



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

Tribunal case reference : **CAM/00ME/LAM/2023/0004**

Property : **Convent Court, Hatch Lane,
Windsor, Berks, SL4 3QR**

Applicant : **Dr Violet Leavers and others**

Respondents : **1.Salters Investments Ltd
2.Freehold Prime Investments Ltd**

Type of application : **Application for the appointment of
a Manager pursuant to s.24
Landlord and Tenant Act 1987**

Tribunal : **Tribunal Judge S Evans
Mrs M Hardman FRICS IRRV
(Hons)**

Date of decision : **28 May 2024**

DECISION

The Tribunal determines that:

1. The Application for an appointment of a manager is granted.
2. Ms Sarah Cleaver is appointed manager of the Property for an initial period of 2 years from 28 May 2024 on the terms of the Management Order attached to this decision.
3. There shall be a s.20C order in favour of the Applicants, to the extent that 50% only of the Respondents' costs incurred in these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

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. As the parties have now effectively agreed all issues save for the Applicants' application for an order under s.20C of the Landlord and Tenant Act 1985, the facts can be briefly stated.
3. The Property, Convent Court, as its name suggests, is a former Grade II religious institution which was converted in about 2005 into about 78 luxury flats.
4. On 27 March 2023 the lead Applicant, Dr Leavers of flats 24 and 78, applied for a fault-based management order, on the grounds that the landlord (in her application the First Respondent) had not insured the building until 26 January 2023, had not issued correct service charge demands, had proposed an unreasonable service charge increase, and left insufficient funds in the service charge accounts for daily expenses. Last but not least, she alleged that there was no suitably qualified managing agent for the Property, in breach of lease terms.
5. At this time, the Management Company under the Lease was CM 2005 Ltd, formerly known as Convent Management Ltd. However, it seems that Cleaver Property Management Ltd (CPML) had taken over management informally at one stage.
6. Hence the Applicants sought to have Miss Cleaver of CPML appointed as the Manager on this Application.

7. The Applicants relied in support of their Application on a s.22 notice under the 1987 Act, served on the First Respondent on 20 February 2023, citing many of the above breaches.
8. On 21 June 2023 CPML's services were terminated by the landlord, and a body called Olanberg took over, it seems.
9. On 18 September 2023 the Management Company under the Lease, CM 2005 Ltd, entered into an agreement with a managing agent called HLM Property Management for the latter to manage the Property.
10. On 3 October 2023 the Tribunal gave directions. The issues identified by the Tribunal for determination were:
 - (1) Is the preliminary notice compliant with section 22 of the 1987 Act; or if not, should dispensation be given?
 - (2) Have the Applicants satisfied the Tribunal of the grounds for making an order, as specified in section 24(2) of the Act?
 - (3) Is it just and convenient to make a Management Order?
 - (4) Would the proposed Manager be a suitable appointee and, if so, on what terms, and for how long should the appointment be made?
 - (5) Should an application be granted pursuant to s.20C of the Landlord and Tenant Act 1985?
11. On 31 October 2023 the Applicants commenced proceedings in the County Court alleging that they had been denied the right of first refusal to the Property, on the grounds that the First Respondent had conveyed the freehold to the Second Respondent on or about 13 April 2022. It is understood that the Second Respondent's position is that the First Respondent should have always remained the legal and beneficial owner of the Property, and that the Respondents are seeking rectification of the register in that regard.
12. The agreement reached in these Tribunal proceedings is said to be without prejudice to the Applicants' contention that they are entitled to exercise the right of first refusal and the Respondents' counter contention that the applicants are not so entitled.
13. In January 2024 CM 2005 Ltd was dissolved. The Respondents say that they are in the process of restoring it to the register of companies.
14. As to these proceedings, the parties have exchanged cases and evidence, and the matter was listed for hearing on 30 January 2024.
15. On 12 April 2024, HML ceased to act as manager, when it terminated its contract, for alleged lack of service charge funds, the Applicants having

represented that the service charge demands sent were so defective that no payments were due.

