



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

Case References : **BIR/41UE/LAM/2022/0002**

HMCTS Code : **V:VHSREMOTE**

Subject premises : **Tower Court/Trinity Court/Windsor Court
No 1 London Road
Newcastle-under-Lyme
ST5 1LT**

Applicant : **Ian Hollins**

Representative : **Robert Bowker (of Counsel)**

Respondents : **(1) Number One London Road
Management Company Limited
(2) Leaseholders of flats at the subject
premises**

Application : **Application under section 24(4) of the
Landlord and Tenant Act 1987 for
Directions**

Tribunal members : **Deputy Regional Judge Nigel Gravells
Graham Freckelton FRICS**

Date of decision : **10 May 2022**

DECISION

Introduction

- 1 On 11 February 2020 the Tribunal made an Order under section 24(1) of the Landlord and Tenant Act 1987 ('the 1987 Act'), appointing the Applicant, Mr Ian Hollins, as manager of the subject premises for three years from the date of the Order ('the Order').
- 2 The relationship between the Applicant and a significant number of the Respondents has not been wholly amicable; and on 20 September 2020 the Respondents made an unsuccessful application to the Tribunal to discharge the Order.
- 3 However, on 26 August 2021 Number One London Road RTM Company Limited ('the RTM company') was incorporated. By Notice of Claim dated 5 January 2022 given under section 79 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') the RTM Company made a claim to acquire the right to manage the subject premises with effect from 19 May 2022. No counter-notice was given alleging that the RTM company was not entitled to acquire the right to manage; and, therefore, pursuant to section 90(2) of the 2002 Act, the RTM company will acquire the right to manage on 19 May 2022.
- 4 On 11 April 2022 the Tribunal received from the Applicant an application under section 24(4) of the 1987 Act for Directions in relation to the handover of the management of the subject premises to Number One London Road RTM Company Limited ('the RTM company').
- 5 On 14 April 2022 the Tribunal directed the Applicant to clarify and expand on the application, specifically to indicate the Directions that he was seeking from the Tribunal. On 19 April 2022 the Tribunal received that clarification.
- 6 On 21 April 2022 the Tribunal issued Directions for a case management conference.
- 7 On 4 May 2022 the case management conference took place by remote video conferencing. The Applicant attended and was represented by Mr Robert Bowker (of Counsel). The following Respondents attended: Mr David Griffiths, Mr Peter Hartley, Mr Peter McCabe, Mr Tom Nesbitt, Mr Richard and Mrs Wendy Sproston, and Mrs Kerry Machin and Mr Mark Rowe, both Directors of the RTM Company. Also in attendance was Ms Kate Magill, Property Team Manager and Building Safety Fund Coordinator at Zenith Management Limited, which the RTM company intends to appoint as managing agents.

Application

- 8 In his application, as clarified, Mr Hollins applied for Directions in relation to the following matters -

The funding issue

- (1) the identity of the person with responsibility for the application to the Building Safety Fund ('BSF') following the acquisition of the right to manage by the RTM company;
- (2) whether the leaseholders will be liable to pay the shortfall between the funds provided by the BSF and the full cost of the fire safety works to the subject premises;

- (3) whether those elements of the fire safety works for which BSF funding has been refused should be put on hold pending clarification as to additional funding.

The Rapleys issue

- (4) whether the leaseholders will be liable for fees already charged by Rapleys, who were engaged by Mr Hollins to project manage the fire safety works.

The RTM issue

- (5) whether, following the acquisition of the right to manage by the RTM company, it is necessary for the Tribunal formally to terminate the appointment of Mr Hollins as manager of the subject premises.

The budget issue

- (6) whether the budget prepared by Mr Hollins for the service charge year 1 April 2022 to 31 March 2023 will remain the effective budget;
- (7) whether the leaseholders are liable to pay to Mr Hollins the sums demanded on account as set out in invoices dated 1 April 2022;
- (8) whether the leaseholders are liable to pay the balancing charge for the service charge year 1 April 2021 to 31 March 2022;
- (9) whether the Tribunal should direct that debts comprising unpaid service charges must not be assigned by the debtor leaseholders.

Two other issues specified by Mr Hollins in his application – the Zenith issue and the handover issue – appear to be covered by the four issues set out above.

