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

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| **Tribunal case reference** | **:** | **CAM/26UG/LAM/2022/0009** |
| **Property** | **:** | **18 Lemsford Rd, St. Albans, Herts AL1 3PB** |
| **Applicant** | **:** | **Catherine McNeill** |
| **Respondents** | **:** | **18 Lemsford Road Ltd** |
| **Type of application** | **:** | **Application for the appointment of a Manager** s.24 Landlord and Tenant Act 1987 |
| **Tribunal** | **:** | **Judge Stephen Evans**<br>**Judge David Wyatt** |
| **Date of decision** | **:** | **22 November 2023** |

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**DECISION**

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**The Tribunal determines that:**

**(1) The Applicant's application for an appointment of a manager is struck out pursuant to Rule 9(3)(b) and (e) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013;**

**(2) The Applicant's application that the Respondent be debarred from defending the claim pursuant to Rule 9(3)(b)(d) and (e) is refused.**

**(3) The Applicant's application for an order under s.20C of the Landlord and Tenant Act 1985 is refused.**

**REASONS**

**Background**

1. The Application before the Tribunal is an application for the appointment of a manager, pursuant to section 24 of the Landlord and Tenant Act 1987.

2. The Applicant is the leaseholder of flat 1. She is one of 4 leaseholders of 18 Lemsford Rd, St Albans, Hertfordshire AL1 3PB ("the Property").

3. The Applicant and the other leaseholders purchased their share of freehold in 2009, and established the Respondent company 18 Lemsford Road Limited. Each leaseholder is a director of the Respondent.

4. Management of the building appears to have progressed initially without incident, but in August 2016 a managing agent was appointed for the Property. They allegedly did not inspect for 9 months, and after a detailed complaint from the Applicant gave notice of termination of management agreement on 9 August 2017, to take effect on 9 October 2017.

5. It appears that thereafter disputes arose between the parties as to the management of the Property, leading to a preliminary notice to appoint a manager pursuant to section 22 of the Act, served by the Applicant on the Respondent in 2020. The notice alleged mismanagement in terms of failure to address damage to a wall, dilapidated garages, tenants' failure to comply with the terms of their leases, failure to insure properly, and using a firm of solicitors who were increasing service charge costs. The Applicant alleges there was no response to this letter. On 15 December 2020, the Applicant e-mailed the buildings insurance brokers confirming she was not happy to proceed with the insurance renewal.

6. On 22 January 2021 the Applicant wrote a 23 page letter with 51 appendices in response to a two-page letter of 7 January 2021 from solicitors acting for the Respondent, complaining of various management issues, as she saw them, in response to their proposals to arrange insurance cover.

7. On 22 November 2021 the Applicant served an addendum to the section 22 notice, alleging that the landlord was in breach of the requirement to seek observations, that it had imposed unreasonable service charges, that it was in breach of the Code of Practice, and that there were multiple disputes which made it just and equitable for a manager to be appointed. The main complaints involved scaffolding issues, noisy internal works, the continued use of the Respondent's solicitors, failure to consult about works, holding leaseholders' money in personal bank accounts, flooding of the car park, and failing to insure the building adequately.

8. The Applicant alleges there was no response to this letter either.

9. The Applicant's next step was to make an application for the appointment of a manager, in March 2022, to this Tribunal under case reference 26UG/LAM/2022/0001. She sought to have appointed a Mr Shah Khan of Envisage Property Management Limited as manager. The Tribunal sent the parties the practice statement on applications for appointment of a manager and template draft management order.

10. The Tribunal gave directions on 1 June 2022 following a telephone case management hearing. The substantive hearing was fixed for 29 September 2022. However, in or about 31 August 2022 the proposed manager withdrew and the Tribunal warned that the Respondent would need a fair period to respond to any new proposals. The Applicant withdrew their application in early September 2022.

11. This led to the Applicant making a second application for a manager, being the instant application dated 24 November 2022. Initially she sought to have appointed Mr Leon McKenzie.

12. This application was accompanied by an application under section 20C of the Landlord and Tenant Act 1985.

13. The Tribunal gave directions on paper on 13 January 2023, and the Applicant duly supplied a statement of case on 1 February 2023. The Respondent complained of a lack of particularity in this statement of case, by e-mail dated 1 February 2023. This led the Tribunal on 1 March 2023 to give further directions, including an extension of time to comply with directions. The Respondent then served its statement of case, and witness statements were provided on both sides, followed by a reply by the Applicant.

