



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

**Case Reference** : CHI/21UD/LVM/2021/0003

**Property** : 24 Warrior Square, St Leonards on  
Sea TH37 6BS

**Applicant** : George Okines

**Respondents** : G & O Rents Ltd  
  
Elaine Cameron (Flat 24A)  
  
Philip Warren (Flat 24B)  
  
Samantha Twomey (Flat 1)  
  
Jim McCardle (Flat 2)  
  
Zed Gregory & Amanda Middleton  
(Flat 3)  
  
Square Compass Limited (Flat 4)  
  
Charles Shimwell (Flat 5)

**Type of Application** : Application to discharge an  
appointed manager – Section 24(9)  
Landlord and Tenant Act 1987

**Tribunal Member(s)** : Judge J Dobson

**Date of Directions** : 5th January 2022

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**DISCHARGE OF ORDER APPOINTING A MANAGER**

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## **ORDER**

1. **The appointment of Mr George Okines as Manager of the Property is discharged as of today 5th January 2022.**
2. **Mr Okines shall prepare closing accounts and provide those to the current service charge year to the Tribunal, the lessees, the freeholder and the RTM company by no later than 2nd March 2022. If any queries are raised on such accounts by 16th March 2022, they shall be answered by 30th March 2022.**
3. **Mr Okines may utilise funds held by him in meeting costs incurred before the right to manage was acquired in connection with matters for which service charges are payable and in taking the steps reasonably required to prepare closing accounts and otherwise comply with the terms of this Order. He shall reimburse any unexpended sums to the paying parties no later than 6th April 2022.**
4. **The Manager may apply if any further orders are required by him in connection with his discharge, if he wishes to deal with any unexpended sums in any other manner and in the event of any unresolved disputes.**
5. **Any notice, restriction or similar placed on the title of the Property to reflect the appointment of the Manager may be removed.**

## **BACKGROUND FACTS**

6. The Applicant Tribunal- appointed Manager was appointed as Manager of the Property 24 Warrior Square, St Leonards on Sea TH37 6BS by Order dated 22nd July 2015.
7. An application has been made on behalf of the lessees in April 2015. That followed the original appointment of a manager in 2004, for an indefinite period, a term rather less likely now. A variation was sought, recorded in the 2015 Order as having been made in 2012, although that Order also records that the appointment of a manager had lapsed in 2014 and the April 2015 application made on realising that. It is apparent that a finite term must have been imposed prior to 2014. The freeholder did not object to the 2015 Order. The 2015 Order was also for an indefinite period, more surprisingly but apparently satisfactory to all concerned.
8. The Property is Victorian and comprises seven flats. There is nothing of which the Tribunal is aware of not from July 2015 onwards.

9. The Manager subsequently applied by application dated 21st April 2021 for discharge of his appointment as manager of the Property due to his personal health circumstances as a result of which he said that he would no longer be able to perform the duties of an appointed manager on an ongoing basis. The precise details of the Manager's health are not relevant for these purposes.

### **HISTORY OF THE CASE**

10. I gave Directions dated 14th June 2021, in which I identified a number of issues which the Tribunal would need to consider, much of which related to the question of what would happen after the discharge of the manager in the event that were ordered. I listed a case management hearing by telephone, which took place.
11. The Lessee Respondents had registered an RTM company and it was proposed that the RTM company issue a Notice of Claim to the landlord for the Right to Manage the property. However, the freeholder had not been given any notice and the freeholder's position was therefore not known and the Lessees considered that in a month's time the position with regard to the right to manage should be clearer. The Applicant could not say for certain as to his ongoing ability to manage the Property and was to attend hospital on 26th July 2021, following which matters were anticipated to be clearer.
12. Consequently, the hearing was adjourned to another date sufficient to facilitate progress in the interim and by which time the approach to take was expected to be clearer. That was fixed for 3rd August 2021, with a direction for a short Position Statement in the meantime. A Position Statement was accordingly filed on behalf of the Lessees which explained that the relevant claim notice in respect of acquisition of the right to manage was served on 27th July 2021, proposing that the right to manage be acquired on 1st December 2021. Details were also provided of two firms of managing agents.
13. The Applicant and four of the Lessees attended the hearing. The Applicant had only attended hospital the previous day and so not all anticipated information was available to him. However, he indicated that he was content to continue until 1st December 2021 and anticipated being able to do so. Whilst the Manager had originally sought the urgent conclusion of his application, the urgency had therefore fallen away. The Applicant also noted that within a month it would be known whether the freeholder would object to the acquisition of the right to manage.
14. The application was stayed until 17th September 2021, for review of the position after the time for the freeholder objecting to the acquisition of the right to manage had expired and once the likely timescale for any such acquisition was clearer. The Applicant and/ or the Respondent

Lessees (and the Respondent freeholder if it wished to) was directed to write to the Tribunal to inform the Tribunal whether the freeholder had objected to the acquisition of the right to manage and of any directions sought from the Tribunal. The Respondent Lessees provided a short Position Statement which stated that the freeholder had not objected to the acquisition of the right to manage. The Respondent Lessees therefore expected to acquire the right to manage on 1st December 2021, such that management would not then revert to the freeholder on discharge of the Management Order. No other Position Statement was submitted suggesting otherwise.

