



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

Case Reference	: CHI/29UL/LAM/2022/0008
Property	: 5 Wellington Terrace, The Esplanade, Sandgate, Folkestone CT20 3DY
Applicant	: Napoleon Management (Sandgate) Limited
Representative	: Gregory Playfoot
Respondents	: Leaseholders of Basement Flat 1, Flats 2, 3 and 5
Type of Application	: Appointment of manager section 24 of the Landlord and Tenant Act 1987
Tribunal Member(s)	: Judge Tildesley OBE Mr D Ashby FRICS Mr P Gammon MBE
Date and Place of Hearing	: 22 August 2022 Havant Justice Centre Members and Parties Joined by the Common Video Platform
Date of Decision	: 2 September 2022

DECISION

Background

1. Napoleon Management (Sandgate) Limited is the freeholder of the property under Title Number K271352. The directors of Napoleon Management are the leaseholders of Flats 1, 2 and 3. The Tribunal understands that Mr Cown, the leaseholder of Flat 4, is not a shareholder of the Company and has no share of the freehold.
2. The property is a converted mid-terrace Victorian style house five storey building (Including the basement). The building consists of a total of five self contained flats. The building is located on the seafront.
3. The Tribunal understands that in or around 2019 Mr and Mrs Newton, the leaseholders of Flat 5 submitted a planning application to the local Council for an additional floor to be added to their Flat which was refused by the Council in August 2019. In February 2020 Mr and Mrs Newton instructed a local contractor to remove the roof and carry out works to the Flat. Napoleon Management Limited questioned the authority of Mr and Mrs Newton to carry out the works and eventually the works were stood down in or around July 2020. Napoleon Management Limited has taken legal proceedings in the County Court against Mr and Mrs Newton claiming damages in the region of £250K. The Tribunal understands that a case management hearing in connection with the court proceedings has been fixed for 26 April 2023.
4. A temporary tin roof has been erected on the property, and the upper floor is covered in polythene to protect the flats below. Flat 5 is now a shell and has been stripped down to bare walls. The property has now been without a roof for almost two and a half years. The Tribunal inspected the property prior to the previous hearing on 9 March 2022.
5. There is considerable disagreement between the leaseholders about the structural integrity of the building and who is responsible for the current state of affairs. The Tribunal has no standing in the wider dispute which will be a matter for the court to determine. The Tribunal's concern is whether an appointment of manager can progress the necessary works to the property to make it wind and watertight, and safe.

The Proceedings

6. On 11 October 2021 Mr Cown applied to the Tribunal for the appointment of a manager in accordance with section 24 of the Landlord and Tenant Act 1987. Mr Cown however, did not specify the name of an appointed manager.
7. On 16 November 2021 the Tribunal advised Mr Cown that it could not progress the Application until a Manager was nominated.

8. On 29 November 2021 Mr Cown put himself forward as the Tribunal appointed manager. Mr Cown said he would be assisted by a firm of Architects and a separate firm of managing agents.
9. On 31 December 2021 the Tribunal drew Mr Cown's attention to the PRACTICE STATEMENT ON THE TRIBUNAL'S CONSIDERATION OF WHO TO APPOINT AS A MANAGER dated December 2021 issued by the Chamber President, Siobhan McGrath
10. The Tribunal identified paragraph 8 of the Practice Statement which stated

"Save in exceptional circumstances, the Tribunal will not usually appoint a leaseholder as the Manager".
11. The Tribunal asked Mr Cown to consider whether he still wished to proceed with the Application on the basis suggested in his response of 29 November 2021 or whether he wished to put forward a person who met the Tribunal's requirements in the Practice Statement.
12. The Tribunal directed Mr Cown to provide a response by 17 January 2022. If no response was forthcoming the Application would be struck out.
13. Mr Cown responded by the due date stating that

"After consideration of the directions and the practice statement, the Applicant still maintains and recommends the appointment of himself as the Tribunal Manager however using the resources of the firm EEUK Limited t/a Enviro Estates ("the Company")".
14. The Tribunal issued directions for exchange of statements of case, and fixed the hearing for the 9 March 2022.
15. At the hearing on 9 March 2022 Mr Cown was represented by his son. Mr Barnaby Hope of Counsel represented Napoleon Management (Sandgate) Limited. After hearing from the parties the Tribunal announced its decision.
 - a) Napoleon Management (Sandgate) Limited had not complied with its obligations to repair the roof and that unreasonable service charges had been made. In this regard the Tribunal was satisfied that the threshold criteria of section 24(2)(a)(i) and section 24(2)(ab)(i) of the Landlord and Tenant Act 1987 have been met.
 - b) It was just and convenient to make an order under section 24(1) of the Landlord and Tenant Act 1987 on the grounds of breakdown in the relationship between the parties, and the delay in finding a solution to the roof.