Representations

- 9 Mr Bowker, on behalf of Mr Hollins, set out the background to the present application. He took the Tribunal through the issues in a wholly objective manner. The thrust of his submission was the desirability that the Tribunal should clarify the issues raised by Mr Hollins and thereby facilitate so far as possible an efficient, effective and smooth handover of the management of the subject premises.
- 10 The Respondents provided only limited assistance to the Tribunal. They clearly wished to express their dissatisfaction with Mr Hollins' management of the subject premises; but much of what they had to say, while potentially relevant to other proceedings before the Tribunal, was not directly relevant to the specific issues raised by the present application.
- 11 Ms Magill did assist the Tribunal in elaborating on some of the latest developments that might affect the liability of the leaseholders to pay for fire safety remediation work to the subject premises and in explaining preliminary dealings that she had had with Homes England.

Discussion and determinations

- 12 The Tribunal endorses the submission of Mr Bowker that the Tribunal should seek to facilitate an efficient, effective and smooth handover of the management of the subject premises. In the view of the Tribunal the issues are relatively straightforward and the appropriate decisions on Mr Hollins' application are reasonably clear.

The funding issue

- 13 In relation to issue (1), since the RTM company will acquire the right to manage the subject premises on 19 May 2022 and the management functions will be exercisable by the RTM company from that date, there must be a presumption that the RTM company will also from that date assume responsibility for applying to the BSF and for all other matters relating to fire safety works to the subject premises.
- 14 Whether the RTM company takes over the application that has been pursued by Mr Hollins or whether, as seems to be the preferred option, the RTM company starts afresh, the leaseholders face two potential consequences. First, a new application to the BSF in relation to a property that has already been the subject of an application is not guaranteed to result in a more favourable outcome and may result in a less favourable outcome. Second, the leaseholders may be liable to pay the costs already incurred by Mr Hollins in respect of his application.
- 15 The Tribunal explained those two potential risks and, although the leaseholders indicated orally at the case management conference that they understood and accepted the risks, the Tribunal requested written confirmation. Following the case management conference the Tribunal received that confirmation from Mrs Machin, one of the Directors of the RTM company.
- 16 In the circumstances, the Tribunal is of the view that the RTM company should assume responsibility for applying to the BSF and for all other matters relating to fire safety works to the subject premises.
- 17 However, the Tribunal is also of the view that it would be inappropriate to direct that the RTM company assume that responsibility. Whether the RTM company pursues an application to the BSF is a management decision for the company. It is not for the Tribunal to make that decision.
- 18 On the other hand, it is appropriate for the Tribunal to direct, and the Tribunal so directs, that from 19 May 2022 Mr Hollins will no longer be responsible for the current application to the BSF, save to the extent that he is required by the BSF to transfer/withdraw the current application.
- 19 Issues (2) and (3) would seem to assume a decision that Mr Hollins would continue to be responsible for the application to the BSF. Given the decision of the Tribunal in relation to issue (1), directions in relation to issues (2) and (3) would seem to be unnecessary.

The Rapleys issue and the budget issue

- 20 These two issues can be taken together since the Rapleys issue is one element, albeit a significant element, of the budget issue.
- 21 When the management of developments such as the subject premises is transferred, it is common practice for the new manager simply to step into the shoes of the former manager and assume responsibility for past and future service charge issues.
- 22 However, in the present case the fact that the successor to Mr Hollins is a RTM company precludes the adoption of that common practice. Section 97(5) of the 2002 Act provides that the transfer of management functions to the RTM company does not permit the payment to the RTM company of service charges required to meet costs incurred before the right to manage was acquired by the

- RTM company. In other words, costs incurred prior to the acquisition of the right to manage by the RTM company can only be recovered through the service charge by the former manager (in the present case, Mr Hollins).
- 23 Applying that provision to the present case, it is convenient to consider first the service charges for the service charge year 2021/2022 (issue (8)).
 - 24 The Tribunal directs that the service charges (including the anticipated balancing charges) for the 2021/2022 service charge year, which by definition relate to costs incurred in that year (and thus before 19 May 2022), can only be collected by Mr Hollins.
 - 25 That does not prevent the leaseholders from challenging the payability and reasonableness of such service charge demands by applying to the Tribunal under section 27A of the Landlord and Tenant Act 1985.
 - 26 In relation to the service charges for the service charge year 2022/2023 (issues (6) and (7)), the suggestion of Mr Hollins that his budget should be the effective (and by implication binding) budget for the whole service charge year is, in the view of the Tribunal, unsustainable. Of course, Mr Hollins may have entered into contracts for work and services that will be binding on the RTM company subject to any renegotiation; and the RTM company (and through the service charge the leaseholders) will be liable to pay the price of any such contracts. However, subject to that, the RTM company will in practice be able to take its own decisions in the exercise of its management functions and reset the budget accordingly.
 - 27 It may be noted that the leases of the subject premises make no express provision for the setting of a service charge budget. Paragraph 7 of Schedule 7 simply provides -

