First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/29UC/LAM/2021/0012**
Property	**:**	**Bridge Hill House,** **Higham Lane,** **Bridge,** **Canterbury,** **Kent CT4 5AY**
Applicant	**:**	**Timothy Huston Stewart**
Respondents **Represented by**	**:**	**(1) Bridge Hill House Management Co. Ltd.** **Wade Barker MA AKC (lay)** **(2) Judith Ann Summerhill (flat 1)** **(4) Diana Susan Hendy (flat 4)** **(5) Miriam Jean Westendarp (flat 5)** **(6) Sarah Lalage Anthony (flat 6) and** **(7) John-Kenneth Closs (flat 7)**
Date of Application	**:**	**19th October 2021**
Type of Application	**:**	**To appoint a manager for the property (Section 24 Landlord and Tenant Act 1987 ("the 1987 Act")).**
The Tribunal	**:**	**Bruce Edgington (lawyer chair)** **David Ashby DipSur FRICS** **Peter Gammon MBE BA**
Date and venue of hearing	**:**	**5th September 2022, Canterbury Magistrates' Court, Broad Street, Canterbury CT1 2UE**

DECISION

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1. The Tribunal refuses the application to appoint David Muggridge FCCA MAE as manager of the property.

2. The Tribunal refuses to make orders pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") and Schedule 11, paragraph 5A of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from recovering its costs of representation before this

Tribunal from the Applicant as part of any future service charge demand or as an administration charge respectively.

Reasons

Introduction

3. This application relates to a country manor house which has been converted into 7 flats. The Respondent is the freehold owner of the property and is also the management company set out in the leases. Each of the seven leaseholders is a shareholder. The Applicant is one of the shareholders and makes this application to appoint a manager for the property. The reason why the leaseholder of flat 3, Carl Wright, has not been included in the title to this decision is because he has only just purchased the leasehold interest and it is not know whether he is yet a shareholder of the Respondent company.

4. Sadly, this application is the latest in a long line of litigious actions taken by the parties. The Tribunal does not have all the details before it but there seem to have been applications to the county court and to this Tribunal wherein the Respondent has sought recovery of service charges and administration charges. The police also seem to have been involved following complaints about the behaviour of one shareholder against another.

5. Whilst this application was proceeding, it became known that further applications had been made for the Tribunal to consider the reasonableness and payability of service charges pursuant to section 27A of the 1985 Act plus an issue relating to the consultation process for some service charges pursuant to section 20ZA of the same Act. Many directions orders were made and eventually it was agreed that the section 27A and section 20ZA matters would be dealt with first and the Tribunal has before it the decision of Judge Dovar dated 29th June 2022.

6. All the service charges in those applications were for 2019 and 2020 and most were disputed by the Applicant in this case. There was a Scott Schedule prepared and Judge Dovar concludes "*save for the modest reduction in cost for accountants, and an adjustment in order to reflect the actual costs set out in the accounts, none of the challenges are successful and dispensation is given in respect of the timber works as set out above*".

7. The hearing date was set for this application and a hearing bundle was received. This has been considered in depth by the Tribunal members. As well as statements of case from the parties, witness statements were included:

   (a) From Diana Susan Hendy (flat 4) opposing the application (page 108).
   (b) From John-Kenneth Closs (flat 7) opposing the application (page 110).
   (c) From Miriam Jean Westendarp (flat 5) opposing the application (page 112).
   (d) From Sarah Lalage Anthony (flat 6) opposing the application (page 114).
   (e) From Judith Ann Summerhill (flat 1) supporting the application (page 117). She says that a new manager needs to be appointed 'independently' and she makes no mention of David Muggridge
   (f) From David Muggridge FCCA MAE (page 147).

8. Mr. Muggridge had been ordered (page 97) to provide a statement 'addressing the Tribunal requirements in paragraphs 9-13 of the PRACTICE STATEMENT ON THE TRIBUNAL'S CONSIDERATION OF WHO TO APPOINT AS A MANAGER dated December 2021 which is attached to the directions, and confirming that he understands the duties and obligations of a manager appointed by a Tribunal under Section 24 of the Landlord and Tenant Act 1987 and is willing to accept such appointment'. His statement makes no mention of the Practice Statement but he does say that he is a Chartered Certified Accountant and is willing to accept the appointment "*insofar as my experience and knowledge permits"*.

9. In his undated statement at page 151, the Applicant says that he asks the Tribunal to appoint Mr. Muggridge to "*fully audit all the transactions of the….Managing Agents….and prepare an accurate representation of the Company's finances and even more importantly help the Leaseholders to set up the Respondent Company and seek a managing agent for the Property to be properly managed for the future*".