14. In March 2023 the Respondent had declined mediation, because it had not yet received the Applicant's Reply.

15. On 13 April 2023 the Tribunal wrote to the parties concerning bundles and indicated that the Respondent must sign the agreement to mediate or give reasons why not, by 21 April 2023.

16. The Respondent duly sent an e-mail explaining that it did not consider that mediation would be fruitful.

17. This led the Tribunal on 26 April 2023 to write to the parties with further directions, and 4 days later, a second witness statement from the Respondent was provided. On 19 May 2023 the Applicant's reply to that statement was also filed.

18. On 31 May 2023 the Tribunal wrote again to the parties. The Tribunal commented that the parties had already taken up a large share of Tribunal resources in dealing with the previous proceedings, and a volume of procedural correspondence and enquiries, some of which might be considered repetitive. The Tribunal noted that the relationship between the parties seemed only to have worsened, and it seemed likely that without a determination from the Tribunal there was a real risk of another application, even if the current one was not approved. The parties were reminded that the Tribunal had limited resources and could not advise the parties. The Applicant said that an inspection of the Property was essential, so the Tribunal arranged that it would inspect the Property and

then hold the first day of the hearing at a nearby venue, then hold the second day of the hearing remotely by video.

19. On 27 June 2023 the Applicant was sent Mr McKenzie's dates to avoid for a final hearing. However, when the Applicant later informed Mr McKenzie of the hearing date of 22 November 2023, he responded the following day to request the sum of £500 plus VAT, in order to proceed until the Tribunal process had concluded. The Applicant alleges that she then had a telephone conversation with Mr McKenzie, in which he had expressed concerns about the management of the premises given the Respondent's conduct.

20. On 11 August 2023 Mr McKenzie wrote to the Applicant by e-mail to state that he had made the decision to withdraw his involvement with the Property with immediate effect, but that if at some point later down the line the Applicant would like his management company to manage the Property, she should not hesitate to contact his company.

21. The Applicant did not inform the Tribunal or the Respondent of this withdrawal of Mr McKenzie at the time it happened.

22. Between August and October 2023, it is said, the Applicant contacted some 22 other management companies to see whether or not they would be interested in managing the Property. The Applicant has given some evidence in the bundle of contact with a number of these companies, who either did not wish to proceed, or who wanted significant sums of money in order to manage. The Applicant said one potential manager turned up at the Property to inspect, seemingly smelling of alcohol.

23. The Applicant informed the Tribunal that she was unable to find another manager until 25 October 2023, when a Mr Robert Leslie of LMS Residential Ltd inspected the Property. He agreed there and then to take management of the Property, should the Tribunal so determine.

24. However, it took the Applicant until Sunday, 5 November 2023 to inform the Tribunal and the Respondent that Mr McKenzie had pulled out, and that she had lined up another proposed manager, although details of that person and their experience and management plan were not revealed.

25. On 6 November 2023 the Respondent emailed the Tribunal requesting the dismissal of the application in the circumstances of Mr McKenzie 's withdrawal. It alleged that it would be prejudiced by any further adjournment of the proceedings and it now wished to find and appoint its own managing agent.

26. The Applicant made a brief reply on the same day, and on 8 November 2023 the Tribunal wrote to the parties stating that the 2 day hearing on 22 November and 23 November 23 could not be effective, and the first day would be reserved for a case management hearing. The Tribunal warned

that it would consider striking out the application, including under rule 9(b) and (e) (set out below) and if the application was not struck out what further directions to give, and gave the Applicant until 15 November 2023 to provide any written submissions and any additional documents relied upon in relation to the proposed striking out.

27. In the event, on 13 November 2023 the Applicant sent with her submissions her own application to Tribunal, seeking the debarring of the Respondent from defending the application. This was supported by a witness statement, which exhibited documents identifying the proposed new manager (Jacqui Slater of LMS Residential Ltd, not Robert Leslie), with a new draft management order and proposed management plan.

**The hearing**

28. The hearing was conducted by video. The Applicant represented herself. Miss Ellisdon, a director of the Respondent and leaseholder of flat 2, was present and indicated she spoke for all of the Respondent's directors.

