



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

Case reference : **LON/00AM/LVM/2020/0012**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **108 Forest Road, London, E8 3BH**

Applicant : **John Fowler**

Representative : **Howard Kennedy solicitors**

Respondent : **(1) Mr Mark Arthurworrey (Freeholder
and Flat C)
(2) Mr Misha Manson-Smith (Flat A)
(3) Natkim Company Limited (Flat B)**

Type of application : **Variation of Appointment of Manager**

Tribunal : **Judge Nicol
Mr T Sennett FCIEH**

Date of decision : **8th December 2020**

DECISION

(1) In accordance with section 24(9) Landlord and Tenant Act 1987, the management order appointing Mr John Fowler as the manager of the property at 108 Forest Road, London E8 3BH made by the Tribunal on 12th October 2016, and extended by further orders made on 8th July 2019 and 29th September 2020, is hereby further extended until 30th September 2021 on the same terms.

(2) The Applicant remains at liberty to apply to extend the order further.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The subject property is a converted end-terrace house containing 3 flats. The first Respondent, Mr Arthurworrey, is the freeholder, the lessee of Flat C and the director of the company which is the lessee of Flat B. The second Respondent is the lessee of Flat A.
2. On 12th October 2016 the Tribunal appointed the Applicant to be the manager of the subject property. The reasons for their decision were expressed in trenchant terms, starting with the opening paragraph:

This is a good example of a solid, well articulated and well evidenced application to appoint a manager in the context of overwhelming evidence that any chance of proper management by the Respondent is minimal to non-existent, and furthermore that the Respondent's evidence to the Tribunal is demonstrably unreliable in certain instances. The combination more than justifies the order we make.

3. The management order was for 3 years and so was due to expire on 11th October 2019. On 8th July 2019 the Tribunal extended Mr Fowler's appointment until 31st December 2020, as well as noting the settlement of some extant Tribunal and court proceedings brought by the Applicant against Mr Arthurworrey and his company in relation to unpaid service charges. The substantive paragraph of the Tribunal's decision stated,
 15. We have considered the papers in the hearing bundle and note the oral submissions of Counsel for the Applicant and of the First Respondent, as well as the fact that the application for the extension of the Order to 31st December 2020 is not opposed by the Second Respondent [Mr Arthurworrey] or the Third Respondent [Natkim Co Ltd]. We accept that there are continuing problems with the management of the Property and consider that extending the Order to 31st December 2020 will not result in a recurrence of the circumstances which led to the Order being made and that it is just and convenient in all the circumstances of the case to vary the Order in the manner requested. Whilst it might be arguable, as argued by the First Respondent [Mr Manson-Smith], that it would be even better for the Order to be extended further still, that is not the application before us and whilst our discretion is quite wide we do not – in our view – have jurisdiction to extend the Order for longer than the period of extension sought by the Applicant.
4. The Applicant has now applied for a further extension of his appointment to 30th September 2021. On 29th September 2020, as well as issuing directions for the determination of the application, the Tribunal made an interim order extending Mr Fowler's appointment until the determination of the application just in case that

determination post-dated the scheduled expiry of the management order.

5. The application was heard on 7th December 2020 by remote video conference. The attendees were:
 - Mr John Beresford, counsel for the Applicant;
 - Mr Jonathan Cowley from Howard Kennedy, the Applicant's solicitors;
 - The first Respondent, representing himself and the third Respondent; and
 - The second Respondent.
6. Both the Applicant and the second Respondent had provided indexed and paginated bundles of relevant documents in accordance with the Tribunal's directions.
7. The first Respondent emailed the Tribunal on Friday 4th December, the last working day before the hearing, attaching an undated and unsigned witness statement with two exhibits, a copy of the lease of Flat A and the claim form and particulars of claim for High Court proceedings brought against him by the second Respondent and his wife. He accepted that his statement was too late to be considered at the hearing and, therefore, applied for the hearing to be adjourned to allow it to be admitted.
8. The first Respondent's reason for providing his material late was that he had provided it in good time to his solicitors, Anthony Gold, but they had left him in the lurch by not processing it and then only telling him late in the day that they could not represent him on this application. This firm is known to the Tribunal and this would constitute unusually poor work from them, if true. The Tribunal would require evidence to establish such allegations but none was provided.
9. The witness statement contained two points which would arguably be relevant to whether the Applicant's appointment should be extended:
 - (a) The Applicant is due to be a witness in a trial which is warned in the Crown Court for the week commencing 14th December 2020 and in which the first Respondent is charged with multiple counts of harassment of the second Respondent. The first Respondent claims that it is a conflict of interest for the Applicant to be both a witness in his trial and the manager of the subject property. However, he had raised this issue (considered substantively further below) in these proceedings as long ago as September 2020. He did not need his witness statement to be admitted for him to be able to argue this point.
 - (b) The first Respondent stated for the first time in his witness statement that he is willing for another manager to be appointed in the Applicant's place. He told the Tribunal that he has interviewed a potential replacement, Mr Washington-Webb, who he would be content with. However, since any replacement manager would be the Tribunal's appointee, they would have to be seen and questioned by the Tribunal