The Inspection

10. The members of the Tribunal did not inspect the property prior to the hearing, partly because a Tribunal (with different members) had inspected the property before and the description given in the prior decision at page 279 is

> "*Bridge Hill House is a large imposing period country residence built about 150 years ago with rendered and colourwashed elevations, sliding sash windows, all under a slate roof, and there are many distinctive ornamental features. The property was converted into seven self-contained residential units in more recent years. It is situated in a quiet cul-de-sac on the outskirts of the village of Bridge, about 3 miles from Canterbury city centre. Overall, the grounds are extensive and mainly to the rear of the property with a large lawn and many mature trees.*"

11. Reference has also been made to Google Earth and to the Land Registry plan.

12. The Tribunal had previously indicated that a decision would be made at the end of the hearing as to whether an inspection was necessary. The Tribunal members concluded that they did not want to inspect the property as it was accepted by both the Applicant and the Respondents that further work needed to be undertaken to put the property in good condition.

The Lease

13. The Tribunal was shown a copy of what seems to be the lease of flat 2. It is dated 19th February 1997 and is for a term of 125 years from 29th September 1995 with a ground rent of £50 per annum.

14. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the leaseholder is liable to pay one seventh of the total charges.

The Law

15. Part II of the 1987 Act makes provision for a tenant or tenants of premises to which that part of the Act applies to apply to this Tribunal for the appointment of a manager. 'Premises' consist of the whole or part of a building if the building or part contains 2 of more flats, as this one does.

16. Section 22 of the 1987 Act says that before making this application, the Applicant must serve a notice on the landlord explaining that it is proposed to make an application to this Tribunal for the appointment of a manager and stating the grounds upon which it proposes to rely. Specifically, the notice must "*specify the grounds on which the tribunal would be asked to make such an order*" and "*where those matters are capable of being remedied…within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified*". It is possible for a Tribunal to waive this requirement in circumstances which do not apply to this application.

17. Section 24 of the 1987 Act says, of relevance to this application, that before making such an order, a Tribunal must be satisfied that there has been a breach of covenant on the part of the landlord and that it is "*just and convenient to make the order in all the circumstances of the case*". There is also a 'catch all' provision in subsection 24(2)(b) which provides that an order can be made "*where the tribunal is satisfied that other circumstances exist which makes it just and convenient for the order to be made*".

18. Section 20C of the 1985 Act enables a Tribunal to make an order that the landlord's costs of representation before a Tribunal cannot be recovered from a tenant as part of a future service charge. Schedule 11, Paragraph 5A of the 2002 Act provides a similar provision in respect of administration charges. These powers must be exercised so as to make the decision 'just and equitable'.

The Hearing

19. The hearing was attended by Mr. Barker representing the Respondent company together with Mr. M. I. Lilford BSc MRICS who had been instructed to oversee the works to the roof and front elevation. The Applicant attended with Mr. Muggridge. Diana Hendy, Miriam Westendarp and Sarah Anthony also attended.

20. The Tribunal chair drew the attention of everyone to the letter to the Tribunal from the Applicant of 1st September 2022 saying that he had only just noticed that the bundle included at page 299 onwards the statement of Mr. Barker. As this was out if time, he asked that the Tribunal ignore this. The Applicant was told that as (1) he had had several days to consider this (2) there were important matters missing from his case such as Mr. Muggridge's compliance or otherwise with the Tribunal's requirements for someone being a manager and (3) much of the statement he referred to contained submissions rather than any new evidence, the Tribunal would consider that latest statement.

21. The Tribunal chair introduced the Tribunal members and then said that he had a couple of questions to raise on the papers. Thereafter he would ask the parties to put their cases. This was how the hearing proceeded.

22. Mr. Muggridge was referred to the Tribunal's practice statement on who could be appointed as a manager. He was asked whether he had seen this and he agreed that he had. He accepted that he could not comply with all the conditions which the Tribunal made clear had to be met. For example he had no knowledge of the RICS code of practice, he had not actually managed such a property as this one before and he did not say that he or his firm had the insurance or the complaints procedure referred to.

23. Having said that, he appears to be an experienced chartered accountant which rather supports the case put by the Applicant at page 151 that he was really putting someone forward who could just audit the books.

24. Mr. Lilford then gave evidence. He explained that he had inspected the property again following the suggestion that there was damp in the hallway. He explained that there was damp there which he had been monitoring. His readings on the last couple of occasions revealed that the damp patch was now dry to the ceiling and the top of the walls.

