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

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| **Case Reference** | : | BIR/00CN/LAM/2020/0002<br>BIR/00CN/LLC/2020/0001 |
| **Property** | : | 58-60 Albion Street, Birmingham B1 3EA |
| **Applicants** | : | Ben Clark & Amy Clark; Ben Holmshaw & Rachel Holmshaw; Kevin O'Keeffe |
| **Representative** | : | All appearing in person |
| **Respondent** | : | MTH Properties Limited |
| **Representative** | : | Mr Ian Williamson, solicitor |
| **Type of Application** | : | Appointment of Manager Section 24 of the Landlord and Tenant Act 1987 ("1987 Act") and an application for an Order under Section 20C of the Landlord and Tenant Act 1985 ("1985 Act") |
| **Tribunal members** | : | Judge Anthony Verduyn<br>Mr V Ward BSc Hons FRICS |
| **Date and mode of Hearing** | : | 28th July 2020<br>Via Skype for Business |
| **Date of Decision** | : | 17th September 2020 |

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**DECISION**

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(1) In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Joe Jobson MRICS of Principle Estate Management, Cornwall House, 31 Lionel Street, Birmingham B3 1AP is appointed as Manager of the Property known as 58-60 Albion Street, Birmingham B1 3EA ("the Property").

(2) The Order shall continue for a period of 3 years from 9th October 2020. 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 in 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 titles as a restriction under the Land Registration Act 2002 or any subsequent Act.

(5) The costs incurred by the Landlord in connection with these Tribunal proceedings are not to be regarded as relevant costs to be taken into account in determining of any service charge payable by the Applicants and other leaseholders at the Property.

## REASONS

1. On 28th February 2020 the Tribunal received an application signed by the Applicants seeking an order appointing Mr Joe Jobson MRICS MIRPM as a Manager of the Property under Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The Applicants also requested an Order under Section 20C of the Landlord and Tenant Act 1985 (the "1985 Act") limiting recovery of the Respondent's costs through service charge provisions.

2. On 3rd March 2020 the Tribunal issued its first directions to progress the application. This provided for other leaseholders to be active in the proceedings, though none subsequently decided to

take up this opportunity. It also provided for sequential Statements of Case.

3. The Applicants provided a detailed Statement of Case received by the Tribunal on 31st March 2020. The complaints comprised, in summary: failure to provide sufficient, timely and certified Service Charge accounts detailing the landlord's expenses; failure to provide details of service charges being held in a suitable service charge account; failing to provide further information relating to Service Charge account on request; alleged failure to refund surplus Service Charges; asserted unreasonable management charges of £1,500 plus VAT per annum; service level failures, focusing on the personal provision of services by a director who had suffered extended illness and failed to provide appropriate cover or emergency cover; alleged failing to comply with consultation requirements; alleged failing to monitor contracts; and failure to have a clear procedure to handle complaints.

4. On 24th April 2020 the Respondent provided a Statement of Case acknowledging the complaints from 3 of the 8 leaseholders at the Property, and noting that two other leaseholders had never paid the service charge at all. The Respondent, though the director concerned, Mr Michael Thomas Hassett, admitted that "the [management] arrangement had not been a success" and "it would be more appropriate for a professional agent to be appointed". The issue was one of identity of that professional only. The Respondent did address the allegations: it was accepted that issue had been raised over landlord's expenses on 22nd March 2019, but a summary was now available as at 20th April 2020, which would also address the further information sought; the absence of a dedicated Bank Account was admitted; in respect of any surplus, this was notional through non-payment of service charges by others and there was provision for a sinking fund in any event; the inability to provide a 24 hour service was admitted, but issues of consultation, monitoring contractors and handling of complaints and disputes were challenged. Notwithstanding that some of the allegations of fact were in issue, the Statement of Case and correspondence of the Respondent showed that appointment of a manager by the Tribunal was not being resisted.

