

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

Case Reference : CHI/00HG/LVM/2019/0009

Property : Charles Cross Apartments
22 Constantine Street
Plymouth
PL4 8AF

Applicant : Philippa Anne Carter

Representative : Fursdon Knapper Solicitors

Respondent : CX Freehold Limited

Representative : Mr Jason Short and Ms Lauren Short on behalf of the
late Mr James Short, sole Director of CX Freehold
Ltd.

Application : Section 24 Landlord and Tenant Act 1987
Appointment of Manager

**Date and place of
Hearing** : 5 December 2019 at Exeter Magistrates Court

**Date of
Determination** : 2nd January 2020

DETERMINATION

Background

1. On 16th July 2019 the Tribunal received an application by Philippa Anne Carter, the long lessee of Flat 46 at Charles Cross Apartments, 22, Constantine Street, Plymouth PL4 8AF for the appointment of a manager in respect of the Charles Cross Apartments under section 24 of the Landlord and Tenant Act 1987 (“the Act”). The proposed manager was Mr Donald Gerrard of Freehold Management Services Limited, Plymouth. The principal grounds for the application were:-
 - a) that the landlord was in breach of the obligation in the lease to insure the premises and
 - b) that the sole Director of the landlord company (Mr James Short) had died suddenly and unexpectedly on or about 13th July 2019 leaving the property, effectively, without management.
2. In view of the urgency of the application, the Tribunal held an interlocutory hearing on 22nd July 2019 by telephone as a result of which an interlocutory order appointing Mr Gerrard as manager on an interim basis until 19th September 2019 was made, with the matter to be reviewed at a telephone hearing on 5th September 2019.
3. At the hearing on 5th September 2019 the interim appointment of Mr Gerrard was extended and directions were given to include the notification of the application and the Tribunal’s orders to all the lessees at the property asking them to return a form to the Tribunal indicating whether or not they supported the application. The Directions also required Mr Gerrard to provide the Tribunal with a report as to what had been happening with regard to the management of the property since his appointment.
4. The case came before the Tribunal on 5th December 2019 for a final determination. Those present at the hearing were Mr Knapper (the Applicant’s solicitor), Mr Roger Carter in place of his daughter (the

Applicant), Mr Gerrard and his colleague Mr Ian Chapman from Freehold Management Services Limited, a number of long leaseholders of Charles Cross Apartments, and, for the Respondent, Ms Lauren Short who was accompanied by her sister Ms Grace Short.

5. The Tribunal had already received confirmation from Mr Jason Short that the application for appointment of manager was not opposed on behalf of the Respondent and Ms Lauren Short also confirmed this at the hearing.
6. The Tribunal had also received from a substantial number of long lessees the form confirming that they did not oppose the application. No lessee had responded to the application to oppose it.

The hearing

7. Mr Gerrard confirmed that the insurance cover that the landlord had procured had been withdrawn and the landlord had been unable over a number of months to obtain insurance cover prior to his death. Following that death of the sole Director of the landlord company there was no one in a position actively to manage the property. It was clear to the Tribunal, therefore, that the grounds for an order for the appointment of a manager were made out. The landlord had been in breach of its obligation to insure under the lease and there were other circumstances making it just and convenient for an order to be made. Thus section 24 subsections (2)(a)(i) and (iii) and subsection (2)(b) of the Act are satisfied. Furthermore, neither the deceased's family nor any of the lessees objected to an order being made.
8. The questions for the Tribunal to determine therefore were:-
 - a) Whom to appoint as manager
 - b) The length of time for the appointment, and
 - c) The terms of the appointment.

With regard to whom to appoint, the Tribunal had received two reports from Mr Gerrard since his initial appointment on an interim basis. He had clearly encountered many problems in securing insurance cover for the property but he had managed to do so. He has also made great strides in securing the confidence of both the lessees and the Short family, in establishing means of communication to keep lessees informed, in sending out demands for on-account service charges and collecting the same (albeit that some payments are still outstanding) and in dealing with day to day enquiries and problems with sub-tenants.