The First Hearing

16. The first hearing was held remotely but beset with connection problems. It did not get properly underway until past noon. The Applicants, through counsel, wished to make use of the remaining time and, if necessary, go part heard. The Respondents, by its counsel, preferred an adjournment. The Tribunal, separately, was concerned that the parties were appearing to sidestep the issue of whether a valid s.22 notice had been served on the right party or parties, given the issues over who the freeholder was at the date of service of the notice (and the parties being unable even to agree the date of transfer of the freehold).
17. The Tribunal therefore decided to grant the Respondents' application to adjourn the hearing to another date, and made directions for the parties to file and serve evidence as to who the landlord was for the purposes of s.22, at the time of service, whether there was any other relevant person who should have been served, and whether the Tribunal should dispense with service if need be.

The Second Hearing

18. Following the hearing the parties filed and served the evidence ordered, and the matter was listed for a second hearing on 14 May 2024. On the Friday before the hearing, the Respondents wrote to the Applicants to inform them they did not oppose jurisdiction, nor did they oppose the making of Management Order appointing Miss Cleaver as Manager.
19. On the day before the hearing, the Applicants served on the Respondents a draft Management Order, which was filed with the Tribunal shortly before the hearing commenced at 10am.
20. The Applicants were represented by Mr Bowker of Counsel, and the Respondents by Mr Stimmler of Counsel. We are grateful to them both for their helpful oral submissions and written skeleton arguments.
21. With Counsel's assistance, and after allowing some time for discussions between them, the issues set out in paragraph 10 above could be narrowed. The Respondents did not take issue with service of the s.22 Notice on the First Respondent only. In addition, no argument was advanced by the Respondents as to the appointment of Ms Cleaver as Manager, or her suitability, subject to any questions the Tribunal might have. The draft Management Order was largely agreed. The parties agreed that the Tribunal would be invited to make the order on the grounds contained in s.24(2)(b) of the 1987 Act only.

22. The Tribunal indicated it would have some questions for Ms Cleaver, and would need assistance from Counsel as to why the Tribunal should appoint a Manager, given the parties were already agreed on that course of action.
23. Mr Bowker for the Applicants called Ms Cleaver, and with care (and with the permission of the Tribunal) asked her to confirm her professional qualifications, her willingness to be appointed personally as the Manager, and to confirm she had adequate insurance of at least £2M. She was asked whether she had read the draft order and could operate under its terms. Ms Cleaver answered all these questions positively.
24. Mr Stimmler had no questions for Ms Cleaver.
25. The Tribunal asked Ms Cleaver if she were an appointed manager elsewhere. She confirmed she was not.
26. The Tribunal asked Miss Cleaver to confirm that she was aware that she personally would be the appointed manager, and not CPML. She said she was aware.
27. The Tribunal asked Ms Cleaver what made her think the issues concerning reapportionment of service charges could be resolved with her assistance. There were 3 flats which were not being billed under the current provisions. She made it clear she would work with legal advisors to achieve this.
28. She was asked how confident she was that the leaseholders would now pay their service charges. She answered that she was not sure how to phrase it, but most leaseholders were looking for CPML to return, and they were aware that there cannot be management without funds. The FTT proceedings had also been contributory to the service charges not being paid, and the reapportionment issue.
29. Ms Cleaver considered that a planned maintenance programme was realistic with an additional month being afforded, i.e. by the end of July 2024.
30. In relation to her experience of larger estates, Miss Cleaver informed the Tribunal that this was not the largest development managed by CPML; it was the third largest. She accepted that she had certain concerns, in that 25 of the units were Respondent-owned/controlled, and that they had prepayment meters, which was not the case with the other units. However, those concerns were based on her historical experience, and she needed to further understand the situation.
31. She was asked what she would do if service charges were not paid. She stated that she believed the Management Order would allow her to enforce collection through the Tribunal or elsewhere.