25. However he agreed that there was a damp patch between a metre and two metres from the floor level in the porch and his investigations revealed that this was probably caused by a split in the soil pipe of flat 3 which had been empty until recently. In cross examination, the Applicant confirmed that he had no problem with Mr. Lilford and that the workmen who had done the work to the roof and front elevation were good.

26. Mr. Barker gave some evidence. He explained that there was a separate bank account set up for the reserve fund but he did not know exactly what amount it contained. He agreed that the only money in the account was in respect of future works. He had sent out demands for the amount required to cover the work undertaken to the roof and front elevation of about £11,500.00 for each leaseholder but only 4 had paid this.

27. When asked about the past, he explained that when he had taken over management, he acknowledged that the previous accounts left a lot to be desired. He had had to change some of the previous accounts because they included things like legal and other litigation costs. As this line of questioning was dealing with what appeared to be the main bone of contention between the Applicant and Ms. Summerhill on the one hand and the other Respondent leaseholders on the other hand, the Tribunal brought that questioning to an end.

28. The reason for that was that Judge Dovar's decision of the 29th June 2022 had dealt specifically with the outstanding service charges and he had made decisions as to what was owing during the period of the 'crossover' between Bamptons and their predecessors i.e. for 2019 and 2020. The Applicant accepted that he had not included much of the evidence relating to the figures as this was being dealt

with by Judge Dovar. He also made it clear that he did not accept Judge Dovar's decision as it did not take into account accounting errors before Mr. Barker came onto the scene.

29. At the end of the hearing there was a brief discussion about why the Respondent company only had one director. Ms. Westendarp explained that this was because of majority decisions taken by the shareholders. The Tribunal could not follow the reasoning and history, and brought the discussion to an end as the issue did not affect the decision to be made by the Tribunal.

Discussion

30. Much of the dispute between the parties seems to have arisen because of a breakdown in the relationship between the Applicant and Miriam Westendarp. More recently, the Applicant wanted the managing agent to send him copies of documents to support the claims for service charges. Under section 22 of the 1985 Act a tenant is entitled to inspect 'accounts, receipts and other documents' relating to service charges. If a tenant wants copies then these must be supplied but at the tenant's expense. On the 22nd April 2021 (page 214) the managing agents, Bamptons, pointed this out and offered to make an appointment for the inspection to take place.

31. An appointment for the 10th May 2021 was made (page 219) to enable the Applicant to inspect documents. There had been some dispute about the extent of the documents which would be made available. On the 6th May 2021, the Applicant said that he would not be attending for the inspection (page 220).

32. At the hearing, the Applicant was questioned about this. He said that he did not want to look at documents he already had copies of. It may have been helpful if he had attended so that he could see clearly the documents as described in section 22 of the 1985 Act.

33. It has not been easy for the Tribunal to ascertain exactly what documents are in issue. However, the managing agents have referred in correspondence (for example at page 233) that their extra fees and the legal costs incurred as a result of the disputes between the parties are being claimed but they are not service charges because they are recoverable under clause 3.9 of the lease which is a separate contractual liability on each leaseholder to pay such costs.

34. Turning now to what appears to be behind this deeply embedded dispute, there have been a number of managing agents appointed and their actions have led leaseholders and, indeed, this Tribunal to doubt their competency. However, since these proceedings started, the managing agents have been Bamptons. Their Wade Barker MA AKC who describes himself as an Associate of the Royal Institution of Chartered Surveyors and a Member of the Institute of Residential Property Management, seems to be in charge of the management. He explained that Bamptons took over management on the 1st January 2020.

35. It seems clear to this Tribunal that there have been errors in the past. One simple example is the failure to set up the reserve fund described in the lease.

When the reserve fund was eventually set up, all the leaseholders should have been able to see the bank statements because those funds are held on trust for each and every leaseholder. This has nothing to do with their role as shareholders.

36. The other point being made by the Applicant is that he is entitled, as a shareholder, to see all the accounting documentation relating to the company. This is not correct. The instructions to the managing agent come from the company director. If the director gives wrong instructions then that is a dispute between the shareholders and the company director. The managing agent cannot be blamed for the instructions he has received and he cannot just ignore those instructions.

37. It also seems clear that the Applicant has not paid his full contribution towards the works undertaken to the property and there is some evidence that a loan has had to be taken out by Ms. Westendarp to cover the shortfall. It may be that this is due to the lack of communication between the managing agents and the shareholders or, indeed, evidence of poor prior management. Whatever it is, the Applicant should have made some effort to get a reasonable amount to the managing agent to at least cover the costs incurred for work he knows have been undertaken.

