



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

Case reference : CHI/8UH/LAM/2019/0001

Property : Hacombe House, Hacombe,
Newton Abbot, Devon TQ12 4SJ

Applicant : Mr Paul Jeffries
Mrs Ann Jeffries

Representative : Clarkslegal LLP, solicitors

Respondent : Raymond Laurence Rowe

Representative : Scott Richards Solicitors

Type of application : Appointment of a manager

Tribunal member(s) : Judge Tildesley OBE
Mr T Dickinson FRICS
Mr W H Gater FRICS

Venue : Torquay & Newton Abbot County Court,
The Willows, Nicholson Road, Torquay,
Devon TQ2 7AZ
1 April 2019

Date of decision : **1 April 2019**

DECISION

Summary of Decision

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Mark Christie of Residential Block Management Group Ltd, The Atlantic Building, Queen Anne's Battery, Plymouth, Devon, PL4 0LP ("the Manager") is appointed as manager of the Property known as Haccombe House, Haccombe, Newton Abbot, TQ12 4SJ more specifically defined on the attached plan.
2. The Order shall continue for a period of two years from 1 June 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.
5. In accordance with section 20C Landlord and Tenant Act 1985, all the costs incurred by the landlord in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants or any of the other leaseholders of the Property.

The Application

1. The Applicants seek a determination pursuant to s.24A of the Landlord and Tenant Act 1987 for the appointment of a manager over the block of flats in which they live, Haccombe House in Haccombe, Newton Abbot ('the Property').

2. Mr Jeffries is the leasehold owner of Flat 17 Haccombe House whilst Mrs Jeffries is the leasehold owner of Flat 18 Haccombe House.
3. The property is a Grade II* Listed large detached building and contains 27 flats let on long leaseholds except Flats 10 and 27 which are owned by the freeholder, Mr Raymond Lawrence Rowe, who has been the registered proprietor of the property under title number DN384750 since 2 July 1997.
4. Up until around late-2015 Mr Rowe self-managed the Property. Between October 2015 and September 2018, the Property was managed on Mr Rowe's behalf by managing agents, Chamberlains, which were replaced by Whitton & Laing from September 2018.
5. The Applicants served two notices under section 22 of the 1987 Act dated 3 May 2018. The first notice required urgent works to be remedied by 15 June 2018. The second notice set out priority works requiring remedy within six months, expired on 5 November 2018.
6. On 6 December 2018 the Applicants applied for an Order under section 24 of the 1987 Act and for an Order under section 20C of the Landlord and Tenant Act 1985 preventing the Respondent from recovering his legal costs through the service charge.
7. On 17 January 2019 the Tribunal issued directions to progress the application and the hearing was fixed for the 1 April 2019.
8. On 7 March 2019 the Tribunal informed the other leaseholders at the property inviting them to join as party to the application. The Tribunal received responses from 14 leaseholders.
9. The following leaseholders made written representations:
 - Ian Davis (Flat 1)
 - Ruth Tovin (Flat 2)
 - Christy Raschdorf (Flat 5)
 - Marie Ann August (Flat 6)
 - Daniel and Rachel Thorogood (Flat 9)
 - Julie and Sean Wenham (Flat 13)
 - Suzanne Lunn (Flat 16)
 - Sean Duller (Flat 20)

10. The Tribunal inspected the property before the hearing.

The Hearing

11. The Applicants attended and were represented by Mr Matthew Cannings of Counsel. Ms Emma Butcher, the instructing solicitor was also in attendance. Mr Rowe who was accompanied by his wife, Mrs Sue Thomas Rowe, was represented by Mr Jamie Dyson Partner Solicitor assisted by Miss Ella Higgins.
12. The following leaseholders were also in attendance Mr Davis, Ms Tovin, Mr and Mrs Stafford (Flat 4), Mr Thorogood, Mrs Fountain (Flat 11), Mrs Wenham, Ms Lunn (Flat 16) and Mr Duller. The leaseholders who had made written representations were given the opportunity to participate in the hearing.
13. The Applicants' solicitors had prepared a hearing bundle which was admitted in evidence.

The Issue

14. At the commencement of the hearing Mr Dyson on behalf of Mr Rowe formally conceded that the grounds for the making of a Management Order were met.
15. The dispute, therefore, focussed on whether Mr Christie should be appointed as Manager or the decision should be deferred to enable Mr Rowe to put forward a person from the current managing agent Whitton & Laing as manager.
16. The Tribunal heard evidence from Mr Christie who was subjected to detailed questions about his expertise and experience.

Reasons

17. The Tribunal decided after considering the evidence that Mr Christie was a suitable person to be appointed as Manager and announced its decision at the hearing. Mr Christie accepted the appointment for a period of two years starting 1 June 2019.
18. The Tribunal placed weight on the following facts in reaching its decision:
 - a) Mr Christie has more than 20 years' experience in the property industry including six years spent exclusively in block and estate management.

