



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

Case Reference : CHI/29UM/LAM/2023/0007

Property : 8 Monins Road, Iwate, Sittingbourne, Kent
ME9 8TY

Applicant : Michael Albert Simons

Representative : Mr Nicholls, counsel
Vincent Sykes Solicitors LLP

Respondent : Yalding Court Management Limited

Representative : Mr Bowker, counsel

Type of Application : Appointment of Manager section 24 of the
Landlord and Tenant Act 1987. S20C
Landlord and Tenant Act 1985

Tribunal Member(s) : Judge D Whitney
Mr C Davies FRICS

Date of Hearing : 19 September 2023

Date of Decision : 6th November 2023

DECISION

Background

1. The Applicant seeks an Order appointing a manager to the property in accordance with section 24 of the Landlord and Tenant Act 1987.
2. A notice under section 22 of the Landlord and Tenant Act was sent on 23 February 2023. The Tribunal received the application on 23 June 2023. Directions were issued on 14th July 2023 and the matter came for hearing at Medway Magistrates Court on 19th September 2023.
3. The Tribunal did not inspect but had used various online resources to view the Property. During the course of the hearing various photographs were also provided by the proposed manager Mr Browne.
4. The Tribunal had an electronic bundle running to 396 pdf pages. Page numbers in [] are to pages within that bundle. We also had a skeleton argument prepared by Mr Nicholls for the Applicant.

Hearing

5. The hearing was recorded. The below sets out a summary of what took place at the hearing.
6. Mr Nicholls of counsel appeared for the Applicant who was in attendance together with his proposed manager Mr Browne. Mr Bowker of counsel appeared for Ms Nettey-Flynn who also attended.
7. Mr Nicholls explained that the Property consisted of 4 flats. The Applicant owned one and the other three were all owned by Ms Netty-Flynn. The Respondent company owned the freehold whose shareholders were the owners of the leasehold flats. Both the Applicant and Ms Netty-Flynn were the directors of the Respondent, although for all practical purposes it was Ms Netty-Flynn who controlled the Property.
8. It was accepted that the Section 22 Notice [2-10] had been served. Mr Nicholls explained it was now agreed that the Property had been insured although he states the late provision of this information is a factor the Tribunal can still have regard to. He suggests that in respect of the other breaches set out in the Third Schedule to the Notice all apply save those relating to insurance.
9. Mr Nicholls then called Mr Simons. He confirmed his witness statement [16-182] was true and accurate.

10. With the agreement of Mr Bowker certain supplementary questions were asked.
11. Mr Simons explained he and his late wife purchased the flat from the developer and they lived there for a month or so before they moved to Cyprus. He stated that he had a conversation with Ms Nettey-Flynn and it was agreed she would look after the building and invoice him and his wife. He stated that Ms Nettey-Flynn was given his address in Cyprus and an email address. This would have been his wife's email address as generally she was going to deal with the flat.
12. Mr Simon's explained they initially lived in Cyprus with a cousin until their flat was ready.
13. Mr Simon's explained that he and his wife returned to the UK due to his wife's failing health and sadly she then passed away.
14. Mr Simons stated his wife dealt with day to day matters in relation to the flat. He stated they could not get involved in the management as they were living in Cyprus.
15. Mr Simons accepted he had verbally told Ms Nettey-Flynn that if he ever sold he would offer her first refusal.
16. He explained soon after his wife died in April 2021 he got in touch with the estate agents who had dealt with the underletting of the flat. He had asked them to value the same and they advised him they had someone interested. He telephoned Ms Nettey-Flynn and told her of this offer and that if she wished to make an offer she should contact the estate agents. Mr Simons stated he was told by the agents she did not make an offer.
17. Mr Simons denied sending the email [270] to Ms Nettey-Flynn.
18. Mr Bowker cross examined Mr Simons.
19. Mr Simons explained after they moved to Cyprus it took a few months to find a tenant and they did look at trying to sell but no one made an offer. The flat has been let by the same agent now known as Belvoir Swale since he moved to Cyprus. Save for short periods between lettings the flat has been let since 2004.
20. He confirmed the agent collected the rent. He confirmed they had never been asked to reduce the rent and he had never had to complain about the state of the building as a whole.
21. Mr Simons agreed that the statement in his solicitors letter [56] to Ms Netty-Flynn referring to querying the lack of demands was not true. He agreed his wife and he had discussed the lack of demands but he did not recall them ever raising it with Ms Netty-Flynn.

Essentially he just wanted to have communication as this was blocking his sale of the flat.