- c) Mr Cown was not a suitable person to be appointed as Manager of the Property. The Tribunal acknowledged that Mr Cown was a successful business person who had considerable skills as an enabler. The Tribunal, however, found that Mr Cown did not fulfil the requirements expected of a manager as set out in paragraph 9 of the Practice Statement. The Tribunal also found that Mr Cown's position as leaseholder would constitute a conflict of interest, and that there were no exceptional circumstances to justify departure from paragraph 8 of the Practice Statement.
16. The Tribunal gave the parties leave to submit by application names of prospective managers to be considered by the Tribunal for appointment. The Tribunal directed that any such application must be made by 4pm on 10 June 2022. If no application was made by that date, a party would have to start the proceedings again if it wished a manager to be appointed.
17. On the 8 June 2022 Mr Playfoot for the Applicant submitted the name of Martyn D Battrick CEA (SA) as the proposed manager. There were no other nominations for the proposed manager.
18. On 8 July 2022 the Tribunal directed that a hearing take place on 22 August 2022 to determine the suitability of Mr Battrick as a Tribunal appointed manager.
19. At the hearing on 22 August 2022 Mr Montanet of Flat 1, Mr Playfoot of Flat 3, Mr Cown of Flat 4 and Mr and Mrs Newton of Flat 5 attended by way of the Common Video Platform. Mr Battrick, the proposed manager was also in attendance. Mr Playfoot represented Napoleon Management (Sandgate) Limited and the leaseholders of Flats 1, 2 and 3. The Tribunal heard from Mr Battrick, Mr Playfoot, Mr Cown and Mr and Mrs Newton.

The Hearing on 22 August 2022

20. Mr Battrick supplied a written statement of his experience and plans for the management of the property. Mr Battrick had familiarised himself with the Tribunal's Practice Statement and the draft management order. Mr Battrick gave evidence and answered questions of the Tribunal, Mr Cown and Mr and Mrs Newton.
21. Mr Battrick is 70 and has had a varied and interesting career in warehousing, waste management and property. Mr Battrick spent the majority of his adult life in the Republic of South Africa (RSA), and returned to the UK 12 years ago.
22. Mr Battrick has been involved in property letting and management since 2004 when he joined a property company in RSA starting as commercial sales and letting agent and ending as Company Member

and KZN Board Member of the Institute of Estate Agents of Southern Africa.

23. When Mr Battrick returned to the UK he started as Residential Sales and Letting Agent with Century 21, then as Co-Founder of The Good Estate Agent. In 2012 Mr Battrick set up Embassy Management and Lettings based in Folkestone. Mr Battrick has managed a high of 33 blocks (from 2012/13 up to 2019/2020), a low of six blocks (during 2020/1 period), and now managed ten blocks. Mr Battrick highlighted three properties which he had managed, namely: Trevarra Court; Wentworth House; and Tresillian Court which posed specific management problems. Mr Cown challenged whether Mr Battrick was now managing these properties. Mr Battrick indicated that Embassy remained the manager of Tresillian Court.
24. Mr Battrick was not a member of a professional property management body in the UK such as RICS and ARMA, and did not hold professional qualifications as a surveyor. Mr Battrick had an understanding of the Service Charge Residential Management Code (“the Code”) (3rd Edition). Mr Battrick believed that he had demonstrable experience of dealing with large scale projects and difficult buildings.
25. Mr Battrick had no previous experience as a Tribunal appointed manager. Mr Battrick admitted when questioned by the Tribunal that he did not fully understand the role of the Tribunal appointed manager. Mr Battrick did not appreciate that the appointment allowed him to act independently of the landlord. Mr Battrick appeared to have a good understanding of the lease. The Tribunal, however, pointed out to him that his authority came from the Order which can override the provisions of the lease.
26. Mr Battrick held Professional Indemnity Insurance (PII) to the value of £0.5M. Mr Battrick produced certificates to demonstrate that Embassy Management and Lettings was a Member of Client Money Protect (valid to 3 June 2023), and of the Property Redress Scheme (valid to 26 September 2022). Mr Battrick said that his firm had an internal complaints procedure published on its website. Mr Battrick said that if he had to increase the level of the PII he would recover the additional cost from the charge to leaseholders.
27. Mr Battrick said he was supported by a Business Manager who had five years experience in property management and an administrator with 21 years experience.
28. Mr Battrick had visited the property on 14 July 2022. Mr Battrick stated that his primary concerns and objectives were associated with owner harmony, financial stability, building shelter and integrity, risks mitigation and the adequacy of insurance cover. Mr Battrick stated that the primary remedial tasks included the reinstatement of the roof shelter, the installation of a suitable Automatic Fire Detection system, and the refurbishment of the communal areas. Mr Battrick indicated

