FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BJ/LAM/2022/0014**
Property	**:**	**741-743 Garrett Lane, Earlsfield, London SW17 0PD**
Applicant	**:**	**Mrs Kimberley Cullum**
Representative	**:**	**In person**
Respondent	**:**	**Garlanmanco Limited**
Representative	**:**	**Mr Martin Walford and Mr Bruce Settle both directors of the Respondent company**
Proposed manager	**:**	**Joanna Roznowska**
Type of Application	**:**	**The appointment of a manager**
Tribunal Members	**:**	**Judge Dutton** **Mr R Waterhouse BSc (Hons) LLM Property Law MA FRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 12th January 2023**
Date of Decision	**:**	**18 January 2023**

DECISION

DECISION

1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (the Act), Ms Joanna Roznowska of Safe Property Management of Unit 48, Westwood Park Trading Estate, Concorde Road, Park Royal, London W3 0TH (the Manager) is appointed manager of the property at 741-743 Garrett Lane, Earlsfied, London SW17 0PD (the Property).

2. The order shall continue for a period of three years from 1 February 2023. 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 the application has been finally determined.

3. The manager shall manage the Property in accordance with:

   (a) The directions and schedule of functions and services attached to this order;
   (b) The respective obligation of the landlord and the leases by which the flats of the Property are demised by the Respondent and in particular with regard to repair, redecoration, provision of services and insurance of the Property; and
   (c) The duties of the manager set out in the Service Charge Residential Management Code (the Code) or such other replacement code published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing & Urban Development Act 1993.

4. The manager shall register the order against the landlord's registered title as a restriction under Landlord 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 before the Tribunal shall not be added to the service charges.

BACKGROUND

1. On 13th August 2022 Mrs Cullum issued a notice under section 22 of the Act setting out her reasons for seeking the appointment of a manager under section 24 of the Act. This document was included within the bundle and is common to both parties. We do not see the need to go into this in great detail for the reasons that we shall refer to in due course.

2. We did ask Mrs Cullum to confirm that the contents of the section 22 notice were correct and true, which she confirmed and that she stood by those.

3. A number of documents were provided to us in a somewhat unhelpful format. The papers were presented to us in a separate Word format or PDF file making it somewhat difficult to review the various documents.

4. Included in the documents was a lengthy statement prepared by Mrs Cullum, the contents of which are noted. She had spent a good deal of time responding to

matters that were raised in the directions order which were somewhat rhetorical and intended merely to show what we, the Tribunal, would need to consider in making any order.

5. In addition to the above, there were documents relating to Ms Roznowska including her experience, management plan, confirmation that she would accept the appointment and other matters that we noted. We will deal with those in more detail in due course.

6. For the Respondent we had received two emails, one it would seem before the Case Management Hearing and one in readiness for this hearing. Both were submitted by Mr Walford. The content was somewhat repetitive seeking to blame Mrs Cullum for the position in which the Respondents found themselves. We noted all that was said

7. What was clear was that there was something of a chequered history in connection with the relationship between Mrs Cullum and the directors of the Applicant Company.

8. The Property in question consists of 5 units of which 4 are residential flats and the fifth is a shop on the ground floor level with its own entrance. We were told in Mrs Cullum's statement that all flats had one bedroom and were of a similar size. The shop was a larger unit and was run by an individual under the style Honeylight Computers which is the fifth co-director of the Respondent. Each leaseholder is a director of the Respondent and this clearly includes Mrs Cullum.

9. It appears that Mrs Cullum has owned her flat since 2013 and that the Respondent Company had earlier purchased the freehold around 2006 and that the representatives at the hearing, Mr Walford and Mr Settle, were two of the directors and owned two of the leasehold properties.

10. It appears from her statement that Mrs Cullum purchased the property not aware of the basis upon which the Property was managed. It is accepted by the Respondent that this was on a self-management basis and that there has been no managing agent involved for some time.

11. The disagreements between the parties appeared to emanate from the Respondent's failure to serve a section 20 notice in respect of roofing works which gave Mrs Cullum a responsibility of around £1,900. It seems that no section 20 notice was issued, although at a hearing concerning this the Respondents were advised to seek dispensation, which apparently they did but did not serve the necessary demands in time.

