



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

Case reference : **LON/00BJ/LAM/2020/0029**

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

Property : **103 Falcon Road, London SW11 2PF**

Applicant : **Ms J Stuart**

Representative :

Respondent : **Mr M Shafique**

Representative :

Type of application : **Appointment of Manager**

**Tribunal
member(s)** : **Judge S Brilliant
Mr C Gowman**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 May 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a video hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined in a remote hearing.

Decision of the Tribunal

The Tribunal declines to appoint the Applicant or any other person as Manager of the Property.

Introduction

1. In these proceedings Applicant applies for a Manager to be appointed under s.24 of the Landlord and Tenant Act 1987 to manage 103 Falcon Road, London SW11 2PF (“the Property”).
2. The Property consist of three units. First, there are commercial premises (an Indian restaurant) on the ground floor (“the Commercial Premises”). The Lessee of the Commercial Premises is Mr Gurung, who has not participated in these proceedings despite having been invited to do so.
3. We were told that Mr Gurung has a long lease of the Commercial Premises, but we have not seen a copy of it.
4. There are two residential floors above the Commercial Premises, the whole of which we shall refer to as “the Upper Part”.
5. Originally, the Upper Part was a single unit. Towards the end of 2004, the Upper Part was divided into two separate units. There is a two bedroom flat on the first floor (“Flat D”). There is a three bedroom flat on the second floor (“Flat E”).
6. The Applicant and Mr Lee are the joint Head Lessees of the Upper Part. We shall refer to this as “The Head Lease”.
7. The Applicant is the sole Underlessee of Flat E. We shall refer to this as “the Underlease”.
8. Mr Lee is the sole Underlessee of Flat D.

The hearing

9. The Applicant represented herself at the hearing. Mr Lee also attended by telephone and supported the Application. The Respondent appeared and was assisted by Mr Arora who had the better command of English.

The Head Lease

10. The Head Lease is dated 05 September 2003 and was made between Glencora Resources Ltd and Crownwebb Estates Ltd for a term of 999 years from 01 January 2003.
11. The Applicant and Mr Lee acquired the residue of the term of the Head Lease in about 2011.
12. The Head Lease demises the whole of the Upper Part of the Property. Included within the Upper Part are all of the floors and ceilings, the joists and beams supporting

the floors and all the external and internal walls which bound or form part of the Upper Part above such levels (paragraph (ii) of the Second Schedule).

13. The Head Lease also demises the roof void, and the beams and timbers supporting the roof (paragraph (iv)).

14. The Head Lease does not appear to demise the roof above the void.

15. By paragraph (2) of Part I of the Fifth Schedule, the Head Lessee covenants to pay by way of additional rent the cost to the Head Lessor of insuring the Upper Part.

16. By paragraph (1) of Part II of the Fifth Schedule the Head Lessee covenants to keep the Upper Part and additions thereto, and in particular the main walls and structure coextensive with the Upper Part, in good and substantial repair and condition.

17. By paragraph (3)(b) of Part II of the Fifth Schedule the Head Lessee covenants to pay 50% of the cost of the Landlord's expenditure in repairing the foundations of Property.

18. Apart from the obligation on the part of the Head Lessee to pay to the Head Lessor (a) the cost of insuring the Upper Part and (b) 50% of the cost of repairing the foundations, there is no provision for a variable service charge to be payable in the usual manner.

19. By paragraph (1) of the Sixth Schedule the Head Less covenants to insure the Property.

20. There appears to be no obligation on the Head Lessor to repair the foundations of the Property (although there is a power to recover 50% of the cost if such work is done). There also appears to be no obligation on the Head Lessor to repair the roof. Neither is there an obligation on the Head Lessor to repair the structure or maintain the common parts of the Property.

The Underlease

21. The Underlease is dated sometime in 2010 and was made between BM Samuels Finance Group plc ("BMSF") (as mortgagee in possession) and the Applicant for a term of 125 years from the date of the Underlease.

22. The Underlease demises the Second Floor Flat (Flat E). At the same time Mr Lee was granted an underlease of Flat D.

23. Included within the demise of Flat E is the shell of the Flat, but no part of the exterior structure or the main timbers or joists (the First Schedule).

24. The Underlease does not appear to demise either the roof void or the roof itself.

25. By clause 6.2.1 The Head Lessee covenants to keep the main structure of the Upper Part in good and substantial repair and condition.

26. By clause 6.3 the Head Lessee covenants to insure the Upper Part. There is therefore a duplication of the obligation to insure the Upper Part. This important fact was not discussed at the hearing because the Applicant only disclosed the Underlease during the course of the hearing. Following the hearing, both parties were invited to be written representations on this point. The Applicant replied but the Respondent did not.

