



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

**Case Reference** : **LON/00AW/LAM/2018/0016**

**Property** : **30 Egerton Gardens, London SW3  
2DB**

**Applicant's** : **(1)Ms Celesta Alexander  
(2)Ms Ann Danos**

**Representatives** : **Ms Alexander in person  
Mr Hammond of counsel on behalf  
of Ms Danos**

**Respondent** : **30 Egerton Gardens Limited**

**Representative** : **Mr Woolf of counsel**

**Type of Application** : **Appointment of a manager**

**Tribunal Members** : **Tribunal Judge Rahman  
Mr Thompson BSc FRICS  
Mr N Miller**

**Date and venue of  
determination** : **28/2/19 at 10 Alfred Place, London  
WC1E 7LR**

**Date of Decision** : **19/3/19**

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**DECISION**

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## **Decisions of the tribunal**

- (1) In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Nigel Cross of TPS Estates ( Management) Limited ('the Manager') is appointed as manager of the property at 30 Egerton Gardens, London SW3 2DB ('the Property').
- (2) The order shall continue for a period of 1 year from 1/4/19. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
- (3) The manager shall manage the property in accordance with the attached "by consent management order" and the schedule of functions and services attached to the order.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the respondent's costs of the tribunal proceedings may be passed to the lessees through any service or administration charge.

## **The application**

1. The applicant's seek an order appointing Mr Nigel Cross of TPS Estates (Management) Limited as a manager under section 24 of the Landlord and Tenant Act 1987 (the "Act").

## **The hearing**

2. The first applicant appeared in person and the second applicant was represented by Mr Hammond of counsel. Also in attendance was Mr J Danos, the second applicant's son. The respondent was represented by Mr Woolf of counsel. Also in attendance on behalf of the respondent was Ms De Vecchi.

## **The background**

3. The property which is the subject of this application is a building comprised of 6 flats. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.]

## **The issues**

4. At the hearing, after much discussion between the parties throughout the whole of the morning, and with some assistance from the tribunal, the parties agreed that Mr Nigel Cross of TPS Estates (Management)

Limited should be appointed as a manager for one year. However, they disagreed on whether the tribunal should make any order under section 20C of the Landlord and Tenant Act 1985 and section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

5. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determines as follows.

### **Appointment of Mr Nigel Cross as manager**

6. In answer to questions from the tribunal, Mr Cross confirmed the following at the hearing:
7. He had read the lease “generally” and agreed to be appointed manager for a year.
8. During the course of the year he would engage with all of the lessees and try to build trust with them. It was clear to him that there had been a breakdown in relationship between the leaseholders. He intended to do things openly and be transparent so as to encourage a good relationship between everyone. In particular, he would be transparent with any spending decisions. He considered that the agreement between the parties at the hearing showed what could be achieved through discussions.
9. He would confirm with all the lessees that they agreed to the lease being varied and would then make the relevant application to vary the leases. He would obtain quotes from independent solicitors.
10. He would review the building, especially with respect to health and safety matters. He would call a meeting with the leaseholders so that he could take on board their views and move forward. He would tackle the administration side of things also. He would ensure that the building is compliant with all relevant regulations.
11. Neither party had any questions for Mr Cross.
12. Having considered the witness statements provided by Mr Cross, together with all the documentation provided in support of his appointment, and his oral evidence, and given the agreement between the parties, the tribunal found it just and convenient to appoint Mr Cross manager for a year.

### **Orders under s.20C and s.5A**

13. On behalf of the second applicant, Mr Hammond stated that the application had been successful. The respondent had agreed to the appointment of Mr Cross as manager and this could only have happened as a result of this application being made. The respondent had only offered an alternative managing agent and had effectively agreed to change Ms De Vecchi after the application had been made to the tribunal. Therefore, the respondent should not be allowed to recover any of its costs as an administration or service charge.
14. The first applicant adopted the submissions made on behalf of the second applicant and further confirmed that she did not wish to recover the fees she had paid to the tribunal in relation to this application.
15. On behalf of the respondent, it was submitted that the application had not in fact been successful. The application was for a management order by the tribunal for a period of five years. The tribunal had not in fact made an order as the parties had agreed, so that good sense could prevail, that Mr Cross be appointed manager for the period of a year. Any feeling of success or victory was therefore for all concerned. If the legal costs cannot be recovered, this would result in further anxieties between the lessees because of the pressure put on the respondent company. There is no evidence of any improper or unreasonable conduct by the respondent. In the last three months, there has been good cooperation between all leaseholders involved in this application. Neither party has been successful. There has been a sensible compromise arrived at for the good of the building. The respondent had done nothing unreasonable. Any order made under section 20C or section 5A would be unfair and would undermine the good spirit of what had been achieved by the parties by agreement at the hearing.
16. The tribunal notes that neither party had behaved unreasonably and all parties made efforts to engage and co-operate and as a result of which they were able to agree to a one-year management order. However, the tribunal found it was reasonable for the applicants to have made the application as the parties were unable to agree and had only agreed at the hearing that Mr Cross be appointed as manager by the tribunal. Ultimately, the applicants did succeed in having their nominated manager appointed by the tribunal (as opposed to employed by the respondent as suggested by the respondent), albeit for one year instead of five years. Given the outcome achieved, the tribunal considers it just and equitable in all the circumstances for an order to be made under section 20C of the 1985 Act and section 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge.