32. She was aware that major works were required to the roof and windows. She was uncertain whether there was a reserve fund. There had been a building survey in 2020 which gave a works estimate in the sum of £660,000, which she considered to be closer to £800,000 to £850,000 in today's money.
33. As to whether it was just and convenient to make an order, Mr Bowker took the Tribunal to various photographs showing the condition of parts of the Property in January 2024. These showed defects such as potholes, slipped tiles, a broken fountain, and damp ingress in some areas. He contended there had been long term lack of maintenance, crossing over the line of what might be expected in terms of routine maintenance. Quite simply, he contended, the Property was an unpleasant place in which to live.
34. Mr Bowker pointed to the Management Agreement between CM 2005 Ltd and HLM Property Management, and in particular its Schedule of Services, the very first paragraph of which set out a duty to collect in the service charges. This had not been done, whatever the reason.
35. He accepted there was an issue over reapportionment of service charges, although both parties considered this might be capable of resolution.
36. As to whether it was just and convenient to make the Order rather than simply allow the parties to contract to do it consensually, Mr Bowker emphasised that the Respondents had tried a normal contractual relationship with managing agents, and it had not worked. The right to sue over previous debts had not been exercised. A Management Order would give the necessary "bite" to ensure that both parties complied with their obligations to pay and collect service charges. The draft Management Order provided that in any conflict between the Lease and the Order, the Order will take precedence. Having the Order will, simply, carry an enormous amount of weight.
37. Mr Bowker confirmed that on an open basis he had informed Mr Stimmler that Ms Cleaver had indicated that she would not be prepared to manage the Property on a simple contractual basis, without a Management Order being made by this Tribunal.
38. The Respondents' counsel's skeleton argument accepted that during the First Respondent's tenure mistakes have been made in the management of the Property, but these issues had been remedied, and the Applicants would have been unlikely to have obtained a Management Order were HLM still in situ.
39. Mr Stimmler represented that the lease does contemplate reapportionment and HLM had tried to resolve the issue, but the Applicants had opposed it on the basis of the calculation of square footage involved. He confirmed that the Respondents were not saying the matter could not be resolved; to

the contrary, there was a reasonable expectation it could be, and if not a section 27A application could always be made.

40. As to the prepayment meters, Mr Stimmler emphasised that the 25 flats mentioned were owned not by the Respondents but by associated companies; a proposal by the Respondents that there be prepayment meters across the board had been opposed by the leaseholders. He was uncertain precisely what the real issue was, because there ought to be separate bills, but there might be an issue over the standing charge. However, the Respondents fully accepted that it was within the manager's powers to apply for a resolution of that issue.
41. Regarding non payment of service charges, Mr Stimmler contended that fact cut both ways. The Applicants had not paid their charges. They said the demands were defective. There were no funds left. HLM had left accordingly. Clearly, there had been a breakdown in relationship between the Applicants and the Respondents. The management order was going to have force in respect of all interested parties.
42. The Respondents accepted that there was building work to be done, although it was disputed that the degree of works was as high as represented by Mr Bowker.
43. CPML had been instructed previously on an ad hoc basis, and the Respondents had been informed that Ms Cleaver was not prepared to be instructed on my contractual basis. Getting a third party now to manage was something in which there could be little confidence. The Respondents were therefore somewhere between a rock and a hard place.

Determination

- (1) Is the preliminary notice compliant with section 22 of the 1987 Act; or if not, should dispensation be given?*
44. The Tribunal is satisfied that the section 22 Notice was valid in form and validly served on the First Respondent. The parties agree.
- (2) Have the Applicants satisfied the Tribunal of the grounds for making an order, as specified in section 24(2)(b) of the Act? Is it just and convenient to make a Management Order?*
45. It was also not in dispute that the grounds for making an order were made out pursuant to s.24(2)(b). However, the decision is for this Tribunal.
46. We agree that it is just and convenient to make a Management Order, for a combination of reasons. First and foremost, the history of management of this Property is chequered. There has been a clear breakdown in relationship between the various managers and the Applicants over recent years. Allegations of fault have been levelled from both sides. There are no

service charge funds, and the parties are at a precipice. Whilst there is a temporary and welcome ceasefire, a relapse in relations is entirely possible without an order. We agree that the “bite” of a Management Order will assist to restore the balance of order in a general sense; and there is a need here for the Manager to have the authority of an appointment, even though the landlord could simply proceed to contract with CPML. A similar situation called for a Management Order in the case of *Opie v Kyriacou*, LON/00BE/LAM/2009/0016, according to *Service Charges & Management* at para. 21-46 (in Mr Bowker’s bundle of authorities).

