



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

Case Reference : **LON/00BK/LAM/2021/0013**

Property : **31 Dorset Square, London NW1 6QJ**

Applicants : **Elliot Sorsky (Flat 3)
Bakhtiyar Sadigli (Flat 4)**

Representative : **Hilary Cooper Law**

Respondent : **Toadwood Ltd**

Representative : **Judge Sykes Frixou Ltd**

Proposed Manager : **Ms Alison Mooney MRIPM ARICS**

Type of Application : **Appointment of Manager**

Tribunal : **Judge Nicol
Mrs S Redmond MRICS BSc (Econ)**

**Date and Venue of
Hearing** : **17th January 2022
By video conference**

Date of Decision : **17th January 2022**

DECISION

1. The parties having reached a settlement, the application is dismissed.
2. The Tribunal has decided to make no order under section 20C of the Landlord and Tenant Act 1985.

Reasons

1. The Applicants are the lessees of 2 of the 7 flats at the subject property, a converted 6-storey Georgian terraced house. On 12th July 2021 they applied for the Tribunal to appoint a manager under section 24 of the Landlord and Tenant Act 1987.
2. The Tribunal issued directions on 28th July 2021. The application was initially due to be heard by remote video conference on 8th October 2021 but the parties agreed an adjournment, to which the Tribunal consented, to try to sort matters out between themselves.
3. The case came back to the Tribunal on 17th January 2022, again by remote video conference. Unfortunately, there were technical difficulties so the hearing started late at 10:50am. The Tribunal heard from Ms Ceri Edmonds, counsel for the Applicants, and Mr Mark Spackman, counsel for the Respondent.
4. The Tribunal had been provided with the following papers in electronic format:
 - The Applicants' bundle in 4 parts;
 - A skeleton argument from Ms Edmonds;
 - The Respondent's Bundle containing 189 pages;
 - The Applicants' Reply to Respondent's Bundle;
 - The Applicants' Supplementary Bundle containing service charge demands;
 - A witness statement dated 17th September 2021 from Ms Mooney; and
 - An email dated 8th September 2021 on behalf of the lessees of Flat 5 expressing support for the application.
5. In the event, the Tribunal did not need to consider the substantive application. The parties had compromised on the appointment of a manager who is not Ms Mooney. All that remained outstanding was the Applicants' application for an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the lessees.
6. The parties are agreed that, if the Respondent does have the power to collect charges to cover such costs, it is pursuant to clause 2(24):

2. THE Lessee hereby covenants with the Lessor ... that the Lessee will at all times during the term hereby granted duly observe and perform ALL AND SINGULAR the covenants and conditions following that is to say:-

(24) That the Service Company shall be entitled at all times during the said term to manage and conduct the business of managing the Mansion and the Flats in all respects as it may think fit for the purpose of constituting and keeping in being a

Mansion of high class residential flats and that without derogating from the generality of the foregoing the Service Company shall be entitled:

(ii) To employ architects surveyors solicitors accountants contractors and builders and any other person firm or company properly required to be employed in connection with or for the purposes of or in relation to the said business and pay them all proper fees charges salaries wages costs expenses and outgoings.

7. Ms Edmonds asserted that costs of legal proceedings would not be included whereas Mr Spackman asserted that the clause was sufficiently widely-drafted to do so.
8. Normally, a section 20C application is about whether the lessees should pay the relevant legal costs or not. However, since the Applicants and their fellow lessees are all members of the Respondent company, Ms Edmonds conceded that they were going to have to pay the costs in any event. If a section 20C order were made so that the costs were not recoverable through the service charge, Ms Edmonds said she accepted that the Respondent would have to call for the funds from the company's shareholders, i.e. the lessees.
9. Nevertheless, Ms Edmonds argued that a section 20C order should still be made because:
 - (a) The costs could be unreasonable and making an order would obviate the need for an application under section 27A of the same Act to challenge their reasonableness through the Tribunal.
 - (b) The application had been justified on the basis alone of breaches conceded by the Respondent and achieved a positive outcome which achieved the Applicants' principal objective of installing professional management.
 - (c) The litigation could have been avoided if the Respondent had, instead of resisting the idea of a professional managing agent, reached the position earlier that they were willing for one to be appointed.
 - (d) Service charge funds had been abused in the past when they were used to pay for legal advice on the tax implications for the lessees of extending their leases. A section 20C order would deter the Respondent from making similar errors in future.
10. Mr Spackman responded to each of Ms Edmonds's arguments. Further, he pointed out that a Tribunal should take into account that a section 20C order overrides a right to costs set out in the lease. He also argued that Ms Edmonds made her submissions on the basis that the Tribunal would making findings but, having not heard any evidence, the Tribunal could not make any findings.
11. The Tribunal is satisfied that the application for the appointment of a manager was a reasonable step for the Applicants to take. There is strong evidence that the property is materially under-managed, to the

detriment of all of the lessees, but also that the Respondent's strong view was that there wasn't a significant problem. The witness statement from Mr Jeff Lush, the most active of the Respondent's directors, unintentionally suggested that he and his fellow board members' are ignorant of many residential property management issues and practices.

12. Further, the parties are now implementing a sensible way forward to ensure both that there is professional management in place and that the parties have a working relationship. There appears to be a high probability that this would not have happened without proceedings being taken.
13. Nevertheless, the Tribunal has decided not to make a section 20C order. As already referred to, the Applicants accept that they are going to pay their share of the Respondent's costs of the proceedings in any event. Without a section 20C order, it remains open to the Applicants (and any other lessees) to apply to the Tribunal under section 27A to challenge the payability of those costs on the basis that they do not come within clause 2(24) of the lease and/or that the costs have not been reasonably incurred.
14. Further, the Tribunal is not satisfied that a section 20C order would act as the kind of deterrent that the Applicants envisaged or that it would be appropriate to use it to pre-empt a section 27A application.
15. Taking into account these matters, the Tribunal has decided not to make a section 20C order.

Name: Judge Nicol

Date: 17th January 2022

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).