9. The Tribunal were impressed that Mr Gerrard had achieved a lot in the time since his initial appointment and were convinced that he was the right person to appoint on a longer-term basis going forward.
10. As for the length of his appointment, Mr Knapper suggested that three years was the appropriate period. The Tribunal agreed and Ms Short did not demur so that will be the period specified in the order which will accompany this determination.
11. The Tribunal now turns to the terms of the appointment.
12. First, the Short family have asked Mr Gerrard if he would be prepared to collect the ground rents on behalf of the freeholder. The Tribunal does not routinely include this in the manager's duties but as he has been requested to do so the Tribunal has no objection to including this in the management order. Normally the ground rents would be simply passed on to the freeholder. However, for reasons that will be set out hereafter, there appears to be a considerable dispute as to who owes what to whom in this case, some of the lessees asserting that they are owed moneys back from either the freeholder or, possibly, Mr Short's estate personally. It has been agreed between the parties that the ground rents will be held in an account (separate

from the service charge account) and held on trust until either agreement between all relevant parties or order of a Court. Mr Gerrard is content to do this.

13. As premised above, there is considerable dispute in this case about historic service charges and other issues whereby the lessees (or, at least some of them) claim that they have overpaid service charges historically and that they are owed a refund either from CX Freehold Limited or, possibly from Mr James Short's estate. A firm of insolvency practitioners has, apparently, been instructed to collect alleged arrears of service charges and some of the lessees present at the hearing reported that they had received, what they considered to be aggressive letters threatening legal action, from that firm. Mr Gerrard confirmed that he had an agreement with that firm that if they collected any historic service charges (i.e. those pre-dating his appointment) they would hand the moneys collected to him and he would hold them in the separate account on trust, as for the ground rent payments, until either agreement between those concerned as to the distribution of those funds or order of a Court.
14. The Tribunal asked Mr Gerrard if he would be in difficulties if he were not charged with the collection of historic arrears. He said he would not and that he would have enough funds in hand to last until the next demand for service charges fell due.
15. Mr Carter said that he felt that the Tribunal-appointed manager should be charged with historic service charges saying that his calculations showed that the lessees were owed many thousands of pounds. Evidently, he thought that the appointed manager would sort this out and recover the moneys said to be owed to the lessees. However, Mr Knapper (who was acting for Mr Carter's daughter in these proceedings) did not submit that the manager should be

charged with trying to sort out the historic service charge situation and Mr Gerrard did not make any pitch to be given that responsibility.

16. The Tribunal considered that the historic situation prior to Mr Gerrard's appointment was fraught with difficulties, particularly as Mr James Short is not around to assist in clarifying the situation. It is likely to be a very complicated matter to work out who owes what to whom. It could involve the Tribunal-appointed manager in many hours of possibly fruitless work. That would be an expensive operation. Mr Gerrard would need to charge all the lessees for that work, whether they have an issue with historic service charge payments or not. That would not be fair on those who have no dispute. Further, each case will be different depending upon what has been charged and paid. The Tribunal considers that this is a matter that each lessee needs to take up with the insolvency practitioners and/or Mr James Short's estate. They may be able to act in concert but they need to take proper legal advice, which the Tribunal being an independent body, cannot give.

17. Finally on this topic, Mr Carter seemed to be of the view that one of the purposes of section 24 of the Act was to give the manager the responsibility for historic service charge claims and payments. The Tribunal refers him to section 24 (4) and(5) of the Act. Subsection (4) makes it clear that an order under the Act 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...” (emphasis added). Then in subsection (5)(b), without prejudice to the generality of subsection (4), “(b) for the manager to be entitled to prosecute claims in respect of causes of actionaccruing before or after the date of his appointment”. In other words, although the Tribunal may give the manager power to take legal proceedings relating to matters which accrued before his appointment, that is a matter entirely in the discretion of the Tribunal and the Tribunal is not bound to give the manager that power. In this instance, the Tribunal does not

consider it appropriate for the manager to be involved in the complex matter of historical service charges claimed and paid and so specifically excludes that power from the management order. There is nothing to stop Mr Gerrard from continuing with his agreement with the insolvency practitioners to hold any moneys paid over to him by those practitioners in a separate account on trust until such time as there is an agreement as to the dispersal of those funds or an order of a Court.

