



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

**Case Reference** : **LON/00BK/LAM/2019/0025**

**Property** : **502 Harrow Road, London W9 3QA**

**Applicants** : **Ms Fiorina Fortunato (Flat 1)  
Cadenza Properties Limited (Flat 2)  
Romo Properties Limited (Freeholder)**

**Representative** : **Ms Fiorina Fortunato**

**Respondents** : **Mr Harminda Pal Singh  
Ms Baljit Kaur**

**Representative** : **Ms Jennifer Birikorang – Aldermartin,  
Baines and Cuthbert Limited -  
Managing agents**

**Type of Application** : **S24 Landlord and Tenant Act 1987 –  
appointment of a manager**

**Tribunal Member** : **Judge John Hewitt**

**Date and venue of  
Hearing** : **7 November 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **7 November 2019**

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**DECISION**

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### **The issue before the tribunal and its decision**

1. The applicants made an application under s24 Landlord and Tenant 1987 (the Act) for the appointment of a manager. The application form also sought dispensation with the requirement imposed by s22 of the Act to serve a preliminary notice before an application under s24 may be made.
2. S22(3) provides that a tribunal may dispense with the requirement to serve a preliminary notice in a case “*where is it satisfied that it would not be reasonably practicable to serve such a notice*”.
3. The hearing today was a preliminary hearing to determine whether the requirement to serve the preliminary notice should be dispensed with.
4. For the reasons set out below the tribunal decides that the requirement to serve the preliminary notice shall not be dispensed with. In consequence, in the absence of a preliminary notice the tribunal does not have jurisdiction to determine the substantive application to appoint a manager and therefore the proceedings must be struck out under rule 9(2)(a) of the tribunal’s rules.
5. The substantive decision of the tribunal is therefore that these proceedings are struck out.

### **Reasons**

#### **Procedural background**

6. The application form is dated 26 September and was received by the tribunal on 27 September 2019. The grounds for the application were (in essence and summary) said to be twofold:
  1. Newly appointed managing agents have issued demands for service charges payable in advance in very substantial sums, both as regards routine service charges (including building insurance) and major works proposed to be carried out; and
  2. There has been a history of excessive service charges and lack of accountability to justify the sums said to have been incurred.

Complaint is made that a new managing agent was appointed who is unfamiliar to the applicants and they “*wish to urgently appoint new management.*”

7. In the application form Ms Fortunato stated that she was the representative of the three applicants and gave as her address for correspondence: 150 Dibdin House, Maida Vale, London W9 1QG (the correspondence address).
8. By letter dated 11 October 2019 the tribunal wrote to both parties to inform them that a preliminary hearing was scheduled for 10:00 on 7 November 2019. It stated that the hearing was to clarify issues. The letter to Ms Fortunato was sent to the correspondence address.
9. By a further letter dated 31 October 2019 the tribunal wrote to both parties and explained in some detail that the issue for consideration was the absence of a preliminary notice and explained the limited circumstances in which the tribunal had authority to dispense with the need for such a notice. It expressly

drew attention to rule 9(2) of the tribunal's rules and made clear that if the judge decided dispensation with the need for the notice was not granted, the proceedings would be struck out under rule 9(2).

10. At the hearing on 7 November 2019 the respondents were represented by Ms Birikorang who is employed by the current managing agents. Ms Fortunato had not arrived by 10:15. At my request the case officer called Ms Fortunato at the mobile number recorded in the application form. It was reported to me that a call was made to Ms Fortunato who said that she was presently in France on an extended visit having been away since early October 2019 and would not be returning for another two weeks. Evidently, Ms Fortunato had not made arrangements for her mail to be forwarded to her or otherwise dealt with in her absence and thus she had not seen the letters sent to her at her correspondence address.
11. I had to decide whether to proceed with the hearing in the absence Ms Fortunato. I had regard to rule 34. I was satisfied that Ms Fortunato had been notified of the hearing. Two letters, correctly addressed had been sent to her at her correspondence address. Where a party and/or a representative, gives to the tribunal a correspondence address, it is incumbent upon them to make suitable arrangements to deal with correspondence sent to it, especially if, as here, the party proposes to be away from that address for an extended period.
12. I am satisfied it was in the interests of justice to proceed with the hearing. The respondents had instructed their managing agent to attend the hearing and it had gone to the expense and trouble of doing so. The issue under consideration was also fairly straightforward.
13. In these circumstances the hearing went ahead in the absence of Ms Fortunato.