15. The application was therefore stayed for a further period until 3rd December 2021. It was stated that the Tribunal would make an appropriate order or give appropriate further directions once the outcome of the acquisition of the right to manage is hopefully known. The Applicant and/ or the Respondent Lessees were directed by 10th December 2021 to write to the Tribunal to inform the Tribunal whether the Respondent Lessees had acquired the right to manage and of any directions sought from the Tribunal.

### **THE CURRENT POSITION**

16. The Tribunal received an email dated 10th December 2021 from Natalie Mooney, Block Management Director at Findley's of Cooden Limited, stating the following:

“We write to advise that we have been appointed the new managing agents for 24 Warrior Square RTM Company Limited as of the 1st December 2021. Please can this be noted and George Okines of ARKO removed as their manager.”

17. The Tribunal also received an email from Mr Lindars with a Position Statement of the same date on behalf of the lessees, stating:

“We wish to inform the Tribunal that there has been no further objections or delays to the acquisition of the right to manage. Therefore, this right to manage has been acquired from 1st December 2021.

The RTM Co has appointed Findleys of Cooden Ltd as our new management company with effect from 1st December 2021.

We request, therefore that the Tribunal grants the application to discharge the appointed manager, George Okines, with immediate effect.”

18. The Tribunal stated that if the Manager or the freeholder had any comment to make, such must be provided by 30th December 2021.
19. The Tribunal has subsequently received an email from the Manager dated 4th January 2022 (later than directed but nothing turns on that and so no other comment is required) in which he stated the following:

“I would like to confirm that the details provided to the tribunal are correct and we have handed over paperwork to the new managing agent. Findleys of Cooden Ltd. I would like to be released from my appointment.”

20. No communication has been received from or on behalf of the freeholder disputing any of the matters stated, most notably that the right to manage has been acquired, or otherwise suggesting there to be any reason why the Manager’s appointment should not be discharged.
21. The most relevant background is therefore that, as I find on the evidence before me, the RTM company has acquired the right to manage. The unchanged position of the Manager is also of significance.

### **CONSIDERATION**

22. The Manager cannot exercise any management functions unless the RTM company agrees, pursuant to section 97(2) of the Commonhold and Leasehold Reform Act 2002. That section provides that a manager is not entitled to do anything which the RTM company is required or empowered to do under the Lease except in accordance with an agreement. The RTM company has not so agreed.
23. In effect, the Manager is therefore unable to manage the Property for that reason and aside from anything else.
24. In addition, there has been nothing provided by the Manager suggesting that his health problems have gone away and that he would wish to continue as Manager- subject to the above- in any event. I perceive that his health matters remain very relevant.
25. No party has sought the continuation of the appointment of the Manager or raised any other issues.
26. In those circumstances, there is no discernible logic to any approach other than to discharge the appointment of the Manager.
27. There are ancillary matters to address. The Manager will be aware of his obligations and functions from the original Order appointing him, including the need to provide final accounts following the end of his tenure. However, it is worth making the position in terms of accounts and other financial matters clear for the avoidance of doubt.
28. Section 97(5) of the 2002 Act makes clear that there shall not be payment to the RTM company of such of the service charges as are required to meet costs incurred before the right to manage was acquired in connection with matters for which service charges are payable. The Manager is entitled to utilise funds held by him for that purpose. To that, I add the Manager may utilise such funds as are

required to meet costs in complying with the provisions of the Order now made, therefore the costs of finalising the accounts and otherwise the management of the Property pursuant to the 2015 Order.

29. On balance, I consider that any unexpended sums following the above matters being attended to ought to be returned to the parties who paid them and in appropriate shares. I have considered whether such sums should instead be provided to the RTM company but in this instance of a Property with a modest number of lessees, I consider that the RTM company can raise its own funds to attend to the management from the date of acquisition of that right and onward.
30. One or other party may identify some other point which requires to be addressed and is not apparent. There is little purpose in attempting to second guess what any such might be. If there is an aspect of the matter on which any direction or determination is required, a party can apply and the matter can then be dealt with.

### **DECISION**

31. Accordingly, the order appointing the Manager is discharged and forthwith. The relevant provision and the related ancillary orders are set out in the Order at the start of this document.

## **RIGHTS OF APPEAL**

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 date this decision is sent to the parties.

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 state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.