18. The only other matter that the Tribunal had expressed some concern about was the fact that Mr Knapper is the solicitor for the Applicant in this case and he has also in the past acted for other lessees of Charles Cross Apartments and he is also Mr Gerrard's firm's solicitor. The Tribunal had raised a concern that there might be a perception amongst either those looking after the interests of the landlord or some of the other lessees as to whether there would be a conflict of interest if he were instructed by the Tribunal-appointed manager to, for example, recover unpaid service charges. To some extent, by relieving Mr Gerrard of the duty to collect historic service charges, this concern is diminished. Mr Gerrard is only going to be concerned with recovering unpaid service charges levied since his appointment. Thus, unless the lessees defaulting in paying those service charges are or have recently been Mr Knapper's firm's clients, there is unlikely to be a conflict of interest. However, Mr Knapper must remain alive to the issue and judge each situation on its own merits as and when they arise.
19. There were no other contentious matters with regard to the terms of Mr Gerrard's appointment. A management order will accompany this decision as will a Schedule of Functions and Services. Mr Gerrard should ensure that every lessee receives a copy of this decision, the management order and the Schedule of Functions and Services. This may be done electronically if appropriate in order to keep the costs down.

Dated the 2nd day of January 2020

Judge D. Agnew (Chairman)

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

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Tribunal members: Judge D. Agnew
Mr M Woodrow MRICS

**Date of
Determination** : 2nd January 2020

MANAGEMENT ORDER

Interpretation

In this order

- (a) “leases” means the long leases of the flats at Charles Cross Apartments 22 Constantine Street, Plymouth PL4 8AF.
- (b) “lessee” means a tenant of a dwelling under a long lease of a flat at Charles Cross Apartments aforesaid.
- (c) “the Manager” means Mr Donald Ian Gerrard of Freehold Management Services Limited, 22b Weston Park Road, Peverell, Plymouth, Devon PL3 4NU.
- (d) “the Premises” means all that residential part of Charles Cross Apartments aforesaid, including the common parts thereof, the freehold interest in which is registered at the Land Registry under title number DN134847.
- (e) “the Respondent” means CX Freehold Limited

IT IS ORDERED THAT:-

1. Mr Donald Ian Gerrard shall in accordance with section 24(1) of the Landlord and Tenant act 1987 (“the 1987 Act”) be appointed as the Manager to carry out the functions in connection with the management of the Premises and/or such functions of a receiver as are specified herein.
2. The appointment shall be for a term of 3 years from 5th December 2019.
3. The Manager shall in continuation of the interlocutory order made by Judge Tildesley OBE herein on 22nd July 2019 exercise in that capacity all the rights

of the Respondent as landlord under the leases and shall carry out in that capacity all the responsibilities of the landlord under the leases.

4. The Manager shall manage the Premises in accordance with:
 - a) The Directions of the Tribunal and the Schedule of Functions and Services attached to this order
 - b) All statutory requirements and the provisions of the current Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
5. The Manager shall be and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the leases to carry out the management functions of the Respondent as landlord and in particular:
 - a. The power to receive ground rents, service charges and any other monies payable by any of the lessees under the leases
 - b. The power and duty to carry out the Respondent's obligations as landlord under the leases as to the landlord's repairing and maintenance obligations
 - c. The power to enter into or terminate any contract or arrangement and/or make any payment necessary , convenient or incidental to the performance of his functions
 - d. The power to appoint any agent or servant to carry out such function or obligation that the Manager is unable to perform himself or which can be more conveniently be done by an agent or servant and the power to dismiss such agent or servant
 - e. The power to grant to lessees on application landlord's consents under and for the purpose of the leases

- f. The power in his own name to bring, defend or continue any legal proceedings in connection with the leases but the Manager shall not be required to take proceedings against any lessee in respect of any unpaid ground rent or service charge levied prior to the Manager's interim appointment on 22nd July 2019. Nor shall the Manager be required to seek the repayment of overpayments of service charges levied by the landlord prior to the Manager's interim appointment on 22nd July 2019. The manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account. The Manager shall be under no obligation to commence or continue such proceedings unless he has been placed in funds to do so by the lessees.
 - g. The power to open and operate client bank accounts in relation to the management of the Premises and to hold those funds pursuant to section 42 of the 1987 Act. The Manager shall deal separately with and keep in a separate account reserve fund monies, and any ground rent monies received. Further, if the Manager should receive from those instructed by the Respondent to recover monies due to the landlord demanded prior to 22nd July 2019 but which remained unpaid at that date, he shall place those monies in a separate designated account to be held on trust pending agreement between all parties concerned as to the distribution of such monies or an order of the Court as to their distribution.
6. From the date of this order no person other than the Manager shall be entitled to exercise a management function in respect of the Premises.
7. The Manager shall produce service charge accounts not less frequently than once a year and shall serve the same on each of the lessees and the Respondent.
8. Without prejudice to the generality of the foregoing the Manager shall be entitled to remuneration (which for the avoidance of doubt shall be

