



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

Case Reference : LON/00AE/LVM/2021/0008

**HMCTS code
(paper, video,
audio)** : V: CVP REMOTE

Property : Kings Court and Carmel Court Kings
Drive Wembley Middlesex HA9 9JQ

Applicant : Mr Robert Robertson

Representative : Mr John Beresford of Counsel,
instructed by Sampson Coward LLP

Respondent : Wisestates Limited

Interested Parties : The lessees of Kings and Carmel Court,
Kings Drive Wembley Middlesex HA9
9JQ

The Manager : Mr Christopher March

Tribunal members : Judge N Hawkes
Mrs S Redmond BSc (Econ) MRICS

**Date of Decision
and Order** : 23 March 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable. The documents that the Tribunal was referred to are in a digital bundle provided by the Applicant, the contents of which we have noted. The orders made are described below.

1. The Applicant, Mr Robert Robertson, has been the Tribunal appointed Manager of Kings Court and Carmel Court, Kings Drive Wembley, Middlesex HA9 9JQ (“the Property”) since 2009.
2. In a decision dated 21 December 2017, a differently constituted Tribunal confirmed that Mr Robertson's appointment as Manager of the Property was for an unlimited duration.
3. The Tribunal has been informed that the Property comprises 151 flats. At Kings Court, there are 72 flats spread over 8 blocks and, at Carmel Court, there are 80 flats spread over 6 blocks.
4. Mr Robertson was previously the managing director of Crabtree Property Management Limited (“Crabtree”) but he has now stepped down from that role and he also wishes to retire as the Manager of the Property.
5. Accordingly, on 25 March 2021, Mr Robertson made this application under section 24(9) of the Landlord and Tenant Act 1987 (“the 1987 Act”) seeking an order varying the existing Management Order so as to provide that he be replaced by Mr Christopher March as Manager of the Property.
6. The Tribunal issued Directions on 11 June 2021 and subsequently gave further directions in August 2021, which included provision for the Management Order to be potentially be updated.
7. The Respondent has been notified of this application and a link to join the final hearing was provided to the Respondent. The application and other relevant documents have been served on the Interested Parties (all the leaseholders at the Property).
8. The Respondent has not sought to oppose the application or to participate in these proceedings. As regards the Interested Parties, the Tribunal has been informed that the Applicant has received email correspondence from two of the lessees at the Property concerning this application.
9. By email dated 24 December 2001, Mr Mohamed requested sight of various documents in order to enable him to consider his position. On 26 January 2022, the Applicant's solicitor provided Mr Mohamed with a link to the bundles relied upon by the Applicant at this hearing. The Applicant has not received any further communication from Mr Mohamed concerning this application.
10. By email dated 10 January 2022, Mr Adapa opposed “Crabtree” being appointed Manager and expressed dissatisfaction with the manner in which the Property has been managed since he became a leaseholder in 2014. On 31 January 2022, the Applicant's solicitor provided Mr

Adapa with a link to the bundles relied upon by the Applicant at this hearing.

11. The Tribunal has received email correspondence from Mr Frimpong dated 17 November 2021. Mr Frimpong is of the view that the Applicant's tenure as Manager ended in 2014. However, as stated above, a differently constituted Tribunal has determined that his appointment was for unlimited duration. Mr Frimpong makes no criticism of Mr March.
12. The final hearing took place by video conferencing on 10 February 2022. The Applicant did not attend the hearing but he was represented by Mr John Beresford of Counsel, instructed by Sampson Coward LLP. Neither the Respondent nor any of the Interested Parties attended or was represented at the hearing. The proposed Manager, Mr Christopher March, attended and gave oral evidence.
13. At paragraph 13 of his skeleton argument, Mr Beresford states:

