



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

Case Reference : **LON/00AW/LVM/2023/0013**

Property : **21 Cheniston Gardens, London W8
6TG**

Applicants : **Miriam Mendez Lovelace, Yannis
Mendez, Sean Mendez and Daniel
Mendez (Ground/First Floor Flat),
Lapo Niccolini (Basement Flat),
Ben and Ria Holt (Second Floor
Flat) and Paul Sandor (Studio Flat)**

Representative : **In person**

Respondents : **Phil Bird (Tribunal Appointed
Manager) and Anita Chotai (Top
Floor Flat)**

Representative : **In person**

Type of Application : **Variation of Appointment of
Manager under Section 24(9)
Landlord and Tenant Act 1987**

Tribunal Members : **Judge P Korn
Mr O Dowty MRICS
Mr J Francis**

Date of hearing : **13 May 2024**

Date of Decision : **30 May 2024**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decision of the tribunal

(A) The application to vary the order for the appointment of a manager is refused, and consequently the existing management order continues in full force and effect.

(B) The Applicants' cost application is refused.

Introduction

1. The Property is a Victorian building divided into five flats, and the Applicants are the leaseholders of four of the flats. Miriam Mendez Lovelace, Yannis Mendez, Sean Mendez and Daniel Mendez are leaseholders of the ground/first floor flat, Lapo Niccolini is the leaseholder of the basement flat, Ben and Ria Holt are the leaseholders of the second floor flat, and Paul Sandor is the leaseholder of the studio flat.
2. In addition to being leaseholders Miriam Mendez Lovelace, Ria Holt and Lapo Niccolini are three of the four joint freeholders of the Property.
3. Pursuant to section 24(9) of the Landlord and Tenant Act 1987 (the "Act"), the Applicants seek the variation of an existing tribunal order appointing a manager over the Property. Mr Phil Bird, Director of Colmore Gaskell Property Management Limited, is the present tribunal-appointed manager and is named as Respondent to the application together with Anita Chotai. Ms Chotai is the other joint freeholder and is the leaseholder of the top floor flat. She opposes the application.
4. The existing order was made on 22 October 2021 and runs for five years from 5 November 2021, expiring on 4 November 2026. The Applicants seek to vary the terms of the order by replacing Mr Bird as manager with Mr Paul Cleaver of Urang Property Management Limited.

Summary of Applicants' written case

5. In written submissions, the Applicants state that even though some of them were originally reluctant to have a manager they respected the tribunal's decision of 22 October 2021 and looked forward to handing over the management responsibility to Mr Bird. They assumed that his involvement would help to resolve in-house disagreements and that

they would no longer have to deal with accounts, cleaning, insurance, and other management decisions. They gave Mr Bird all the relevant information and documents and initially he showed interest and they believed that having a manager would turn out to be a positive solution.

6. However, Mr Bird did not explain to them how the system would work, for example how long it would take for them to receive accounts. Such an explanation would have saved considerable confusion, frustration and endless emails. As the months went by, the Applicants also noticed several errors and unexplained delays. For example, there was an insurance claim for a leak that had never happened (as far as they knew), the accounts were very unclear, and Mr Bird consistently acted reactively rather than proactively.
7. The Applicants tried to communicate their concerns by telephone and by email. Mr Bird replied initially, but then he seemed to lose interest quite quickly. The Applicants understand that only 2 visits were made by Mr Bird to the Property since his appointment, and after a while they started to lose confidence in the way that he was managing the Property. After a year they asked for a face-to-face meeting to help rebuild trust, and Mr Bird was reluctant to meet but eventually he agreed to a Zoom meeting a month and a half after their request. After that meeting (on 17 January 2023) they believed that a new, more positive phase would begin and they completed their part of the actions discussed at the Zoom meeting, but Mr Bird only acted on a very small number of his own action points.
8. The Applicants state that it continues to be extremely challenging to communicate with Mr Bird, as often he is unavailable and ignores emails. Having not heard from him in the past 6 months, they emailed to find out whether he was still managing the Property but did not receive a reply. Since in their view Mr Bird did not keep his side of the Zoom meeting agreement they have lost trust in him. He has had many opportunities to resolve issues but has not taken them. They have had to get involved in almost every step themselves, and very little has happened since his appointment. As set out in their more detailed comments in the Scott Schedule, they have had to spend an enormous amount of time chasing up issues. They have also had no reply from him to any currently outstanding questions, except for a partial response in relation to water ingress.