recoverable as part of the service charges) in accordance with the Schedule of Functions and Services below.

9. The Manager shall in the performance of his functions under this order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £1 million providing copies of the current cover note on request by any lessee, the Respondent or the Tribunal.
10. The Manager shall act fairly and impartially in his dealings in respect of the premises.
11. The Manager shall register this order against the freehold title in accordance with section 24(8) of the 1987 Act.
12. The Manager shall within three months of the end of his appointment cause a final account to be taken in respect of the service charges and any reserve fund and shall send a copy thereof to the lessees and the Respondent. The Manager shall within three months of the end of his appointment also hand over any funds held to the credit of any bank account in respect of the Premises and/or any documentation relevant to the ongoing management of the Premises to the landlord (or its managing agent) or, if applicable, to the person appointed as the Manager by the Tribunal in Mr Gerrard's stead.
13. The Manager may apply to the Tribunal for further Directions in accordance with section 24(4) of the 1987 Act. The Manager's cost of applying for further Directions shall be chargeable to the service charge account if not recovered from an individual lessee.

SCHEDULE OF FUNCTIONS AND SERVICES

Financial management

1. Following consultation with the lessees to prepare an annual service charge budget, administer the service charge and prepare and distribute service charge accounts to the lessees in accordance with the proportions contained in the leases.
2. Demand and collect ground rent and service charges from the lessees. Instruct solicitors to recover any unpaid service charges demanded since 22nd July 2019 and any other monies due under the leases.
3. Create a reserve fund.
4. Produce for inspection (but no more than once each year) within a reasonable time following a written demand by a lessee relevant receipts or other evidence of expenditure, and provide vat invoices (if applicable).
5. Manage all outgoings from the funds in respect of day to day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with the lessees, solicitors or other professional persons arising from the day to day financial management of the Premises.

Repairs and maintenance

7. Deal with all reasonable enquiries raised by the lessees in relation to repair and maintenance work and instruct contractors to attend and rectify problems as necessary.
8. Administer contracts in respect of the Premises and check demands for payment, goods, services, plant and equipment supplied in relation to the contracts.
9. Manage the common parts and service areas of the Premises, including the arrangement and supervision of maintenance.

10. Carry out regular inspections of the common parts of the Premises at the Manager's discretion.

Insurance

11. Maintain in the Manager's own name an insurance policy with a reputable insurer insuring the building in which the Premises is contained and provide a copy of the cover note to all lessees and the Respondent on request.
12. Manage or provide for the management through a broker (if appropriate) any claims brought under the aforesaid insurance policy.

Major Works

13. Undertake as soon as practical (if not already done) a full health and safety review to include asbestos and fire safety survey, an assessment of the electrical supply to the Premises and a condition report to determine what works if any may be required and the relative urgency of the same.

Administration and Communication

14. Deal promptly with all reasonable enquiries raised by lessees, including routine management enquiries from lessees or their solicitors.
15. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.
16. Provide the lessees with telephone, postal and email contact details and complaints procedure.
17. Keep records regarding lessees, agreements entered into by the Manager and any changes in the lessees.

Fees

18. Fees for the routine day to day management services as set out in the document headed Appendix II-The Services (attached hereto) shall be a yearly fee of £18,600 plus vat (i.e. £200 plus vat per flat). Any additional

charges as set out in the document headed Appendix III (attached hereto) shall be charged at the rate of £55 per hour for the Manager or his senior staff and £25 per hour for the Manager's junior staff, as appropriate.

Dated the 2nd day of January 2020

Judge D. Agnew. (Chairman)