FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**(1) BIR/00CN/LAM/2022/0008** **(2) BIR/00CN/LLC/2022/0010**
Subject premises	**:**	**Flats 93-104** **Rupert Street** **Nechells** **Birmingham** **B7 5DS**
Applicant	**:**	**Foziur Raza**
Representative	**:**	**Joseph Chiffers (of Counsel)**
Respondent	**:**	**Sycamore Management (Nechells) No 1 Ltd**
Representative	**:**	**Mark Strangward**
Type of Application	**:**	**(1) Application under section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager** **(2) Application under section 20C of the Landlord and Tenant Act 1955 for an order for the limitation of costs**
Date of Hearing	**:**	**5 April 2023**
Tribunal Members	**:**	**Deputy Regional Judge Nigel Gravells** **David Satchwell FRICS**
Date of Decision	**:**	**20 April 2023**

DECISION

Introduction

1 This is a decision on the first of two applications by the Applicant, Mr Foziur Raza, the leaseholder of flats 93, 95, 98, 98a, 103 and 104 Rupert Street, Nechells, Birmingham B7 5DS. By the first application, under section 24 of the Landlord and Tenant Act 1987 ('the section 24 application') the Applicant applied for an order appointing Mr Doig Rudling as manager of the subject premises. By the second application, under section 20C of the Landlord and Tenant Act 1985 ('the section 20C application') the Applicant applies for an order for the limitation of costs. The section 20C application was stayed pending the determination of the section 24 application.

2 The Respondent is Sycamore Management (Nechells) No 1 Ltd, the freeholder and management company currently responsible for the management of the subject premises.

Background

3 The subject premises comprise a four-storey self-contained apartment block containing 13 flats/maisonettes.

4 The freeholder (and management company) is Sycamore Management (Nechells) No 1 Ltd, a company owned by the leaseholders, with one share allocated to the leaseholder(s) of each flat.

5 It is not clear whether the information currently held by Companies House accurately reflects the identity of the directors and officers of the company.

6 In any event, for some years the management of the subject premises has been undertaken by Mr Mark Strangward, the leaseholder of flat 101.

7 However, in recent years there has been increasing disagreement about the management of the subject premises. The principal protagonists have been the Applicant and Mr Strangward, each supported by a number of other leaseholders; and the disagreements have led to litigation in the High Court, the County Court and the First-tier Tribunal.

8 Since January 2022 the Applicant and the leaseholders of three other flats (94, 100 and 102) have withheld the payment of their service charge contributions, although the sums due have been deposited in an account held by 4D Properties Limited, a management company of which Mr Rudling is a director.

9 It appears that both sides have come to the conclusion that the subject premises require professional management but they disagree on who should be appointed. Both sides claim that the members of the Respondent company have agreed to appoint their preferred manager.

10 Against that background, on 7 September 2022, the Applicant initiated the preliminary stage of the section 24 application for the appointment of a manager. Pursuant to section 22 of the Landlord and Tenant Act 1987 ('the 1987 Act'), the Applicant served a notice on the Respondent, indicating that the Applicant intended to apply for an order for the appointment of Mr Rudling as manager of the subject premises and specifying the grounds on which the Tribunal would be asked to make the order.

11 The specified grounds were -

(i) that unreasonable service charges have made (section 24(2)(a) of the 1987 Act);

(ii) that the Respondent is in breach of obligations owed to the leaseholders under their leases and relating to the management of the subject premises or any part of them (section 24(2)(ab) of the 1987 Act) ;

(iii) that other circumstances exist which make it just and convenient for to appoint a manager (section 24(2)(b) of the 1987 Act).

12 The preliminary notice set out the matters on which the Applicant relied to establish the above grounds and the steps required to remedy those matters.

13 On 3 October 2022 Mr Strangward, purportedly acting on behalf of the Respondent, wrote to the Applicant in response to the preliminary notice, stating that the remedies specified by the Applicant were unreasonable and/or impracticable and/or irrelevant to the section 24 application.