- b) Plymouth Block Management of which Mr Christie is managing director was awarded the Smaller Managing Agent of the year award at the ARMA Ace Awards in 2017 and has been accredited and incorporated with ISO 9001: 2015 (Quality Management System).
- c) Mr Christie has relevant experience and a track record with listed properties. The Tribunal cross examined Mr Christie on his management of the six properties which he gave as examples of similar properties to the subject property. The Tribunal was satisfied with the manner in which he dealt with the problems at these properties.
- d) Mr Christie has the necessary expertise to tackle the principal issues with the subject property, namely service charge arrears and putting together a major works programme.
- e) Mr Christie gave a satisfactory explanation for his various directorship appointments which was a particular concern for Mr and Mrs Thorogood.
- f) The Tribunal believed that Mr Christie would after these proceedings have a better understanding of the nature of the appointment which is personal to him and that his authority stems from the Management Order rather than the lease. The Tribunal also noted that one of the property managers at Plymouth Block Management had held the position of Tribunal appointed manager
- g) The Tribunal considered his proposed fee of £250 per annum per flat (£6,750) plus VAT was reasonable having regard to the market rate for managing agents in the South West Region and the premium that is associated with the appointment. The Tribunal noted the leaseholders' concerns about Mr Christie's proposed fees for additional works. The Tribunal, however, indicated that this was standard professional practice and recognised in the Service charge residential management Code published by the Royal Institution of Chartered Surveyors (RICS) (Part 3 of the Third Edition with effective date of 1 June 2016).
- h) The Tribunal did not consider an adjournment to assess Mr Christie against a manager nominated by Mr Rowe would alter the Tribunal's view about his suitability for appointment. Further the Tribunal was satisfied that the short delay with Mr Christie coming up to speed would not have an adverse effect on the property.

- i) The Tribunal took note of Ms Butcher's evidence that the Applicants have no prior personal or professional connection with Mr Christie who was an entirely independent and impartial third party. Ms Butcher also gave evidence of her concern that there may not be many suitable alternative nominees to Mr Christie. Ms Butcher had contacted a number of managing agents in the region to enquire whether they would be willing and able to take on the proposed management of the property and none were able to assist with her enquiry. The Tribunal explained to the Respondent and the leaseholders that Mr Christie was answerable to the Tribunal and not to Mr and Mrs Jeffries and or Mr Rowe.

19. The appointment was made subject to the following conditions:

- a) The Tribunal expressed that the objectives for the order were to collect service charges and arrears in a timely fashion, to agree a major works programme fully costed and to establish good relations with the freeholder and leaseholders.
- b) The Tribunal would expect Mr Christie to visit the property in person at least once a month in the first year.
- c) By **1 May 2019** Mr Christie to supply the Tribunal, and the representatives for the parties with a management plan for the next five years identifying the priorities for the next two years. Mr Rowe indicated that he would affix the plan to the residents' noticeboard in the communal areas so that all leaseholders could view it.
- d) By **1 May 2019** Mr Christie to supply the Tribunal and the parties' representatives with details of his charges and in particular his fees for additional duties. The form of the charges should be in accordance with the RICS Code. Mr Rowe to affix the charges to the noticeboard.
- e) The Tribunal questioned the wisdom of Mr Christie bringing in a new surveyor to assess the major works required for the property. The Tribunal indicated that there had already been two reports prepared by reputable surveyors and that Mr Christie should engage the services of one of those surveyors to take forward the programme.
- f) By **1 June 2019** Mr Christie to provide a certificate of liability for the professional indemnity cover which should specifically state that it applies to Mr Christies' duties as a Tribunal appointed manager

- g) The Tribunal will provide the representatives with a draft order for their comments within 7 days.

The Extent of the Property Covered in the Management Order

20. Mr Dyson indicated that the parties had reached an agreement with the extent of the property subject to the management order. Essentially the management order did not extend to the area used by Mr Rowe for the nursery business, the area developed by Mr Rowe for wildlife and plants and the private garden area. The Tribunal approved Mr Dyson's suggestion of producing a plan drawn up by a surveyor clearly identifying the boundaries of those areas subject to the management order. The Respondent to provide the Tribunal and the Manager with a copy of the plan by no later than **1 May 2019**.

Section 20C Order and Costs

21. Mr Rowe stated that he would pay his own legal costs in connection with these proceedings and that no costs would be passed through the service charge. For the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under Section 20C of the 1985 Act, so that the Respondent may not pass any of his costs incurred in connection with the proceedings before the Tribunal through the service charge.
22. The Tribunal indicated that it would not be sympathetic to an application for costs from the Applicants because the threshold of unreasonable conduct had not been met by Mr Rowe. The Tribunal considered that Mr Rowe had conducted the proceedings in a helpful and constructive manner.

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).