



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

Case reference : **LON/00AM/LVM/2023/0014**

Property : **11 King Edward's Road, Hackney,
London E9 7SF**

Applicant : **Pauline Mason with
Olivia Joseph**

Respondent : **King Edward's Road Freeholders
Limited with Mr Philip Adams and Mr
Nicholas Brett**

Type of application : **Variation of Appointment of Manager
Judge Dutton**

**Tribunal
member(s)** : **Mr R Waterhouse BSc (Hons) LLM
Property Law MA**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **7 February 2024**

Date of Decision : **13 February 2024**

DECISION

DECISION

The tribunal determines that it will extend the period of the management order dated 1 November 2019 in claim number LON/00AM/LAM/2019/0007 as varied and extended on 12 September 2022 in claim number LON/00AM/LVM/2022/0007 until 31 December 2025 for the reasons set out below.

Background

1. By an application dated 20 October 2023 Ms Pauline Mason sought to extend the existing management order by a year.
2. Prior to the hearing of the matter on 7 February 2024 we were provided with statements as requested in directions dated 11 January 2024. These were from Ms Mason, Ms Joseph the existing manager, Mr Adams and Mr Brett who both attended the hearing, as well as Dr Charles Witzel.
3. Ms Mason, Ms Joseph and Dr Witzel supported the continuance of the involvement of Ms Joseph of Mainland, although Dr Witzel was somewhat ambivalent as to whether this was under the existing Management Order.
4. Mr Adams had provided a lengthy statement which dealt in some detail with the state of repair of the property at 11 King Edward's Road, London E9 (the Property). His concern was that Ms Joseph had not fulfilled the role of a tribunal appointed manager as he would wish. He refers to the majority of the lessees as being disillusioned and that there was a lack of trust.
5. In contrast Mr Breet said in his statement that everyone was in agreement that the Property was now better managed and that he did not want to return to self-management. His statement referred to water ingress issues and faulty down pipes. He ends his statement saying "*I can continue working with Mainland to get all my issues sorted fixed, I would simply prefer it to be our choice rather than court mandated, wasting courts time.*"
6. Ms Mason's statement ran to some 51 pages, including attachments. She set out the history of the Property. It was the shortcomings of the self-management which in 2019 led to the appointment of a manager (Mr Davidoff) who was replaced by Ms Joseph in 2022, with whom she was very happy and wished to continue for a further two years to December 2025.

7. Ms Joseph's statement set out the history of the property and in particular the problems she has had recovering service charge arrears from four of the leaseholders. We were provided with a list of tenant's balances showing that £36,939.03 was owed. This money she said needed to be recovered to enable works to progress for which quotes had been obtained. The main issues centred around the entrance steps and the mansard roof.

Hearing

8. We are grateful to Ms Mason, Ms Joseph, Mr Adams and Mr Brett for giving up their time to attend the hearing. We asked Mr Adams whether he had any real objection to Ms Joseph continuing. He did not. Asked about the arrears of service charges he accepted that a sum was due and owing from him and that he would make arrangements to discharge same.
9. Mr Brett said he had become in arrears as the details of the service charges were sent to an old email address, which he accepted was his fault. He wanted to set up a repayment plan. He, as with Mr Adams, had no real objection to Ms Joseph continuing but did not know whether a two-year extension was appropriate.
10. Ms Mason said she would have no objection to any order ending earlier than allowed for if all the works required had been completed and all outstanding monies recovered. She found Ms Joseph very reactive and that in the absence of a Management Order the leaseholders would be back where they started.
11. Ms Joseph told us that the arrears stemmed from the management by ABC (Mr Davidoff's company). She hoped that up-to-date estimates would be available in the next couple of weeks and that, subject to clearance of the arrears, works would be capable of being started. When it was put to her that an extension of the order for two years would seem to be preferred, she did not demur.

Findings

12. We must say that we were heartened by the apparent concordat between the parties before us. The executors of the late Ms G Depaoli (flat B) did not lodge any submissions and nor did Mr Foleros (flat E), who we were told lives abroad. It seems clear to us that there is some goodwill to achieve the reinstatement of the Property to a good standard. Indeed Ms Mason, Mr Adams and Mr Brett are owner occupiers. It also is clear to us that not extending the Management Order could result in the historic issues resurfacing, although Mr Adams and Mr Brett stated that they would wish Ms Joseph to remain, although not necessarily as a tribunal appointee. Our

concern in following this route is that this could be open to problems of changes of managing agents potentially on a whim, which could see a return to the earlier problems that resulted in the appointment of a manager in 2019.

13. We find that it is right to continue the appointment of Ms Joseph (Mainland) as the tribunal appointed manager. The question is for how long? We are unconvinced that a period expiring on 31 December 2024 would, give her sufficient time to resolve the service charge nonpayment issues and deal with the repair issues, which, by common agreement, exist.
14. In those circumstances we are satisfied that it is just and equitable to order an extension of the Management order made on 1 November 2019 to 31 December 2025, on those same terms, no party indicating that they wished for any amendment to be made. Notice of such extension shall be given to the HM Land Registry by Ms Joseph.
15. By 31 December 2024 Ms Joseph is to provide a short report to the tribunal and the leaseholders confirming the progress made both on collecting the outstanding service charge monies and the plans for the repairs to the Property to ensure that it is watertight.
16. Both Ms Mason and Mr Adams sought orders under the provisions of s20C of the Landlord and Tenant Act 1985. There has been no legal representation, and the tribunal has ordered an extension, as requested by Ms Mason. In the circumstances the tribunal considers it just and equitable to make an order under s20C to prevent the landlord from recovering the costs of these proceedings as being relevant costs to be taken into account when determining the amount of any service charge payable.

Judge Dutton

13 February 2024

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).

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) 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) The appropriate 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 or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (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) where the tribunal is satisfied–
 - (i) that unreasonable variable administration 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;
 - (abb) where the tribunal is satisfied–
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied–
 - (i) that 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;
- or
- (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (2ZA) In this section "relevant person" means a person–
- (a) on whom a notice has been served under section 22, or
 - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable–

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to—
 - (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
 - (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
 - (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.