



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

**Case Reference** : **CHI/00ML/LAM/2019/0013**

**Property** : **24 & 24A Saxon Road, Hove,  
East Sussex, BN3 4LF**

**Applicant** : **Edwin Jacob Wagena**

**Representative** : **In person**

**Respondent** : **Colin Glinsman**

**Representative** : **Gabriella Moffatt, Solicitor of Dean  
Wilson LLP**

**Type of Application** : **Appointment of a Manager**

**Tribunal Members** : **Judge D Dovar  
Mr N Robinson FRICS**

**Date and venue of  
Hearing** : **12<sup>th</sup> December 2019, Brighton**

**Date of Decision** : **19<sup>th</sup> January 2020**

---

**DECISION**

---

1. This is an application for the appointment of a manager under s.24 of the Landlord and Tenant Act 1987.
2. The subject property comprises two residential units, with the parties being both long leaseholders and freeholders jointly.
3. The Applicant served a s.22 notice on his joint freeholder, the Respondent, dated 25<sup>th</sup> April 2019. Although the Applicant did not formally serve himself as joint freeholder, the Tribunal waives any such requirement under either ss.22 (3) or 24 (7) of the 1987 Act, having raised this issue and the proposal to waive the requirement with the parties and neither objecting.
4. It is common ground that the notice has not been complied with and that there is disrepair which is a breach of the terms of the lease. Accordingly, the Tribunal is satisfied that it has jurisdiction to consider whether to appoint a manager. Further, it is apparent from the evidence filed by the parties, that they cannot work together in order to manage the Property and so it is just and convenient to make an order under s.24.
5. Mr Pickard was the manager jointly proposed by the parties and after subjecting him to some questioning, the Tribunal were satisfied that he was suitable to be appointed manager. He confirmed:
  - a. He was in a partnership whose resources he could utilise;
  - b. He had managed other properties of this type as well as large blocks;
  - c. Whilst he had not studied the leases, he had some input into the proposed Management Order which he considered gave him sufficient ability to raise funds in advance for works;
  - d. He would approach, early on for a surveyor to carry out an inspection to look at what is required both immediately or in the near future and what could be left to a later date. He would then obtain a draft

specification and schedule of works and arrange a meeting with the lessees and explain what needed to be done. He would put together a plan and go from there. Once the works were agreed he would go through the s.20 process and collect the money.

6. The parties agreed a Management Order which the Tribunal went through with them at the hearing making some amendments. The final version is attached to this decision.

Judge Dovar

## **Appeals**

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.

---

**ORDER UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT  
1987**

---

1. In this Order
  - (a) “the Property” means at 24 and 24a Saxon Road, Hove, East Sussex BN3 4LF registered under Title Number SX88988.
  - (b) “Leases” shall mean the Ground Floor Flat Lease and the First Floor Flat lease
  - (c) “Ground Floor Flat Lease” means the lease of the ground floor flat dated 12 April 1990 and made between (i) Michael and Patricia Bishop and (ii) Hilda Lewis and registered at H M Land Registry under title number ESX168241
  - (d) “First Floor Flat Lease” means the lease of First Floor Flat dated 12 April 1990 and made between (i) Michael and Patricia Bishop and (ii) Michael Bishop, varied by a Deed of Variation dated 12 March 2012 and made between (i) Respondent and (ii) Lousie Alexander and further varied by a Deed of Variation dated 29 June 2018 and made between (i) Respondent and (ii) Louise Alexander registered at H M Land Registry under title number ESX207136.
  - (e) “Licence for Alternations” means the licence dated 29 June 2018 and made between (i) Respondent and (ii) Applicant
  - (f) “Flat Owner” means any person holding any of the Leases from time to time
  - (g) “Accounting Year” means 25 December to 24 December
  - (h) “the Tribunal” means the First-tier Tribunal (Property Chamber) (Residential Property)
2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the 1987 Act”) Mr Gary Pickard of Jacksons, 193 Church Road, Hove, East Sussex (“Jacksons”) is appointed as the manager of the Property.
3. The order shall continue for a period of 3 years from 25 December 2019. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
4. The Manager shall manage the Property in accordance with:
  - (a) The Directions and Schedule of Functions and Services attached to this order;
  - (b) The obligations of the Lessor in the Leases 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’) 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.

5. 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 more conveniently be done by an agent or servant and the power to dismiss such agent or servant;
  - (c) The power to open and operate client bank accounts in relation to his management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and / or to hold those funds pursuant to section 42 of the 1987 Act on trust and to keep an account or accounts established for that purpose of monies received on account of the reserve fund;
  - (d) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the parties to these proceedings or of any lessee owing monies under the Leases;
  - (e) The power to insure the Property as a cost to the service charge fund for the Property (“the Service Charge Fund”); and
  - (f) The power to raise a reserve fund for the Property.
6. The Manager shall not be personally liable to make any payments due from the Flat Owners but shall instead be entitled to demand and collect sums from the Lessees for the purposes of making such payments.

