



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

Case Reference : **CHI/43UK/LAM/2016/0007**

Property : **Castle Place, Castle Square, Bletchingly,
Redhill Surrey**

Applicant : **William George Sheldon**

Respondent : **(1) Castle Place Bletchingly Freehold
Limited
(2) Mr Schrijver (Apt.1)
(3) Mr and Mrs Cove (Apt.2)
(4) Mrs Bradley-Smith (Apt.3)
(5) Ms McHugh (Apt.5)
(6) Mr Pamenter (Apt.6)**

The Manager : **Mr Pickard**

Type of Application : **s24 Landlord and Tenant Act 1987
(appointment of Manager)**

Tribunal Members : **Judge Dovar
Mr Ridgeway MRICS
Mr Packer**

**Date and venue of
Hearing** : **26th January 2023, Remote**

Date of Decision : **13th March 2023**

DECISION

1. This is an application to extend the appointment of a manager, Gary Pickard, under s.24(9) of the Landlord and Tenant Act 1987. The original appointment had been made by the Tribunal on 26th October 2016 for a period of 3 years. That Management Order was varied by the Tribunal on 25th May 2017 in order to facilitate the raising of ad hoc interim demands and then quarterly demands on account. It was then on 14th July 2020 extended to 25th October 2022.
2. This application was made on 5th July 2022, before the Order expired, and it has been extended on an interim basis pending this decision.
3. On 15th September 2022, the Tribunal gave directions. As well as directing the Manager to provide an update, the Applicant was to file a statement of case by 14th October 2022 and 14 days later the Respondents were to file their statement(s) of case, any documents relied on and any witness statements.
4. The Applicant filed his statement of case, the Manager provided his written consent to continue to act and a report to the Tribunal and only Mr Cove, the Third Respondent filed any statement of case.
5. This matter was dealt with by way of remote hearing. As well as the Applicant, Mr Will for the Fourth Respondent (her son) attended as did the Third Respondents.

6. Save for the Second Respondent, none of the other Respondents raised any objection to the continuation of Mr Pickard's role. The Tribunal was told that the Fourth and Fifth Respondents were in favour of the application, and that there had been no response from the Sixth Respondent. The Third Respondent was also in favour and had filed submissions setting out some concerns as to management as a whole, but not to Mr Pickard.

7. The Second Respondent made a very last minute written request to adjourn the proceedings. The Tribunal was not prepared to adjourn the hearing for a number of reasons. Firstly, he had not filed any evidence or provided any statement in compliance with the Tribunal's directions and so there was little he would have been able to raise at the hearing. Secondly, no reason had been given for the failure to comply with the previous directions as to filing of evidence or a statement of case. Thirdly, he stated that he had not received notice of the hearing, but the Tribunal was satisfied that sufficient notification of the hearing had been given to him and had been provided with email correspondence which established that. Finally, he had not condescended to provide details of any objection, but it appeared that any objections may have had something to do with his view of the conduct of the Manager as well as the considerable arrears that he had accrued and the fact that proceedings have been commenced against him to recover those arrears. It was not clear whether he objected to a management order per se, or just to Mr Pickard. No alternative manager was proposed. For all those reasons the Tribunal was not prepared to adjourn the matter.

8. As mentioned above, Mr Pickard provided a report, which has been taken into account in this decision. He had continued to pursue significant insurance claims for the Property and had plans for various major works. He had also been dealing with issues with neighbours over a disputed boundary and a common accessway.

9. He stressed a significant difficulty with carrying out works due to a lack of funding. Overall arrears stood at around £110,000. His time and resources have been spent pursuing significant arrears that have accrued, not least from the Second Respondent of around £88,000 and also from the Sixth Respondent of around £15,000. He was pursuing the Second Respondent through the County Court. In doing so, and in having to take such steps, he was concerned over his potential exposure and an inability to recover costs through the service charge. None of those present at the hearing objected to a variation to enable him to recover reasonable costs of litigation through the service charge.

