



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

<b>Case Reference</b>	:	CHI/00HH/LAM/2020/0009
<b>Property</b>	:	Sunhill Apartments 19 Alta Vista Road Paignton Devon TQ4 6DA
<b>Applicants</b>	:	Mr J Melville, Mrs L E Harris Mr P Wagstaff & Mrs S Gliddon and Ms K L Freame
<b>Representative</b>	:	Mr J Simmonds
<b>Respondent</b>	:	Mr M Morgan and Mrs B Morgan
<b>Type of Application</b>	:	Variation of Management Order. Section 24 Landlord and Tenant Act 1987 (the Act).
<b>Tribunal Members</b>	:	Judge C A Rai (Chairman) Mr D Banfield FRICS Regional Surveyor
<b>Date and venue of Hearing</b>	:	18 December 2020 CVP Remote Video Hearing
<b>Date of Decision</b>	:	3 January 2021

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**MANAGEMENT ORDER**

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1. Having heard submissions from Mark Christie the proposed manager and from Mr Simmonds, representative of the Applicants, the Tribunal appointed Mark Christie MInstLM, AIRPM, ISO, ARMA of Residential Block Management Group Ltd trading as Plymouth Block Management, the Atlantic Building, Queen Anne's Battery, Plymouth Devon PL4 0LP (the Manager) as interim manager of Sunhill Apartments 19 Alta Vista Road Paignton Devon TQ4 6DA (the Property) for a term of three months from 1 January 2021 until 31 March 2021 which appointment was made in accordance with section 24(1) of the Act (the Interim Order).
2. Following the receipt of further submissions from Mark Christie on 3 February 2021 it now appoints Mark Christie as manager of the Property for a term commencing on the 1 April 2021 and expiring on 31 December 2025.

3. During the term of this Order 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 and 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 the manager set out in the current edition of the Service Charge Residential Management Code (the Code) or any replacement 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.
4. The Manager shall register the Order against the Landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.
5. From the date this Order comes into effect no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
6. The Manager shall act fairly and impartially in his dealings in respect of the Property.
7. The Manger 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 proper performance of the said functions.
8. From the date of his appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity insurance cover of at least Two Million Pounds (£2,000,000) and shall provide copies of the certificate of the liability insurance together with a copy of the policy document to the Tribunal prior to 8 January 2021. The certificate must specifically state that it applies to Mark Christie's duty as a Tribunal appointed manager. In addition, the Manager shall supply the Tribunal with a signed letter from his insurer confirming that it has received notification of the interim appointment and the Tribunal's intention to make an extended appointment of him as Manager of the Property. All documents must be sent to the Tribunal in an electronic form.
9. All rights and liabilities of the Landlord or the previous manager Martin Woodhead arising under any contracts of insurance, and/or contracts for the provision of services to the

Property became rights and liabilities of the Manager under the Interim Order and continue to be his rights and liabilities under this Order.

10. The Manager apply all amounts received by him in the performance of the Landlord's covenants under the leases of the apartments within the Property.
11. The Manager shall be entitled to remuneration, which shall be recoverable as part of the service charges due from the owners of the twelve apartments within the Property in accordance with the Schedule of Functions and Services attached.
12. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts.
13. The Manager shall be entitled to apply to the Tribunal for further directions.
14. The Manager shall inform the leaseholders and the freeholder of his appointment and his powers under the Order.

#### **Reasons for the decision to make an Order**

15. The Applicant applied to the Tribunal to appoint Mark Christie as Manager in place of Mr Woodhead, on expiry of the existing management order which ends on 31 December 2020.
16. The Tribunal was told by the Applicant that the reasons which led to the appointment of Mr Woodhead continue and for that reason sought dispensation from serving a preliminary notice under section 22 of the Act.
17. This decision has been made following a remote hearing which was not objected to by the parties. The form of remote hearing was CVP, (Cloud Video Platform). A face to face, hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that we were referred to were in a single bundle of 341 numbered pages. Any references to page numbers in this decision are to that bundle.
18. The Hearing took place on 18 December 2020 starting just after 12:00 am and ending just before 13:00. The Respondents had not logged into the video hearing by 13:00 and had previously indicated to the Tribunal that they were unlikely to attend the Hearing.
19. Having considered rule 34 of its Rules **(The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [SI 1169]** the Tribunal was satisfied that reasonable steps had been taken to notify the Respondents of the time and date of the Hearing and it considered it was in the best interest of justice to proceed with the hearing.

