FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MX/LVM/2023/0001**
Property	**:**	**Tavistock Mews, Lindsay Avenue, High Wycombe, Buckinghamshire HP12 3DG**
Applicants	**:**	**1. Anthony Kelly (Flat 24)** **2. Paulo Lopes (Flat 12)** **3. Cajjad Unus (Flat 18)**
Representative	**:**	**John Kelly**
Respondents	**:**	**1. Tavistock Mews Residents Association Limited** **2. Shanly Homes Limited**
Representative	**:**	**1. Ali Shah of Advance Block Management**
Type of application	**:**	**Section 24 Landlord and Tenant Act 1987 - Appointment of Manager**
Tribunal members	**:**	**Judge K. Saward** **Mr A. Tomlinson BSC (Hons) MRICS**
Date of decision	**:**	**12 August 2024**

DECISION AND REASONS

Decisions of the Tribunal

1. The Tribunal does not make an order for the appointment of a manager. The application is dismissed.

2. No order is be made under section 20C of the Landlord and Tenant Act 1985 that the Respondents costs before the Tribunal shall not be added to the service charges.

3. The application for reimbursement of Tribunal fees is refused.

The application and hearing

4. On 9 May 2023 the Applicants made an application to the Tribunal to appoint a manager under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The manager proposed by the Applicants is given as "Neil Douglas Block and Estate Management". It is in fact, Neil Kurz, the managing director of that company who the Applicants propose. If the Order is made, Mr Kurz would replace Advance Block Management ("ABM") who were appointed by the First Respondent ("the Residents Association").

5. The Applicants are three leaseholders within the property who sought the order due to alleged breaches of a relevant Code of Practice and company governance matters concerning the First Respondent.

6. Directions were issued by the Tribunal on 13 November 2023 along with a copy of the Practice Statement issued in July 2023. The Practice Statement gives an indication of the Tribunal's expectations of a proposed manager when deciding whether to make an appointment.

7. A hearing took place before the Tribunal on 7 February 2024, which had been listed to determine the application. However, the case was not ready to proceed because: (a) ABM claimed not to have received the application or Directions of 13 November 2023 until notified of the hearing date on 15 January 2024; and (b) the Applicants had failed to comply with the Directions - there was no filed bundle containing all documents, a draft management order, or witness statements.

8. With the agreement of all present, the hearing of 7 February 2024 was converted to a case management hearing in order to explore/narrow the issues and attempt to focus on resolution. At that time, there appears to have been a willingness to co-operate between the parties, and it was anticipated that a meeting would take place with the Committee of the Residents Association to find a way forward. It was agreed that the proceedings be paused for 30-days, and the Tribunal issued further Directions so that the proceedings could be concluded on the next occasion should further re-course to the Tribunal be necessary.

9. The Directions required the Applicants by 4pm on 27 March 2024, to send to the First Respondent's Solicitors and the Tribunal (i) witness statements for all witnesses due to appear, focussing on the basis on

which an order is sought under section 24 (ii) a copy of documents relied upon in the witness statements as proving the alleged breaches/conduct (iii) a short witness statement from Mr Kurz; (iii) any section 20C application, and (iv) a statement of case summarising the basis of the application.

10. The First Respondent was directed by 4pm on 17 April 2024 to similarly serve and file: (i) witness statements to address allegations made as to breaches of codes of practice and breach of proper company governance (ii) documents supporting its case and reply to the Applicants' case (iii) any amendments needed to the draft management order (iv) a statement of case summarising the basis of reply, and (v) a reply to any section 20C application.

11. After the Directions were issued, an application was made by the First Applicant on 25 March 2024 for an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"), to limit the costs incurred by the landlord from these proceedings that may be recoverable through the service charge.

12. When there was non-compliance by the parties with the Directions of 7 February 2024, and a failure to co-operate with the Tribunal in the preparation of bundles, the Procedural Judge issued further Directions on 4 and 18 June 2024 requiring the production of the bundles.

13. The bundles that materialised were muddled and incomplete. The First Respondent's bundle was 42 pages with an additional 60 pages described as 'the Applicants second bundle'. In fact, it duplicated the first 60 of 108 pages submitted by the Applicants. Neither party produced the original application with accompanying documents or the Directions. It was to left to the Tribunal to retrieve the unpaginated bundle from the first hearing. The parties confirmed that the bundles as a whole contained all documents they wished to rely upon.

