



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

Case Reference : CHI/29UN/LVM/2022/0004

Property : Samuel Court, 10-12 Athelstan Road,
Cliftonville CT9 2BA

Applicant : Ethel Properties Ltd
Christine Jakobson and Peter McPherson

Representative : Wade Barker

Respondent : Mr Colin Rouse Flat 1
Mr Jason Allen Flat 2
Satvinder Singh Bains Flat 3
Parvip Kaur Bains
Mr Maxwell Hendy Flat 4
Mr James and Mrs Kathleen Harris Flat 5
Mr Thomas Richards Flat 6
Ms Elaine Gill Flat 7
Mr Robin Cross Flat 8
Ms Linda Green Flat 10
RS Homes Kent Ltd Flat 11

Representative :

Appointed Manager : Mark Blooman MRICS

Type of Application : Application to vary Management Order

Tribunal Member(s) : Judge Tildesley OBE

Date of Hearing : Decision on Papers

Date of Decision : 2 September 2022

DECISION

Background

1. On 16 May 2022 the Applicants applied to vary a Management Order under section of 24 of the Landlord and Tenant Act 1987 made on 24 April 2020 which appointed Mr Mark Blooman MRICS as Manager of the property for a period ending on 21 May 2022. The variation sought was to extend the Order by two years until 22 May 2024.
2. As the application for variation was made prior to the expiry of the Order, the Tribunal took the view that the Order remained in force until the Application was determined. The Tribunal's directions of 27 May 2022 and 6 July 2022 confirmed that the Order continued until the Application was finally determined.
3. The Applicants are the leaseholders of Flats 9 and 12. Samuel Court Residents Association Limited, the freeholder of the property was dissolved on 5 October 2021. The Respondents to these proceedings are the ten remaining leaseholders.
4. The property comprises a detached house originally constructed as a pair of semis built in the late 19th century on lower ground, raised ground and two upper floors at some time converted to form 12 flats understood to comprise 4 x 3 bedrooms; 4 x 2 bedrooms; 2 x studio and 2 x 1 bedroom flats at lower ground floor level.
5. The Tribunal directed the Applicants to send the Application and directions to the Respondents. The Applicant's representative confirmed that he had done so on 6 July 2022.
6. The directions required the Respondents to complete a pro-forma indicating whether they agreed or disagreed with the Application. The Tribunal received a response from a Linda Green of Flat 10 who agreed with the Application. The Tribunal received no other response from the Respondents.
7. The Tribunal indicated that the Application would be suitable to be dealt with on the papers unless there were objections to the Application.
8. The Tribunal received no objections. Mr Barker the Applicant's representative provided a statement of case. Mr Blooman, the Manager, supplied a witness statement, in which he confirmed that he was prepared to continue as Manager for such period as the Tribunal determines. The Tribunal had sight of the decision made on 24 April 2020.

Reasons

9. Under section 24(9) of the 1987 Act the Tribunal may on the application of any person interested vary or discharge an Order appointing a manager. There is no statutory restriction on the Tribunal's power to vary or discharge an order unless it is made by a relevant person, namely, the landlord, when the Tribunal has to be satisfied that the variation or discharge sought would not lead to a recurrence of the events that gave rise to the Order. The test to be applied when exercising its discretion under section 24(9) is whether it is just and convenient to vary or discharge the Order.
10. The Tribunal on the 24 April 2020 found that the management of the property by the freeholder had been erratic and inconsistent over a period of time and this had resulted in administrative chaos, uncollectable service charges, the property falling into disrepair and the flats at the property being unable to be sold.
11. The Tribunal decided that the primary purposes of the Management Order were to make the Property wind and watertight and free from hazards and in this regard for the Manager to prepare a five year programme and to demand and account for service charges in accordance with this Order and the legislation.
12. The Tribunal also noted that there were drafting errors in the leases. The most critical concerned the contributions of the leaseholder at Flat 9 to the costs of insurance and of services. The Tribunal was satisfied from examination of the leases that the intention of the parties was for all leaseholders to make an equal contribution to those costs. The Tribunal, therefore, incorporated a provision in the Order that the contribution from each leaseholder to the costs of insurance and services shall be 8.3333 per cent. This proportion, however, would only apply whilst the Order remains in force. The Tribunal advised that an application should be made on behalf of the leaseholders to seek a variation of the leases to deal with the drafting errors.
13. Mr Blooman explained that his appointment as Manager had been affected by Covid-19 pandemic and the various lock-downs and restrictions that have resulted therefrom as well as the resulting supply chain bottlenecks and contactor availability. Nevertheless Mr Blooman has issued service charge demands for the years ended June 2022 and 2023, and had collected £58,924.89. There are arrears of £30,709.12 which are owed by four leaseholders. Mr Blooman has instructed solicitors to take action to collect those arrears. Following a section 20 consultation Mr Blooman instructed a contractor to carry out a range of repairs both externally and internally to the property. Mr Blooman has also issued a further section 20 consultation for more substantial external decorations and repairs which he is hoping to be carried out as a variation of the contract for the first set of works. Mr

Blooman has taken out buildings insurance for the property and met with the majority of the leaseholders on Zoom on 16 February 2022.

