



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

Case reference : **LON/00AY/LAM/2021/0001**

HMCTS code (paper, video, audio) : **P: V: CVPREMOTE**

Property : **34/36 Prescott Place, The Manor Works Clapham, London, SW4 6BU**

Applicants : **Ben Freeman and Bianca Baccini (Flat 36B)**

Representative : **In person**

Respondent : **Constantin Batin**

Representative : **Bloomsbury Law Solicitors (Imran Ahmad)**

Interest Parties : **1. Thomas Phillip Threfall (Flat 36A);
2. Kimberley Sum and Esther Carragher (34 Prescott Place);
3. Anne Camilla Frances Darling and Edwina Mary Gillian Barker (Flat 36D)**

Type of application : **Appointment of Manager**

Tribunal members : **Judge Robert Latham
Ian Holdsworth FRICS**

Date and Venue of Hearing : **28 June 2021 at
10 Alfred Place, London WC1E 7LR**

Date of interim decision : **21 July 2021**

INTERIM DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected by the parties. The form of remote hearing was V: SKYPEREMOTEOURT. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The tribunal has had regard to the documents to which reference is made in this decision.

Decisions of the tribunal

The Tribunal has adjourned this application for a period of three months to enable the Applicants and the Interested Parties to decide whether they wish to proceed with this application for the appointment of a manager. If no application is made by 28 September 2021, the Tribunal will treat this application as withdrawn.

The Application

1. On 19 January 2021, the Applicants issued an application seeking an order appointing Aldermartin, Baines & Cuthbert (“ABC”) as a Manager of the property which they occupy at 34/36 Prescott Place, Clapham, London, SW4 6BU (“the Property”) under section 24 of the Landlord and Tenant Act 1987 (the “1987 Act”). A preliminary notice under section 22 of the Act, dated 7 December 2020, has been served on the Respondent landlord at Flat 1, 50 Oakhill, Surbiton, Surrey, KT6 6DY and at The Manor Works, Prescott Place, London, SW4 5BU.
2. On 1 September 2017, a Tribunal (in LON/00AY/LAM/2017/0015) had appointed Mr Richard Davidoff as a Manager for a period of three years. That appointment expired on 31 August 2020. No party applied to extend that management order. A tribunal has no jurisdiction to vary or extend an order after it has expired. The Tribunal directed the Manager within 28 days of the conclusion of the management order to prepare and submit a brief written report for the tribunal on the progress and outcome of the management order up to that date, to include final accounts. This has not been prepared. The issue on this application is why a further management order should be made when the previous order has manifestly failed.
3. The other leaseholders, who are interested parties to the application, are
 - (i) Thomas Phillip Threfall (Flat 36A);
 - (ii) Kimberley Sum and Esther Carragher (34 Prescott Place);
 - (iii) Dr Anne Camilla Frances Darling and Edwina Mary Gillian Barker (Flat 36D).

4. The Applicants provided four addresses for the Respondent, three of which are in the UK and the fourth is in Moldova. All these addresses had been obtained from the Land Registry. It has been said that the Respondent lives in Moldova. On 10 February 2021, the tribunal sent a copy of the application to the Respondent at First Floor Flat, 189 Richmond Road, King Upon Thames, Surrey, KT2 5DD, and emailed it to him at cbatin@gmail.com. The tribunal emailed a copy of the application to Mr Imran Ahmad at Imran.ahmad@bloomsbury-law.com. On 10 March 2021, Mr Ahmad notified the tribunal that he had been instructed to act for Mr Batin in these proceedings.
5. On 8 April 2021, the Tribunal gave Directions. The Tribunal noted that it appoints an individual, rather than a firm, as a manager. The Applicants were asked to confirm whether they intend to ask the tribunal to appoint Mr Davidoff as Manager. The Applicants have now confirmed that they wish to appoint Mr Davidoff.
6. Paragraph 4 of the Directions, required the Applicants to send a number of documents to the Respondent. The Tribunal has received no confirmation that the Applicants have applied with this direction.
7. The Applicants were required to file a digital, indexed and paginated bundle of documents by 10 June. The Applicants failed to do so. On 20 June, Mr Freeman emailed six documents. This did not include a management plan. Neither did he address the management problems that have arisen at the Property or how a management order could address these. Mr Freeman apologised for the delay, explaining that there had been three deaths in his family in the previous three months.
8. On 25 June, Mr Freeman emailed a letter from Judge and Priestly, Solicitors, dated 24 June which explained the complex history of litigation affecting the Property. The Solicitor stated that he was instructed by (i) Prescott Place Freeholders Limited; (ii) Thomas Philip Threlfall; (iii) Ben Freeman; (iv) Elena Blanca Baccini; (v) Kimberly Sum; (vi) Esther Carragher; (vii) Anne Camilla Frances Darling and (viii) Edwina Mary Gillian Barker. The Solicitor made it clear that he was not instructed in connection with the management order and did not offer any views on what outcomes the management order could seek to achieve.

