



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

Case reference : CHI/00ML/LVM/2019/0008

Property : 104 Livingstone Road, Hove East Sussex BN3
3WL

Applicant : Katherine Mary Routley and Stephen John
Routley

Representative :

Respondent : David Ian Johnston and Leanne Rachel Bogen-
Johnston

Representative :

Type of application : Variation of Manager Order Section 24 of the
Landlord and Tenant Act 1987 (1987 Act)

Tribunal member(s) : Judge Tildesley OBE
Mr R Wilkey FRICS

Venue : 6 September 2019
Havant Justice Centre

Date of decision : 10 September 2019

DECISION

**AMENDED UNDER RULE 50 OF TRIBUNAL PROCEDURE RULES
2013 BY DELETING PARAGRAPH 9 OF SCHEDULE OF
FUNCTIONS WHICH DEALT WITH THE TENANTS'
CONTRIBUTION TO THE SERVICE CHARGE**

The Application

1. The Applicants seek a determination pursuant to s.24(9) of the Landlord and Tenant Act 1987 for a variation of a management order by appointing Mr Gary Pickard in place of Mr Erkal Erguven as manager of the property known as 104 Livingstone Road, Hove, East Sussex BN3 3WL.
2. Ms Katherine Mary Routley, Mr David Ian Johnston and Mrs Leanne Bogen-Johnston are the proprietors of the freehold title for the property registered with the HM Land Registry under Title number SXX105937. The property has been converted to provide two self-contained flats.
3. Ms Katherine Mary Routley holds a lease of 999 years from 16 July 2012 for the Upper Maisonette under title number ESX345555 which she holds on trust for her brother, Mr Stephen John Routley.
4. Mr David Ian Johnston and Mrs Leanne Bogen-Johnston holds a lease of 999 years from 18 May 2012 in respect of 104a Livingstone Road under title number ESX344598.
5. On 11 August 2017 the Tribunal appointed Mr Erkal Erguven as manager of the property for a period of two years from 1 September 2017¹.
6. The Applicants state that Mr Erguven's appointment has not resolved the problems at the property and the proposed programme for external repairs was not started. According to the Applicants, Mr Erguven sent them an e-mail on 10 October 2018 stating that he was resigning his appointment with immediate effect. Mr Erguven, however, made no application to discharge the Order. The Applicants sought a variation of the Management Order by appointing Mr Gary Pickard as the new manager.

Consideration

7. The Respondents' principal concern was with the performance of the previous manager, Mr Erguven. The Tribunal explained that the focus of this hearing was whether Mr Pickard was suitable to be appointed as manager. The Tribunal advised the parties that it would be requiring Mr Erguven to prepare final accounts, and answer questions on those accounts, and if the parties were dissatisfied regarding the reasonableness of the service charges, they could make application against Mr Erguven under section 27A of the 1985 Act.

¹ Tribunal ref CHI/OOML/LAM/2017/0005

8. Mr Pickard was called to give evidence. Mr Pickard supplied a Management Plan, a Curriculum Vitae, a copy of Professional Indemnity Insurance and a draft Order.
9. Mr Pickard had been appointed a Manager under section 24A of the 1987 on eleven occasions, six of which were current. Mr Pickard gave evidence on each appointment. Mr Pickard explained that he acted independently of the parties and that he was answerable to the Tribunal. Mr Pickard outlined his intentions in respect of the property if he was appointed. Mr Pickard also made clear to the parties that his authority to act stemmed from the Order and not from the landlord's powers under the lease. Mr Pickard emphasised that he would work with the parties to reach a successful outcome but he would not hesitate to take action if a party failed to meet his/her expectations, and the costs of his actions would be paid ultimately by the parties through the service charge. Mr Pickard stated that his set up fee of £1,000 plus VAT was to cover 10 hours work, if it took less time the charge would be reduced conversely it would be increased if the time taken was more than 10 hours.
10. Both parties indicated their agreement to the appointment of Mr Pickard.