14. The grounds of the application are (1) to permit Mr Blooman to complete the major works programme which was interrupted by Covid 19, and to continue to collect the arrears of service charges, and (2) currently there is no landlord for the property.

Decision

15. The Tribunal is satisfied that Mr Blooman has progressed the objectives set for the Management Order and has brought stability and order to the management of the property. The Tribunal, however, accepts that Mr Blooman has been hindered by the various lockdowns associated with the Pandemic and by the resulting supply chain bottlenecks and contractor availability. This in itself is a valid reason for extending the Order to enable the completion of the necessary works to the property. There is a more compelling reason for the continuation of the management order, and that is the absence of a landlord which means that if the management order is terminated there would be no person having responsibility for the performance of the landlord's covenants under the lease. The Tribunal notes Mr Barker's intention to restore the landlord company to the register of companies which would then enable attention to be given to the variation of the leases regarding the service charge provisions.
16. The Tribunal, therefore, decides for the above reasons that it is just and convenient for the Order made on 24 April 2020 to be extended until 21 May 2024. Mr Blooman will remain as Manager of the property during the continuation of the Order
17. The Tribunal requires Mr Blooman to send this decision to each leaseholder, and confirm to the Tribunal that this has been done. The Tribunal will reissue the Management Order with the new date once it has confirmation from Mr Blooman about his level of fees for the ensuing period.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.



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MANAGEMENT ORDER

INTERPRETATION

IN THIS ORDER

“**The Property**” means the flats and other premises known as Samuel Court, 10 and 12 Athelstan Road, Margate CT9 2BA under title number K159528 and shall include the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds passages, bin-stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property

“**The Landlord**” shall mean Samuel Courts Residents Association Limited or their successors in title to the reversion immediately expectant upon the Leases.

“**The Tenants**” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and “Tenant” shall be construed accordingly.

“**The Leases**” shall mean all leases and/or underleases of flats in the Property

“**The Manager**” means Mr Mark Blooman MRICS of B2 Building Surveyors Limited, 9/27 The Broadway, London N8 8DR.

“**The Functions**” means any functions in connection with the management of the Property including any obligations and powers of the landlord under the Leases.

It IS ORDERED that

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Mark Blooman MRICS of B2 Building Surveyors Limited, 9/27 The Broadway, London N8 8DR is appointed as Manager of the Property.
2. The Order shall continue for a period of two years from 22 May 2022 to 22 May 2024. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.
3. The primary purposes of the Management Order are to make the Property wind and watertight and free from hazards and in this regard to prepare a five year programme and to demand and account for

service charges in accordance with this Order and the legislation.

4. The Manager shall manage the Property in accordance with
 - a. the directions and schedule of functions and services attached to this Order;
 - b. save where modified by this Order, the respective obligations of the Landlord and the Lease whereby the Property is demised by the Landlord 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”) (3rd Edition) 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.
 - d. The provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

5. 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. The wording of the restriction shall be:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 10 of the Order of the Tribunal dated 24 April 2020 and renewed on 2 September 2022 have been complied with.”

DIRECTIONS

6. From the date 24 April 2020 this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.

7. Where there is a conflict between the provisions of the Management Order and the lease, the provisions of the Management Order take precedence.

8. That the Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the

exercise of any of their said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.

9. That the Landlord allows the Manager and his employees and agents access to all parts of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Management Order. This includes providing keys to gain access to the rear garden.
10. On any disposition [other than a charge] of the landlord's estate in the property registered under title no K159528, the landlord will procure from the disponee of the property, a direct covenant with the Manager, that the disponee will (a) comply with the terms of this order and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from its disponee.
11. The Manager shall act fairly and impartially in his dealings in respect of the Property.
12. 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.
13. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2 million and shall provide copies of the certificate of liability insurance to the Tribunal and upon request being made by any Tenant of all or part of the Property, and the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.
14. That no later than two weeks after the 24 April 2020 the Landlord shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Landlord shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge and Insurance of the Property.
15. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date of the appointment become rights and liabilities of the Manager subject to the right of the Manager to decide in his absolute discretion which of any contracts he will assume the rights and liabilities and such decision shall be communicated in

writing to the relevant parties within 56 days from the date this order.