The Hearing

9. Mr Freeman appeared for the Applicants. He was accompanied by Mr Davidoff, the proposed Manager.
10. There was no appearance from the Respondent, Mr Batin, or his Solicitor, Mr Ahmad. The Respondent has not filed any papers in response to this application. Mr Batin is said to live in Moldova. However, Mr Freeman stated that Mr Joseph Donovan had informed Ms Baccini that Mr Batin does not exist. The Tribunal asked the Case

Officer to contact Mr Ahmad's office. She was told by his secretary that he would not be attending because he had tested positive for Covid-19. No explanation was given as to why he had not informed the tribunal of this or why he was unable to attend a virtual hearing. Mr Davidoff stated that he had spoken to Mr Ahmad in the previous week and that he had told him that he would do what he could to block his appointment as Manager. Given the background to this case, we accept this evidence. There has been no application by the Respondent to adjourn this application.

11. During the course of this hearing, Mr Davidoff emailed the tribunal a total of 30 documents. All these documents should have been in the Application Bundle. Many of these documents would not have been necessary had Mr Davidoff submitted his written report on the progress and outcome of the management order and provided final accounts as the Tribunal had directed in the management order (see [32] below). The management order expired on 31 August 2020.
12. The Tribunal informed Mr Freeman that we have rarely seen such a poorly prepared case. The Tribunal had some sympathy for Mr Freeman. He has not been assisted by his fellow leaseholders. When the tribunal had made the original management order, the lessees were represented by Paul Darling QC. We were told that he is the husband of Dr Anne Darling, one of the leaseholders.
13. There is a complex history to this Property. We consider this briefly before explaining our decision to adjourn this application.

The Background

14. The property at 34/36 Prescott Place is a substantial property on three floors. The Property now consists of four flats which are let on long leases, and two residential flats known as Flat 36C and Flat 36E which have recently been created in what had been in the first floor commercial unit known as "The "Manor Works". The Applicants describe these as "luxury flats".
15. The freehold interest was held by Stephen Donovan who granted long leases in respect of four of the flats:

(i) 36A Prescott Place (first and second floor): On 13 April 2012, he granted a 125 year lease to Thomas Threlfall for a premium of £460,000. The ground rent is £100 per annum. Mr Threlfall is an interested party to this application. He occupies his flat, but has played no active part in these proceedings. In an undated "Management Report 2019-20" prepared for the tribunal, which Mr Davidoff stated was prepared in September 2020, it is reported that Mr Threlfall is in

arrears of £1,948.80 to the Manager. The lessee makes a 20% contribution to the service charge expenses.

(ii) 36B Prescott Place (first and second floor): On 25 May 2012, he granted a 125 year lease to Elena Baccini and Ben Freeman for £465,000. The ground rent is £100 per annum. The undated “Management Report 2019-20” states that they owe £1,948.80. The lessees make a 20% contribution to the service charge expenses.

(iii) 34 Prescott Place (ground, first and second floors): On 12 July 2012, he granted a 125 year lease to Kimberley Sum and Esther Sum (now Carragher) for a premium of £347,500. The ground rent is £100 per annum. Kimberley Sum and Esther Carragher are named as Interested Parties. Ms Carragher no longer occupies the flat. The lessees make a 15% contribution to the service charge expenses.

(iv) 36D Prescott Place (ground, first and second floors): On 17 April 2013, Stephen Walsh granted a 125 year lease to Anne Barker (now Darling) and Edwina Barker for a premium of 405,000. The ground rent is £100 per annum. Anne and Edwina are sisters. They are named as Interested Parties. Dr Anne Darling no longer occupies the flat. The lessees make a 15% contribution to the service charge expenses.