14 On 25 October 2022 the Applicant made the present applications to the Tribunal, the section 24 application largely repeating the content of the preliminary notice.

15 On 4 November 2022 the Tribunal issued Directions for the conduct of the applications.

16 On 5 April 2023 the Tribunal inspected the external common parts of the development. Present at the inspection were Mr Raza, Mr Strangward, purportedly representing the Respondent, and a number of other leaseholders of flats in the subject premises. The Applicant requested the Tribunal to inspect the interior of one or more flats; but, since he refused to allow Mr Strangward to accompany the Tribunal, the Tribunal took the view that it should not see any evidence that was not shared with Mr Strangward and the Respondent.

17 On the same date, a hearing was held at Centre City Tower in Birmingham. In addition to those persons present at the inspection, the hearing was attended by Mr Joseph Chiffers, of Counsel, representing the Applicant, and by Mr Doig Rudling.

Preliminary issue

18 The Applicant questioned whether Mr Strangward had the authority to represent the Respondent in the present proceedings.

19 The background to that issue is a protracted dispute between the Applicant (supported by the leaseholders of three other flats (94, 100 and 102)) and Mr Strangward as to the identity of the directors of the Respondent company. The Tribunal understands that that dispute is the subject of High Court proceedings.

20 In any event the Tribunal has no jurisdiction to determine issues concerning the running of the Respondent company or to resolve disputes between the shareholders and the directors.

21 The Tribunal takes the view that it should adopt a pragmatic approach. In the circumstances of the present application, the complaints made against the Respondent as the grounds for the appointment of a manager are largely complaints against Mr Strangward, who, as noted above, has as a matter of practice been managing the subject premises. It therefore seems appropriate for him to respond to those complaints.

22 The Tribunal also notes that on the application form the Applicant appears to have named Mr Strangward as the Respondent's representative.

Relevant legislation

23 Section 24 of the 1987 Act provides (so far as material) –

> (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
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> (a) such functions in connection with the management of the premises, or
>
> (b) such functions of a receiver,
>
> or both, as the tribunal thinks fit.
>
> (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—
>
> (a) where the tribunal is satisfied—
>
> (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
>
> ...
>
> (iii) that it is just and convenient to make the order in all the circumstances of the case;
>
> (ab) where the tribunal is satisfied—
>
> (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
>
> (ii) that it is just and convenient to make the order in all the circumstances of the case;
>
> ...
>
> or
>
> (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Determination

24 In making its determination the Tribunal took into account all relevant representations and evidence provided by the parties in their written submissions and at the hearing. However, the Tribunal is bound to record that the (documentary) evidence provided by both parties to support their respective positions on the relevant issues was incomplete.

25 As noted above, the Applicant purported to rely on paragraphs (a), (ab) and (b) of section 24(2) of the 1987 Act. However, as is clear from the wording of section 24(2), those paragraphs specify two matters on which the Tribunal must be satisfied: first, the substantive requirement (breach of any obligation, unreasonable service charges and other circumstances) and, second, the requirement that 'it is just and convenient to make the order (in all the circumstances of the case)'. Although the Applicant's allegations, if proved, would address the first requirement, in the preliminary notice and application form the Applicant did not specifically address the second and separate requirement that the Tribunal must be satisfied that it is just and convenient to make the order.

The first requirement

26 The specified grounds are considered in the order set out in the preliminary notice and application form.

Unreasonable service charges charges have been made

27 It appears that this ground is based solely on an earlier determination of the First-tier Tribunal on an application by the Respondent under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'). By that application, the Respondent sought a determination that the service charges demanded on account for the service charge year 2021/2022 were payable and reasonable. In its decision dated 5 September 2022 (BIR/00CN/LIS/2021/0041-0044) the Tribunal determined that, with one exception, the sums demanded were payable and reasonable. The exception related to the demand for a contribution of £7,500.00 to the reserve fund to finance the proposed replacement of the roof of the subject premises. While the Tribunal determined that it was reasonable to demand contributions to such a reserve fund, the Tribunal noted the uncertainty in relation to the extent of the proposed works and the costs. In the circumstances, the Tribunal stated that it was 'not in a position' to determine that the sum demanded was reasonable in amount.

