



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

Case Reference : **LON/00AG/LAM/2022/0007**

Property : **33 Broadhurst Gardens, London NW6 3QT**

Applicant : **Ms Eileen Hauptman (1)
Mr Eric Bergsagel (2)**

Representative : **Mr Robert Brown of Counsel instructed by Mis
Janice Northover, Solicitor together with Mr
Neil Maloney FRICS FARPM (proposed
appointee)**

Respondent : **Rosbury Properties Limited**

Representative : **Mr Sat Bal, Secretary of the Respondent
Company**

Type of Application : **Appointment of a Manager pursuant to s24
Landlord and Tenant Act 1987**

Tribunal Members : **Judge Dutton
Miss M Krisko BSc (Est Man) FRICS**

Date of Hearing : **20th October 2022**

Date of Decision : **17 November 2022**

DECISION

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DECISION

- 1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 Mr Neil Maloney of My Home Survey, The Boat House, Rear of 26 Rosecroft Gardens, Twickenham, Middlesex TW2 7PZ is appointed as Manager for the property at 33 Broadhurst Gardens, London NW6 3QT (the Property).**
- 2. The order shall continue for a period of three years from 1 December 2022. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time then the appointment will continue until that application has been finally determined.**
- 3. The Manager shall manage the Property in accordance with the terms and directions contained in the order attached.**
- 4. 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.**
- 5. An order shall be made under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs for the Tribunal shall not be added to the service charges.**

BACKGROUND

1. This was an application first made Ms Eileen Hauptman but subsequently joined by Mr Bergsagel, for the appointment of a Manager in respect of the premises at 33 Broadhurst Gardens, London NW6 3QT.
2. The Property is a detached building converted into five flats all subject to long leases of 999 years less ten days.
3. Ms Hauptman is the leaseholder of Flat 3 and Mr Bergsagel the leaseholder of Flat 4 with his wife.
4. Mr Satwinder Singh Bal (Mr Bal) and his wife are the joint leaseholders of Flat 1. Mr Bal and Amrit Pal Kaur Bal are the joint leaseholders of Flat 2 and Spark Property Company Limited is the current leaseholder of Flat 5. Spark Property Partners Limited is a company controlled by Mr Bal.
5. The Respondent is a lessee owned freehold company with each leaseholder automatically having an equal share. In the present case the control of the Respondent has effectively been within the remit of Mr Bal and his relatives as well as the position he attains by being the controller of Spark Property Partners Limited.
6. On the 9th May 2022 a notice under section 22 of the Landlord & Tenant Act 1987 (the Act) was served on the Respondent on behalf of Ms Hauptman. This set out the grounds for which the application was being made, the breaches of the

obligations owed to the tenant under the lease and those items capable of being remedied with the timescale. The Respondent Company and the other leaseholders did not respond to this notice.

7. As a result, an application under section 24 of the Act was made by Ms Hauptman on 6th June 2022. This led to directions being issued on 15th June 2022 subsequently amended on 21st July and 24th August 2022. We will return to those directions in due course.
8. The matter came for hearing on 20th October 2022. This followed the inclusion of Mr Bergsagel as an Applicant by order dated 31st August 2022.
9. In preparation for the hearing, we were provided with a bundle running to some 621 pages. This included the application with grounds, the management plan and details of the Manager together with a draft management order. We had the witness statement of Ms Hauptman which ran from page 88 to 339. Included with the bundle were the section 22 notice, an application under section 20C and some photographs.
10. Mr Bal served a witness statement apparently under his own name but c/o Rosbury Properties Limited and said to have the support of his wife, Mrs Amrid Bal and the other directors of Rosbury Properties Limited. We will turn to the witness statement in due course.
11. This statement elicited a reply from Ms Hauptman. Again, that document is in the bundle running from pages 426 through to 431 and had been settled by Counsel.
12. At this point it is appropriate to deal with the circumstances surrounding the hearing and the difficulties that ensued.
13. The directions issued in this case have been amended on three occasions but there has been no change to the description of the hearing as being 'face to face' at 10 Alfred Place, London WC17 LR starting at 10.00am on a date to be fixed.
14. Confirmation of the hearing was sent by email to Ms Northover of Northover Law, Mr Bergsagel the second Applicant and Mr Bal on behalf of the Respondent. The confirmation was sent to Mr Bal's email address that had been used throughout the procedure. This email was sent on 9.43am on 2nd September and has not been returned as undeliverable.
15. On the morning of the hearing, which was due to start at 10.00am, it became apparent that Mr Bal was not attending, although no reason had been given by him. We caused the caseworker to contact Mr Bal both by email and by telephone. The email was sent at 10.04am on the morning of the hearing and two telephone messages were left with Mr Bal, one to his answer phone, the second which rang out.
16. At 11.46am Mr Bal, using the email address to which the notice of the hearing has been sent, asked what time the hearing was stating he did not have the details.

