



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

Case reference : **LON/00AC/LAM/2022/0025**

Property : **108a & 108b Holden Road, London,
N12 7EA**

Applicants : **Nigel John Thorne and Susan
Victoria Slonims**

Representative : **Mr Woodhouse of Counsel**

Respondents : **Shu Leung Tang and Ann Shuk
Chuen Tang**

Representative : **Mr Owen, Solicitor**

Type of application : **Appointment of a manager**

Tribunal members : **Tribunal Judge I Mohabir
Mr I Holdsworth FRICS**

Date of hearing : **5 June 2023**

Date of decision : **13 July 2023**

DECISION

Introduction

1. This is an application made by the Applicants under section 24 of the Landlord and Tenant Act (as amended) (“the Act”) for an order in respect of 108a & 108b Holden Road, London, N12 7EA (“the property”).
2. The property is described as a semi-detached house converted into two maisonettes. The Applicants are the lessees of Flat 108a Holden Road. The Respondents are the joint freeholders of the property.
3. The various management failures complained of by the Applicants are set out in the witness statement of the Second Applicant, Mrs Slonims dated 24 February 2023. For reasons that will become apparent, it is not necessary to set these out.

The Law

4. Section 24 of the Landlord and Tenant Act 1987 provides:

"(1) A leasehold valuation tribunal may, on an application for an order under this section, by order appoint a manager to carry out, in relation to any premises to which this Part applies-

- (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) A leasehold valuation 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...*
- (ii) ...*
- (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;*

(aba)...

(abb)...

(ac) where the tribunal is satisfied-

- (i) where any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and*
- (ii) that it is just and convenient to make the order in all the circumstances of the case;*

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Hearing

5. The hearing took place on 5 June 2023. The Applicants were represented by Mr Woodhouse of Counsel. The Respondents were represented by Mr Owen, a Solicitor.
6. The Respondents had not filed or served any evidence in the case. When this was raised with Mr Owen, he said that that they were consenting to the appointment of the Applicant's proposed manager, Mr Green.
7. Therefore, the only issue before the Tribunal was whether Mr Green possessed the relevant knowledge and experience to be appointed as the manager of the property.
8. This was set out in two witness statements prepared by him together with a draft Management Plan for the property.
9. In addition, the Tribunal conducted its own examination of Mr Green in relation to this property management experience.
10. Mr Green told Tribunal he had no formal training or qualification in property management. His interest in property management started in or around 2011 when he took on the management of his own property portfolio and those of some family members. It was in 2018 that he accepted third party property instructions to manage residential property. His sole trader business now manages some 102 units over some 15 sites, one site has 62 flats and the remaining sites between 2-4 flats.
11. Almost all the leasehold properties he manages hold a share of the freehold. He has no experience of managing blocks of flats with freeholder interest.
12. The services offered to his clients varies. At the 62 flat block he is not responsible for the issue of service charge demands, at the other properties his company carries out a full management role. The company does not operate a client account for either annual or reserve service charges. He told Tribunal that all his 40 or so clients operate

property specific service charge accounts and he uses these accounts to deposit monies and make payments.

13. After review of the witness statements and hearing evidence the Tribunal had a number of reservations about Mr Green's intention to act as Manager of the Property. These include:
 - The lack of any formal property management training and qualification;
 - limited knowledge and experience of residential management and in particular the requirements of the RICS Service Charge Residential Management Code; and
 - no established governance for client monies within his company and specifically, no business client account. His company is not Regulated by the RICS or ARMA.
14. The Property comprises two dwellings with no common areas. This type of property should present a straightforward management situation that demands practical management skills with a reliance upon consultants for professional expertise. Mr Green's responses to Tribunal questions revealed knowledge of the statutory property management requirements including those relevant to section 20 consultation. The Tribunal concluded Mr Green has acquired many of the necessary skills and knowledge from his exposure to the procedures adopted by other managing agents since 2011. They would encourage him to improve his knowledge of the RICS guidance and adopt this unequivocally in his property management of this Property.
15. The Tribunal was also concerned at the lack of governance of client monies. It was not clear from his submission whether Mr Green was authorised to make payments to contractors at the various properties he managed or his role in accounting for receipts and expenditure.
16. Mr Green confirmed to the Tribunal that it is his intention to open a client monies bank account. The Tribunal endorsed this proposed action. They also recommend a further bank account is opened for the deposit of reserve account monies. This is to ensure compliance with the RICS code.
17. The Tribunal is cognisant of the fact that Mr Green is not a member of the RICS and, therefore, will not be subject to formal financial scrutiny and external supervision. The Tribunal intend to apply a condition that a Chartered Accountant must inspect the client accounts every six months to ensure compliance with RICS standards. After each satisfactory review, the auditors shall issue a certificate of satisfactory compliance, which would be attached to the six monthly reports to Tribunal.