28 For the purposes of the present application and section 24(2)(ab), the Tribunal notes that the earlier Tribunal did not make a positive decision that the contribution to the reserve fund was not reasonable (and therefore unreasonable). Rather it determined that it was unable to decide whether the contribution demanded was reasonable in amount. On that basis it might be argued that there is no determination that unreasonable service charges have been made.

29 However, since the effect of the earlier Tribunal's decision was that the sum of £7,500.00 demanded by the Respondent was not payable, this Tribunal determines that the demand was unreasonable.

The Respondent is in breach of obligations owed to the leaseholders under their leases

30 The Applicant raised a number of alleged breaches -

(i) failure to maintain, repair and renew the roof and balconies of the subject premises (clause 5(i)(a));

(ii) failure to supply annually a summary of the costs incurred under clause 5 (paragraph 11 of the Fourth Schedule);

(iii) failure to insure the building (clause 6(a));

(iv) unreasonable withholding of consent to subletting (clause 3(1)(f)(iii)).

31 As to (i), it appears that some repairs have been carried out to the roof and balconies. The parties agree that further major work is still required but they have commissioned reports that reach different conclusions on the extent of the work required.

32 Mr Strangward argues that, the covenants in clause 5 are expressly subject to the leaseholders paying their service charge contributions. It is not disputed that the Applicant and three other leaseholders are currently withholding payment to the Respondent.

33 In the light of the qualification to clause 5, on the available evidence the Tribunal is not satisfied that the Respondent is in breach of its obligation in clause 5(i)(a).

34 As to (ii), it appears that the Respondent supplied documentation to the Applicant and other leaseholders but there was disagreement between the parties as to the content of that documentation.

35 On the available evidence the Tribunal is not satisfied that the Respondent is in breach of its obligation in paragraph 11 of the Fourth Schedule.

36 As to (iii), at the date of the hearing, buildings insurance (but not public liability insurance) was still in place. However, that cover was due to expire in mid-April 2023 and renewal with the current insurer has been refused because of the failure to carry out repairs to the subject premises.

37 Mr Strangward argues that without the service charge contributions of the nine leaseholders withholding payment the Respondent does not have the resources to pay for the necessary repairs, which were made a pre-condition of renewal by the current insurer.

38 The Tribunal acknowledges the dilemma of the Respondent; but it finds that, unlike the Respondent's covenants in clause 5, the Respondent's covenants to insure in clause 6 is not subject to the contributions and payments of the leaseholders.

39 Although Mr Strangward stated that alternative buildings insurance would be secured, it was not clear whether that would include public liability cover.

40 On the available evidence, the Tribunal is unable to determine whether the Respondent is in breach of the covenants to insure in clause 6.

41 As to (iv), it appears that Mr Strangward, purportedly acting on behalf of the Respondent, has refused consent to the Applicant subletting one or more of his flats. When the Applicant proceeded to permit third party occupation of his flat(s), the Respondent applied to the Tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the Applicant had committed a breach of the covenant against subletting contained in clause 3(1)(f)(iii) of his lease.

42 Those proceedings were dismissed by consent (BIR/OOCN/LBC/2022/0004-0005).

43 The Applicant submitted that the dismissal by consent suggests that there was no reasonable basis for the Respondent to refuse consent to subletting.

44 However, the Consent Order contains no recitals that elaborate on the background to the dismissal.

45 In the circumstances, the Tribunal is not satisfied that the Respondent is in breach of any obligation to the Applicant under clause 3(1)(f)(iii).