**L Rahman**  
**Tribunal Judge**

**19.3.19**

**IN THE FIRST TIER TRIBUNAL**  
**PROPERTY CHAMBER**  
**RESIDENTIAL PROPERTY**

**IN THE MATTER OF SECTION 24(1) OF THE LANDLORD AND TENANT  
ACT 1987**

**AND IN THE MATTER OF 30 EGERTON GARDENS, LONDON SW3 2DB**

**CELESTA ALEXANDER  
ANN DANOS**

**Applicants**

**-and-**

**30 EGERTON GARDENS LIMITED**

**Respondent**

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**BY CONSENT  
MANAGEMENT ORDER**

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***Interpretation:***

In this order:

- (a) “Common Parts” means any garden area, postal boxes, refuse store, cycle store, security gates, lifts, paths, halls, staircases and other access ways and areas (if any) within the Premises that are provided by the Respondent for common use by the Lessees or persons expressly or by implication authorised by them.

- (b) “Freeholder” means the person or persons with the benefit of the freehold title registered at HM Land Registry under Title Number BGL38583.
- (c) “Leases” means the long leases vested in the Lessees and the Respondent.
- (d) “Lessee” means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord & Tenant Act 1987 (“the Act”).
- (e) “The Manager” means Mr Nigel Cross, BSc, MRICS of TPS Estates (Management) Limited, Hyde Park House, 5 Manfred Road, London, United Kingdom, SW15 2RS.
- (f) “The Premises” means all that property known as 30 Egerton Gardens, London SW3 2DB.
- (g) “The Respondent” includes any successors in title of the freehold estate registered under title number BGL38583
- (h) “The Tribunal” means the First-Tier Tribunal.

***Preamble***

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

AND UPON the Tribunal being satisfied that the Applicants are entitled to so apply and that the jurisdiction to appoint a manager is exercisable in the present case

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

AND UPON the parties having agreed by consent the terms of the Management Order hereafter set out

IT IS ORDERED THAT

1. Mr Nigel Cross, BSc, MRICS is appointed the Manager of the Premises pursuant to section 24 of the Landlord and Tenant Act 1987 for a period of 1 year commencing on 1 April 2019. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires. The Manager is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:
  - (a) The right to receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder.
  - (b) The power to raise a reserve fund.
  - (c) The power to raise quarterly demands of the Lessees on the usual quarter days 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, including an initial demand on account of the current quarter at or after the date of his appointment. Demands are not required to be raised in accordance with the Lease.
  - (d) The power and duty to carry out the management obligations of the Respondent contained in 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; and

- (iii) The Respondent's power to grant consent.
  
- (e) The power to delegate to other employees of TPS Estates (Management) Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions, and to pay the reasonable fees of those appointed.
  
- (f) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
  
- (g) The power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases or the Premises and to make any arrangement or compromise on behalf of the Respondent including but not limited to:
  - (i) Proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases;
  
  - (ii) Legal action to determine that a breach of covenant has accrued;
  
  - (iii) Legal action to prevent a further breach of covenant.
  
- (h) The power to commence proceedings or such other enforcement action against the Respondent.
  
- (i) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
  
- (j) The power 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 section 42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the Leases (if any) or under powers given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

- (k) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money to the Manager.
- (l) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the Respondent in the Premises under title number BGL38583.
- (m) The power to execute deeds of variation on behalf of the Respondent in respect of the Leases limited to (i) interim service charge in advance (ii) balancing payments (iii) reserve fund.

2. The Manager shall manage the Premises in accordance with:

- (a) The directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
- (b) All statutory requirements, including those set out in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987;
- (c) The respective obligations of all parties under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

- (d) The duties of managers set out in the Service Charge Residential Management Code (2016) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
3. From the date of this Order, 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.
4. From the date of this Order, the Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges or any other monies from the Lessees. Such functions are transferred to the Manager forthwith.
5. The Respondent, the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation 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 said duties and powers.
6. Without prejudice to the generality of the foregoing hereof:-
- (a) The Respondent, whether by itself, its agents, servants or employees, shall within 21 days of this Order deliver to the Manager all such accounts, books, papers, memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are relevant and/or necessary to the management of the Premises as are within its custody, power or control together with any such as are in the custody, power or control of any of its agents, servants or employees in which last case it shall take all reasonable steps to procure delivery from its agents, servants or employees.
- (b) Within 14 days of compliance of paragraph 6(a) above the Manager shall decide in his absolute discretion which or any contracts he will assume the rights and liabilities under.

