



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

Case reference	:	CHI/00HH/LVM/2019/0007
Property	:	Albert Court Market Street Torquay Devon TQ1 3AH
Applicant	:	Mr and Mrs A Suchorski and other leaseholders
Representative	:	Mrs J Armstrong and Mrs A Dixon
Respondent	:	Mr R Norton, Norton Property Management Ltd and other leaseholders
Representative	:	None
Type of application	:	Appointment of Manager (Interlocutory) Section 24 Landlord and Tenant Act 1987
Tribunal member(s)	:	Judge C. A. Rai Judge Tildesley OBE Mr M Woodrow MRICS
Venue	:	Plymouth Magistrates Court St Andrews Street Plymouth Devon PL1 2DP
Date of decision	:	23 September 2019

DECISION

1. This application has arisen following the failure of the current Manager, Richard Norton, to discharge his duties in a manner satisfactory to the Applicant and other residents of the Property.
2. The Tribunal received the application on 26 June 2019. The Applicant seeks a variation to the existing management order dated 1 November 2017, (the Current Order), and applied to the Tribunal to:-
 - (i) Discharge the current manager Richard Norton with immediate effect.
 - (ii) Appoint Mrs Angela Dixon of Angela Dixon Sales and Lettings Ltd (Company Number 07008807) of 19 Old Mill Road Torquay TQ2 6AU as manager under section 24 of the Landlord and Tenant Act 1987 for the remainder of the term of the Current Order which will expire on 30 October 2020.

3. The Current Order required that the manager apply to the Tribunal for a review of the progress made during his appointment between 31 March 2019 and 30 April 2019. [See paragraph 17]. Mr Norton did not comply with this requirement.
4. The Application was listed for a hearing on 29 August 2019. By Directions dated 14 August 2019, Mr Norton was directed to attend the hearing on that day to give evidence about his term of manager and produce up to date service charge accounts for the Property.
5. On the day before the hearing, Mr Norton contacted the Tribunal Office and forwarded a letter, dated 30 July 2019, which he claimed to have previously sent to the Tribunal, stating that he would be unable to attend the Hearing on any date at the end of August, but told the Tribunal that he did not contest the discharge of his appointment.
6. One of the grounds for the Application is that Mr Norton has not produced any service charge accounts for the Property during the term of his appointment.
7. Mrs Jill Armstrong represented the Applicant. Mrs Angela Dixon, the proposed manager was in attendance with her colleague Lisa Furse. Other applicants were also present.
8. Mrs Armstrong said that she had made enquiries to find another manager and had identified that Mrs Dixon as willing to take on the management of the Property.
9. An undated email from Mrs Dixon is included in section 4 of the hearing bundle and lists her experience of property management which is summarised below.
10. Mrs Dixon founded her business approximately 10 years ago and currently operates it herself with the assistance of one full time staff member, Lisa Furse. The company currently manages five or six blocks, varying in size between three and twenty six flats.
11. Mrs Dixon has no professional qualifications although the company belongs to UK Association of Lettings Agents. It has full money protection.
12. There is no copy of Mrs Dixon's professional indemnity insurance policy in the bundle but she agreed to send a copy of it to the Tribunal office within the 7 days following the Hearing. She was unable to confirm the amount of her indemnity insurance cover. She acknowledged that she has not yet approached her insurers to enquire if they would make an endorsement on her policy should she be appointed by the Tribunal as "Manager" of the Property.
13. She stated that she would charge £175 per flat per annum and that her business is not VAT registered. She retains a list of local contractors apparently compiled from recommendations. If necessary she would

seek advice from a local chartered surveyor, who is a member of the Royal Institution of Chartered Surveyors (RICS) to assist her in identifying suitable contractors.