that he would not be identified as the Responsible Person for Fire Safety until a fully functioning fire safety system was installed.

29. Mr Battrick said that Embassy had been involved with the oversight of major works for many years and had a myriad of contacts for most project types. Mr Battrick, however, pointed out that competent professionals had already supplied quotations for the re-roofing of the property, and that these would have to be reviewed if he was appointed.
30. Mr Battrick had supplied a proposal for his charges as a Tribunal appointed manager. However, Mr Battrick acknowledged following questioning that he would have to submit a revised proposal. Mr Battrick indicated that he would be willing to act as the managing agent appointed by the freeholder if he was not considered suitable to be appointed by the Tribunal.
31. Mr Playfoot stated that he had contacted on behalf of Napoleon Management (Sandgate) Limited a wide range of property agents for the potential appointment before deciding to put forward Mr Battrick. Mr Playfoot stated that the leaseholders of Flats 1, 2 and 3 had contributed £30,000 each for the works on the roof. Mr Playfoot explained that Napoleon Management (Sandgate) Limited had carried out a section 20 consultation in respect of the proposed works and had obtained quotations from three local contractors. Mr Playfoot indicated that Napoleon Management (Sandgate) Limited preferred for Mr Battrick to be appointed by the Tribunal so that he would be seen by the other leaseholders as independent of the freeholder.
32. Mr Cown questioned the propriety of Mr Battrick charging the leaseholders the additional fee for increasing the cover on the PII. Mr Cown contended that Mr Battrick was not following the Code by charging fees at an hourly rate. Mr Cown submitted that he had been severely prejudiced by the property not having a roof for the last two and half years. Mr Cown said that he had suffered damage to his flat which was immediately below Flat 5 and had lost rent. Mr Cown estimated that his losses amounted to in the region of £40K. Mr Cown stated that he would submit a “prejudice claim” to the section 20, and that it would be unfair to him to contribute to the costs of the roof.
33. Mr and Mrs Newton asserted that the property was unsafe because the owners of the Flats below Flat 4 had taken out structural walls. Mr and Mrs Newton did not agree with the surveyor’s report commissioned by Napoleon Management (Sandgate) Limited. Mr and Mrs Newton indicated that their preference was for Mr Battrick to be appointed as a manager.

Decision

34. The Tribunal found on the previous hearing that it was just and convenient to appoint a manager. The property is in serious state of disrepair and has had no permanent roof structure for the past two and

half years. The Court is to determine who is responsible for the disrepair. It is likely that the Court's determination would not be forthcoming for a significant period of time. In the meantime, Napoleon Management (Sandgate) Limited bears responsibility under the lease to put the building back into a reasonable state of repair. The Tribunal observed at its inspection of the property that the freeholder has taken some steps to mitigate the disrepair but has been unable to move forward because of disunity in the leaseholder community. This disunity is compounded by the fact that the majority of the leaseholders owned the freehold. The Tribunal considers that a Manager appointed under section 24 of the 1987 with the power to raise the necessary funds in advance and who is independent of the parties may be able to effect the necessary repairs to return the property to a reasonable state of repair. The appointment of a Manager, however, is not a guarantee of success which ultimately would depend upon securing the necessary funds to carry out the required works, and the co-operation of the leaseholders.

