



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

Case reference : **LON/00AN/LVM/2022/0008**

Property : **10 Askew Road, London W12 9BH**

Applicant(s) : **(1)Mr Bernard Bortey
(2)Mrs Shannel Bortey**

Respondent(s) : **(1)Ms Patricia Elizabeth Roberts as
executor of Ms Iris Shoucair
Aikman deceased (freeholder)**

Respondent(s) : **(2)Mr Joseph Cato (Power-of-
attorney & managing agent**

Respondent(s) : **(3)Mr Craig Newell MRICS
(tribunal- appointed manager)**

Type of application : **Variation of order for appointment
of a manager**

Tribunal member(s) : **Judge Tagliavini
Mr K Ridgeway MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date of interim order &
further directions** : **21 November 2022**

DECISION AND ORDER

The tribunal's summary decision

- (1) The tribunal further varies the Management Order dated 20 March 2014 made pursuant to the tribunal's decision dated 4 February 2014 to extend the appointment of Mr Craig Newall BSc MRICS MCI Arb as manager with the functions of a receiver until **1 July 2025** and make additional provision in respect of his management as set out in the Management Order (Addendum) below.
 - (2) Any further application seeking to extend/vary the Order and Addendum should be made by **1 April 2025**.
 - (3) The manager must by **1 August 2025** send to the tribunal and copy to the other parties a full report on his management with closing accounts
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BACKGROUND

1. This application concerns 10 Askew Road, London W12 9BH ('the Property'), which comprises three flats (basement, ground and first floor). The applicants are the long leaseholders of the first floor flat. The basement and ground floor flats are not subject to long leases. The first respondent is the executor of the freeholder's estate (Ms Aikman deceased) and resides in New York.
2. The second respondent, Mr Cato holds a power of attorney for the executor and is the first respondent's agent. Mr Cato appears to arrange the letting of the basement and/or ground floor flats although it is not known whether this is or without the knowledge of Ms Roberts. The third respondent, Mr Newell, is the tribunal-appointed manager for the Property pursuant to an Order made originally by the tribunal in its decision dated 4 February 2014. The original applicant was substitute by an order of the tribunal on 12 January 2017 after the current applicants acquired their interest in the long lease.
3. The applicants seek the variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987 (the "Act"). The existing order is dated 07 May 2019 and expires on 01 July 2022 (amended to continue until the determination of this application).
4. The applicants seek to vary the May 2019 order by:
 - Appointing Mr Craig Newell as receiver, with a view to enforcing a County Court Judgment for unpaid service charges for the basement and ground floor flats with a possible view to obtaining a charging order and a consequent order for sale of the subject property or part of them.

- Giving Mr Craig Newell the power to collect rents from the tenants of the basement and/or ground floor flats, to be applied towards the unpaid service charges, and
 - Extending the appointment beyond 01 July 2022, to enable Mr Craig Newell to collect the unpaid service charges and arrange fire safety works to the Property.
5. The applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') and for the reimbursement of tribunal fees.
 6. The initial hearing of this application was held and adjourned on **1 August 2022** in order for Mr Newall to make further enquiries as to:
 - (i) Whether the deceased's estate has now been fully distributed and whether the executor's powers had been extinguished.
 - (ii) The identity of the new freeholder (if any).
 - (iii) The nature and extent of the power of attorney granted to Mr Cato and whether this had expired or was still in force.
 - (iv) The identity of the tenants occupying the basement flat and a copy of their lease.
 - (v) The nature and extent of the local authority dealings with the tenants of the basement flat due to their actions in allegedly carrying out unauthorised works at the subject property.

The hearing on 21 November 2022

7. The tribunal was told that a representative/family member had contacted the tribunal in order to pass on the information that Mr Cato would not be attending the hearing as he had become unwell. No request for an adjournment was made. The tribunal considered the lack of compliance with the tribunal's directions by first and second respondents and their evidence unwillingness to play an active role in these proceedings. Consequently, the tribunal considered it was appropriate and reasonable to proceed in Mr Cato's absence.
8. The tribunal was provided with the applicants' witness statement dated 6 November 2022 describing their difficulties in getting any meaningful response from either respondent to their requests to extend their demise to include the loft space and queries in respect of the ongoing need for maintenance of the subject property.
9. A statement dated 17 October 2022 from Mr Newall detailed the multiple unsuccessful efforts he had made to obtain any substantive response to many of his questions as instructed by the tribunal. Mr

Newall was able to inform the tribunal that the basement flat appeared to have been let and was occupied by a family.

10. Mr Newall told the tribunal that the subject building was now insured and that there were finally sufficient funds to carry out fire safety works, as Mr Cato had made sporadic payments of service charge. However, works remained outstanding and further funds were required. Therefore, an order was required allowing Mr Newall to collect the rent from the tenants of the basement flat and the ground floor flat if this was subsequently let.

The tribunal's decision and reasons

11. Section 24(9A) of the Landlord and Tenant Act 1987 states:

The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

12. The tribunal is satisfied that section 24 ((A) is met and a further variation extending the appointment of Mr Newall as a manager with the functions of a receiver is required.
13. The tribunal is satisfied there has been little substantive change by Ms Roberts and Mr Cato as to their approach to the management of this property since the Order was made on 20 March 2014. The tribunal is also satisfied, that unless the Order is varied and further extended, the subject property will continue to deteriorate in breach of the landlord's repairing obligations and will cause prejudice to the applicants.
14. The tribunal is satisfied that in order for Mr Newall to be able to continue to manage the subject property effectively and carry out required works he requires the power to collect the rents from the tenants of the basement flat and ground floor flat (if let). Therefore, the tribunal amends the Order dated 20 March 2014 to expressly include this power.
15. Any reference to Mr Newall being appointed as a receiver in the Order or subsequent interim Orders is amended to record that he is appointed manager and has the functions of a receiver.

Section 20C and reimbursement of fees

16. The tribunal determines that in the circumstances it is reasonable and appropriate to make an order under section 20C of the Landlord and

Tenant Act 1985 so that the landlord's costs of this application are not added to the service charges. The tribunal considers it is appropriate for the first and second respondents to reimburse to the applicants the application and hearing fee totalling £300.

Name: Judge Tagliavini

**Date: 21 November
2022**

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).

MANAGEMENT ORDER (Addendum)

This Order is to be read in conjunction with the Management Order dated 20 March 2014 ('the Order') made pursuant to a decision dated 4 February 2014. Where any of the below provisions conflict with the terms of the Order the paragraphs below are to take precedence

1. The tribunal further varies the Order and extends the appointment of Mr Craig Newall BSc MRICS MCI Arb until **1 July 2025** as manager with the functions of a receiver of the subject property at 10 Askew Road, London W12 9BH ('the Property').
2. The manager has the power and the right to collect the rents from the occupiers of the basement and ground floor flats at the said Property to be applied towards the service charges owed by and due from the first and second respondents who act on behalf of the freeholder.
3. Any reference to the manager in the Order or any subsequent interim order as having been appointed as the receiver of the Property is substituted by the reference to the manager as 'having the power of a receiver.'
4. Mr Newall may charge fees of £2,100 plus VAT per annum in respect of the services he provides under the Order.

Name: Judge Tagliavini

Date: 21 November 2022