16. On 24 April 2013, Stephen Donovan granted a 999 year lease in respect of The Manor Works, the commercial unit on the first floor to Anthony Haydn Peake. In a witness statement, dated 16 May 2017, prepared for the first application, Dr Darling describes how Stephen and Joseph Donovan had been working at the Property converting the vacant commercial units to create two additional residential flats. Mr Peake has played no role in any of the subsequent proceedings.
17. On 29 May 2014, Stephen Donovan transferred the freehold of the Property to the Respondent. This has led to extensive litigation which can be summarised briefly.
18. On 26 June 2018, Mr Threfall, Mr Freeman, Ms Baccini, Ms Sum, Dr Darling and Mr Barker (“the qualifying tenants”) served a “Section 11A Notice” on the Respondent as their first step in exercising their Right of First Refusal (“RFR”) under Part 1 of the 1987 Act. Prescott Place Freeholders Limited was established as the Nominee Purchaser.
19. On 25 October 2019, HHJ Letham, having satisfied himself that the qualifying tenants had complied with the statutory requirement for their RFR, made the following order:

(i) The Defendant shall transfer to the First Applicant the freehold interest of 34/36 Prescott Place, Clapham, London SW4 6BU (the

“Property”), which is registered at HM Land Registry under Title Number SGL222261; and

(ii) On the same terms as the Defendant acquired the freehold of the Property, or alternatively on terms as may be determined by the Appropriate Tribunal.

20. On 12 April 2021, this Tribunal determined that that the consideration paid by the Respondent in respect of the relevant disposal of the freehold of the property on 29 May 2014 is £125,000.

21. Mr Michael Walsh, Counsel who appeared for the qualifying tenants instructed by Judge and Priestley, stated that the Nominee Purchaser would not return to the County Court to enforce the order made by HHJ Letham. It would rather apply to the Land Registry to register the transfer. Mr Walsh seemed unaware of the management order.

22. In November 2020, the tenants noticed “For Sale” signs outside the Property, which were marketing for sale Flat 36C and Flat 36E, namely the two flats which had been created out of the commercial units. The leasehold interests for the Flats were also advertised for sale on Foytons’ website. The tenants were concerned that an attempt was being made to thwart their statutory RFR.

23. On 7 November 2020, the Nominee Purchaser and the qualifying tenants issued proceedings in the High Court, namely the Business and Probate List of the Chancery Division:

(i) On 16 December 2020, Mr Justice Adam Johnson made an order restraining the Respondent from marketing the Property;

(ii) On 14 January 2021, Bloomsbury Law applied to the Land Registry on behalf of Joseph Donovan to register leases in respect of Flats C and E which he asserted had been granted on 30 May 2014.

(iii) On 15 January 2021, there was a hearing before Mr Justice Meade. Mr Ahmad appeared on behalf of the Respondent and Joseph Donovan. He made no reference to the application which he had made to the Land Registry on the previous day. The Judge joined Joseph Donovan as a defendant. He made a further order restraining the defendants from dealing with the Property.

(iv) On 8 February 2021, Mr Justice Zacaroli extended this order.

24. A trial will be held in the High Court to determine the effect of the events which have occurred since November 2020. The Applicant has undertaken not to apply to register its interest until the disposal of

these proceedings or until further order. Mr Freeman told us that the High Court had fixed a Case Management Hearing for October 2021.

The Management Order

25. On 1 September 2017 a tribunal (Professor Robert Abbey and Stephen Mason FRICS) made the initial management order. The application was brought by Dr Darling and Mrs Barker. They were represented by Paul Darling QC. Mr Ahmad appeared for the Respondent. The Tribunal noted the Respondent's "complete failure to engage with the Tribunal" prior to Mr Ahmad's appearance at the hearing. The management order was made for a period of three years from 1 September 2017.
26. On 2 March 2018, the Manager made an application for directions from the Tribunal as the Respondent had failed to supply any either of the insurance or any other of the documentation relating to the management of the Property. On 27 March, Professor Abbey held a further hearing at which Mr Davidoff was present. Mr Ahmad arrived late. Mr Davidoff confirmed that he had now been able to insure the Property. However, no other documentation had been provided. The Tribunal therefore reissued management order with a penal notice. Mr Davidoff stated that this penal notice had had the desired effect and the relevant documentation was provided.
27. However, there was a fundamental problem that Mr Davidoff had failed to address. The Respondent was liable to pay 30% of the service charges. He has not paid a penny. In the absence of any payment from the Respondent, works could only be executed if the other lessees were willing to meet the shortfall. It seems that they have not been willing to do this.
28. Despite this, on 21 September 2017, the Manager served a Stage 1 Notice of Intention to execute a package of external decorations and repaired. On 3 January 2018, the Manager served a Stage 2 Notice of Estimates. The lowest quote for the works is £12,840. Three years later, none of these works have been executed.
29. On 27 June 2018, the Manager referred the Respondent's debt to PDC Law. On 4 February 2019, PDC Law obtained a money judgment in the sum of £10,383.40, including interest and costs. On 28 January, PDC Law obtained a charging order in respect of the debt. Judge and Priestley have advised the Manager not to enforce the charging order until the RFR has been resolved. Presumably, any debt will be offset against any payment due to the landlord on the transfer of the freehold.
30. Mr Davidoff provided the Tribunal with the undated "Management Report 2019-2020" which was apparently prepared in September 2020. This records that the Respondent's debt had increased to £16,165.40.