“In Orchard Court Residents Association v St Anthony's Homes Ltd [2003] EWCA Civ 1049 the Court of Appeal confirmed that in determining an application made under s.24(9) of the LTA 1987 the FTT did not need to satisfy itself that one of the thresholds set out in s.24(2) had been met as there was a clear distinction between s.24(2) and s.24(9). S.24(2) was concerned with creating new management orders where none existed before and had quite explicit criteria that had to be met before an order could be made. S.24(9), on the other hand, was concerned with management orders which already existed and had thus already satisfied the requirements of s.24(2). Therefore, the only criteria which the Tribunal has to consider is whether it is just and convenient to allow Mr March to replace Mr Robertson as manager of the Property. The Tribunal will also have to consider the terms of the proposed management order against the “just and convenient” criteria.”
14. The Tribunal accepts that these are the relevant considerations.
15. The Tribunal closely questioned Mr March with reference to the matters set out in the December 2021 “Practice Statement on the Tribunal's Consideration of who to appoint as a Manager” (“the Practice Statement”), and we are satisfied that he is a suitable appointee. We note that neither the Respondent or any of the Interested Parties has made any criticism of Mr March. Whilst criticism has been made of Crabtree, it is not proposed that Crabtree be appointed Manager of the Property.
16. Having considered all of the circumstances of this case, we are satisfied on the balance of probabilities that it is just and convenient to make an order in the terms below appointing Mr March as Manager of the Property in place of Mr Robertson and updating the terms of the Management Order.

17. Paragraph 5 of the Practice Statement provides (emphasis supplied):

*“The Tribunal will usually appoint a named person as a Manager rather than a company or a firm. The Tribunal expects the named person to take responsibility for the appointed Manager’s duties. The named person may use the resources of their company/firm and receive support from others **but the Manager will have ultimate responsibility.**”*

18. The Tribunal is appointing Mr March and not Crabtree as Manager of the Property. Accordingly, whilst Mr March may use the recourses of Crabtree and may receive support from others, it is Mr March alone who will have ultimate responsibility for managing the Property.

19. It should also be noted that the terms of the Management Order, as varied, has been updated significantly and that the order will now be of fixed rather than unlimited duration.

20. The Manager’s duties are owed to the Tribunal as a whole, rather than to this particular Tribunal. Accordingly, any application for further Directions or concerning any other matter in connection with this Management Order should be made to the Tribunal rather than to any named Tribunal members.

Name: Judge N Hawkes

Date: 23 March 2022

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).

MANAGEMENT ORDER

**(as varied in accordance with the Decision of the Tribunal dated
23 March 2022)**

Interpretation

1. In this Order:

“The Property” means the flats and other premises known as known as Kings Court and Carmel Court, Kings Drive, Wembley Middlesex HA9 9JQ and registered at HM Land Registry under title number **NGL268131** and shall include the building, outhouses, gardens, amenity land, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts, storage rooms basements, garages; other appurtenant property; and all other parts of the property.

“The Landlord” shall mean the Respondent, Wisestates Limited, 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 and garages in the Property.

“The Old Manager” means Robert Robertson of 15 Galena Road London W6 oLT.

“The Manager” means Christopher March c/o Crabtree PM Limited 15 Galena Road London W6 oLT.

ORDER

2. In accordance with section 24(9) of the Landlord and Tenant Act 1987 (“the Act”) **Christopher March** is appointed as Manager of the Property in place of the Old Manager who has managed the Property pursuant to an order of the Leasehold Valuation Tribunal in proceedings under case reference LON/00AE/LSC/2008/0101 & 2009 dated on or around 7 May 2009 (“the 2009 order”).
3. The Landlord shall retain its rights and responsibilities in relation to flats 45 and 51 Kings Court, being flats not let on long leases.
4. The Manager’s appointment shall start on **7 April 2022** (“the start date”) and shall end on **31 December 2026** (“the end date”).

5. For the avoidance of doubt this Order does not displace covenants under the Leases and the Tenants remain bound by them.
6. The purpose of this Management Order is to provide for adequate management of the Property including in relation to the garages at the Property.
7. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out in below;
 - (b) the respective obligations of the Landlord and the Tenants 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 and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993; 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 Manager must act fairly and impartially in the performance of his 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. The Manager’s overriding duty is to this Tribunal.
10. Where there is a conflict between the provisions of the Management Order and the Leases, the provisions of the Management Order take precedence.
11. 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.
12. 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.

13. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of the Order. If the Manager is unable to decide what course to take, the Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
 - (a) any failure by any party to comply with an obligation imposed by this Order; and
 - (b) circumstances where there are insufficient sums held by him/her to discharge the Manager's obligations under this Order and/or to pay the Manager's remuneration.
 - (c) Where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

14. 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 the 2009 order;
 - (b) subject to the Old Manager's rights to payment from the service charge fund pursuant the 2009 order, the Old Manager shall indemnify the Manager for any liabilities arising from the commencement of the original management order in 2009 and the start date; and
 - (c) the Manager has the right to decide in his absolute discretion the contracts in respect of which he 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.
15. 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.

Licences to assign, approvals and pre-contract enquiries

16. The Manager shall be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including

those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord.

17. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

18. 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 commenced during the appointment, after the end of his appointment.
19. Such entitlement includes bringing proceedings in respect of arrears of service charge and rent attributable to any of the Flats in the Property, including, where appropriate, proceedings before this Tribunal or the Courts under section 27A of the Landlord and Tenant Act 1985 or section 168(4) of the Commonhold and Leasehold Reform Act 2002 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.
20. 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

21. Apart from the sums payable by the Landlord under paragraphs 23 and 28 of this order, the Tenants are responsible for payment of all of the Managers' fees, which are payable under the provisions of this order but which may be collected under the service charge mechanisms of their Leases.
22. The sums payable are:
 - (a) an annual fee of £362.00 per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable) to be increased annually in line with changes to the Retail Price Index;
 - (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code or such

- other duties detailed in the schedule (so far as applicable);
- and
- (c) VAT on the above fees.

23. The Landlord is responsible for payment of the Managers' fees for the collection of ground rent at the rate of 10% of the rents demanded. Such fee to be deducted by the Manger from the rents collected.

Ground Rent and Service charge

24. The Manager shall collect the ground rents payable under the residential Leases. The Manager shall account on a quarterly basis to the Landlord for the ground rent he receives.

25. 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.

26. 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 his appointment.

27. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a Tenant), in respect of any unused premises in the Property retained by the Landlord, or premises let on terms which do not require the payment of a service charge.

28. The Landlord must pay (as if he were a Tenant) a reasonable service charge to the Manager at a rate of 1.4217% of the Aggregate Maintenance Provision (as defined in the long leases of Kings Court) for both flats 45 and 51 Kings Court, such figure to include a contribution to the Manager's costs under paragraph 22 of this order at the same rate.

29. The Manager is entitled to recover through the service charge the reasonable costs and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by him whilst carrying out his functions under the Order.

Administration Charges

30. The Manager may recover administration charges from individual Tenants for his 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.

Disputes

31. In the event of a dispute regarding the payability of any sum payable under this Order, rather than under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, or the Landlord 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.
32. 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.
33. 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

34. The Landlord must comply with the terms of the Order above.
35. On any disposition other than a charge 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.
36. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his 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.
37. The Landlord is to allow the Manager and his 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 his functions and duties and exercise his powers under this Order.

38. Within 14 days from a request from the Manager, the Landlord must provide all necessary information to the Manager to allow for an orderly transfer of responsibilities.

DIRECTIONS TO OLD MANAGER

39. Within 14 days from the date of this Order the Old Manager 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.

40. The Old Manager must within two months of the start date:

- (a) prepare final closing accounts and send copies of the accounts and a final report to the Manager, Landlord, and Tenants, who may raise queries on them within 14 days; and
- (b) answer any such queries within a further 14 days.

41. The Old Manager must reimburse any unexpended monies to the Manager within three months of the start date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

DIRECTION TO CHIEF LAND REGISTRAR

42. To protect the direction in paragraph 35 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 NGL268131. 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 15 December 2020:

"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 35 of an Order of the Tribunal dated 23 March 2022 have been complied with”

DIRECTIONS TO MANAGER

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

Notification

44. The Manager must serve a copy of this Order on Tenants, the Old Manager and the Landlord, within 14 days of the date of this Order.

Registration

45. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 42, within 14 days of the date of this Order.

Complaints

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

Insurance

47. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager’s interest is noted on the insurance policy.

48. From the date of appointment, and throughout the appointment, the Manager must ensure that he has appropriate professional indemnity insurance cover in the sum of at least £2 million and shall provide copies of the certificate of liability insurance or alternatively a letter from the insurer confirming the level of cover to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate or letter should specifically state that the cover applies to the duties of a Tribunal appointed Manager.

Conflicts of Interest

49. 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.

Accounts

50. 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

51. The Manager must:

- (a) send to the Tenants and the Landlord a copy of: (i) the management plan dated 29 September 2020; (ii) the addendum to the management plan dated 10 February 2022; and (iii) the capital expenditure plan.
- (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 his/her 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.

52. 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

53. 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 Tribunal on the progress of the management of the Property up to that date, providing a copy to the Tenants and the Landlord at the same time.

End of Appointment

54. 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).

55. Unless the Tribunal directs otherwise the Manager must within two months of the end date:

- (c) 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
- (d) answer any such queries within a further 14 days.

56. 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.

Schedule of Additional Fees

[See annexed document]