17. In an email at 12.08am he says that he understood the matter was to be a video hearing and asked that we were informed as to why the Respondent was not present and unable to represent themselves. He said Mrs Amrid Pal Bal was in India and his wife Mrs Reenu Bal was teaching. He did however say that he would attend. We had delayed the start of the hearing until 10.30am in the hope that we could establish what Mr Bal's position was and why he was not there.
18. Mr Bal attended the Tribunal offices at 12.55pm. He was told that in his absence we had already made our decision, which we will deal with later in this decision. An indication was given and that it may be possible to review but he would need to be prepared to pay the costs thrown away today. He said that he would appeal the position. He then went on to say that in his view the costs intended to be charged by Mr Maloney were too high and that he could not afford them.
19. The Tribunal's position insofar as Mr Bal is concerned is as follows. There is no doubt that the directions which have been issued on three occasions make it perfectly clear that the matter was to be dealt with on a face-to-face hearing at the Tribunal offices. We are satisfied that Mr Bal was told by email dated 2nd September 2022 that the case was to be heard at the Tribunal offices on 20th October 2022. There is no reason why that email did not arrive as it was sent to the same email address that the Tribunal had been using throughout. Indeed, it is the email address that Mr Bal used on the morning of the hearing.
20. Further, in support of our view that Mr Bal was very well aware of the hearing, is the fact that the bundle which was produced by the solicitors for the Applicant contains on the front page an index headed 'For hearing 20th October at 10.00am'. It seems clear to us that Mr Bal had received this bundle for he was able to comment on the costs associated with the appointment of Mr Maloney and he could only have done that if he had had the bundle and seen what Mr Maloney's proposals were. In the circumstances we have come to the conclusion that for whatever reason Mr Bal decided not to attend the hearing at the time. We waited over half an hour for his attendance whilst attempting to determine his position. He did not respond to the Tribunal until 11.46am on the morning by which time we had already heard evidence from the Applicants and decided that an order should be made. We will come on to further comments made by Mr Bal when he did address us on his arrival, which are relevant.
21. The Applicant needs to satisfy us that there are grounds contained in section 24 of the Act and also that it would be just and convenient in all the circumstances for an order to be made. We were taken through the items on the section 22 notice by Counsel for Ms Hauptman (Mr Brown). This included concerns relating to the breach of the tenants rights of access to the reserved property. This related to a passageway to the side, which also gave access to the rear garden, which was in the ownership of the flats. However, access was required to the side by Ms Hauptman for works to her flat and this was denied.
22. Another issue related to the insurance of the Property. In particular there was concern that the declared value on the latest insurance policy of £1.1m was too low and there was no evidence that this had been reviewed. It appears from correspondence that there has been something of a claims history as set out in a letter from 3Dimensional Insurance Limited to Mr Bergsagel who was the

company secretary for Rosbury Properties Limited. This letter is dated 5th February 2019 and appears at page 275 of the bundle. This explains why the premiums had increased. In addition, at page 276 the following is set out in highlight *“Although your building figure has been indexed linked over the years we are not aware you had a full valuation carried out in the past five years. If not you might like to take advantage of the details in the attached declared value sheet. Please contact us if you would be interested in the re-build cost assessment report therein.”* The declared value in this year was £1.442m.