Decision

11. The Tribunal finds that Mr Gary Pickard is suitable to be appointed as Manager of the property under section 24 of the 1987 Act for a period of two years with effect from 27 September 2019.
12. The appointment is subject to the terms of the Order below. The Order contains powers over and above those set out in the leases in order to secure the objectives of the Order.
13. The Tribunal discharges Mr Erkal Erguven from his duties as Manager of the Property under the Order dated 1 September 2017 which has now expired **EXCEPT** for his responsibilities (1) to produce a final closing account to be given to Mr Pickard and Ms Katherine Mary Routley, Mr David Ian Johnston and Mrs Leanne Bogen-Johnston within 28 days from date of this Order (2) answer questions raised on the account by Mr Pickard, Ms Katherine Mary Routley, Mr David Ian Johnston and Mrs Leanne Bogen-Johnston within 14 days, (3) to hand over any current policy of insurance and other documents relating to the property to Mr Pickard, (4) to reimburse any unexpended monies to Mr Pickard. The Tribunal reserve the right to Order Mr Erguven to

obtain certification of the final accounts by a qualified accountant as defined in section 28 of the Landlord and Tenant Act 1985.

**FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN
SERIOUS CONSEQUENCES FOR THE PERSON
CONCERNED.**

14. The Applicants made no application for reimbursement of the Tribunal application and hearing fees.

MANAGEMENT ORDER

INTERPRETATION

IN THIS ORDER

“The Property” means the flats and other premises known as 104 Livingstone Road, Hove, East Sussex BN3 3WL registered with the HM Land Registry under Title numbers SXX105937, ESX345555 and ESX344598.

“The Landlord” shall mean Ms Katherine Mary Routley, Mr David Ian Johnston and Mrs Leanne Bogen-Johnston 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 the leases in the Property: 999 years from 16 July 2012 for the Upper Maisonette under title number ESX345555, and 999 years from 18 May 2012 in respect of 104a Livingstone Road under title number ESX344598.

“The Manager” means , Mr Gary Pickard FNAEA of 193 Church Road, Hove, East Sussex BN3 2AB.

“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 Gary Pickard FNAEA of 193 Church Road, Hove, East Sussex BN3 2AB is appointed as manager of the Property.
2. The Order shall continue for a period of two years from 27 September 2019. 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 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.
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.

DIRECTIONS

5. From the date 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.
6. Where there is a conflict between the provisions of the Management Order and the lease, the provisions of the Management Order take precedence.
7. 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.
8. 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.
9. The Manager shall act fairly and impartially in his dealings in respect of the Property.
10. 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.
11. The Manager shall be entitled to exercise the following powers:
- a) The power to delegate to colleagues at Jacksons, appoint accountants, architects, solicitors, surveyors, and other

professionally qualified persons as may be reasonably required to assist him in the performance of his functions and pay the reasonable fees of those appointed.

- b) The power to appoint any agent or servant to carry out such function or obligation which the Manager is unable to perform himself or which can be more conveniently be done by an agent or servant and the power to discuss such agent or servant.
 - c) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the parties to these proceedings, or of any lessee owning monies under the Leases.
12. 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 £1 million and shall provide copies of the certificate of liability insurance to the Tribunal prior to the 27 September 2019 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 Mr Pickard's duties as a Tribunal appointed manager.
13. That no later than 4 weeks after the date of this Order Mr Erguven and the Landlord shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, Mr Erguven shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge and Insurance of the Property. The Manager is entitled to such disclosure of documents as held by Erguven, his advisers or agents as is reasonably required for the proper management of the property.
14. The rights and liabilities of the Landlord or previous Manager 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 such decision shall be communicated in writing to the relevant parties within 56 days from the date this order.
15. 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.
16. By no later than six months from the date of appointment 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 at the same time.

17. 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.
18. 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.
19. The Landlord and Tenants have the right to apply for a variation of the Order in accordance with section 24(9) & (9a) of the 1987 Act.

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.