35. The sole issue for the Tribunal is whether Mr Battrick is suitable to be appointed as Manager of the Property in accordance with section 24 of the Landlord and Tenant Act 1987.
36. The parties put forward no other nominations for the position of Manager. The Tribunal noted that at the previous hearing Mr Cown enquired of more than 25 experienced management companies including ones which had previously been appointed as a Manager by the Tribunal as to whether they would be interested in the appointment. According to Mr Cown, most of the agents said that they would only take on the appointment when confirmation of funding for the roof was in place and the property was put back to a good state of repair.
37. It is important that the Tribunal sets the context for its enquiry on suitability. Although the appointed Manager is accountable to the Tribunal, the Tribunal does not get involved in the day to day management, and relies on the Manager to use his/her professional judgment in carrying out the terms of the Order. Also the Tribunal is not liable for the actions of the Manager, and at times has to act and be seen to act independently of the Manager particularly if proceedings are brought against the Manager by the leaseholders.
38. The Tribunal, therefore, when considering an appointment of Manager considers whether there are sufficient external safeguards in place to protect the interests of the leaseholders. This typically involves membership of a recognised professional body which can hold the Manager to account for acting below professional standards; professional indemnity insurance giving sufficient cover in the event of legal action taken against Manager for negligence or breach of contract; and protection for client monies. There have been occasions where Tribunals have departed from these requirements but it carries a risk for leaseholders and freeholder. The Tribunal also endeavours to get a

fit between the professional skills of the Manager with the problems at the specific property. The Practice Statement dated December 2021 sets out the requirements in more detail.

39. The Tribunal finds in relation to Mr Battrick that he was an experienced property manager who had organised major works and had managed blocks of flats which had involved difficult leaseholders. Although Mr Battrick did not hold membership of a professional body, he appeared to understand the Code and the lease. Mr Battrick held PII but the level of cover was not sufficient for this appointment. His firm Embassy Management and Lettings had a complaints procedure which was similar to the requirements of the Royal Institution of Chartered Surveyors, and it was also a member of the Property Redress Scheme. Embassy belonged to Client Money Protect. The Tribunal was not sure whether the protection offered by Client Money Protect extended to service charge monies.
40. The Tribunal finds that Mr Battrick gave his evidence confidently and was straightforward with his answers. Mr Battrick asked questions when he did not understand an issue. The Tribunal is satisfied that Mr Battrick had no conflict of interest if he took up appointment.
41. The Tribunal had regard to Mr Cown's representations in connection with Mr Battrick's appointment. The Tribunal shares Mr Cown's concern about the perilous state of the building, and his acknowledgement that it requires the intervention of an independent person tasked to organising the necessary works to put the property back to a reasonable state of repair. In the Tribunal's view, Mr Cown will have to decide whether he prioritises the repairs by making the appropriate contributions which a Manager will have the power to enforce or to pursue his action for damages.
42. The Tribunal formed the view that Mr Battrick would be suitable to be appointed as a Manager pursuant to section 24 of the 1987 Act subject to him confirming the following matters:

The PII cover be increased to £2M and that it would apply to his duties as a Tribunal appointed Manager.

- Confirmation from Client Money Protect that it applies to service charges collected from long leaseholders, and the level of protection.
- To provide a revised schedule of costs which should be in the form recommended at paragraph 3.4 of the Code: Annual Fee and a Menu of Charges for duties outside the scope of the Annual Fee. The Tribunal acknowledges that the Annual Fee is likely to be higher for a Manager appointed under section 24 because by definition the Manager is dealing with a "problem" building. The fee, however, still needs to be within the bounds of reasonableness. The fee should not include

costs directly connected with the landlord's status as a Company. These should be separately agreed with the landlord and recovered from the shareholders of the company.

- To give an indication of the amount of funds necessary to provide an adequate sum to cover immediate costs on taking up appointment. The immediate costs relate to running costs including preliminaries for the major works.
43. The Tribunal requires Mr Battrick if he wishes to be appointed to provide the above information to the Tribunal and to the leaseholders within 14 days from the date of this decision.
 44. On receipt of the information and provided it is satisfactory to the Tribunal, the Tribunal would confirm the appointment of Mr Battrick as Manager pursuant to section 24 of the 1987 Act initially for period of 15 months with an option to apply for an extension of the Order after 12 months. The extension will be at the discretion of the Tribunal. The terms of the appointment will be in accordance with the Draft Management Order. Under the terms of the Order the Manager will have power to demand payments in advance in respect of service charges together with the facility to require each leaseholder to pay an immediate sum to put the Manager in funds to carry out his duties. The parties are reminded that the provisions of the Order overtake the provisions in the lease.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.