22. Mr Simmons explained he just wants to sell the flat.
23. Mr Simons confirmed he had received no real complaints over the years. He mentioned he had the odd complaint about things blocking the stairway sometime ago from his agent but he told them there was nothing he could do. He felt it was just an issue between the people in occupation of the flats themselves.
24. He explained his buyer in 2019 raised an issue with the window frames being rotten. He understood it was the management companies responsibility to repair the windows.
25. He could not understand why the company accounts showed a deficit as he had never had money claimed.
26. On questioning by the Tribunal he explained his late wife had worked for the company who built the flats. It was the show flat which they purchased. He had last visited in he thinks 2012 or 2014 viewing externally only. He knew at some point they would get a bill for the windows if nothing else.
27. He agreed the email at [270] appeared to have been sent from what was his wife's email address.
28. He thought when they moved in Cyprus from their flat to a house, after about 3 or 4 years, his wife had given Ms Netty-Flynn the address.
29. Upon conclusion of Mr Simon's evidence the Tribunal adjourned briefly for the comfort of all parties.
30. When the hearing re-started Mr Bowker called Ms Netty-Flynn. She confirmed her statement [183-361] was true. She confirmed she had read it the evening before.
31. She was then cross examined.
32. Ms Netty-Flynn confirmed originally she wanted to buy all 4 flats but was advised by the finance company she should not do so.
33. Mr Simons did make contact to tell her he was moving to Cyprus. She agreed she said she would help with cleaning communal areas, hoovering and tidying up. She did not realise how long this situation would continue for.
34. She denied ever having been supplied with an address in Cyprus. She did have an email and emailed about the bank closing the

account. Her recollection was Mr Simons called her and he said he was living with his sister in Peterborough.

35. Ms Nettey-Flynn confirmed she did make the changes to the companies address so that it was listed as her address. She felt this was better than letters going to the Applicant's flat when he was not living there.
36. Ms Nettey-Flynn stated she did contact the agents about making an offer for the flat but supposedly they would not entertain an offer from her.
37. She stated the block has been maintained. It was in her interests to do so. She stated she has had no contribution from the Applicant and has always used her own money to maintain the block. She stated she had limited contact from the Applicant and his late wife and was only provided with an address when he wanted to sell the flat.
38. In respect of the deficit she stated that Mr Simons was a director of the company and should know that he is expected to contribute to the costs.
39. Ms Netty-Flynn confirmed she used a broker to place the insurance.
40. The Tribunal then questioned Ms Nettey-Flynn.
41. The only fire risk assessment she had conducted was the one within the bundle.
42. She owned a portfolio of 9 properties in total of which 5 were flats. This is the only block in which she is involved in the management. She explained whilst initially she had used agents she now managed her tenancies herself.
43. Upon conclusion the Tribunal adjourned for lunch. Over the luncheon adjournment the parties agreed Mr Browne, the proposed manager, could email certain photos which the tribunal received and viewed.
44. Mr Nicholl called Mr Browne. He confirmed his statement [362-371] was true.
45. He confirmed he had inspected externally. The windows were wood double glazed units and all seemed weathered and in disrepair. In his opinion Mr Simon's windows were in the worst condition. Mr Browne talked through the photographs and his opinion as to what they showed.

46. Mr Browne confirmed he had seen the practice statement. He had considered the Residential Management Code, the Lease, the insurance and the fire risk assessment.
47. He confirmed he was approached by the Applicant's solicitors. He had previously worked with a team member of the firm in respect of the sale of a leasehold property. He was told of the circumstances and asked if he wished to be nominated.
48. He explained that his home address was in Nottingham. His fiancée and family live in the South East. Various of his employees who would be part of the team working on Property are based in the South East although his business is Sheffield based.
49. He has a local caretaker who is based about 20 minutes away. He himself has been an Associate member of RICS for 3 years, a member of IRPM for 4 years and a member of ARLA for 5 years.
50. Mr Browne is the owner of the Horizon Group of companies. He explained what each company did and his role. He explained the roles of the staff within his management business and how long they had worked for him. He had not been appointed previously by the Tribunal but had undertaken general reading around the subject.
51. He confirmed he was willing to be appointed as a Tribunal manager. He confirmed his fee is an inclusive fee and he would not charge additional sums for undertaking Section 20 consultations. He understood his insurance cover would cover him personally as a tribunal appointed manager.
52. On questioning by the Tribunal he explained he had operated as Horizon for the past 5 years. Prior to this he had spent his 20's in the military. He had invested in property. He explained his companies owned the freeholds of a property in Maidstone which was subject to long leaseholds owned by separate parties. They manage a converted house in Hastings and a 230 unit development in Ramsgate for a residents owned management company.
53. He confirmed he would be looking initially for a one year appointment. His companies do not take commissions. He would visit personally quarterly but have the caretaker as his eyes and ears in the locality.
54. Counsel for each party made their closing submissions.