Service charge

3. 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.
4. Administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants.
5. Demand and collect service charges, insurance and any other payments (except ground rent) due from the tenants under the leases.
6. The Manager shall have the authority to demand payments in advance and balancing payments at the end of the accounting year, raise advance and ad hoc service charge demands during the accounting year including payment in advance for the major works prior to contract, to establish a sinking/reserve 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.
7. The Manager will finalise his first estimate of the service charge for the year from 27 September 2019 to 26 September 2020 (accounting year) within 45 days of the date of the commencement of the Management order, and send it with the demand for payment on account. Thereafter for subsequent accounting years the estimated budget and demand will be issued 30 days prior to the commencement of the relevant service charge year.
8. The service charge shall be payable within 21 days of the demand.
9. The Manager is entitled to recover through the service charge the costs of his fees and of any surveyors, architects, solicitors, counsels and other professional persons or firms fees incurred by him whilst carrying out his functions under the Order.
10. 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

11. The Manager may recover administration charges from individual Tenants for his costs incurred in collecting 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

12. Prepare and submit to the Landlord and the tenants 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.
13. 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.
14. Maintain on trust an interest bearing client account in the name of the property at such bank or building society, as the Manager shall from time to time decide, into which service charge contributions, Insurance Rent and all other monies arising under the leases shall be paid.
15. All monies collected will be accounted for in accordance with any relevant Association of Residential Managing Agents (ARMA) Code of Practice.

Repair and Maintenance

16. 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.
17. The setting up and implementation of a planned maintenance programme to allow for the periodic redecoration and repair of the property.
18. 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.
19. To liaise with the relevant statutory bodies responsible for buildings.
20. 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.
21. Instruct a building surveyor in connection with the matters detailed in paragraphs 17-21 as and when he considers appropriate.

Right to Bring Legal Proceedings

22. 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.
23. Such entitlement shall include but shall not be limited to bringing proceedings in respect of any arrears of service charge 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.
24. 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 and for any adverse costs order. If any of those costs are recovered direct from the defaulting Tenant or Landlord those costs should be refunded to the service charge account.
25. The Manager has the right to instruct solicitors and counsel and other professionals for the taking of legal proceedings.

Fees

26. For the duration of this Order the Manager shall be entitled to charge the following fees:
- (a) A one-off set up fee of £1,000 (One Thousand Pounds) plus VAT to cover 10 hours work, plus VAT for any additional time reasonably required to complete the following tasks:
 - (i) Initial inspections of the Property
 - (ii) Consideration of documents
 - (iii) Preparation of proposed management plan
 - (b) An annual management fee of £650 (Six Hundred and Fifty Pounds) plus VAT and disbursements for the basic management duties listed at (i)-(ix) below (“the Standard Management Fee”):
 - (i) Collection of service charges
 - (ii) Payment of all invoices
 - (iii) Maintaining service charge income and expenditure details of handover to an accountant to produce certified year end accounts
 - (iv) Managing day to day repair issues, including arranging contractors to carry out repairs with the costs of repairs to be paid for from the Service Charge Fund
 - (v) Providing a telephone number for emergency out-of-hours calls of a maintenance nature
 - (vi) 4 visits to the Property per annum to carry out on-site inspections

- (vii) Communicating with the lessees but not beyond reasonable correspondence
 - (viii) Providing a point of contact for maintenance issues
 - (ix) Annual reporting to the applicant and the respondents, in their capacity as the freeholders of the Property
 - (x) Oversight of health and safety compliance.
- (c) The Standard of Management Fees may be increased annually, on the anniversary of the order, in line with inflation.
- (d) Additional fees at the rate of 5% plus VAT and disbursements on any works over £1,000 to include, where required, the preparation and service of any notices pursuant to section 20 of the Landlord and Tenant Act 1985 (as amended). For the avoidance of doubt these fees are payable in addition to costs of any architects, surveyors or other appropriate persons for the preparation of specifications and/or schedules of works, including the obtaining of tenders by them and contract administration.
- (e) An additional charge shall be made for the arrangement, claims handling and brokerage of insurances for the Property, public liability, engineering and employee cover on the basis of a fee of 20% of the insurance premium if the insurance is brokered and handled by the Jacksons' insurance department and not by outside brokers.
- (f) A reasonable additional charge for dealing with solicitors' enquiries on sales and transfers of the flats at the Property, payable by the outgoing lessee.
- (g) Tasks which fall outside of set-up requirements or the Standard Management Fee are to be charged separately using the following hourly rate; £100 plus VAT for the Manager or a principal of Jacksons, £75 plus VAT for an associate at Jacksons and £60 plus VAT for property managers at Jacksons.
- (h) The fees at paragraph 27(g) about may be increased annually on the anniversary of the order in line with inflation.

Complaints procedure

27. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of ARMA.

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 written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.