14. The full application was heard remotely on 7 August 2024. None of the parties were legally represented. Before the hearing, the First Applicant nominated his brother John Kelly to appear on his behalf. Mr A. Kelly was not present. Mr Unus (the Third Applicant) joined the hearing shortly after it had started. The Second Applicant, Mr Lopes, was not present. Both Mr J. Kelly and Mr Unus took the opportunity to speak at the hearing. Mr Kurz also attended throughout to answer questions.

15. Whilst Counsel had appeared for the First Respondent at the first hearing, the directors had since decided to continue without legal representation. Instead, Mr Ali Shah from the Management Company was instructed to appear on its behalf. Mr Shah stressed that he had made it clear to his client that the conduct of these proceedings are not within the scope of his expertise.

16. Michael Shanly was originally named in the application as the Second Respondent. He was substituted by Shanly Homes Limited, as the

freehold owner, by direction of the Tribunal on 20 November 2023. The Second Respondent has taken no active part in the proceedings.

17. At the start of the hearing on 7 August 2024, the following issues were identified for determination, as set out within the Tribunal Directions of 13 November 2023:

- Did the preliminary notice comply with the statutory requirements within section 22 of the Act? If the preliminary notice is wanting, should the Tribunal still make an order in exercise of its powers under section 24(7) of the 1987 Act?

- Have the Applicants satisfied the Tribunal of any ground(s) for making an order as specified in section 24(2) of the 1987 Act?

- Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?

- Is it just and convenient to make a management order?

- Should the Tribunal make an order under section 20C of the 1985 Act, to limit the Respondent's costs that may be recoverable through the service charge and/or an order for the reimbursement of any Tribunal fees paid by the Applicant?

18. It transpired that little effort had been made since the first hearing by either the Applicants or First Respondent to resolve their differences. Consequently, no progress had been made towards resolution.

19. The hearing largely took the format of submissions in response to questions put by the Tribunal and the opposing party. Time was also spent by the Tribunal questioning Mr Kurz about his suitability for appointment and his submissions including his completed draft form of Order and other supporting documentation.

Background

20. The property comprises 35 purpose-built flats within 4 small blocks built in the year 2000. The blocks are 3-storey of traditional brick construction. The flats are let to the tenants on long leases for a term of years commencing, in most cases, from 2000.

Procedural Matters

21. The First Respondent's bundle contained a 'skeleton argument', which included an 'application to dismiss' the Applicants' case. Four reasons were given: (1) the Applicants non-compliance with the Directions of 7 February 2024 (2) it is disagreed that any breaches have occurred (3) three of the directors disagree with the appointment of a new

manager and consider there is insufficient reasons or evidence, and (4) the development is run by leaseholders via the 'Residents Management Company' and it should not be within the remit of the Tribunal to appoint a new manager.

22. Before hearing from the parties on the main issues, the Tribunal asked Mr Shah if this 'application to dismiss' was still being pursued. It had already been established that neither side had complied with the Tribunal Directions. The Tribunal informed Mr Shah that he would need to elaborate upon the grounds, and an application would be considered under the strike-out provisions within Rule 9 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

23. After a short adjournment, Mr Shah confirmed that the application to dismiss was withdrawn. He considered it wise for the Tribunal to proceed to hear the parties' cases.

24. No site inspection was undertaken by the Tribunal nor was one requested.

Section 22 notice

25. Before applying for the appointment of a manager under section 24, preliminary notice must be served under section 22 upon: (i) the landlord, and (ii) any other person by whom obligations relating to the management of the premises, or any part of them, are owed to the tenant under their tenancy. Amongst other things, the notice must specify the grounds on which the Tribunal would be asked to make an order and give a reasonable period to take steps for matters within the notice capable of being remedied.

26. Whilst Mr Shah said he thought there was an issue over the validity of service of the section 22 notice and its reasons for issue, he was unable to elaborate. Mr Shah referred us to the 'skeleton argument', but this does no more than record that one of the issues for the Tribunal to decide is whether a valid preliminary notice was served under section 22. This merely reflected the issues identified within the Tribunal's Directions.