38. Within the last 2 years some substantial work appears to have been done to the roof and front elevation to stop water ingress into some of the flats. More work is planned and there were meetings of the company shareholders on the 12th August 2020 and 19th January 2022 where a budget was agreed following a 'forward maintenance plan' prepared by M. I. Lilford BSc MRICS of Price Lilford Building Surveying Ltd. A letter was sent to all the company shareholders on the 15th February 2022 (starting at page 335) explaining the way forward that was being prepared and offering choices as to how to deal with the works needed.

39. Photographs and detailed plans from Mr. Lilford are set out in the bundle commencing at page 346 and extending to page 460. He then signs a witness statement commencing at page 461 in which he says that he was appointed as 'contract administrator' for the first phase of the work to the roof and front elevation which was finished in January 2022.

Conclusions

40. The Tribunal members were satisfied that whilst Mr. Muggridge appears to be a competent and experienced accountant, he himself – quite rightly – acknowledged that he did not have the knowledge or expertise to undertake the management of this Grade 2 listed building which clearly has problems. He has given no details of his fees, his insurance, his complaints procedure and so on.

41. For these reasons, the Tribunal finds that whilst there may have been breaches of the terms of the leases in the past e.g. in respect of the reserve fund, they appear to have been rectified. The application therefore fails as it is not 'just and convenient' for the order to be made.

Costs

42. As it was known from the outset that Mr. Muggridge would not be able to undertake the task he was being asked to do, the Tribunal cannot see how it could be reasonable to make the costs orders under section 20 of the 1985 Act or Schedule 11 of the 2002 Act.

The Future

43. The Tribunal is very conscious of the fact that it has not really resolved the issues between the parties. It's functions and powers are limited by the 1987 Act.

44. The problem is that whilst the law can provide protection and comfort to disadvantaged people, there are some occasions, such as this, where people just have to sit down and resolve matters between themselves. The only alternative, if that cannot work, is for the company to sell the freehold.

45. In this case, the Respondent company has the property as an asset but it is of limited value because the ground rent is small and the shareholders clearly don't want to give the company additional monies to enhance the assets.

46. The shareholders must therefore realise that in order to raise money to undertake work to the building and keep it in good order, they – all of them – must put money into a pot so that it can be used for that purpose. Unlike an ordinary limited company whose shareholdings may be worth money, the shareholders in this case would be unable to just sell their shares and walk away from the problem or refuse to contribute. That is simply not an option unless everyone is happy for the property to just fall into disrepair.

47. Therefore if one or two shareholders have difficulty with the way monies have been handled by a managing agent instructed by the company, they either have to use their own abilities or employ their own expert to unravel the problem and come to a decision about how things should be handled. If that works then no doubt the shareholders as a unit can come to an agreement to share the cost of such an investigation.

48. What one has at the moment is a property which appears to be expensive to maintain and where the property manager is having to cope with disputes between the shareholders. That is bound to increase expense and over a longer period of time. It is not part of a managing agent's task to, as it were, stand in the middle of a fight between shareholders. The more time he has to spend on this, the more he is entitled to charge, particularly if the problem was caused by an earlier managing agent. It is the company which must resolve any dispute caused by an earlier agent.

49. At least this managing agent has clearly thought about what needs to be done to the building and he has employed a surveyor to oversee the tasks. He has created what all reserve funds need i.e. a plan over a number of years which sets out the approximate time when work must be undertaken and then sets out what funds should be in the reserve to cover that work. Leaseholders are then not met with huge service charges as they have been with the recent work to the roof

and front elevation.

50. What cannot happen, with respect to the Applicant and Ms. Summerhill, is for leaseholders to just withhold payment of actual and proposed service charges. This ends up with either expensive litigation or spending money on an expert who can advise as to whether the problems lie with the managing agent or not. If money is withheld, the repair and maintenance work just does not happen.

51. Perhaps some thought ought to be given for the leaseholders to meet and discuss how these problems can be resolved. They should all be directors or at least agree that one or two people can do the job with the support of all. If the problems have been caused by earlier managing agents, it may be that the cost of investigation can be sought from them. However, as some years have passed since things such as the lack of a sinking fund happened, it is, perhaps, a false economy to incur yet further litigation expense.

52. Some might say it is a matter of learning from one's mistakes.

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Judge Bruce Edgington
14th September 2022

ANNEX - RIGHTS OF APPEAL

i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. 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.

iii. 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.

iv. 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.