

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

IN THE MATTER OF 38 FERNDALE ROAD, BURGESS HILL

CASE NUMBER: CH1/45UG/LAM/2020/0010

BETWEEN

MARIA GABRIELA RUSSELL

Applicant

and

**(1) JAMES CHARLES RUSSELL
(2) ROLAND GRAEME ST CLERE-SMITHE
(3) JULIAN MICHAEL ST CLERE-SMITHE**

Respondents

MANAGEMENT ORDER

Interpretation

In this Order:

- (a) "Leases" means the long leases vested in the Lessees of the flats
- (b) "Lessee" means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 ("the Act").
- (c) "the Manager" means Mr Marcus J Staples BSc MRICS Dip Prop, a Chartered Surveyor of Deacon Crickmay Asset Management
- (d) "the Premises" means all that property known as 38 Ferndale Road, Burgess Hill, including the common parts thereof, the freehold interest in which is registered at HM Land Registry under Title Number WSX293794

- (e) "the Respondents" mean (1) James Charles Russell (2) Roland Graeme St Clere-Smithe and (3) Julian Michael St Clere-Smithe who, together with the Applicant, Maria Gabriela Russell, are the freehold owners of the Premises and references to the "Respondents" in this Order shall include successors in title to the freehold estate registered HM Land Registry under Title Number WSX293794 or any interest created out of the said freehold title.

Preamble

UPON the Applicant having applied to the First-Tier Tribunal for the appointment of a Manager under Part II, Landlord and Tenant Act 1987 ("the Manager Application")

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to apply for the appointment of a manager under section 24 of the 1987 Act

AND UPON the First-Tier Tribunal being satisfied that it is just and convenient in all the circumstances to make an Order pursuant to section 24 of the 1987 Act to appoint a Manager

IT IS ORDERED THAT

1. Mr Marcus J Staples BSc MRICS Dip Prop shall in accordance with section 24(1) of the 1987 Act be appointed as the Manager to carry out the functions in connection with the management of the Premises and/or such functions of a receiver as are specified herein. The appointment shall be for a term of 2 years commencing on the date of this order.
2. The Manager shall with immediate effect exercise in that capacity all the rights of the Respondents and Applicant as landlord under the Leases and shall carry out in that capacity all the responsibilities of the landlord under the Leases.
3. 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 and the provisions of the Service Charge Residential Management 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);
4. The Manager shall be and 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 as landlord under the Leases in particular:
- a. the power to collect and receive any monies payable by the Lessees under the Leases
 - b. the power and duty to carry out the Respondents' and Applicant's obligations as landlord under the Leases as to the Landlord's repairing and maintenance obligations;
 - c. 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;
 - d. 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;
 - e. the power to grant consent to the Lessees, on application for landlord's consent, where required, under and for the purposes of the Leases;
 - f. the power in his own name to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee to recover arrears of any monies due under the Leases, including for such sums as fell due for payment before the Manager's appointment. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account. The

Manager shall be under no obligation to commence or continue such proceedings unless he has been placed in funds to do so by the Lessors.

- g. the power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to their appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to S.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 or the power 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.
5. 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.
 6. From the date of this Order, the Respondents shall not, whether by themselves or by any agent, servant or employee, demand any future payment of sums falling due under the Leases.
 7. Without prejudice to the generality of the foregoing hereof 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.
 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 £5,000,000 providing

copies of the current cover note upon request by any Lessee, the Respondents, Applicant or the Tribunal.

9. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
10. The Manager shall register the Order against Freehold Tide No. WSX 293794 in accordance with s 24(8) of the 1987 Act

The Co-operation of the Respondents/Payment of on Account Sums

11. The Applicant and the Respondents are directed to co-operate with the Manager and give reasonable assistance to the Manager.
12. The Applicant, the First Respondent, the Second Respondent and the Third Respondent shall each within 14 days of the date of this order, pay to the Manager the sum of £500 on account in order to place the Manager in funds in respect of the Manager's basic management fee and in respect of anticipated costs of repair and maintenance that are required to be undertaken at the Premises.

Liberty to apply

13. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24 (4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
 - a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;
 - c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

Judge N Jutton

30th day of November 2020

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management

1. Produce an annual service charge budget based on the estimated cost of carrying out repair work as well as an assessment of day to day running costs.
2. 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).
3. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
4. 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.

Repairs and Maintenance

5. Produce a maintenance plan for the next three years to include repairs requiring immediate attention and those which should form part of the cyclical maintenance of the Premises
6. 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.
7. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.

8. Carry out regular inspections (at the Manager's discretion but not less than four times per year) without use of equipment, to such of the Common Parts 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 those Common Parts.

Insurance

9. Take out in the Manager's own name (or that of his company) in accordance with the terms of the Leases an insurance policy with a reputable insurer to insure the building comprised in the Premises together with the contents of the common parts of the Premises and provide a copy of the cover note to all Lessees and the Respondent on request. The Manager will take reasonable and proper account of any quotation for insurance cover that may be produced to him by the Lessees.
10. Manage or provide for the management through a broker (if appropriate) of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Administration and Communication

11. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.
12. Provide the Lessees with telephone, postal and email contact details and complaints procedure.
13. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Fees

14. Fees for the provision of routine day to day management services shall be a yearly fee of £200 per flat plus VAT. For repair works (but only in the case where such repair works are of sufficient value so as to require consultation with the Lessees pursuant to section 20 of the Landlord &

Tenant Act 1985), the fees will be 10% of the net cost of the work plus VAT and will include preparing the specification, going out to tender, appointing a contractor, and project managing the work. Additional charges for non-routine management services, including dealing with the application to appoint the Manager, shall be charged at an hourly rate of £120 plus VAT.