**Name:** Judge Dovar

**Date:** 10<sup>th</sup> January 2020

## **DIRECTIONS**

1. 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 £1,000,000 and shall provide copies of the current cover note upon a request being made by any of the Flat Owners or the Tribunal.
2. That no later than 28 days after the date of this order the Flat Owners shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. That no later than 28 days after the date of this order the Flat Owners shall supply the Manager with a closing service charge account for the Property.
4. The Manager is entitled to such disclosure of documents as held by the Flat Owners, their advisors or agents as is reasonably required for the proper management of the Property.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges payable under the Leases) in accordance with the Schedule of Functions and Services attached.
6. The Manager shall be entitled to apply to the Tribunal for further directions.
7. The Manager shall register the order against the freehold title of the Property (Title Number SX88988) pursuant to section 24(8) of the 1987 Act and is entitled to recover his reasonable legal costs for doing so from the Service Charge Fund.
8. The Manager shall register a restriction against Title Number SX88988 in Land Registry standard form N, with the following wording "*No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without the written consent of Mr Gary Pickard of 193 Church Road, Hove BN3 2AB*" who is entitled to recover his reasonable legal costs for doing so from the Service Charge Fund.
9. In the event of any inconsistency between these directions and/or the schedule of functions and services set out below and the Leases, the provisions of these Directions and/or the Schedule of Functions and Services shall prevail.

## **SCHEDULE OF FUNCTIONS AND SERVICES**

### **1. Insurance**

- 1.1 Maintain appropriate building insurance for the Property.
- 1.2 Ensure that the Manager's interest is noted on the insurance policy.

## **2. Service charge**

For each Accounting Year:

- 2.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge demands to the Flat Owners.
- 2.2 Set, demand and collect service charges, insurance premiums and any other monies due under the Lease (other than ground rent).
- 2.3 Raise advance and ad hoc service charge demands outside the terms of the Leases, which shall be payable within 21 days of the date of the demands.
- 2.4 Collect from the Flat Owners such sums as he shall specify at his discretion to be fair and reasonable reserve fund contributions as reasonable provision for costs, expenses and outgoings that are not of a recurring nature.
- 2.5 Instruct solicitors to recover unpaid service charges, insurance premiums and any other monies due from the Flat Owners (other than ground rent).
- 2.6 Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.
- 2.7 The Manager is not required to investigate the service charges or the accounting position for any period prior to his appointment.
- 2.8 Collect from the First Floor Flat their share of the insurance premium incurred on 27 September 2019 in the sum of £228.57 which is to be credited against the account of the Ground Floor Flat.

## **3. Accounts**

For each Accounting Year:

- 3.1 Prepare and submit to the Flat Owners an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- 3.2 Maintain efficient records and books of account which are open for inspection by the Flat Owners. Upon request, produce for inspection, receipts or other evidence of expenditure.
- 3.3 Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which service charges and all other monies arising under the leases or this Order shall be paid.
- 3.4 All monies collected will be accounted for in accordance with any relevant Association of Residential Managing Agents (ARMA) Code of Practice.

## **4. Maintenance**

- 4.1 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.



- 4.2 The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Flat Owners.
- 4.3 The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- 4.4 Instruct a building surveyor in connection with the matters detailed at paragraphs 4.1-4.3 above, as and when he considers appropriate.

## **5. Alterations**

- 5.1 Inspect the Ground Floor Flat and the First Floor Flat to ascertain whether the obligations of the Lessors as specified in the Leases and the terms of the Licence for Alterations, in particular with regard to maintenance, repair and decoration are being met
- 5.2 The Manager shall have the power to deal with any future applications for consent for alterations from Flat Owners, and may give consent (not to be unreasonably withheld) subject to any conditions he considers reasonable, provided the proposed alterations are within the demise of the Flat Owner seeking consent. In considering whether to give consent the Manager shall take into account amongst other factors whether the proposed alteration adversely affects the other Flat Owner, or negatively impacts the freehold reversion.

## **6. Disputes and litigation**

- 6.1 The Manager shall be entitled to take such action as may be necessary, including bringing Court or Tribunal proceedings, to secure the compliance of the Flat Owners with their obligations in respect of the Property, as prescribed under the Lease, Licence for Alterations or under the terms of this order or by operation of law. Such action may include forfeiture (in the name of the owner of the reversion from time to time) and/or action to recover service charges, the Manager's fees and/or any other relevant contributions due.
- 6.2 For the avoidance of doubt, the entitlement under clause 6.1 above includes the right of the Manager to take whatever legal action is necessary to recover any liabilities or contributions due from the Flat Owners in respect of the flats at the Property or the Property as a whole, the costs of such action to be paid from the Service Charge Fund and recoverable from the Flat Owners irrespective of the provisions of the Leases. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order from the Service Charge Fund.

## **7. Fees**

- 7.1 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 an hourly rate of £100 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)-(x) below (“the Standard Management Fee”):
- (i) Collection of service charges
  - (ii) Payment of all invoices
  - (iii) Maintaining service charge income and expenditure details for 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.
- 7.2 The Standard Management Fees may be increased annually, on the anniversary or the order, in line with inflation.
- 7.3 Additional fees at the rate of 5% plus VAT and disbursements on any works over £500 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.
- 7.4 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 brokers for whom Jacksons are authorised representatives in accordance with the requirements of the FCA (Financial Conduct Authority)
- 7.5 A reasonable additional charge for dealing with solicitors’ enquiries on sales and transfers of the flats at the Property, payable by the outgoing lessee.
- 7.6 Tasks which fall outside of set-up requirements or the Standard Management Fee are to be charged separately using the following hourly rates; £100 plus

VAT for the Manager or a principal of Jacksons, £75 plus VAT for an associate or property managers at Jacksons. The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting lessee of £30 plus VAT for each letter written. The registration of dispositions shall give rise to a reasonable charge to be levied by the Manager's nominated solicitors.

- 7.7 The fees at clause 7.6 above may be increased annually on the anniversary of the order in line with inflation.

## **8. Complaints procedure**

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