### **The hearing**

14. Ms Birikorang explained to me that the Property, 502 Harrow Road, comprises of four self-contained flats. Two flats, numbers 1 and 2 have been sold off on long leases. The remaining two flats are retained by freeholder and are not the subject of long leases. I infer they may be let by the freeholder for short-term lets or perhaps occupied by licensees of the freeholder. The respondents hold a head lease of the property under which they have the obligation to insure the building and carry put repairs and provide services. Evidently, the freeholder makes a contribution to the respondents in connection with the expenditure incurred.
15. I observe here that the freeholder is cited as the third applicant. It is arguable whether it is entitled to be an applicant. S21(1) of the Act provides that: "*The tenant of a flat ...may apply ... to the ... tribunal ... for an order under section 24 ...*" It was not clear to me that the freeholder is a tenant of flat.
16. Ms Birikorang also informed me that her firm had been in quite detailed correspondence over the past four months or so with Ms Fortunato and the freeholder in connection with service charges and related issues. In respect of major works, the freeholder has paid sums on account but Ms Fortunato has not.

### **Consideration of the issue**

17. S22(1) of the Act is quite clear: *“Before an application for an order under section 24 is made ... by a tenant of a flat ... a notice under this section **must** ... be served.* (Emphasis added.) The obligation to serve the notice is thus mandatory.
18. That mandatory obligation is subject to an exception set out in s23(3). The tribunal may dispense with the obligation to serve the notice in a case where it is satisfied: *“... that it would not be reasonably practicable to serve such a notice...”*
19. In this case Ms Fortunato is fully aware of the names and addresses of the respondents and their managing agents and has been in detailed correspondence with them on the matters which form the grounds of the application to appoint a manager. In these circumstances I find it difficult to understand how it was not reasonably practicable for Ms Fortunato to have served a notice compliant with s22. It seems to me that service of a preliminary notice was a straightforward task and could have been undertaken with relative ease.
20. The authorities and text books on this subject suggest that dispensation with a s22 notice covers two main situations; one where the landlord, or person to be served is missing, and the other where there is some urgency in making an appointment. The application form does not suggest that either of those circumstances apply here.
21. I do readily appreciate that Ms Fortunato was not present at the hearing and has not advanced any case for dispensation, but I struggle to understand what compelling case for dispensation would have been put forward if she had attended the hearing.
22. In these circumstances I am not satisfied that I should make an order to dispense with the requirement to serve a preliminary notice.
23. In the absence of a preliminary notice and in the absence of dispensation the tribunal does not have jurisdiction to make an order appointing a manager under s24 of the Act. Accordingly, rule 9(2)(a) the tribunal must strike out the whole of the proceedings. Hence, I have made an order to this effect

### **Concluding observations**

24. It may be helpful if I draw attention to two points.
25. The first is that the application form suggests Ms Fortunato may not fully appreciate the difference between a managing agent as appointed by a landlord or management company, and a manager appointed by the tribunal under s24 of the Act. There are significant differences between the two appointments. Ms Fortunato may wish to seek further advice on this subject if she proposes to make a fresh application under s24.
26. The second is that the application form states that matters in issue are the reasonableness of service charges – past and future – and related accounting

issues. Both of those matters fall within s27A Landlord and Tenant Act 1985 and an application to the tribunal under that section may well provide a more suitable forum in which to resolve those issues.

Judge John Hewitt  
7 November 2019

### **ANNEX - RIGHTS OF APPEAL**

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify parties about any rights of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to this tribunal - the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the date on which the tribunal sends out to the person making the application the written reasons for the decision.
4. 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.
5. 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.
6. If the tribunal refuses permission to appeal, a further application for permission may be made directly to the Upper Tribunal (Lands Chamber).