12. This dispute seems to have rumbled on and lead to others which have resulted in hearings before the Tribunal, the last one being on 14th May 2021. At that hearing Judge Carr made a number of findings which could be summarised to show that the service charges demanded in 2020 were not payable, that a section 20C order was made and a requirement that the Respondents reimbursed the Applicant with the issue fee. The matter was dealt with on paper. However, that decision dated 14th May 2021 has not been appealed and it must stand. It recites the fact that there had been four other decisions relating to the subject Property

In this latest case the sum that the Respondent sought to recover was £12,098.09 for various issuers, none of which they were able to recover for various reasons set out in that decision. We have noted the contents of that decision.

HEARING

13. The matter came before us for hearing on 12th January and was attended by Mr Walford and Mr Settle for the Respondents and by Mrs Cullum and Ms Roznowska. Unfortunately Mr Walford and Mr Settle came to the hearing without any of the documents and with an attitude that the previous decisions made by the Tribunal were irrelevant and unjustified. Some time was spent on the suggestion that Mrs Cullum had made an offer to settle a while ago but it was made clear to us that that offer was no longer on the table although Mr Settle seemed to wish to see any email in which such an offer had been made. It is worth noting that Mr Walford refers to this offer in his latest email.

14. It was quite clear to us during the course of hearing that there was no love lost between the parties. On more than one occasion Mr Settle accused Mrs Cullum of lying. It is interesting also to note that both Mr Walford and Mr Settle were of the view that they should still be able to recover the £12,000 odd which the Tribunal in May of 2021 had ruled was not recoverable.

15. Mrs Cullum's concern was and confirmed by Mr Walford, that there was no company bank account into which service charges could be paid. There appears to be no accounts prepared for a number of years, demands are made which are not in accordance with the terms of the lease and there appear to be no invoices to support any of the costs said to have been incurred.

16. Mrs Cullum told us that she had been trying to sell her flat for some time and that she had had three offers but these had fallen through once it became apparent that there were problems with the management. This was made more obvious by the fact that the Respondents were unwilling to complete the necessary leasehold enquiry forms that any diligent solicitor acting for a purchase would raise.

17. At one point Mr Walford indicated that he, presumably speaking on behalf of the Respondent, would be prepared to accept the sum of £4,500 and a share of the costs of the roof repair and would in return provide the necessary conveyancing documents. However, that did not appeal to Mrs Cullum as she was not satisfied that she could trust the Respondents directors to stick to their word. She was also now some seven months pregnant. Insofar as she was concerned the only way forward was for a manager to be appointed so that the management of the Property could be taken away from the Respondent Company. Then she could be certain of being able to properly process the sale of her flat but it would also ensure that going forward the upkeep of the Property was properly dealt with and that the terms of the relevant legislation were adhered to.

18. We then heard from Ms Roznowska concerning her proposals for management. She provided some limited details. She confirmed to us that her costs per unit would be £400 plus VAT and that this would last for the period of her appointment, which she believed should be three years to enable her to deal with all outstanding matters. She told us that she would be instructing a surveyor to

prepare a schedule of condition of the Property, which she thought would give rise to a cost of some £950. In addition, as there was no apparent fire risk assessment or health and safety report and perhaps also an asbestos survey, she would arrange for those to be undertaken at a cost she estimated or around £350 plus VAT. Thereafter a specification would be drawn up to deal with what appeared to be essential roofing works as well as some external/internal works which Mr Walford had highlighted as needing attention.

19. She told us that she would anticipate any surveyor drawing up the specification would charge in the region of 10% of the cost of the works and to supervise and that she charges 5% of the value for dealing with all section 20 consultation.

20. She told us that her costs for preparing the leasehold reports for the prospective purchasers would be £200 plus VAT, she said that she did not charge for attending Tribunals whilst she was appointed, and that the general administration did not generate an additional charge. She told us that she had three full time members of staff who were training to become members of the Institute of Residential Property Management and that she herself was an Associate of the RICS and had now joined ARMA.