14. She told the Tribunal that she would visit the Property at least every three months and more often if required.
15. Her office uses a property management software package which enables her to reconcile income and expenditure relating to each managed block with the company bank balance on a daily basis. She is confident that she would be able to collect service charges both from the leaseholders who are owner occupiers, those who are not and the freeholder who remains the owner of the majority of the converted flats. 18 flats have been converted within the building but the ground floor remains unconverted.
16. She said that all messages left on her office answerphone are automatically emailed to her and that there is always cover available during staff holiday periods.
17. She had visited the Property twice prior to the hearing. She had not looked at the leases. She would anticipate collecting service charges twice yearly. She cannot yet estimate the amount she would need to collect but would prioritise the lift repair, gate repair and lighting of hallways. She accepted that it may take some time to improve the Property.
18. Mrs Dixon acknowledged that she is not familiar with the Service Charge Residential Management Code published by the RICS. She has no knowledge or familiarity with the duties of a tribunal appointed manager and seemed unaware that her duty would be to the tribunal not to the leaseholders or the freeholder. She agreed to obtain a copy of the Code from a Chartered Surveyor and to familiarise herself with it.
19. She said that she has had little experience of undertaking consultation for “major works” although she had taken over management of a block part way through major works. She expressed willingness to download the appropriate consultation form and was aware of the £250 limit of expenditure and familiar with the term “aggregation of works”.
20. Mrs Dixon’s company has no documented complaints procedure and currently operates on the basis that if a complaint is made it must be dealt with by someone other than the person against whom the complaint was made.
21. Neither the Applicant nor Mrs Dixon have obtained any evidence of a current building insurance policy but Mrs Dixon said that she would be able to put insurance cover in place on short notice should this become necessary. Mrs Armstrong also stated she had approached the freeholder to find out if he had current buildings insurance cover for the Property but had not received any satisfactory response although she would persist in her enquiries.

22. The Tribunal explained its reservations about appointing Mrs Dixon as manager on account of her lack of suitable professional qualifications, relevant experience and actual knowledge of the role of a tribunal appointed Manager. However it told the parties that in all of the circumstances it might consider making an interim appointment. Whilst Mrs Armstrong suggested a twelve month appointment might be acceptable, Mrs Dixon said she would accept a six month appointment.

Decision

23. In accordance with section 24(1) Landlord and Tenant Act 1987 Angela Dixon of Angela Dixon Sales and Lettings Ltd ('the Manager') is appointed as manager of the property at Albert Court Market Way Torquay TQ1 3AH ('the Property'). The order shall be interlocutory and continue until 14 January 2020.
24. The Manager shall manage the Property in accordance with:
- (a) The directions and schedule of functions and services attached to this order; and
 - (b) The respective obligations of the landlord in the leases by which the flats at the Property are demised and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
25. The Tribunal discharges Richard Norton from his duties as Manager of the Property under the Current Order except for his responsibilities (1) to produce a final closing account and answer questions raised on the account by the Landlord and Tenants within 14 days, (2) to hand over any current policy of insurance and other documents relating to the property to the new manager, (3) to reimburse any unexpended monies to the new Tribunal appointed manager.
26. The Manager shall register the Order against the Landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

Judge C. A Rai
Chairman

Rights of appeal

1. 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.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. The appointment shall be limited to arranging insurance for the building and dealing with any day to day management issues that require urgent attention which will include repairs to the lift, entry gates and external lighting and general maintenance and cleaning of the common parts.
2. From the date of the appointment and throughout the appointment the Manager shall ensure that she has appropriate professional indemnity cover in the sum of at least one million pounds (£1,000,000) and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent, the freeholder or the Tribunal. Evidence that the insurers have been informed of the appointment of the Angela Dixon as manger must also be provided.
3. The Manager shall be entitled to remuneration subject to approval by the Tribunal (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
4. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
5. The Manager shall be entitled to apply to the Tribunal for further directions.
6. The Manager shall inform the leaseholders of her appointment and her powers under the order.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Set, demand and collect an estimated service charge in advance to pay for insurance premiums, her management fee and any other matters under the leases requiring urgent attention. For the avoidance of doubt this power stands **outside the terms of the lease.**
- (ii) Should it be necessary, instruct solicitors and counsel to recover estimated service charges imposed under (i) above including taking proceedings before a court or a tribunal.
- (iii) The Manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, accountant, counsel or expert on a full indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Landlord, those costs should be refunded to the service charge account.
- (iv) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property and in accordance with the lease.

Repair and Maintenance

- (i) Deal with urgent repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all urgent building maintenance relating to the services and structure of the Property which includes compliance with all regulatory and statutory requirements and in the interests of good estate management.

Accounts

- (i) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection receipts or other evidence of expenditure.
- (ii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which service charge contributions shall be paid.
- (iii) All monies collected will be accounted for in accordance with the accounts regulations as issued by the RICS.

Fees

The Manager's fee for the above-mentioned management services will be a basic fee of £175 per unit per annum apportioned pro rata for a period of less than a year.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the RICS.

Section 24 Landlord and Tenant Act 1987

24 Appointment of manager by [a . . . tribunal] extracted sub-sections

(1) [The appropriate 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) [The appropriate 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;

[(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration 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;]

[(abb) where the tribunal is satisfied—

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, 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).]

[(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of [Schedule 11](#) to the Commonhold and Leasehold Reform Act 2002.]

(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.
 - (g) [The appropriate 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 2002], [the tribunal] may by order direct that the entry shall be cancelled.
- [(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.]