47. Secondly, and in a similar vein, we consider that the prospects of obtaining yet another manager for this Property on a purely contractual basis would be extremely problematic, and take a disproportionate time, against the deteriorating state of the Property and the other outstanding issues.
- (3) *Would the proposed Manager be a suitable appointee and, if so, on what terms, and for how long should the appointment be made?*
48. Ms Cleaver’s lack of experience as an appointed manager cannot be an impediment; otherwise no proposed manager could ever be appointed for the very first time.
49. We take at face value her positive affirmations (paragraphs 23 and 26 above). We were concerned at one stage that she may have underestimated the challenge she faces in this case, but that concern has been assuaged, given the parties’ pledges of assistance and this Tribunal’s ability to exercise appropriate oversight.
50. We considered the draft Management Order largely agreed between the parties and scrutinised the paragraphs which depart from the “standard” draft. We are satisfied that the latest terms, since filed with the Tribunal, and annexed to this decision, are appropriate and workable, save for (a) the addition of the word “reasonable”, which we have inserted before the word “payment” in paragraph 8(2), for reasons of protection of the leaseholders from whom additional sums may be demanded from time to time; (b) the removal of paragraph 21 for the same reasons; (c) a change of date in paragraph 39 to today’s date.
51. As to duration, we agree that 2 years should be the initial appointment.
- (4) *Should an application be granted pursuant to s.20C of the Landlord and Tenant Act 1985?*
52. As to s.20C of the 1985 Act, Mr Bowker contended that the Applicants had succeeded on their Application. It would not be fair, to use his words, for the Applicants to pick up the landlord’s bill. The application for 20C had been prefaced in the Applicants’ Counsel’s skeleton argument for the first hearing. The arguments came as no surprise to the Respondents.

53. Mr Stimmler responded to say that the lack of a formal application under s.20C was a complete answer to the issue. He contended that the Tribunal's decision to make a Management Order would be made ultimately on a non-fault basis. He contended that when HLM had been appointed, they had faced real difficulties, in particular resistance from the Applicants in making payment of service charges, which had ultimately led to HLM stepping down. The current situation could not all be squarely laid at the Respondents' door.

54. In *Tenants of Langford Court v Doren Ltd (LRX/37/2000)*, HHJ Rich held:

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

55. The Tribunal determines that a formal application was not necessary. The issue was indicated in the directions, and prefaced in the Applicants' first skeleton argument.

56. Otherwise, we agree, to an extent, with both positions. The Applicants have been successful, but we cannot overlook the fact the Applicants' non-payment of service charges has led in part to the current absence of a manager, and that the Tribunal is invited to proceed on what is ultimately a non-fault basis (as a matter of good sense and practicality).

57. We consider that it would be just and equitable to make the following order. There shall be a s.20C order in favour of the Applicants, to the extent that 50% only of the Respondents' costs incurred in these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Parting points

58. There was no application made for the application and hearing fees; and we would have made no order for the same in any event.
59. As to any Rule 13 costs, which were mooted in written arguments but not pursued in the hearing, but reserved for later, we reminded the parties of *Willow Court Management Co. Ltd v Alexander* [2016] UKUT 0290 (LC), in which the Upper Tribunal considered the power under Rule 13(1)(b) of the procedural Rules 2013 to award costs on basis of unreasonable behaviour. The Upper Tribunal at para. 43 had observed that Rule 13 applications should not be regarded as routine, that submissions are likely to be better framed in the light of the Tribunal's decision rather than in anticipation of it, and that applications made before the decision is available should not be encouraged.
60. We therefore need say no more than this, in the unlikely event the parties wish to take this further. *Willow Court* informs us that unreasonable conduct is a precondition of the power to award costs. This first stage is application of an objective standard of conduct, not an exercise of discretion. In paragraph 25 of *Willow Court*, the Upper Tribunal considered it improbable that (without more) the examples urged upon it would justify making an order under the Rule; the examples given (in para. 23 of the decision) included a party who fails to prepare adequately for a hearing, who fails to reduce proper evidence in support of their case, who fails to state their case clearly, or who seeks a wholly unrealistic or unachievable outcome. In paragraph 26 of *Willow Court*, the Upper Tribunal considered that Tribunals should not be overzealous in detecting unreasonable conduct after the event.
61. With those parting thoughts, we are grateful to the parties for making the Tribunal's task in this case easier. They are to be commended for reaching consensus on many matters, not least the terms of the draft Management Order, which we have largely approved.

Judge:

S J Evans

Date:

28/5/24

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.