to make an order under section 20C.

The application

1. The applicants seek the appointment of a manager of the property known as 22/23 Hyde Park Place, London W2 2LP (the “Property”) pursuant to section 24 of the 1987 Act. The Property is described in the application as *“formerly a club for escaped Dutch servicemen during WW”, the building now consists of 11 flats (five in the basement, two on the ground floor and one on each of the four upper floors)*”.
2. The applicants are Mr and Mrs Renton, the long leaseholders of Flat 4 and Ms Malik, the leaseholder of Flat 1B.

The hearing

3. The applicants, Mr Renton and Ms Malik both attended the hearing to give evidence and were represented by Ms Hormaeche of Counsel. Mr Stephen Wiles of Prime Property Management, the proposed manager, also attended as did Mrs Renton and Miss Renton. The respondent was represented by Mr Cohen of Counsel. Also attending for the respondent were Mr Arena (director and chairman of the board of directors and leaseholder of Flat 2), Mr Devlin (director and leaseholder of Flat B), Mr Dadabhay (director) Mr Singh (director) Ms Feld (director), Mr Arbuckle (director) Mr Belcher, Ms Madams, Mr Arze of Kay and Co and Ms Ishack (Flat 1A).
4. At the commencement of the hearing the respondent handed in a further document, namely the witness statement of Michael Arze, of the managing agents. No objection was made to the late admission of this statement although a short adjournment was given to Counsel for the applicants later in the day to read this through.
5. The tribunal heard oral evidence from several witnesses throughout the course of the day including from the proposed property manager.

Directions were made for written closing submissions which were received on 30 April 2018. What follows is necessarily a summary of the evidence heard and submissions made.

The background

6. A case management hearing took place on 18 January 2018 following which directions were issued of the same date. At the case management hearing the tribunal identified one of the questions to be decided as “*Is the preliminary notice compliant with section 22 of the Act and/or if the preliminary notice is wanting, should the tribunal still make an order in exercise of its powers under section 24(7)*”.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been of any relevance to the issues in dispute.
8. The applicants each hold a long lease but none are resident at the Property.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - i. Is the preliminary notice compliant with section 22 and, if not, should the tribunal still make an order in exercise of its powers under section 24(7) of the Act?
 - ii. Has the applicant satisfied the tribunal of any grounds(s) for making an order, as specified by in section 24(2) of the Act?
 - iii. Is it just and convenient to make a management order?
 - iv. Would the proposed manager be a suitable appointee and, if so, on the terms and for how long should the appointment be made?
 - v. Should a costs order be made?

Validity of the Preliminary notice

10. The section 22 notice was dated 17 October 2017 and stated that it was the intention of the applicants, at that stage Mr and Mrs Renton (Ms Malik being joined later in the proceedings), to make an application for an order under section 24 of the 1987 Act. The redress sought included (i) the grant of new leases which allow the lessee to have uncarpeted floors, (ii) the respondent re-calculating the purchase of the freehold

for the purposes of the new leases, (iii) the provision of accounting evidence in respect of the excess freehold purchase price money held by the respondent's solicitors and (iv) making any dispensation application by 10 November 2017. In both his skeleton argument and in closing written submissions Counsel for the respondent submitted that the section 22 notice was defective as the period given to remedy the defects of only 3.5 weeks was not a reasonable period within which to take the steps identified. Amongst other things it was said that it was clearly unreasonable to expect the respondent to prepare new service charge accounts for the years prior to 2015 in only 3.5 weeks. Counsel for the applicants did not address the issue of the validity of the section 22 notice in her written closing submissions.

The tribunal's decision

11. Under section 22 of the 1987 Act the notice must set out the matters referred to in section 22 (2) (a) to (e) as follows;
 - a) *Specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] may serve notices, including notices in proceedings, on him in connection with this Part;*
 - b) *State that the tenant intends to make an application for an order under section 24 to be made by [the appropriate tribunal] in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not so if the [requirement specified in pursuance of that paragraph is complied with];*
 - c) *Specify the grounds on which [the tribunal] would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;*
 - d) *Where those matters are capable of being remedied by [any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take steps for the purpose of remedying them as are so specified; and*
 - e) *Contain such information (if any) as the Secretary of State may by regulations prescribe".*
12. The tribunal determines that the preliminary notice is prima facie invalid as it failed to provide a reasonable period for the matters complained of to be remedied.