23. In a letter to Mr Bal again by 3Dimensional Insurance Limited dated 30th January 2020, the question of the declared value is again raised but the building sum insured and the declared value appeared to be increased by a smallish amount.
24. On 15th February 2021 3Dimensional Insurance wrote again to Mr Bal setting out the terms of the policy and again raised the question of the declared value. For this policy the declared value increased from just under £1m to £1.005m for the period ending 19th February 2022. Again, this does not appear to have been following any form of professional assessment. The final letter from 3 Dimensional Insurance is 28th January 2022 for insurance due for renewal on 19th February 2022. This again raises the question concerning the declared value and that has increased to £1.1m but this does again not appear to be the subject of any formal review. There is evidence of emails passing between the two Applicants, Mr Bergsagel at this time being the company secretary in which he says in one email dated 30th May 2019 *“I will think further about your email below but of course Sal has the voting majority in Rosbury and is effectively his own landlord. Unless he breaks a specific law he could choose and do what he wants. You write that it could have a major impact on insurance and the ability to let or sell a flat in the building but I cannot see how. Please can you explain further.”*(page 324)
25. One email that is of relevance is dated 16th February 2022 from Ms Hauptman to Mr Bal. In this she expresses concern that the premium has been unnecessarily increased as a result of withdrawal of claims and concern that there has been no valuation for some years. Nonetheless she agrees to pay her contribution. What she does raise in this email is that there was agreement that there should not be any loan in respect of the premium payment for insurance and for that reason she paid the broker directly.
26. Another issues raised as a result of the section 22 notice was the fire risk assessment which was obtained in June of 2021 from Freya Comprehensive Fire Solutions and in particular concerns that there were insufficient life safety systems and insufficient fire compartmentation. The overall risk assessment, however, is moderate. One matter that needed immediate attention was the securing of the letterbox to prevent accelerant being poured into the hallway. The other items required a reduction in risk in the three-month period following on from the report. There were also photographs showing ladders being stored in the stairway which it was said belong to Mr Bal and that this was the only means of escape. There was concern therefore that the matters which had been highlighted in the report had not been attended to by May of 2022 when that was the time for review.

27. There are concerns relating to the general repair of the Property. We were told it was last decorated to the rear only in 2008. Mr Bal's witness statement appears to confirm that there has not been much in the way of external decorative works for many years and there may have been some internal refurbishments he believed in 2015. He did however say that the flooring was dated and needed to be replaced as part of the next scheduled maintenance. Photographs of the Property were produced showing amongst other issues the need to externally decorate, the uneven state of access paths, lifted lead flashing to the roof, cracking in the brickwork, signs of leakage, apparently unsafe wiring in respect of common parts lighting and a meter cupboard which appeared to be also used for storage.
28. Mr Brown took us through the various matters that are set out in the section 22 notice and we have noted the responses made by Mr Bal in his lengthy statement. What can be gleaned from Mr Bal's statement is an acceptance that an independent manager should be appointed although this seemed to be under the auspices of the Respondent rather than the Tribunal. He says at the end of his lengthy statement that the Respondent with support of at least 60% of the leaseholders would like to appoint a Mr Clive Greenwood of Anderson Wild & Harris. He would be at a cost of £3,000 per annum excluding VAT. It was suggested that a meeting should be scheduled, and a resolution approved to appoint a Mr Greenwood at the earliest opportunity.
29. While we are on the subject of Mr Bal's statement, we have noted the contents of the Respondent's bundle which includes statements said to be from the residents at the Property. However, these are confined to Mr Bal and his wife Mrs Reenu Bal, Mr Amajit Chohan who was it seems a tenant at the Property and contains a list of issues that have occurred involving Ms Hauptman and other visitors to the Property.
30. These documents and comments confirm that there is no love lost certainly between Ms Hauptman and Mr Bal.
31. It was also raised that the Respondent company had been the subject of a default judgement for non-payment of a fee but that this had been paid by Mr Bergsagel who apparently had lent the company the money.
32. We heard from Ms Hauptman who confirmed her witness statement and that the contents were true.
33. Mr Bergsagel confirmed that he was not aware that Ms Hauptman was making the application and he had hoped that it could be non-confrontational and had offered to help to resolve issues to Mr Bal but there had been no response. He supported Ms Hauptman in her application and had himself made a statement in support dated 5 October 2022.
34. We then heard from Mr Maloney who told us he had been a chartered surveyor for 30 years or more and was a specialist in property management. We were then provided in the bundle before us with a management plan, which we carefully noted, and the draft management order, which again had been reviewed by us.