10. The context of this management order is an odd one, it not being readily apparent why an order was necessary as the leaseholders by the time of that application owned the reversion. It appears that it arose because of a dispute between the leaseholders themselves. Paragraph 1 of the original decision to appoint a manager (which was done by consent) refers to “*A protracted disagreement has arisen between the Applicants and the owners of the other apartments over the ownership and management of the property.*” The Applicants to the original application were Mr and Mrs Cove and Mr Pamerter. Paragraph 9, states the following:

“Following a dispute between the tenants and Ms Foster [the original freeholder who demised the various interests] the first Respondent [Castle Place Bletchingley Freeholds Ltd], a company wholly owned by the tenants in their role as Directors and shareholders, bought the freehold reversion from Ms Foster and as a separate title acquired freehold ownership of the boiler room site. ... At the date of the settlement agreement Bletchingley Castle Management Ltd had been dissolved and had been struck off ... it no longer existed as a legal entity and its obligations under the lease had reverted to the landlord Ms Foster and latterly to the first respondent.”

11. Having considered the settlement agreement referred to and the leases, the then Tribunal then went on

“17. It is clear to the Tribunal that the terms of the existing leases are patently unsatisfactory. In addition to the problems of the extent of the demise and the relationship between the management company and other parties, a number of further ambiguities remain in relation to the ratio or division of various charges between the tenants, parking arrangements, discrepancies in plans and the existence of an increasing ground rent. Since the tenants between them now own the reversion (in the form of the first respondent) it is recommended that they take independent legal advice with a view to correcting these problems.

18. ... Since the tenants are all shareholders in the first Respondent company which owns the reversion, they will have to bear the cost of the service charge expenditure among themselves in their roles as shareholders...”

12. Notwithstanding those difficulties, the Management Order imposed at that stage did not specifically address them. It went little further than inserting the Manager into the leases with management responsibilities. It did permit him to collect ground rents and to receive his fees out of the service charge. Although the terms of the Management Order were varied in May 2017, that was only to permit collection on account for a limited period.
13. It became apparent at the present hearing that a significant, if not only reason for the management order to continue, was to remedy defects in the leases as to apportionment. The Applicant stated that some efforts had been taken to making an application to vary the leases, but that no actual application had been made. The process had been stalled by the inability to agree a number of variations that were proposed. The Tribunal was concerned about the appropriateness of continuing a Management Order for the purpose of dealing with difficulties with apportionment which could be overcome by an application to vary the leases and iron out the defects identified as long ago as in October 2016 when the order was first made.
14. This is an application under s.24(9) of the 1987 Act for the extension of the Management Order by a person interested. Accordingly, the Tribunal has a

general discretion as to whether the variation ought to be made. It is not directly concerned with either whether the original grounds for making the order are in existence (*Orchard Court Residents Association v St Anthony's Homes Ltd* [2003] EWCA Civ 1049) nor even whether it is just and convenient to make the order or whether making the order would result in the recurrence of the circumstances which led to the order being made in the first place (cf. s.24(9A), where the application is made by a Relevant Person; i.e. the landlord). However, in considering whether to continue the Management Order, the Tribunal does have regard to what would be the impact of not continuing it.

15. As set out above, there were various works planned and management issues to be dealt with. The insurance claim was also still being progressed. Whilst various suggestions were made as to the variation of terms, none of the parties had applied to vary the management order and no proposed wording had been provided. Further, the Manager considered that he had sufficient powers under the Order as currently drafted to pursue the arrears recovery, his only issue being with respect to costs.
16. Notwithstanding the concerns above as to whether this was a case for extending the order, in this instance it will be extended to enable the Manager to continue with the various matters he is presently involved in and to avoid the difficulties that may otherwise arise with respect to the defects in the leases. However, if proper attempts are not made within the additional time that has been given to remedy the problems, it may not be extended further in the future. A future

Tribunal may well be reluctant to extend the appointment any further simply to paper over the known remediable cracks.

17. In light of the concerns about litigation set out above, the defects in the leases and the inclusion of the boiler shed within the management order and also in light of the model Management Order which was appended to the Practice Statement on 'The Tribunal's Consideration of Who to Appoint as a Manager', dated December 2021, circulated by the Chamber President, further amendments have been proposed by the Tribunal to the Management Order. A draft accompanies this decision. As no proposed variations had been proffered before or at the hearing, any party who wishes to make submissions on the amendments should do so by 5pm on 31st March 2023; if any submissions are made, then the Tribunal will consider whether to give further directions before finalising the Order and it will be continued on an interim basis in the meantime.