5. The Applicants' reply was received by the Tribunal on 5th May 2020. It noted that 3 of the 4 resident leaseholders were Applicants, and one of the other properties was sold subject to contract. All leaseholders knew of the proceedings. They also pointed to the complaints being pursued having existed for more than a year, and that voluntary resolution could not be achieved, especially in regard to the manager to be appointed. Accounts remained outstanding and overdue, and they criticised the documents thus far received. The absence of any surplus Service Charges was accepted to be due to non-payment by one party who

is leaseholder for 2 of the flats, and conduct in respect of arrears is unexplained by the landlord. They elucidate that the level of management charge is unreasonable for the service levels provided, rather than as a sum, and reiterated many of their complaints.

6. By letter of 13th May 2020, the Respondent through Mr Hassett, acknowledged that "the major difference between Applicant and myself is which suitable Managing Agent should be appointed". The Respondent's nominee was Mr Alan Freeman of Bright Willis and the Applicant's nominee was Mr Joe Jobson.

7. The Tribunal issued further directions on 20th May 2020, noting the acceptance in principle of the appointment of a manager by the Respondent. In terms of procedure, the Tribunal noted: "it appears that the issue that the Tribunal has to determine is whether to make an order appointing the agent proposed by the Applicant or to refuse the proposal and allow the Respondent freeholder to appoint an agent of his own choosing." The Applicants having provided details of their proposed appointee, similar particulars were directed from the Respondent's intended appointee. A hearing was directed which, notwithstanding the terms of the further directions, amounted in practice to the assessment of the rival candidates for appointment. No inspection was deemed necessary, nor was one appropriate given the current pandemic.

8. Section 24 of the 1987 Act reads, so far as is relevant:

24.— Appointment of manager by a tribunal .

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver, or both, as the tribunal thinks fit.

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in

the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

[...]

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

9. The Tribunal may only make an order under section 24 in the circumstances identified Section 24(2). The circumstances identified in that section comprise two elements: a fault element (for example, breach of the terms of the Lease, non-compliance with the code of practice or overcharging); and that additionally, in all the circumstances, it is just and reasonable so to order.

10. In this case, the making of an order is not in fact in issue between the parties. Both some fault (primarily, breach of the requirements relating to accounts and the separate banking of Service Charge moneys) and the justice and convenience of making an Order are simply undisputed on the facts. The recent financial disclosure relied upon by the Respondent is also plainly inadequate. Suffice it to say, therefore, that having considered the admitted and indisputable parts of the application as set out in the Statements of Case, the Tribunal is satisfied that it may make an order.

11. The question for resolution by the Tribunal, therefore, is the choice between the Applicants' candidate and the Respondent's candidate,

or possibly the appointment of neither candidate. At the hearing, it was not contended by either party that one or other candidate was such as to be unsuitable to be appointed, and the issue was the merits of the preference of the Applicants for Mr Joe Jobson and the Respondent for Mr Alan Freeman. It is noted that the 1987 Act does not require the Tribunal to appoint a successful Applicant's candidate as manager, although that would be the usual consequence of a successful application. The Tribunal considers that it is entitled to chose between the candidates in this case and, indeed, that there is no burden of proof on either side in respect of the proposed candidate, save that its candidate is suitable for appointment (which is both admitted and plainly the case).

12. At the hearing, Mr Joe Jobson of Principle Estates described himself as owner and one of two "directors" of Principle Estates. He is a chartered surveyor and a member of the Royal Institution of Chartered Surveyors, by whom he is regulated. He is a member of Institute of Residential Property Management. He outlined his 8 years of experience in property management, initially with CP Bigwood. Principle Estates now managed more than 6,000 units over 230 developments, for many clients, and he manages 650 personally in the Birmingham area, some local to the Property. He has 23 staff, but recognises that appointment is personal. He carried £5m in indemnity insurance and proposes to charge £175 per unit plus VAT. He describes his approach as collaborative with both landlord and leaseholders. He considers that transparency is key to improving matters and he would wish to review accounts as soon as possible after appointment, because this is at the crux of the disputes between the parties. He had a site inspection report, but had not personally visited ahead of the hearing. His staff had done this.