13. Although it was not directly addressed on this point the tribunal went on to consider whether it should exercise its discretion under section 24(7) which provides that;

“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).”*

14. The tribunal had heard no grounds upon which it should exercise its discretion and declined to do so. Two of the applicants had been involved in a prior application to the tribunal and should have been well aware of the requirements of a valid section 22 notice (the section 22 notice having been previously been found to be invalid in that first application). No reasons were given for such a short period having been given to the landlord in which it was asked to remedy the alleged defects although one might suspect that this was connected to the applicants’ zeal for making the application before a new managing agent was appointed. Having served a notice which is was plainly potentially defective the applicants could have withdrawn it and served a fresh one. No reason was given for their failure to do so.

15. The tribunal heard much evidence from both parties on the general merits of whether it was “*just and convenient*” to appoint a manager and it is considered it would be helpful if it were to give an indication of whether it would have appointed a manager had the section 22 notice been valid.

The Applicants’ case

16. The applicants relied on a statement of case dated 9 February 2018 and the evidence of Ms Malik and Mr Renton.

17. The section 22 notice set out the background to the application and concluded at paragraph 49;

“The appointment of Gareth Targett to replace Colin Devlin in 2015 brought about major improvements in how the building was managed but now that he has resigned, the reforms that were out in place could

be undermined. The only practical solution to these problem (sic) is to remove the board's powers to interfere with the building manager by asking the Tribunal to appoint Mr Targett's successor under s.24 of the Landlord and Tenant Act 1987."

18. Mr Renton's evidence confirmed that he had been happy with the previous management by Mr Targett and only became concerned when he heard he would not be managing the Property from December 2017. He confirmed that it was too early to tell whether there were any real issues with Kay & Co's management although there had been an issue with the re-tender of the gas contract. His complaints centred on 4 issues (i) the proposed "*replacement carpet*" covenant in the new lease (it has since transpired that the covenant sought by Mr Renton appears in the new leases) (ii) an objection to the fact that the vaults were included in the enfranchisement of the Property (iii) complaints about Mr Devlin's management of the Property and (iv) concerns about Kay & Co's management.
19. Ms Malik's evidence principally centred on her discontent with Mr Devlin's role as a director. She submitted that Mr Devlin continued to act as though he ran the Property after he had ceased to act as property manager and Ms Malik was concerned he was trying to force her to give up her cats. Her evidence was that she felt insecure living in a building where she felt directors were acting in a high-handed fashion and decided to rent out her flat and live elsewhere. Her evidence also was that once she moved out of her flat she continued to be treated unfairly by comparison with other leaseholders. It was said she was told she couldn't rent out her flat for more than 6 months when a blind eye was turned to a board member renting a flat out on Airbnb. It was also said a campaign was "*waged against her*" because of her allegedly noisy tenants and inadequate sound proofing under the floor of her flat. The final straw was said to be a refusal to have her join the board of directors.
20. It is the applicants' case that the management problems at the Property are long-standing and stem largely from the same cause being Mr Devlin's purported mismanagement of the Property over a lengthy period.
21. The applicants say that some of the grounds that the applicants complain of can only be remedied by the appointment of a manager under section 24. The applicants want the manager to be directed to make an account of the money the participating tenants paid towards the cost of the enfranchisement in order to separate the cost of the freehold from the cost of the purchase of the unregistered vaults which they did not agree to purchase under the participation agreement. Without a management order it is said that the purposes for which the participants paid the money cannot be achieved. The role of the manager should be "*to replicate the calculation and apportionment of*

the freehold purchase that would have been arrived at had the enfranchisement been conducted properly”.

22. During the course of the hearing the tribunal raised a question as to how far and on what terms it would be appropriate to entrust the manager with accounting for the freehold purchase and how the manager would be protected if a participating tenant was unhappy with the process. The applicants say that the manager would be protected if he complied with the management order but that no objection would be made if the tribunal considered the case required a different manager with more experience of management orders.