29. Mrs Debbie Banerji-Haldar, the wife of director Mr Haldar, together the leaseholders of flat 3, also attended. After some initial confusion, it was established that she was not a director of the Respondent company, and that she was happy for Miss Ellisdon to represent all the views of the other directors of the Respondent. She was therefore content that her role be limited to observer only.

30. At the commencement of the hearing, the Applicant indicated that she sought 3 things from the Tribunal: that her application not be struck out, that the Respondent be debarred from defending, and that there be a hearing as soon as possible, even that day, to appoint a manager, albeit Miss Slater was not available. (Mr Leslie was said to be at the end of a telephone, however).

31. The Respondent indicated that it also sought 3 things: the striking out of the application, to defend the application for debarring order, and in the event that it was necessary, a chance to interview the proposed new manager, given that the directors had had no real opportunity to do so.

32. The Tribunal proceeded to hear the Respondent's application first. The Applicant did not disagree with this course of action.

33. The Respondent submitted that there had already been one application for a manager previously before the Tribunal, and that matters had progressed nowhere in the last four years. Miss Ellisdon added that this was the second time a manager had resigned, the last being in 2022. She added that the Applicant had known about the resignation of Mr McKenzie for some 3 months without telling the Respondent, and that was a lack of cooperation which would justify the sanction of striking out, pursuant to rule 9(3)(b) of the Tribunal's procedure rules. It was not until 6 November

2023 that the Applicant notified the Respondent of these difficulties, she added. Miss Ellisdon referred to the resignation e-mail from Mr McKenzie, which did not blame the Respondent. She contended that the Applicant's claims were all about historical issues and there was no evidence supporting these. She contended there was no reasonable prospect of the application succeeding. She accepted that the Respondent had not taken any steps to obtain its own manager, but explained this was because of the Applicant's outstanding application.

34. The Applicant responded that there are fundamental issues with the building; that she had to follow the directions given; and the proposed manager Mr McKenzie wanted money up front, which she could not raise. She claimed that Mr McKenzie had got "a nose bleed" from the Respondent, which was the real reason for his withdrawal. The Applicant accepted that she did not have any evidence that that was the case, aside from her telephone conversation with him. She said she believed she had had time to find a replacement, and wanted to provide the Tribunal with a solution, not a problem. She emphasised the difficulty which she had faced in obtaining other managers. She informed the Tribunal, pursuant to questions asked, that Jacqui Slater had not been to the Property, only Mr Leslie, on 25 October 2023. She explained that the initial costing on the management plan was a budget for a surveyor, who would then later inform a budget as to the short, medium term and long term options. She informed the Tribunal that the appointment proposed was for 1 year only, and when asked whether this was a realistic timescale, she replied that it was in Miss Ellisdon's hands to cooperate.

35. The Tribunal then heard the Applicant's application to debar the Respondent. She complained of what she called aggressive communications on the part of the Respondent to Mr McKenzie; and that the Respondent had had the opportunity to mediate in March, but had refused. She claimed that the Respondent had singularly tried to find fault with Mr McKenzie, and had said nothing positive about him. She said there had been constant nitpicking throughout the process. She also said that the Respondent's communications to the Tribunal had been consistently sent to create work and objection, in order to cause hassle to the Tribunal. Lastly, she alleged that there was no real defence to her application.

36. The Respondent denied any failure to cooperate, and referred to previous attempts by the parties to resolve matters. Miss Ellisdon considered that the directors were asking reasonable questions of Mr McKenzie, but he had not replied to the most recent e-mail they had sent. She said that he if he had not got the time to answer the Respondent's questions, that raised "a red flag". She also pointed to initial replies which had been provided to their questions, but not by Mr McKenzie, rather someone else in the office.

37. She denied that the Respondent's conduct had been vexatious; it had asked professional questions which were perfectly valid and not unreasonable to ask. She accepted there had been a multiplicity of communications directed to the Tribunal, but there were not as many from the Respondent as from the Applicant; in any event, it was necessary to put their side of the story to the points made, she said.

38. Miss Ellison denied that there were no reasonable prospects of defending the application. She confirmed that the fault-based grounds were opposed, and confirmed that in respect of Ms Slater, the Respondent had not formed a view as to her capability of being appointed, but had not yet had an opportunity to meet with her, and take an informed view.