16. The Manager shall be entitled to remuneration, 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.
17. By no later than 2 September 2023 the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date providing a copy to the Tenants of the Property and the Landlord and the Freeholder at the same time.
18. Within 56 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 reports and accounts on the Landlord, and Tenants 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 any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
19. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 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.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

1. Maintain appropriate building insurance for the Property.
2. Ensure that the Manager's interest is noted on the insurance policy

Ground Rent

3. The manager shall collect and account for the ground rents payable under the residential leases.

Service charge

4. Prepare an annual service charge budget, and make provision for interim payment in advance, and a balancing payment by, or credit made to, the Tenants at the end of the year as appropriate.
5. Administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants.
6. Demand and collect service charges and Insurance due from the Tenants under the leases.
7. The Manager shall adopt an accounting year ending 24 June in each year.
8. The Manager shall have the authority to demand payments in advance and balancing payments at the end of the accounting year, to establish a sinking fund to meet the Landlord's obligations under the lease, to allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund, and to collect arrears of service charge and insurance that have accrued before his appointment.
9. The Manager will finalise his first estimate of the service charge for the year from 25 June 2019 to 24 June 2020 (accounting year) within 14 days of the date of the Management order, and send it with the demand for payment on account which will be payable 14 days after issue.
10. Thereafter the Manager will prepare an estimate of the service charge for the year commencing 25 June 2020 and each successive year, such estimate to be sent to all Tenants prior to the commencement of the relevant accounting year.
11. The interim service charge shall be payable in advance by two equal instalments on 24 June and 25 December in each accounting year.
12. The contributions payable by the Tenants to the service charge and insurance shall be 8.3333 per cent.
13. The Manager is entitled to recover through the service charge the cost of any surveyors, architects, solicitors, counsels and other professional persons or firms fees incurred by him whilst carrying out his functions under the Order.
14. Place, supervise and administer contracts and check demands for payments of goods services and equipment supplied for the benefit of the Property with the service charge budget.

Administration Charges

15. The Manager may recover administration charges from individual Tenants for his costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. The Manager should publish the costs of his charges for debt recovery and the timetable allowed for each course of action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Accounts

16. The Manager within 90 days from 24 June of each year shall prepare and submit to the Landlord and the leaseholders an annual statement of account detailing all monies receivable, received and expended. The accounts to be certified by the external auditor, if required by the Manager.
17. Maintain efficient records and books of account, which are open to inspection by the Landlord and the Tenants. Upon request, produce for inspection, receipts or other evidence of expenditure.
18. Maintain on trust an interest bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent and all other monies arising under the leases shall be paid.
19. All monies collected will be accounted for in accordance with the Code 3rd edition.

Repair and Maintenance

20. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all 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.
21. The setting up and implementation of a planned maintenance programme for 5 years to allow for the periodic redecoration and repair of the property.
22. 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 Property including preparing a specification of works and obtaining competitive tenders.
23. To liaise with the relevant statutory bodies responsible for buildings.
24. To ensure that the Landlord, and the Tenants are consulted on any proposed works to the Property and to give proper regard to their views. Copies of programmes of planned and major works should be sent to the Landlord and Tenants.
25. The Manager has the power to incur expenditure in respect of the provision of all necessary health and safety equipment and in complying with all regulatory and statutory requirements.

Licences to assign, approvals and pre-contract enquiries

26. The manager shall be responsible for carrying out those functions in residential leases with regard to approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the lease provides should be carried out by the landlord.
27. The manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat.

Right to Bring Legal Proceedings

28. The Manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of his appointment.
29. Such entitlement shall include but shall not be limited to bringing proceedings in respect of any arrears of service charge and rent attributable to any of the Flats in the property and for which these proceedings shall include any application under Part 7 or Part 8 of the Civil Procedure Rules for judgment in the County Court or High Court including a charging Order or any application made to the First-tier Tribunal under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.
30. 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.
31. The Manager has the right to instruct solicitors and counsel and other professionals for the taking of legal proceedings.

Fees

32. The Manager's fee for the above-mentioned management services will be a basic fee of £3,500 per annum. The basic fee will include those services for the Annual Fee at paragraph 3.4 of the Code
33. Fees for additional services will be in accordance with the fees set out in the Management Plan dated 21 January 2020. The Manager will provide an appendix setting out these additional fees to be affixed to the order within 14 days.
34. VAT to be payable on all the fees quoted above where appropriate at the rate prevailing on the date of invoicing.

Complaints procedure

35. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.