The Manager had informed the lessees that he could only proceed with the works (for which he will charge a 10% supervision fee) if they were willing to meet the shortfall. The Report stated that there was £8,218.24 in a service charge account and £2,767.33 in the reserve fund. It seems that the tenants were unwilling to fund the shortfall.

31. Mr Davidoff also provided the Tribunal with the Service Charge Accounts for 2019/20. This suggested that there was a reserve fund of £608.54 and a general reserve of £25,44.44. During 2019/20, nothing had been spent of the repair and management of the Property.
32. The management order expired on 31 August 2020. Paragraph 7 of the management order provided (emphasis added):

“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 or if an alternative direction is sought, as decided by the Tribunal upon application by any interested party.

33. The Manager has not produced the report for the tribunal on the outcome of the management order including the final accounts. This should have been provided by 28 September 2020. The Directions are mandatory. The Manager was and remains under a duty to comply with these Directions. The Tribunal is unclear as to what sums the Manager now holds on behalf of each lessee. Any unexpended monies should have been reimbursed to the paying parties.
34. The Applicants have not provided the Tribunal with a management plan. It was apparent that neither Mr Freeman or Mr Davidoff was clear as to what could be secured through a management order. Mr Freeman complained that there was a problem of dampness which seems to be due to defective rendering. This would not seem to be covered by the external decorations which were contemplated in 2017. Significant management expenses have been incurred with little benefit to the lessees.

The Decision to Adjourn the Application

35. The Tribunal has decided to adjourn the case for three months to allow the Applicants to review whether they want to proceed with this

application for an appointment of a manager. They must consider what outcome they seek to achieve through the management order. This needs to be a decision for all the lessees. They should also discuss this with their legal advisors.

36. It may be that the lessees conclude that they have a limited objective of ensuring that the Property is properly insured. If so, they should consider whether the appointment of a manager is necessary to achieve this objective. Mr Davidoff informed the Tribunal that the Property is currently insured. It should be possible for the lessees to extend this insurance.
37. The lessees should also consider whether the appointment of a manager is the best means of ensuring that repairs are executed. Are they willing to meet the 30% of funding that is due from the Respondent? Whilst they would have a good claim against the Respondent, they have little prospect of being able to enforce this.
38. Mr Davidoff suggested that the Tribunal could direct the Respondent to pay the sums that are due and enforce this through a penal notice. The Tribunal is far from satisfied that it has power to make such an order in respect of non-payment of a debt. In any event, there would be problems of enforcing it against the Respondent who apparently resides in Moldova. A tribunal does not make mandatory orders which are likely to be unenforceable.
39. It would be open to the lessees to consider their common law rights of self-help (see *Lee-Parker Izzet* [1971] 1 WLR 1688). Finally, it would be open to them to apply for the Right to Manage under the Commonhold and Leasehold Reform Act 2002.
40. The Tribunal is aware that the lessees are only seeking an interim measure until they can enforce their RFR. However, they can only acquire the freehold interest when the High Court proceedings have been finally determined. It is unclear when this will be.
41. The Tribunal is concerned that the litigation involving this Property has involved three different jurisdictions, namely the County Court, the High Court and this tribunal. It would be open to the lessees to apply for the injunction proceedings to be transferred from the Chancery Division to the County Court sitting at Central London. The County Court could then direct that all outstanding matters be heard by a judge sitting both as a Judge of the County Court and as a Tribunal Judge.

Judge Robert Latham
21 July 2021

Postscript

On 16 July, Mr Freeman contacted the Case Officer enclosing an invoice from ABC seeking to charge Mr Freeman £2,250 in respect of Mr Davidoff's attendance at the hearing. The basis of the claim is not clear. If this is claimed under the management order (now expired) or as a service charge, any party would be entitled to seek a determination from this tribunal as to whether it is payable/reasonable. This rather seems to be a claim in contract, a matter in respect of which this tribunal would have no jurisdiction. ABC would need to establish that it has a contractual right to recover Mr Davidoff's expenses, namely that there was an agreement between ABC and Mr Freeman for Mr Davidoff to be paid for his attendance and the rate at which he would be remunerated. The contract for such a retainer would normally be in writing. If there is any dispute about this, it would be a matter for the County Court and not for this tribunal.

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).