Summary of Respondents' written case in brief

9. Mr Bird notes that a significant majority of the leaseholders originally expressed no desire for either the appointment of a manager or a managing agent. He also feels that since his appointment efforts have been made to disrupt his management. In an attempt to create unity and to address the leaseholders' concerns, he initiated a series of Zoom meetings and a site meeting aimed at fostering communication and co-

operation among all parties. He also facilitated numerous meetings to help leaseholders to reach agreement regarding lease extensions, which demonstrates a proactive approach to resolving internal conflicts and misunderstandings. However, one leaseholder has consistently been in arrears and has only paid when threatened with legal action. Furthermore, on being pursued for service charges that individual subjected Mr Bird to multiple abusive emails, undermining his attempts at constructive dialogue. In addition, Mr. Holt's incessant emails and telephone calls to Mr Bird (in Mr Bird's view) crossed the boundaries of professional communication.

10. Since Mr Bird's appointment significant strides have been made towards the Property's upkeep and safety. A planned preventative maintenance survey was executed, along with a comprehensive fire risk assessment and an asbestos survey, ensuring the building's compliance with safety regulations.
11. Mr. Bird has also developed a 5-year service charge forecast, detailing necessary works derived from the preventative maintenance survey. This forecast was presented in a meeting with leaseholders, who expressed their agreement and satisfaction with the proposed works. In the first year following this plan, the installation of a new fire alarm system, as recommended by the fire risk assessment, was successfully completed. However, the commencement of Year 2 works, which include the decoration of communal areas and carpet replacement, has been hindered due to service charge arrears, impacting the overall progression of the works and enhancement of the Property.
12. While he acknowledges that not every aspect of the management has been flawless, Mr Bird states that he and his firm have consistently conducted themselves with professionalism and have prioritised the building's best interests. He has also responded to many – although not all – of the detailed comments contained in the Applicants' Scott Schedule.

Oral submissions at hearing

Opening comments

13. The Applicants and Mr Bird briefly summarised some of the points made in their respective written submissions.
14. Ms Chotai said that prior to Mr Bird's appointment there were 20 years of terrible property management. At one stage there was a managing agent, but that person was sacked within a year. In an effort to improve the management of the Property Ms Chotai tried to involve the other freeholders/leaseholders in appointing a managing agent but this did not yield a positive result. Now that a manager was in place she did not

want the further upheaval of him being replaced by another manager. In her view there are not currently any big problems and Mr Bird should be given the time to carry out his planned programme.

Building insurance

15. The Applicants said that they had asked Mr Bird why he had added 'contents insurance' to the policy, but no reply was received. Mr Bird said in response that whilst he accepts that did not respond immediately he did in fact reply. Mr Holt disagreed that Mr Bird had replied.

Ms Chotai's alleged arrears of payment for electricity

16. The Applicants said that Mr Bird had failed to chase up payment by Ms Chotai of some electricity bills. Mr Bird said that this was a historic issue although he was unable to explain why he had not replied. Ms Chotai said that there had been no determination that she owed an amount for electricity and no bill was sent to her.

Electricity bills more generally

17. Ms Mendez Lovelace said that the Applicants received red electricity bills on a number of occasions during 2021 and 2022 and passed them over to Mr Bird together with a letter from a bailiff. Mr Bird said that he would look into the matter but – as she understood it – he did nothing until the meeting on 17 January 2013 when he reported that he had established that the energy company (EDF) had been billing the wrong property.
18. In response, Mr Bird agreed that there had been problems with EDF but he said that he had responded on 9 August 2022 to a concern raised by Ms Mendez Lovelace on 7 August 2022 and she had thanked him on 12 August 2022.

Accounts

19. The Applicants said that the accounts were unclear and that a line-by-line statement would have been useful. Mr Bird had promised to provide such a statement but (according to the Applicants) he did not do so. However, Mr Bird said that a statement had in fact been sent out and Ms Chotai agreed that one had been sent out, albeit that she could not be absolutely sure.
20. Regarding the 2021/22 accounts, the accounts produced by Mr Bird were – in the Applicants' view – shockingly inadequate. Mr Bird did then improve them but was late in delivering the improved accounts.

In addition, there were some discrepancies in the accounts which were raised in the January 2023 meeting but not since explained by Mr Bird.

21. In response, Mr Bird said that the first set of accounts were very basic simply because the initial period was very short, although financial information was provided and an explanation of that financial information was given. He did not feel that it was worth spending money on getting a firm of accountants to produce formal accounts for this initial period. However, as the Applicants were not happy with this, he then arranged for formal accounts to be prepared but this took time.
22. As regards the discrepancies to which the Applicants had referred, Mr Holt had merely raised one query about a tiny sum of money which turned out to be an amount of interest. Mr Holt in reply maintained that there was more than one query although he accepted that maybe some issues were more presentational than substantive.
23. Ms Chotai added that at that January 2023 meeting the main issue was meant to be the progressing of the internal works and that the meeting had been hijacked by people talking instead about trivial accounting issues. Mr Holt did not accept this.