before the Tribunal could even consider appointing them but neither Mr Washington-Webb nor any other potential manager attended for that purpose. The Tribunal has made no directions for such a consideration, nor have the other parties had any opportunity to consider their response. While the Tribunal would consider adjourning to allow a party to supplement their existing case, this amounts to an entirely new application. It is open to the first Respondent to make that application in fresh proceedings later but it is too late to try to shoehorn it into the current application.

10. Apart from those two points, the first Respondent's witness statement sought to give his position on a range of extant disputes between himself and the second Respondent, including allegations of fraud. The only relevance of such matters is to demonstrate that the first and second Respondents continue to be so mired in significant and substantial disputes that it would be a disaster if the management of the building were transferred to him from Mr Fowler as an independent Tribunal-appointed manager. This is the opposite of the first Respondent's intention and wishes.
11. In the circumstances, the Tribunal refused to admit the first Respondent's witness statement or to grant the adjournment. The hearing, therefore, proceeded to its conclusion.
12. Under section 24(9A) of the Act, the Tribunal must be satisfied in relation to two matters in order to be able to vary the management order by extending it. Without going into details, it is clear that the first and second Respondents are in serious ongoing dispute. While the first Respondent accuses the second Respondent of fraud, the latter accuses the former of such serious harassment as to force him and his family into alternative rented accommodation with the intention of forcing him to sell his flat at a low price, leaving the first Respondent in complete control of the building. There can be no doubt that the problems which led the Tribunal to make the management order in the first place would recur, possibly even to a worse degree, if the order were not to be extended. It is clearly just and equitable for the order to be extended.
13. As referred to above, the first Respondent relied on an alleged conflict of interest as to why the Applicant should not continue as manager. However, the first Respondent put nothing forward which could support this. Instead, his case is that the Applicant is having to be dragged to the Crown Court under pain of sanctions to give his evidence, which hardly speaks to any enthusiasm for testifying against him. Merely attending at court to give truthful testimony is not enough to establish any conflict with the Applicant's role as manager. On the contrary, it is the only thing he can do consistent with his professional duties. The Tribunal is satisfied that there is no conflict of interest as alleged.

14. The current Tribunal is in the same position as the one which issued its decision on 8th July 2019 (see the quote in paragraph 3 above), save in one respect. In this Tribunal's opinion, it has the jurisdiction to extend the management order for a further period beyond that asked for, namely 30th September 2021, but it would be procedurally unfair to consider this now because all parties prepared for the hearing on the basis that this was all that was asked for.
15. Mr Beresford explained that the Applicant had not sought a longer extension because he estimates that the period to 30th September 2021 would provide him with sufficient time to execute his current plans to fix the roof, at which point he would want to review his position.
16. In the Tribunal's opinion, it is beyond optimistic to think that the Applicant's job might be completed by September 2021. The first and second Respondent's disputes are likely to have consequences well beyond that date. Significant sums of money have been spent on pursuing litigation against the first and third Respondents and they have yet to satisfy judgments already made against them. The Applicant should try to avoid incurring further such costs where possible. This might include seeking an order which would not require a further application to the Tribunal, e.g. a longer extension combined with provision for review if required. This is something to bear in mind for the future.
17. In the circumstances, the Tribunal is more than satisfied that it is just and equitable to grant the application and extend the management order to 30th September 2021.

Name: Judge Nicol

Date: 8th December 2020

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).

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (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
 - (ii) ...
 - (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;
 - (aba) where the tribunal is satisfied--
 - (i) that unreasonable variable administration 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;
 - (abb) where the tribunal is satisfied--
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, 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
 - (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section "relevant person" means a person–
 - (a) on whom a notice has been served under section 22, or
 - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable–
 - (a) if the amount is unreasonable having regard to the items for which it is payable,
 - (b) if the items for which it is payable are of an unnecessarily high standard, or
 - (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to–
 - (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide–
 - (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

- (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
 - (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.