35. He gave details of a couple of properties where he had been the managing agent, which in his view had gone well. Asked how he would deal with the problems between the parties he said that he would arrange to call at the Property with the hope to speak with all lessees, seek a meeting and explain what was to be done and that this would occur in the first month. He did, however, accept that there would be difficulty in getting Mr Bal and his family involved.
36. In the first three months the fire risk would be reviewed and any measures that needed to be undertaken could be put in hand. He did think that he might wish to retain the services of a competent fire risk assessor but this would be in relation to matters highlighted in the report. He considered that a health and safety inspection was required and was not aware of any electrical safety certificate. He believed that a survey on the structure was required, particularly as there appeared to be some history of subsidence. A structural surveyor may need to be appointed and he was under the impression that the insurers had agreed this.
37. He indicated that he would need monies quickly to enable him to deal with the management arrangements and that would wish to include a provision for a reserve fund and to demand payments on account for future works.
38. At the conclusion of the hearing Mr Bergsagel said that he would like to make an application under section 20C which accorded that which had been made by Ms Hauptman and we agreed that he could be joined into that application which was dated 6th June 2022.
39. It was clear to us from the information given and indeed from Mr Bal's witness statement that there were problems in connection with this Property. The ownership arrangements were set up on the basis that Ms Hauptman and Mr Bergsagel had little or no right to say as to the management of the Property if Mr Bal and his family and company relied solely on the voting rights applying to the Respondent Company.
40. It was of interest to us when Mr Bal attended that he reiterated this entitlement and that as he, his family and his company controlled the Respondent, he was in effect entitled to deal with matters as he thought were appropriate.

FINDINGS

41. It is clear from the paperwork that we had the opportunity of considering prior to the hearing and the skeleton argument produced by Mr Brown for which we are grateful that there are problems with this Property. The photos show general neglect of the building, cracking, movement, leaks and poor repair. It may be that insurance claims may not be met due to the poor condition. The Respondent does not follow the RICS code of practice, the service charge demands were not legally correct without rights and obligations attached, and some question that there was a problem with the accounts. Mr Maloney has also identified a number of issues in his management plan and the witness statement from Mr Bal appears to indicate that certain works had been carried out as they should be in accordance with the terms of the lease.

42. As we have recorded there appears to be no love lost between Mr Bal and Ms Hauptman and this appears to have impacted on the management of the Property as evidence by the comments we made at paragraph 40 above. Mr Bergsagel it seems to us has found himself as something of a piggy in the middle. Mr Bal when he attended complained that the costs of appointing Mr Maloney were too high and that he would not be able to afford to meet those expenses. The fact is that he or his family and company are the owners of three of the five flats in the Property and hopefully funding could be arranged to enable the payment of monies Mr Maloney said he would require to make the improvements in the Property and its ongoing management. Certainly, bringing the property up to a reasonable standard and necessary repair will do nothing other than to increase the value of the flats within the building.
43. It is unfortunately not an uncommon occurrence when there is owner occupier leasehold management that certain minority interests are not dealt with as should be the case. In this case we have a 60:40 split. It seems to us that it would be no bad thing if, certainly for a period of three years, an independent Tribunal-appointed manager were able to put right the issues that were clearly highlighted to us at the hearing and in the papers before us. Indeed, Mr Bal himself in his witness statement moots the possibility of appointing a manager although it would still be within his control.
44. There needs to be a change of heart and a realisation that the proper management Property is for the benefit of all occupiers and not just the majority shareholders. In those circumstances we find that it would be appropriate to appoint Mr Maloney as the manager for the Property on the terms of the attached management order for a period of three years commencing on 1 December 2022
45. In addition, also we make orders under section 20C of the Landlord & Tenant Act 1985 considering it just and equitable so to do to prevent the Respondent, who does not appear to have instructed any solicitors in any event, to recover costs that may have been incurred in connection with opposing this application.

Andrew Dutton

Judge:

A A Dutton

Date:

17 November 2022

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.