39. In response, the Applicant said she wanted a substantive hearing to establish the grounds for an order, the making of which was just and equitable. She said that £1M was at risk in this case (being the value of the Property, we assume). She emphasised that this was her home; she was the only occupying leaseholder because the other leaseholders rented their flats out or left them vacant (she had stopped letting out her own flat for short stays some time ago).

**Determination**

40. The Tribunal is being invited to make case management decisions. In so doing, it must apply The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, in particular rules 3 and 9, as follows:

*"Overriding objective and parties' obligation to co-operate with the Tribunal*

*3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
*(2) Dealing with a case fairly and justly includes— (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; and (e) avoiding delay, so far as compatible with proper consideration of the issues.*
*(3) The Tribunal must seek to give effect to the overriding objective when it— (a) exercises any power under these Rules; or (b) interprets any rule or practice direction.*
*(4) Parties must— (a) help the Tribunal to further the overriding objective; and (b) co-operate with the Tribunal generally."*

*"Striking out a party's case*

*9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.*
*(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal— (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.*
*(3) The Tribunal may strike out the whole or a part of the proceedings or case if— (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it; (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly; (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal; (d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or (e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.*
*(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.*
*(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.*
*(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.*
*(7) This rule applies to a respondent as it applies to an applicant except that— (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and (b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them. "*
*(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent."*

The Respondent's Application

41. The Tribunal determines to exercise its powers under rule 9(3)(b) and (e) to strike out the Application for the appointment of a manager, for the following reasons.

42. Firstly, the Applicant has not co-operated with the Respondent or the Tribunal, such that the Tribunal can no longer deal with the proceedings fairly and justly: rule 9(3)(b). As rule 3 reminds us, this includes considerations of proportionality, avoiding delay, and having regard to the parties and Tribunal's resources. The Applicant has not co-operated, primarily because she failed to inform the Respondent and Tribunal at the earliest opportunity of the withdrawal of Mr McKenzie. This in turn has led to the Tribunal being unable to case manage the problem at the earliest opportunity. Instead, the Applicant waited 3 months, and has attended the Tribunal today with a proposed Management Plan made only 9 days earlier, by (or for) a manager who had not even inspected the Property, and which (for reasons explained below) disclose no reasonable grounds for the application succeeding.

43. The Tribunal is mindful that it must, so far as practicable, seek to ensure parties can participate fully in proceedings. An adjournment might ordinarily enable a litigant to 'put their house in order', but the Tribunal cannot ignore the fact that this is the second application made by the Applicant under s.24 when the Applicant has explained at the 11th hour that a proposed manager has pulled out. Therefore, the Tribunal lacks any confidence that the Applicant can successfully drive her application home. Furthermore, an adjournment prejudices the administration of justice, impacts upon other Tribunal users, and causes delay. The adjournment would have to be too long and in effect provide for the Applicant to start again. Despite the guidance given by the Tribunal the lack of sufficient focus and evidence in relation to the current fault-based grounds alleged by the Applicant (with long and repetitive general argument about an excessive number of allegations but limited specific written evidence) and in particular the inadequate management proposals (please see below) mean that the Applicant would need to be directed to first prepare adequate case documents for the Respondent to answer.

44. We do not accept that Mr McKenzie withdrew on account of the Respondent's conduct. It is quite clear from his resignation email, which did not mention the Respondent, that he was prepared to entertain a future instruction (notwithstanding, we note, the parties' acrimonious relations, of which he must have been aware). Whilst the Respondent's correspondence was robust, we do not consider it to have been unreasonable or vexatious.

45. Secondly, we do not consider there are reasonable prospects of the Applicant's application succeeding: rule 9(3)(e). For a start, Mr McKenzie

has withdrawn and his Management Plan appears to have been inadequate for the reasons noted below. Moreover, his proposed replacement is someone who has put forward a Management Plan (or in whose name a Management Plan has been put forward; the Applicant said that she and Mr Leslie had worked on it together, adapting it slightly from the plan prepared by Mr McKenzie) but never been to the Property. The Plan is short-term (1 year) and short-visioned; there is no real plan beyond engaging a surveyor, and the Tribunal notes that the plan envisages the setting of a service charge budget before the surveyor has even inspected.