Other circumstances

46 It is more appropriate to consider the third ground in the context of the second requirement.

Summary on the first requirement

47 In relation to the first requirement of section 24(2), for the reasons stated in the preceding paragraphs the Tribunal is satisfied that at least one of the Applicant's allegations (unreasonable service charges) is established.

48 The threshold of the first requirement is satisfied by establishing a single relevant breach.

<u>The second requirement</u>

49 Turning to the second requirement of section 24(2), the Tribunal must be satisfied that 'it is just and convenient to make the order (in all the circumstances of the case)'. Whereas the threshold of the first requirement is reasonably easily met, the threshold of the second requirement is rather higher. Tribunals have repeatedly stressed that the appointment of a manager is a remedy of last resort.

50 Against that background, in determining whether it is just and convenient to make an order the Tribunal considered a number of factors.

51 If the present application rested on the first two grounds alone – unreasonable service charges and breach of obligations – the Tribunal would not be persuaded that the breaches in question would be sufficient to justify ordering the appointment of a manager for the subject premises.

52 However, in the view of the Tribunal, the third ground – that other circumstances exist which make it just and convenient to order the appointment of a manager - is rather more substantial. There is compelling evidence that the Applicant (and to some extent some other leaseholders) and Mr Strangward have reached an impasse in their relationship as shareholders (and actual/potential directors) of the Respondent company. They seem to be incapable of agreeing on matters that affect the physical condition of the subject premises - to the serious detriment of the premises. There is evidence of a near total loss of trust, exemplified by the arguably cavalier approach of both the Applicant and Mr Strangward to the Consent Order referred to above.

53 In those circumstances, the Tribunal takes the view that responsibility for the management of the subject premises should, if possible, be transferred

to an independent manager, free from the persistent and obstructive disagreement among the members of the Respondent company, which has clearly had an adverse effect on the proper management of the premises.

54 The Tribunal is therefore satisfied that it would be just and convenient to make an order for the appointment of a manager of the subject premises in place of the Respondent.

The Applicant's proposed manager

55 The Applicant proposed that the Tribunal should appoint Mr Doig Rudling (of 4D Properties Ltd) as manager of the subject premises.

56 Pursuant to the Tribunal's Directions, Mr Rudling provided a statement, indicating his willingness to be appointed as manager of the subject premises and setting out his management plans.

57 Mr Rudling was questioned by the Tribunal. It became apparent that Mr Rudling's experience has almost exclusively centred on the management of commercial properties, with some limited experience of managing mixed commercial/residential properties.

58 While acknowledging Mr Rudling's extensive experience in managing commercial property, the Tribunal was concerned by his lack of experience of managing residential blocks. Management of such properties can pose very different challenges and can require a very different approach in dealing with the leaseholders/tenants. The subject premises provided clear evidence of those challenges.

59 Moreover, the current physical condition of the subject premises presents obvious issues on which the leaseholders have very different views, which can only exacerbate the challenges referred to.

60 Where the Tribunal is considering the appointment of a manager under section 24 of the 1987 Act, it must be completely satisfied that the person appointed will be able to address the problems that previously affected the subject premises. Unfortunately, for the reasons outlined above the Tribunal is not satisfied that Mr Rudling has the necessary experience to meet that requirement. That is no criticism of Mr Rudling's professional competence: it is simply a reflection of its restricted scope.

Summary

61 The Tribunal refuses the Applicant's application for an order appointing Mr Rudling as manager of the subjected premises.

62 The Tribunal recognises that its decision does not provide a solution to the issues highlighted in the present case. For the reasons set out above, the Tribunal has determined that it would be just and convenient to appoint a manager of the subject premises but it is not persuaded that the proposed manager is the appropriate person to be appointed.

Appeal

63 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

64 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

65 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

66 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

Section 20C application

67 The Tribunal has issued Directions in relation to the Applicant's section 20C application.

20 April 2023

Professor Nigel P Gravells
Deputy Regional Judge