13. When questioned by Mr Williamson for the Respondent attention was paid to practical issues as the Property is a Grade II listed building, to which he responded he would prepare a maintenance plan for the next 10 years.

14. Mr Clark also asked questions for the Applicants relating to accounts, and Mr Jobson responded that accounts would be made available, having been audited and with proper separation of funds. There was a clear process, including an on-line portal. The preparation of accounts, but not the auditing of them, was included in the management fee. No budget was yet prepared, but it would include a sinking fund for future substantial works.

15. At the hearing, Mr Alan Freeman of Bright Willis Limited gave evidence in support of his own appointment. He described himself as a Property Management Consultant and a Chartered Secretary regulated by the Financial Conduct Authority. He reported to two

directors of Bright Willis, one of which, Mr David Truman, is a Chartered Building Surveyor. He was a member of the Institute of Residential Property Management and Bright Willis was applying for Association of Residential Management Agents' membership. Mr Freeman has 20 years of experience, including a period with Countrywide. Bright Willis have 8 staff in leasehold management, servicing 120 developments, primarily in the Midlands and several local to the Property. The company offices are in Hall Green. There is £5m in indemnity insurance. Bright Willis had inspected the Property some time ago, in the person of Mr Truman, and they proposed charging £150 per unit plus VAT. Monthly meetings were proposed at first, then becoming quarterly after issues were progressed. Proper financial arrangements would be instituted and regular information provided to leaseholders. A ten-year maintenance plan would be drawn up. Budget proposals had already been formulated.

16. Upon questioning by Mr Clark, it was stated that an additional 10% fee was charged on capital works over £2,000, and £400 was chargeable for independent preparation of accounts. The budget was stated to be based on recent expenditure, but later said to be subject to revision. The neutrality of Bright Willis was contested, but Mr Freeman insisted that the intention was to serve all parties. A 24-hour hot line was also part of the package.

17. In closing, Mr Williamson for the Respondent stated that there was no reason to doubt the competence of either candidate and deferred to the Tribunal. Mr Clark for the Applicants advocated the transparency offered by Mr Jobson, the flat costs structure and site report that had been seen. Mrs Clark also offered that it was less clear to her how arrangements with Bright Willis would operate.

18. The Tribunal finds that both candidates are qualified for the appointment as manager, but prefers to appoint Mr Joe Jobson in all the circumstances of this case. Although Mr Jobson had not at the time of the hearing personally visited the Property and prepared a budget, the visit by Bright Willis was some time ago, had been in the person of Mr Truman and led to a budget which was, perhaps inevitably given the issues, provisional at this stage. Mr Jobson has distinct advantages on an appointment: His offices are more local and the size of business is more substantial; and his qualifications are also to be preferred, especially as regulation by RICS more closely reflects the obligations being undertaken than regulation by the FCA. Both candidates had sufficient recent experience and the overall length of experience is not considered to be decisive in this case. The flat fee structure offered by Mr Jobson, and the confidence in him of the leaseholders (who had satisfied the Tribunal in respect of making an appointment, albeit without substantial dispute), are also relevant factors in favour of Mr

Jobson. His appointment represents a comprehensive clean break with the unsatisfactory management of the Respondent.

19. In respect of the Section 20C application, the Respondent indicated it would not seek to add its costs to the service charge, and this was confirmed at the hearing. In light of this concession, and the success of the Applicants, an order under Section 20C follows. There is no relevant power in the Tribunal to award costs in favour of the Applicants, were they to have incurred any.

20. An Order accompanies this decision.

21. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Tribunal Judge Dr Anthony Verduyn

Dated 17th September 2020

**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.