46. The Respondent had raised the need for works to the roof/upper levels to stop damp, but the Plan says nothing about this. The Plan focusses on the matters which the Applicant had been most concerned about (forcing the leaseholders of flats 2 and 3 to repair their separate garages, which appear to be in poor condition, and the leaseholder of flat 2 to install a stopcock for an external water pipe, remove a "suspected unlawful building" in the garden (a wooden outbuilding said by the Respondent to have replaced an earlier such outbuilding) and disclose details of a builder said to have "raised party wall issues with Flat 1"). This does not demonstrate the independence needed from a tribunal-appointed manager and does not appear natural territory for a manager. Nor does it explain how the manager proposes to achieve any of this (they had not contacted the other leaseholders) or who, at least in the first instance, will provide funds needed for any appropriate enforcement action.

47. Nor does the Plan say anything about how the building would be insured. As noted above, it appears the Applicant prevented an earlier insurance renewal because, while she had mentioned to the brokers her allegations about the garages, the "unlawful building" and the external pipe, she was concerned that this had not been fairly presented to insurers and the brokers ultimately withdrew. The Respondent then instructed their solicitors to liaise with brokers to arrange insurance and handle company law administration to take out a fresh policy. It appears the Applicant again argued that the new cover may be based on inadequate information and insisted that the new brokers remove her flat from cover under the new policy, so she could take out her own insurance policy.

48. We cannot advise, but this situation seems troubling. It is unclear, for example, whether the Applicant has grounds for her concerns or whether the two policies might result in insurers denying cover by reference to each other, or how they would work in the event of a claim. We would have expected a proposed manager to investigate the situation and explain how they proposed to insure the building in the short term (if it is said that further disclosure/an additional premium is needed, for example) and longer term.

49. It seems that the Plan is to simply manage the Property organically over an unrealistic time period, for a basic fee of only £1800 including VAT. It

could not be just and convenient to appoint a manager in these circumstances with such a plan.

50. The new draft management order from the Applicant does not add anything useful to the plan. The professional indemnity insurance policy summary provided is only for LMS Sheridans Ltd, with no reference to cover for the personal liability of a tribunal-appointed manager, and is limited to half the cover expected under the draft management order.

51. Finally, whilst we are mindful that the Applicant could issue a fresh application for appointment of a manger (as long as it is not an abuse of process of the Tribunal), we consider the time for finality on the instant Application has come.

The Applicant's application

52. Having determined to strike out the Application for appointment of a manager, it is not strictly necessary for us to consider whether or not to debar the Respondent.

53. In any event, we refuse the Applicant's application to debar pursuant to rules 9(3)(b)(d) and/or (e). We do not consider that the Respondent has failed to co-operate, such that its conduct prevents the Tribunal dealing with the proceedings fairly and justly. Nor has its conduct been vexatious, we determine. The correspondence to McKenzie was not aggressive or unreasonable. It was robust, but as made clear in his resignation email, he was prepared to consider management in the future, so it did not dissuade him. The correspondence from the Respondent with the Tribunal was indeed prolix, as the directions of 31 May 2023 made clear, but both parties were equally responsible, we find.

54. As for the Respondent's failure to mediate, it did not initially refuse, but did so later. Having case managed this application, and having seen the parties today, we do not consider that mediation would have resolved all the issues between them, given their animosity towards each other.

55. We do not consider that a strike out under rule 9(3)(e) is appropriate or just. The case documents from the Applicant are inadequate, as noted above. The Respondent clearly disputes the fault-based grounds, as the multiple witness statements evidence; and the Tribunal does not get to the point of considering the suitability of any manager until the Applicant proves her grounds, at a final hearing. We cannot determine the merits of any fault based grounds today.

The section 20C application

56. It follows that the Applicant's section 20C application must also fail. It cannot be just and equitable to prevent the Respondent's costs incurred in these proceedings from being claimed within future service charges from

the Applicant (if the Respondent is contractually entitled under the terms of the lease to do so), in circumstances where her application for the appointment of a manager has been struck out as having no reasonable prospect of success, and because she has failed to co-operate with the Respondent and the Tribunal, such that the proceedings cannot be determined fairly and justly.

57. Finally, we express a hope that the parties can somehow strive to find an independent manager for the Property upon whom they can both agree. It appears there is nothing to prevent the Respondent from engaging a suitable professional manager. If the leaseholders can step back and allow them to make their own independent management plans and decisions they may save unnecessary costs, but should be realistic about the fees which might be expected by a suitable manager. However, again, the tribunal cannot advise.

Judge:

S J Evans

Date:
22/11/23

**ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.
4. 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.