Water ingress

24. On 4 November 2022 Ms Mendez Lovelace wrote to Mr Bird about a problem with water ingress, but the response (from Mr Bird's colleague) was not as quick as she hoped it would be. The colleague then said that a contractor would visit the Property, but this did not happen, although Mr Bird himself did attend on 21 November. Various contractors then came and went, and Mr Bird said that the issue related to the gutter. Mr Bird said that scaffolding would be needed, the Applicants suggested an alternative approach, and the problem was eventually resolved. However, the insurers were not informed for 5 weeks and they told Ms Mendez Lovelace that they could not get any information from Mr Bird's firm.
25. There was then a further water ingress issue in November 2023, this being a new leak in Mrs Holt's kitchen. Again, according to Ms Mendez Lovelace, the insurers could not get any information from Mr Bird's firm, and she stated that the problem remained unresolved. Questions were raised with Mr Bird and eventually his colleague sent Ms Mendez Lovelace a report, but the report did not in her view reflect the true position.
26. In response, Mr Bird said that he provided a full response in relation to the first leak on 11 November 2022, 7 days after it was reported. He then engaged in further email correspondence with Ms Mendez

Lovelace regarding the practical issue of gaining access and a contractor (not just Mr Bird himself) attended on 21 November 2022. The issue was noted to the insurers, and he did not accept that the insurers were unable to get hold of him.

Proposed internal decoration works

27. Mr Holt said that he accepted that the internal redecoration works were long overdue. He added that the Applicants had suggested a contractor who had produced a schedule of works, but Mr Bird had not taken this up. In response, Mr Bird said that this was because at that stage no funds were available to carry out the works. Ms Chotai added that, now that funds were finally available, in her view the internal works needed to start as soon as possible but that everyone was getting bogged down in small issues (except for the water ingress issue, which she accepted was not a small issue).

Mr Bird's willingness to continue

28. When asked by the tribunal whether he definitely wished to continue as manager, Mr Bird readily acknowledged that it had not been an easy role to date but said that he did want to see it through and confirmed that there was now finally enough money to carry out the internal redecoration works as all leaseholders were up to date with payment of their service charges.

Mr Cleaver's comments

29. Mr Cleaver had noted from his inspection that the Property was run down. He said that his firm had a big team of internal experts and that his general approach was to be more remote and to let junior colleagues deal with day-to-day issues so that he could come in just to resolve big issues.

Closing submissions

30. The Applicants said that certain issues had been characterised as 'trivial' but that small details can be important. Ultimately, the problem was that they had lost confidence in Mr Bird, in large part because of what was sometimes a delay in responding but sometimes a complete failure to respond to their concerns.
31. Ms Chotai said that any manager would find this Property difficult to manage. It would not help to replace Mr Bird with Mr Cleaver as in her view Mr Bird was doing a good job in the circumstances. In any event, Mr Cleaver did not know the details and so there would be further delay as he learnt about the Property. Also, the fact that Mr Cleaver's firm was bigger did not make it better.

32. There was also some ultimately inconclusive discussion about a fire escape issue.

Relevant statutory provisions

33. *Landlord and Tenant Act 1987*

Section 24

(9) The appropriate tribunal may, on the application of any person interested, vary ... an order made under this section

(9A) The tribunal shall not vary ... an order under subsection (9) on the application of any relevant person unless it is satisfied – (a) that the variation ... 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 ... the order.

Tribunal's analysis

34. Under section 24(9A) of the Act, the tribunal should not vary an existing order for the appointment of a manager unless satisfied (a) that the variation 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 the order.
35. Focusing first on limb (a) of section 24(9A), this limb does not involve an assessment of whether Mr Cleaver would be an improvement on Mr Bird; rather the issue here is whether appointing Mr Cleaver would lead to a recurrence of the original problems which caused the previous tribunal to order the appointment of a manager. As Mr Cleaver has experience of being a tribunal-appointed manager and came across as competent and knowledgeable on property management issues, we are satisfied that appointing him in place of Mr Bird would not lead to a recurrence of the original problems.
36. However, we need to be satisfied in relation to both limbs. Limb (b) of section 24(9A) involves an assessment of whether it would be just and convenient in all the circumstances of the case to replace Mr Bird with Mr Cleaver, and this is a less straightforward question.
37. On the one hand, there have undoubtedly been problems under Mr Bird's tenure as manager. He has not communicated as well as one would have hoped with those of the leaseholders who have applied for him to be substituted. Some of this poor communication seems to have resulted from his frustration with the manner in which some of the

Applicants have engaged with him, some from (in his view) the trivial nature of some of the issues repeatedly raised with him, and some from what he regards as unreasonably high expectations in the context of a manager/leaseholder relationship.