The Respondent’s case

23. The respondent relied on its statement of case and principally on the evidence of Mr Arena and Mr Devlin.
24. Counsel for the respondent accepted that Mr Renton’s evidence was completely honest but submitted the motivation for the application was misplaced and based on a misreading of the participation agreement, historic issues concerning Mr Devlin’s management and a spurious point about Kay & Co.
25. Mr Arena explained that the landlord had appointed Kay & Co with a 3-month break clause to ensure effective property management during these proceedings. He also explained that the landlord had obtained advice from Bishop & Sewell in relation to the new lease and the terms contained were those sought by Mr Renton as to the flooring covenant. Although an issue had been raised by Ms Malik as to whether she had been sent a lease in a different form, after the hearing the tribunal was sent copy correspondence and the proposed new lease which clearly showed that Ms Malik had received the same proposed lease as all other leaseholders.
26. Mr Devlin also gave oral evidence and was cross examined in relation to his email correspondence with Ms Malik and the issue of the vaults. He submitted that he had no personal agenda against her and told the tribunal about the problems with noise he had with her tenants.
27. In closing submissions Counsel for the respondent submitted that the issue of the new lease/the vaults and the enfranchisement process was not a matter which came within section 24(2)(a)(i) of the 1987 Act as it did not relate to “*a breach of any obligation owed to him by the tenant under his tenancy and relating to the management of the premises*”.
28. The respondent submits that all other grounds relied on are historic such as the issue about client money, the correct end of year of accounts for the period 2009-2015 (the accounts post 2015 being made to the

correct end of year date) and complaints in relation to a section 20 consultation which took place before 2015. Counsel submitted it was clearly not just and convenient to make a management order as all complaints are either irrelevant or historic. 7 out of 11 leaseholders support the respondent in opposing the application with a further 2 abstaining. All leaseholders (including the applicants) are said to be happy with the current management of the Property or believe it is too soon to assess Kay & Co's performance. All historic complaints were said to relate to a period before the appointment of Kay & Co and the complaints about the new leases and enfranchisement have nothing to do with the management of the Property.

The tribunal's decision

29. The tribunal did not find, in the alternative, that it was just and convenient to appoint a manager.
30. There were no real concerns with the current management of the Property which would justify the appointment of a manager. As was acknowledged by Mr Renton he had been happy with the performance of the previous manager, Mr Targett. His concerns were that the management would no longer be robust and that Mr Targett's reforms could be undermined. He considered the only practical solution to his concern was the appointment of a manager. We are of the view that the application is premature. It is accepted that the current management is of a good standard and we had no evidence to suggest that it would deteriorate. Kay & Co are a professional firm of managing agents and have only been appointed relatively recently.
31. The majority of the grounds relied upon by the applicants were in our view historic and of no relevance. Mr Devlin is no longer managing the Property and has not been involved in its management since Mr Targett's appointment. We were not persuaded that he has abused his position as director on the limited evidence before us relating to an exchange arising from alleged noise nuisance and the board allegedly turning a blind eye to unauthorised subletting of another flat at the Property.
32. Ms Malik's previous worries concerning her cats were no longer relevant nor were her concerns in relation to allegations of noise nuisance given that she had moved away with her cats and a resolution appeared to have been reached in relation to the alleged noise nuisance. Issues arising in relation to the terms of the enfranchisement and participation agreement were outside of the remit of the application and were not matters falling within section 24. The terms of the participation agreement can be enforced in the County Court if agreement cannot be reached. It appears to us that the terms of the new leases to be granted are now in the terms agreed between the parties and can be executed. Any issues between the parties as to the terms of

the participation agreement and any payment for the vaults is not a matter for our jurisdiction.

The proposed manager

33. Mr Stephen Wiles of Prime Property Management, the proposed manager, appeared to give evidence to the tribunal. The tribunal has already indicated that it is declining to appoint a manager in this case and therefore makes no finding on Mr Wiles' suitability as a proposed manager.
34. The respondent was highly critical of Mr Wiles' evidence in relation to insurance and his knowledge of the RICS Code of Practice. It was clear to the tribunal that Mr Wiles had not been fully instructed in relation to the particular problems in this case concerning the collective enfranchisement and the continuing dispute. These are unusual circumstances and not something in our judgment which one can expect a proposed manager to be alive to. However, the tribunal would suggest that in future before agreeing to be nominated as a proposed manager Mr Wiles should ensure that he has read the relevant leases and familiarised himself with the important provisions, is fully conversant with the problems facing a property and has given some thought to the management plan which will need to be put in place.

Application under s.20C

35. The applicants had made an application for an order under section 20C of the 1985 Act and submissions were made in the parties' closing submissions. Having considered those submissions and taking into account the determinations above, the tribunal determines that no order should be made under section 20C.

Name: Judge O'Sullivan

Date: 11 June 2018

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).