20. The Hearing was attended by the Manager who responded to questions from the Tribunal. Mr Simmonds represented the Applicants.
21. The Manager told the Tribunal that he had discussed the management of the Property with Mr Woodhead and intended to operate what he described as a “back to basics” approach. He will speak to all the leaseholders and the freeholder. He has substantial experience of management initially in the Royal Navy but more recently he owned a letting agency which he sold about five years ago. He retained the “block management” business and has expanded that into a substantial business. He currently manages many different blocks of flats/ apartments mainly within the Plymouth area but extending as far east as Torquay. He has experience of managing blocks of between 4 – 22 apartments and was appointed by the Tribunal to manage another Property in 2019.
22. He explained his responsibilities as manager to the Tribunal and anecdotally shared his experience of how he had overcome ecological issues affecting another property under his management.
23. He identified that the primary issue affecting the Property is maintenance and believes that a five-year plan is necessary to put, what he termed, the “essential maintenance” back on track. He will consult as necessary with a RICS professional to prepare this plan.

24. He understands the difficulties caused by the mix of tenanted and owned flats but stressed that the leaseholders, not the tenants, have responsibility to pay the service charges. He uses professionals including lawyers to deal with debt recovery and told the Tribunal that he operated a swift but fair regime for recovery of unpaid service charges.
25. When the Tribunal suggested that it would invite him to put forward submissions as to what provisions should be included within the Final Management Order, he confirmed that would assist him.
26. Mr Simmonds requested that the Tribunal give the Manager power to recover the cost of his time chasing debts. He referred it to its earlier decision on 6 October 2020 [page 40] and to paragraph 16 [page 42] in particular.
27. Mr Simmonds also asked the Tribunal if it would be able to award costs against the Respondents. The Tribunal explained that it has an extremely limited costs jurisdiction in relation to its jurisdiction under section 24 of the Act.
28. The Tribunal referred the parties to Rule 13 of its Rules and to the Upper Tribunal decision in the case of **Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC)**.
29. Whilst an application for costs may be made during the proceedings it must be made within 28 days after the date on which the Tribunal sends a decision notice recording the decision which finally disposes of all issues in the proceedings [Rule 13(5)]. The Tribunal cannot make an order for costs against a person without first giving that party an opportunity to make representations [Rule 13(6)].
30. The Tribunal issued an Interim Order appointing Mark Christie as Manager of the Property on 22 December 2020.
31. On 3 February 2021 Mark Christie the Interim Manager made further submissions to the Tribunal regarding the terms of his appointment.
32. The Tribunal has no jurisdiction under the application made to it to vary the terms of the current leases of the Property or require lessees to comply with provisions which are not Landlord or Tenant covenants in those leases.
33. Other submissions referred to matters already included in the Interim Order and confirmed by this Order.

Judge C A Rai (Chairman)

## **SCHEDULE OF FUNCTIONS AND SERVICES**

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#### **Insurance**

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

#### **Service charge**

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Set, demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (iv) 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.

#### **Accounts**

- (i) Prepare and submit to the Respondent and lessees 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.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) 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 ground rent, service charge contributions and all other monies arising under the leases shall be paid. [See section 42 of the Landlord and Tenant Act 1985.]
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors. All service charge accounts should comply with Tech 03/11.

#### **Maintenance**

- (i) 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.
- (ii) 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 Respondent and the lessees.

- (iii) 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.

### **Fees**

- (i) Fees for the above-mentioned management services will be a basic fee of £250 per annum per flat for the first year of the appointment and thereafter subject to an annual review. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a written scale of fees notified by the Manager to the leaseholders on 1 April 2021 and on every anniversary of this date for the duration of his appointment. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.
- (vi) If a Manager has commenced proceedings or decides during the term of this Order to commence proceedings against a party for breach of covenant on the part of a lessee or freeholder of the Property, which shall include actions for the recovery of sums due under this Order he shall be entitled to recover all costs reasonably and properly incurred in those proceedings or in contemplation of those proceedings from the defaulting party personally. The Manager shall be entitled to recover his fees at his current hourly rates plus in addition to reimbursement of any professional fees and court fees and his annual management fee.

### **Complaints procedure**

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.