38. However, to some extent he has created his own problems; it is incumbent on him to try to act professionally and it should have come as no surprise to him that as a tribunal-appointed manager he might struggle to be universally popular. In addition, if he had responded more quickly to some of the Applicants' concerns that might have generated some goodwill and made it less likely that they would follow-up with frequent (and sometimes rude) reminders that he had not addressed their questions or not done so to their satisfaction. Furthermore, some issues – notably the EDF issue – should have been dealt with more quickly by him and the result communicated more effectively to leaseholders.
39. On the other hand, having been given the opportunity at the hearing to present their best examples of failings on the part of Mr Bird, in relation to many of those examples the Applicants have not in our view demonstrated that the issue was either major or clear-cut. The point regarding contents insurance was not a particularly compelling one, and in relation to their concerns about the initial accounts we found Mr Bird's position to be reasonable. In addition, the complaints about accounting irregularities as raised at the January 2023 meeting do not seem to have been significant enough to have warranted the level of annoyance expressed by the Applicants. Furthermore, whilst we accept that this may have been borne out of genuine frustration, the nature and length of some of their complaints were disproportionate and counter-productive at times. Mr Bird will have been managing various other blocks at the relevant times, and it was simply not realistic to expect him to provide full and prompt answers at all times to complaints made in this manner, even though we accept in principle that he could and should have communicated better.
40. The Applicants' point regarding Ms Chotai's electricity bills seems misplaced, albeit that this is an instant in which we accept that Mr Bird should have communicated better. The points made by the Applicants regarding Mr Bird's need to engage with their suggested contractor indicate a slight misunderstanding of the section 20 consultation process given that there were insufficient funds to carry out the works at the relevant time. In relation to the water ingress issue, whilst it is common ground that water ingress can be a serious and urgent issue the basic facts as to how quickly and effectively Mr Bird's team responded are disputed, and in our view the competing analyses of Ms Mendez Lovelace and Mr Bird on this issue are both plausible.
41. In addition, and as commented on by the tribunal at the hearing, none of the Applicants gave a witness statement and therefore their evidence

could not be properly tested by cross-examination. Accordingly, significantly less weight can be attached to their factual evidence than would otherwise have been the case.

42. As regards Mr Cleaver himself, whilst in principle he seems experienced and competent, we do not have any sufficiently persuasive reason to believe that he would do a better job. First of all, it is likely that there would be a delay whilst he became familiar with the Property, the problems and the personalities. Secondly, his arrival would not necessarily stop there being two factions at loggerheads with one another. Thirdly, no manager is perfect, and Mr Cleaver might just make different mistakes, or he might be popular during an initial honeymoon period and then become less popular as soon as he told leaseholders things that they did not want to hear.
43. It should also be noted that Ms Chotai has full confidence in Mr Bird. That does not make her right in any objective sense, but there was no evidence before us of any favouritism on Mr Bird's part and Ms Chotai's good opinion does at least mean that someone with a stake in the good management of the Property believes that Mr Bird is doing a good job.
44. We acknowledge that there have been problems under the current manager, but one thing on which all parties seem to agree is that the internal redecoration works should not be delayed any longer than necessary. Now that Mr Bird finally has the funds to proceed, everyone has an incentive to act reasonably in order to reduce friction and to allow him to get on with his job, and there is therefore a logic in sticking with the same manager at this stage.
45. We would, though, stress that it is now incumbent on everyone to act reasonably, and all parties (including Mr Bird) should have learnt some lessons through having gone through this somewhat bruising process. Mr Bird needs to acknowledge that he has communicated poorly at times, and he needs to find a way to keep leaseholders better informed. The leaseholders for their part need to avoid raising trivial issues and they need to have some trust in Mr Bird's capabilities. Leaseholders also need to communicate as succinctly and as politely as reasonably possible with Mr Bird and with each other, and they need to pay their service charges promptly in the absence of any fundamental reason to justify not doing so. It may well be appropriate for an early meeting to be arranged and for all parties to offer confidence-building steps or concessions at that meeting so as to generate a more constructive approach to the management of the Property.
46. In conclusion, therefore, we do not consider that it would be just and convenient in all the circumstances of the case to replace Mr Bird with Mr Cleaver. Consequently, the application is refused.

Cost applications

47. The Applicants have applied for an order that the existing manager reimburse to them the cost of their application fee (£100) and hearing fee (£200).
48. Under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 *“The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party ...”*. In the present case the Applicants’ main application has failed and we do not consider that it would be appropriate to require the existing manager to reimburse these fees in such circumstances in the absence of any compelling other reason to do so. Consequently, this application is also refused.

Name: Judge P Korn

Date: 30 May 2024

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.