Decision

55. The Tribunal declines to appoint a manager.

56. Both parties agreed that a Section 22 Notice had been served. The Applicant relied on the grounds set out in the Third Schedule to that notice save in respect of insurance.
57. We are satisfied that there have been breaches of the lease and the Residential Management Code. The Respondent company has not issued service charge demands or the like as is admitted by Ms Netty-Flynn. Further it seems clear that the actual management itself has not dealt with all matters one would typically expect. This is amply evidenced by the Fire Risk Assessment which was only recently undertaken. We agree with the comments made by Mr Browne in his evidence that it is unclear as to whether the person who conducted the same really understood what is required.
58. We are satisfied that what Mr Nicholls refer to as the “threshold requirement” of Section 24(2) of the Landlord and Tenant Act 1987 are met. Whilst not specifically conceded by the Respondent it seemed from the evidence that in fact there was little dispute over this.
59. We do accept the insurance has always been in place on the basis of the evidence before us. It is unfortunate a copy was not promptly provided. Ms Netty-Flynn did say her solicitor has been instructed to provide and certainly it seems from the emails within the bundle from the solicitors that they accepted and acknowledged at times they (rather than their client) had been slow in providing information.
60. It is a question of then considering whether the appointment of a manager would be “just and convenient”. We are not satisfied it would.
61. Mr Simons and his late wife were content to leave the management to Ms Netty-Flynn. Mr Simon himself seems to have had little dealings with the flat as these were dealt with by his late wife. There is no evidence that until he decided he wished to sell he had taken any particular interest in the property and management of the same despite being a director. There is no evidence that over the time the flat was owned he has been pro-active in finding out what was happening with regard to the management and whether he owed any monies for things such as insurance. He was content to leave matters to Ms Netty-Flynn.
62. Having viewed the photographs and considered the evidence we find that Ms Netty-Flynn must have been managing the property notwithstanding that certain items are now in need of further works. Mr Simons own evidence supported this given he accepted he had received no substantive complaints from his tenants or agents relating to the communal areas of the Property.

63. Plainly some of these necessary repairs will be expensive and the parties need to determine what are obligations of the Respondent and which matters are the leaseholder's responsibility. Various issues were raised as to the windows and who was responsible for the repair and replacement of the same. We make no determination as to responsibility within this decision. Given the development is now approximately 20 years old it is not unrealistic to expect that major items of expenditure may be required.
64. Much was made of the fact the Respondent's accounts show a deficit. It was unclear as to how the figures are arrived at and the schedules produced by Ms Netty-Flynn did not appear to be consistent. However this is a matter relating to the company. Money has been spent including on insurance. Mr Simon agreed as far as he is aware neither he nor his wife have ever made any contribution. It is likely therefore that money will be owed to the company. That is a separate matter and the parties will need to reach an agreement as to what sums are owed and which remain payable. Whether or not a manager was appointed a reconciliation of these matters would still be required by the two parties being Mr Simons and Ms Netty-Flynn.
65. Essentially the issues seem to have arisen because Ms Netty-Flynn believed she would be offered first refusal on the flat. Such arrangement does not appear to this tribunal to be a legally binding requirement. On that basis she had continued for the past 2 decades managing, using her own funds to do what works she thought were required. Mr Simons was completely "hands off" and never made any payment. He accepted he had little or no complaints from his tenants or his agents. Having looked at the photos and the like we are satisfied the condition of the property is as one would expect of a property of this age.
66. Plainly Ms Netty-Flynn and the Respondent must look at the way it manages the Property and should be taking account of the Management Code and the lease. She would be well advised to take advice on these matters. Equally she and Mr Simons need to sit down and agree matters re the company deficit.
67. However overall taking account of the very specific factual circumstances we are not persuaded that it would be just and convenient to appoint a manager and we decline to do so.
68. We were impressed by Mr Browne. We can see he could be a good manager for a property such as this. The fact his company is based in Sheffield would not of itself have dissuaded us from appointing him. His explanation of his experience and how practically he would manage a development such as this seemed to be well considered and sensible. We did however have some concerns that he did not fully understand the role as a tribunal manager. Further we had some concerns that his fee was too modest for undertaking

such a management. Tribunal appointments almost inevitably give rise to extra time being required and spent by a manager. Parties involved are almost inevitably in dispute and this often leads to managers being involved in extensive communications far more than one would normally see.

69. We say the above to assist Mr Browne if he considers again being nominated as a manager and it is not meant to detract from his clear and well considered plan for the property.

RIGHTS OF APPEAL

1. 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
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.