21. She confirmed that there was out of hours coverage by her team and that they had online facilities for leaseholders to get access to their accounts to check on various issues that may concern them.

22. It became apparent from discussions that there was concern as to the level of insurance cover for the Property. Ms Roznowska said the first thing that she would do would be to obtain a reinsurance valuation which could be done on a desktop basis and would then review the insurance to make sure that it was sufficient. It was also suggested that the insurance should be split so that the elements attributable to the residential units would be paid as to 25% by leaseholders and the element payable in respect of the shop would be met solely by the owner of the shop. It was confirmed that she would not wish to recover the rent from the shop which could remain with the landlord of that property and that there was no ground rent to deal with.

DECISION

23. Mrs Cullum had confirmed that the contents of her section 22 notice were correct. This was to a very large extent supported by the decision of this Tribunal in May of 2021 when it highlighted that there had been failures by the Respondent and in particular its directors to follow the provisions of the Landlord and Tenant Act 1985. No section 20 notices had been served, no proper demands compliant with the Act had been produced, no accounts appear to have been produced, there appear to be breaches of section 20B of the Act and a complete disregard of a number of decisions that this Tribunal has made in the past. This leaves us with no doubt that the Mrs Cullum can show that there have been matters referred to in section 24 of the Act which would enable us to make an order.

24. Of course, the overriding consideration for us is whether it would be just and convenient to do so. Again, we have no doubt that it would be. The attitude of

Mr Walford and Mr Settle clearly indicated that they thought little of the Tribunal's powers and even less of Mrs Cullum's right to bring applications to the Tribunal in respect of their perceived failings. It may well be the case that the management on a private basis, or self-managed as they put it, was an option. However, such an option does not apply where there is a total disregard for the legislation relating to leasehold properties.

25. Of concern to us, and it should be of concern to the long leaseholder who we understand are sub-letting their properties, is that there appears to have been no fire risk or health and safety review. The properties that they let are to private individuals and they need to ensure that they are complying with all relevant legislation in respect of private lettings, in the assured short hold format we assume, which must comply with the various obligations particularly found in the Housing Act 2004 and subsequent statutory instruments arising therefrom.

26. As it was put to them by Mr Waterhouse, the appointment of Mr Roznowska would not only protect their rights but would also enhance the value of their properties.

27. We are satisfied that the appointment of Ms Roznowska is a win-win situation for both sides whether the directors of the Respondent Company realise it or not. As private landlords they must make sure that the Property complies with all legislation, and this is something that will happen if Ms Roznowska is appointed.

28. Further, their attitude towards Mrs Cullum is unreasonable. She has merely sought to rely on legislation that is in place to protect tenants and it is inappropriate for them to have ignored that. It is inappropriate of the directors of the Respondent Company, to frustrate Mrs Cullum's attempts to sell her flat. She will shortly have two children living in a one-bedroom property which clearly is not suitable and the attempts to extract monies, which she is not, as a result of previous Tribunal decisions, obliged to pay is inappropriate.

29. Accordingly, as we have indicated we have no doubt that the appointment of a manager is the way forward. Ms Roznowska has a number of Tribunal appointments, and we are satisfied that she will be able to fulfil the role in respect of this Property.

30. Under the circumstances, we have made a management order which is attached. We propose to put this in place for a period of three years as we accept Ms Roznowska's view that she will need that long. We draw again to the attention of the directors of the Respondent Company that at the expiration of this order unless it is extended, they will be entitled to take back the management of the Property if they so wish but they must be aware that they cannot continue to do so on the basis that this is their own private fiefdom where they can remain immune from the impact of legislation that relates to residential accommodation.

31. We think it is just and equitable that a section 20C order be made so that the Respondents cannot recover the costs of these proceedings from the Applicant. The Applicant also made a request for an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 and we are content to

make such an order so that the costs of these proceedings cannot be recovered through any form of cost liability under the terms of the lease.

Andrew Dutton

Judge: A A Dutton

Date: 18 January 2023

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.