18. The Tribunal is aware of the short comings of Mr Green in terms of his experience, formal training and business governance but recognise few managing agents are interested in managing a two dwelling block property. He has practical experience of property management. He exhibits a commitment to address the concerns held by the Tribunal. The additional conditions and supervision proposed will further support Mr Green and enhance governance.
19. After careful consideration the tribunal is persuaded to approve his appointment as Manager of the Property. The management order is annexed to this decision.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).



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

Case reference : **LON/00AC/LAM/2022/0025**

Property : **108a & 108b Holden Road, London,
N12 7EA**

Applicants : **Nigel John Thorne and Susan
Victoria Slonims**

Respondents : **Shu Leung Tang and Ann Shuk
Chuen Tang**

Tribunal members : **Tribunal Judge I Mohabir
Mr I Holdsworth FRICS**

Date of hearing : **5 June 2023**

Date of Order : **13 July 2023**

MANAGEMENT ORDER

Interpretation

1. In this Order:

“The Property” means the premises known as known as 108A and 108B Holden Road, London N12 7EA and registered at HM Land Registry under title number MX242805 and shall include the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin stores, common parts, storage rooms basements, electricity and power rooms; and all other parts of the property.

“The Landlord” shall mean Shu Leung Tang and Ann Shuk Chuen Tang or their successors in title to the reversion immediately expectant upon the Leases.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and “Tenant” shall be construed accordingly.

“The Leases” shall mean all leases and/or underleases of flats in the Property.

“The Manager” means Mr Daniel Green

“The Tribunal” means the First-tier Tribunal (Property Chamber)

ORDER

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Mr Daniel Green is appointed as Manager of the Property.
3. The Manager’s appointment shall start on 14 days from the date of this order (“the start date”) and shall end on two years thereafter (“the end date”).
4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
5. The purpose of this Management Order is to provide for the management of the Property which includes taking steps to resolve the following problems of inadequate management identified by the tribunal:
 - a. The issues identified in the report of Peter J McNeill dated 1 March 2021 (“the Report”)
6. To address the steps identified in the previous paragraph the Manager is empowered to:
 - a. Collect monies in order to prepare and carry out a programme of works to remedy all of the issues identified in the Report.
7. The Manager shall manage the Property in accordance with:
 - a. the terms of this Order and the Directions set out below;

- b. the respective obligations of the Landlord and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
 - c. the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993(whether the Manager is a Member of the RICS or not; and
 - d. the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
8. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
9. The tribunal requires the Manager to act fairly and impartially in the performance of their functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
10. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
11. Any application to extend or renew this Order must be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager’s appointment will continue until that application has been finally determined.
12. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:

- a. a serious or persistent failure by any party to comply with an obligation imposed by this Order;
- b. circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and
- c. where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

13. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
 - a. the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
 - b. the Manager has the right to decide, in their absolute discretion, the contracts in respect of which they will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
14. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
15. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

16. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.
17. Such entitlement includes bringing proceedings in respect of arrears of service charge attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further

include any appeal against any decision made in any such proceedings.

18. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

19. The Landlord is solely liable for payment of the Manager's fees. However, should the Landlord fail to make payment of any fees within 28 days of a first class postage of a written demand by the Manager to the Landlord's registered address, then the Manager may obtain payment for those fees
 - a. from the Tenants by way of a 50% contribution in respect of each of the two leases of the Property (payable within 28 days of the first class postage of a written demand by the Manager to the address for the tenant in the relevant Land Registry entry)and/or
 - b. A contribution of greater than 50% from the Applicants if they elect to pay more.
20. Any of the Tenants may apply to the Tribunal for an order that the Landlord reimburse them for any fees that they have paid to the Manager under the preceding paragraph, together with their costs of obtaining that reimbursement.
21. The sums payable are:
 - a. an annual fee of £2,000, to be increased on the anniversary of appointment in line with the Consumer Prices Index;
 - b. where in any month there are building works at the Property involving builders being on-site for more than half of that month, an additional fee of £83 for that month;

- c. where it is necessary to undertake consultation under section 20 of the Landlord and Tenant Act 1985, a fee of £450, unless the consultation process includes a requirement for notification of the award of the contract, in which case the fee shall instead be £550;
- d. a reasonable fee for any attendance at Tribunal or Court;
- e. postage costs and other minor incidental costs.

Ground Rent and Service charge

- 22. The Manager shall not collect the ground rents payable under the residential Leases.
- 23. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.
- 24. Whether or not the terms of any Lease so provides, the Manager shall have the authority to:
 - a. demand payments in advance and balancing payments at the end of the accounting year;
 - b. establish a sinking fund to meet the Landlord's obligations under the Leases;
 - c. allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund;
 - d. alter the accounting year and to collect arrears of service charge and insurance that have accrued before their appointment; and
- 25. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in part of the Property retained by the Landlord, or let on terms, which do not require the payment of a service charge.
- 26. To ensure that the Manager has adequate funds to manage the Property, the Manager may immediately collect £ 500 from each Tenant and, as the case may be, any reasonable sum from the Landlord. Any sum demanded by the Manager shall be payable within 28 days.
- 27. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms,

incurred by them whilst carrying out their functions under the Order.

Administration Charges

28. The Manager may recover administration charges from individual Tenants for their costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

Disputes

29. In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
30. In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.
31. In the event of dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
32. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

DIRECTIONS TO LANDLORD

33. The Landlord must comply with the terms of this Order.

34. On any disposition of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
35. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
36. The Landlord is to allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.
37. Within 14 days from the date of this Order the Landlord must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
 - a. all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and
 - b. all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

DIRECTION TO CHIEF LAND REGISTRAR

38. To protect the direction in paragraph 34 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no MX242805. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 30th day of November 2022

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration or their conveyancer that the

provisions of paragraph 34 of an Order of the Tribunal dated 13 July 2023 have been complied with”

DIRECTIONS TO MANAGER

39. The Manager must adhere to the terms of the Order above.

Registration

40. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 38, within 14 days of the date of this Order.

Conflicts of Interest

41. The Manager must be astute to avoid any Conflict of Interest between their duties and obligations under this Order, and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

42. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

Insurance

43. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager’s interest is noted on the insurance policy.
44. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of at least £1 million and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

45. The Manager must:
- a. prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be

- certified by the external auditor, if required under the Leases;
- b. maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
 - c. maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
 - d. hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

- 46. The Manager must:
 - a. by 28 days after this order draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant and to the Landlord;
 - b. subject to receiving sufficient prior funds:
 - i. carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order. ii. arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
 - c. liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and
 - d. ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.

- 47. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.

Reporting

48. By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tenants, and the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.
49. The Manager must confirm in his initial report to Tribunal no later than 6 months from date of appointment, that he has set up a client bank account for this property and include with his report a copy of a reconciliation statement from the appointed independent Chartered Accountant. All subsequent 6 monthly reports must include the client account reconciliation with a brief verification report from the independent Chartered Accountant.

End of Appointment

49. No later than 56 days before the end date, the Manager must:
 - a. apply to the tribunal for directions as to the disposal of any unexpended monies;
 - b. include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a “Final Report”); and
 - c. seek a direction from the tribunal as to the mechanism for determining any unresolved disputes arising from the Manager’s term of appointment (whether through court or tribunal proceedings or otherwise).
50. Unless the tribunal directs otherwise the Manager must within two months of the end date:
 - a. prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and
 - b. answer any such queries within a further 14 days.
51. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