The lessee shall if required by the lessor pay to the lessor on request such sum or sums in advance and on account of the service charge proportion as the lessor or its accountants or manager or managing agents (as the case may be) shall specify to be a fair and reasonable interim payment.
 - 28 It has been the practice of successive managers or managing agents to set an annual budget and to demand payments on account and a balancing charge (or credit) when the service charge accounts have been finalised. Moreover, leaseholders have been permitted to pay the payments on account by monthly instalments.
 - 29 In the circumstances the Tribunal determines (in relation to issue (6)) that there is no basis for directing that the budget set by Mr Hollins for the service charge year 2022/2023 should be the effective budget for the whole service year.
 - 30 That leaves the issue of the demands for payments on account issued by Mr Hollins on 1 April 2022 (issue (7)). Contrary to the practice of payment by monthly instalments (referred to above), the demands expressly required a single payment for the period April to September 2022 and did not provide for payment by monthly instalments.
 - 31 While paragraph 7 of Schedule 7 to the leases provides a basis for demanding 'fair and reasonable interim payments', the Tribunal takes as its starting position the presumption that the RTM company should take over all management functions from the date of acquisition of the right to manage. However, that presumption must be qualified by any legal restrictions and,

specifically in relation to the recovery of service charge payments, section 97(5) of the 2002 Act.

- 32 On the one hand, it might be argued that when the demands for service charge payments on account were issued on 1 April 2022 no costs had yet been incurred and that the RTM company is not therefore precluded by section 97(5) from demanding/receiving the payments on account. On the other hand, Mr Hollins will doubtless already have incurred costs since 1 April 2022 and will continue to do so until 19 May 2022, in which case section 97(5) would apply - so that again Mr Hollins alone would be entitled to collect those payments.
- 33 The Tribunal therefore directs that the demands for payments on account issued by Mr Hollins on 1 April 2022 are valid in principle but that the amount recoverable by Mr Hollins is limited to those costs which (i) have been incurred or committed prior to 19 May 2022 and (ii) have been reasonably incurred.
- 34 The parties may apply to the Tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination in relation to the limits imposed by paragraph 33 above.
- 35 Furthermore, Mr Hollins or the RTM company may apply to the Tribunal under section 94(3) of the 2002 Act for a determination of the amount of any accrued uncommitted service charges held by Mr Hollins on 19 May 2022.
- 36 Finally, in relation to issue (9), the Tribunal is of the view that it has no jurisdiction to direct that debts comprising unpaid service charges must not be assigned by the debtor leaseholders.

The RTM issue

- 37 Mr Hollins seeks a direction terminating his appointment by the Tribunal as manager of the subject premises.
- 38 In the view of the Tribunal, the formal termination of Mr Hollins' appointment may be premature.
- 39 In reality, Mr Hollins' appointment will be devoid of substance from 19 May 2022. By section 96(2) of the 2002 Act all the management functions in the leases become the functions of the RTM company on that date; and by section 97(2) Mr Hollins is not entitled to do anything which the RTM company is required or empowered to do under the leases by virtue of section 96. Since the Order appointing Mr Hollins conferred no functions on Mr Hollins additional to those in the leases, the acquisition by the RTM company of the right to manage the subject premises deprives Mr Hollins of any substantive management function in relation to the premises.
- 40 However, it is clear from a number of decisions of the Upper Tribunal that the First-tier Tribunal retains jurisdiction to determine any unresolved disputes between Mr Hollins and the leaseholders: see *Eaglesham Properties v Lessees of Drysdale Dwellings* [2015] UKUT 0022 (LC); *Kol v Bowring* [2015] UKUT 0530 (LC); *Suchorski v Norton* [2021] UKUT 0166 (LC).
- 41 In the view of the Tribunal, it is therefore sensible that Mr Hollins appointment should continue until all outstanding disputes between the parties have been resolved.

Section 20C application

42 The Tribunal has issued Directions in relation to the leaseholders' application under section 20C of the Landlord and Tenant Act 1985.

10 May 2022

Professor Nigel P Gravells
Deputy Regional Judge