27. The Fifth Schedule of the Head Lease provides for the Underlessee to pay by way of a service charge a proportion of the cost of the Head Lessee complying with its obligations including those in clauses 6.2.1 and 6.3. This proportion is 50% (clause 1.13 of the Underlease).

The Application

28. In her Notice of Application dated 24 November 2020, the Applicant says that the Respondent does not fulfil his duties and obligations. In particular, he does not insure the building, he does not respond to correspondence, he does not carry out urgent repairs to the roof and façade, and refuses to contribute to the cost of urgent repairs to the roof and façade when arranged by the leaseholders.

29. She says that the Respondent has been negligent in carrying out works to the common parts to ensure they comply with safety regulations. The Respondent has not carried out any regular maintenance works required to keep the Property in good order, such as painting and decorating the façade and the common parts.

30. In her s.22 notice dated 11 February 2020, she had made the same complaints and also said that the Respondent refuses to communicate with the leaseholders, does not reply to letters, and hangs up the phone when called.

31. The Applicant puts herself forward as the Manager. She is a Chartered Surveyor with 20 years of experience in managing her own residential properties in London. She has 10 years of experience in owning and managing Flat E. She holds professional indemnity insurance.

32. She is able to comply with the RICS requirements regarding estate management. She has experience of both valuation and development.

33. The Applicant lives in Trieste but commutes across the border to Slovenia to work. We found the Applicant an entirely honest witness, concerned about the lack of management of the Property.

34. She says that she would have preferred an independent Manager, but has found it difficult to find one for a reasonable price, given the small number of units in the Property. She has contacted 12 management companies and only two were willing to act. But that would be for a high fixed cost.

35. On 08 December 2020, the Tribunal emailed the Applicant pointing out that it would be highly unusual and highly unlikely for the Tribunal to appoint a leaseholder as Manager. Moreover, as she did not appear to be currently resident in the UK, that would be a further reason for the Tribunal to be unlikely to appoint her as Manager.

36. Directions were given on 18 December 2020.

37. The Applicant subsequently provided a Statement of Case in which she repeated the allegations set out above, and set out what she would propose to do if she were appointed Manager. She has not provided any documentary evidence in support of her complaints.

38. The Respondent provided a Statement of Case dated 08 April 2021. Much of it was background which is not strictly relevant. Importantly, he said it had been agreed that the Head Lessees would be primarily responsible for both the maintenance and insurance of the Upper Part, including the roof structure.

39. In part, this was a reference back to correspondence in 2008 between the Respondent and BMSF, the mortgagees in possession of the Head Lessee. On 26 November 2009, BMSF'S solicitors wrote to the Respondent's solicitors asking for an up to date schedule of insurance for the Property.

40. On 27 November 2009, the Respondent's solicitors replied:

Whether or not the lease so provides, the owner of the lease of the upper parts of the building took responsibility for the insurance of the upper parts. There are therefore no arrears of insurance payable to our client.

41. Now the Tribunal has had the benefit of reading the Head Lease, it would appear that the Head Lessee did have responsibility for the insurance of the Upper Part (see paragraph 26 above).

Discussion

42. We set out above the provisions of the Head Lease and the Underlease because they show just how restricted are the obligations of the Respondent regarding the Property.

43. The Applicant at the start of the hearing frankly and correctly accepted that the only responsibility of the Respondent about which she was entitled to complain was the failure of the Respondent to insure the Property.

44. It is now clear to us that the Applicant and Mr Lee are required to insure the Upper Part (as well as the Respondent being required to do so). They cannot really complain that Respondent has failed to do this. Of course, they reasonably want the Commercial Premises to be insured as well and in this respect the Respondent is at fault.

45. In her written submissions dated 04 May 2021, the Applicant said she would like the Tribunal either to instruct the Respondent to insure the whole of the Property and charge a proportionate share to herself and Mr Lee, or instruct Mr Lee and herself to insure the whole of the Property and charge the Respondent a proportionate share. These are not powers which the Tribunal has.

46. Despite these difficulties about insurance, we do not consider that this is an appropriate case in which to appoint a Manager of the Property. We do not consider it is satisfactory that the Applicant lives abroad and has no real experience of being an independent manager of someone else's property. Nor do we consider it "just and convenient" in the circumstances of this case to appoint a Manager where the sole issue is in effect that of insurance of the Commercial Premises.

47. The parties now need to agree between themselves whether (a) the Respondent will insure the whole of the Property and reclaim 50% from the Applicant and Mr Lee, (b) the Respondent will insure the Commercial Premises and the Applicant and Mr Lee will independently insure the Upper Part, or (c) the Applicant and Mr Lee will insure the whole of the Property.

Name: Simon Brilliant

Date: 21 May 2021

Rights of appeal

¹By 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).