- (c) The Respondent shall within 21 days of this Order deliver to the Manager all keys, fobs and other access/entry cards to the Premises. If the Respondent fails to deliver such keys, fobs and other access/entry cards to the Premises the Manager shall be entitled to remove the existing locks and any other security systems currently installed at the Premises and install such locks and other security as, in his absolute direction, he thinks fit.
- (d) The Respondent shall within 21 days of this Order 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, 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.
- (e) The Respondent shall within 21 days of this Order give 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 any relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive such sums under the Leases of any Lessee it shall forthwith pay such sums to the Manager without deduction or set-off.
- (f) The Respondent shall permit the Manager and assist him as he reasonably requires to serve upon Lessees any notices under section 146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
- (g) The rights and liabilities of the Respondent as Landlord arising under any contracts of insurance to the Premises shall from the date hereof become rights and liabilities of the Manager.
- (h) 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 attached.

7. From the date of this Order, the Respondent and the Lessees shall - on receipt of 24 hours written notice – give the Manager reasonable access to any part of the Premises which he might require in order to perform his functions under this Order.
8. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £1,500,000 providing copies of the current cover note upon written request by any Lessee, the Respondent or the Tribunal.
9. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
10. The Manager is directed to register forthwith a restriction at the Land Registry in standard Form N against the freehold estate registered under title number BGL38583 in the following words:

*“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Mr Nigel Cross of TPS Estates (Management) Limited of Hyde Park House, 5 Manfred Road, London, United Kingdom, SW15 2RS”*
11. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or freehold interest.
12. The Manager and/or any party to these proceedings shall have liberty to apply to the Tribunal for further or other orders or directions.

## **SCHEDULE**

### **FUNCTIONS AND SERVICES**

#### **Financial Management:**

1. Prepare an annual service charge budget (consulting with the Lessees as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in the proportions set out in the Leases. Instruct solicitors to recover any unpaid service charges, and any other monies due to the Respondent.
3. Create a form of reserve fund if so required but in any event to recover (as appropriate) service charges by way of interim demands.
4. Produce for inspection, (but not more than once in each year) within a reasonable time following a written demand by the Lessees, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

#### **Insurance:**

7. Take out an insurance policy in the Manager's name (noting the interest of the Lessees, the Respondent and any mortgagee) in relation to the Premises and the

contents of the Common Parts of the Premises with a reputable insurer, and provide a copy of the cover note/schedule to all Lessees and the Respondent.

8. 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:**

9. 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.
10. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts.
11. Manage the Common Parts, and service areas of the Premises as there are, including the arrangement and supervision of maintenance.
12. Carry out regular inspections (at the Manager's discretion but not less than once per year) without use of equipment, of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of the Premises.

**Major Works:**

13. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Premises, to bring it up to a proper state of repair as required under the terms of the Leases. This is to include the retention of the services of a suitably qualified surveyor to inspect the Premises and provide a report on the condition of the same and any works required. Thereafter to arrange for the surveyor so retained to prepare a specification of works and for the Manager to thereafter obtain competitive tenders, serve relevant notices on the Lessees pursuant to section 20 of the Landlord and Tenant Act 1985 and supervise the works in question.

**Administration and Communication:**

14. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquiries from the Lessees or their solicitors.
15. Provide the Lessees with telephone, fax, postal and email contact details (including emergency contact details) and complaints procedure.
16. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

**Variation of Leases:**

17. Organise by agreement amongst the Lessees or in default of agreement by way of application to the Tribunal the variation of all of the Leases so as to provide for (i) interim service charge in advance (ii) balancing payment (iii) reserve fund.
18. Appoint independent solicitors to effect the conveyancing and registration of the deeds of variation. These costs are to be recovered through the service charge.

**Fees:**

19. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £280 plus VAT per annum per Flat for the Premises.
20. The Manager shall be entitled to a project coordination fee of 9% plus VAT of the total cost of any building, redecoration or repair works which at any time total in excess of £250 charge for any one lessee. In the event that a third party building surveyor is appointed then the Manager shall receive to a minimum fixed fee of £500 plus VAT to undertake all of the administration, serving notices, liaising with lessees, paying bills.

21. In the event that the Manager prepares, compiles and issues the service charge accounts he shall be entitled to an additional annual fee of £300 plus VAT.
22. An additional charge shall be made in relation to the arrangement, claims handling and brokerage of insurances for the Premises, public liability, engineering and employee cover on the following basis:
  - (a) In the event that the Manager specifically arranges buildings insurance either directly to an insurance company or through a third party broker known to him then he shall not charge for any insurance related work (including any claims) as he will receive a commission from the insurance broker/firm. This commission will be calculated as a percentage of the overall premium and is included in the premium charged. This fee will represent the Manager's remuneration for undertaking the claims handling work associated with the policy, such fee to be calculated as a percentage of the gross premium paid in any one year.
  - (b) In the event that insurance is not placed through the Manager then a minimum additional annual charge of £300 plus VAT will be charged for the administration and payment of the policy. Additionally, the Manager shall be entitled to a charge of 7.75% plus VAT of the total sums of any successful claims made on the policy to cover the procedure, administration and organisation of the remedial works.
23. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £95 plus VAT payable by the outgoing Lessee.
24. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a rate of £100 plus VAT or such other rate as shall be agreed.
25. The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings (including these proceedings) whether in the Court or the Tribunal, to enforce the terms of the Leases. For the avoidance of doubt, the Manager is



directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.

Dated 28 February 2019

## **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).