27. Mr Shah subsequently confirmed that he could not identify any flaws with the section 22 notice. It emerged that the skeleton argument was copied and adapted from the document drafted by Counsel for the First Respondent for use at the first hearing. There are no recorded issues of validity of the notice arising from that hearing, which would have been anticipated had any been raised.

28. The Tribunal proceeds on the basis that the requirements of section 22 of the Act have been met.

Grounds under the Act

29. Under section 24(2) of the Act, the Tribunal may appoint a manager in various circumstances. In summary, these are where the Tribunal is satisfied:

- that any 'relevant person' (in this case the Respondent) 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 (section 24(2)(a));

- that unreasonable service charges have been made, or are proposed or likely to be made (section 24(2)(ab));

- that unreasonable variable administration charges, or prohibited administration charges, have been made, or are proposed or likely to be made (section 24(2)(aba));

- that the 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) (section 24(2)(ac));

And,

- in each of the above, it is also just and convenient to make the order in all the circumstances of the case;

Or

- that other circumstances exist which make it just and convenient for the order to be made (section 24(2)(b)).

30. The section 22 notice alleged breaches of a Code of Practice by Mr Shah and ABM i.e., under section 24(2)(ac). It also refers to breaches of sections 172 and 175 of the Companies Act 2006 by one of the directors of the Residents Association, suggesting potential engagement of section 24(2)(b). Both sections were identified as those in issue at the first hearing.

31. Mr A. Kelly was reminded during the first hearing that he should file a witness statement in compliance with the Directions Order, setting out his evidence because the allegations he makes are of a serious nature. They should be clearly set out and evidenced. The Tribunal emphasised "*for the avoidance of doubt the submissions currently made in documents 6 and 7 of the current bundle are not sufficient*." The Judge

went on to give written examples of how Mr Kelly could frame the content of his statement in terms of identifying how he says the current manager has failed to comply with obligations under the Code of Practice by reference to the points made in the section 22 notice.

32. Despite this very clear guidance, one brief witness statement was submitted by Mr A. Kelly. His only claims concern: (i) the removal of the three Applicants as directors of the First Respondent company without their consent in 2022, and (ii) a failure by the First Respondent to adhere to a resolution of the company to change managing agents. Documentation is supplied from Companies House to confirm their appointment as directors, along with correspondence from Solicitors instructed by individuals instructed for both sides, including Mr Kelly.

33. It is evident there is a long running dispute between the Applicants and First Respondent over the directorships and conduct of company business. However, these matters do not divulge deficiencies in how the property has actually been managed. It only indicates that those who voted at the contested meeting wanted ABM replaced. As evidence, it falls a long way short of amounting to circumstances which make it just and convenient for an order to be made to appoint a manager on grounds under section 24(2)(b)).

34. Mr Kelly's witness statement makes no mention whatsoever of the Code of Practice or paragraphs therein nor does it provide any particulars of alleged failings by the current manager. The Statement of Case similarly identifies the basis of the application as limited to the two company matters outlined above. The only conclusion the Tribunal could draw from these omissions was that a case was no longer being advanced on grounds under section 24(2)(ac). Upon us seeking clarification at the hearing, Mr J. Kelly conceded that this ground "must have gone" but said that he had expected his brother (the Applicant) would have included a breach of the Code within the witness statement.

35. Mr Unus orally complained of failures by ABM to provide a breakdown of service charge expenditures and general lack of communication but accepted that he had not provided any witness statement setting out his grounds of complaint. During the hearing, both Mr J. Kelly and Mr Unus sought to air grievances over matters such as parking, gardening, and where funds had been spent. Mr Kurz also referred to various defects in the maintenance and condition of the property that he considered unacceptable and remained outstanding since before the first hearing in February 2024.

36. None of these matters were particularised in witness statements, as directed, to allow the First Respondent fair opportunity to respond. Mr Kurz said he had photographs that could be supplied, but it was far too late. Mr Shah wished to respond and did so as best he could. Understandably, without fair notice of the particularised complaints having been produced, as required, he could not reasonably answer all

points. He directed the Applicants to the online portal set up for tenants to register maintenance/other issues.

37. Of course, it is understood that the Applicants are unfamiliar with the Tribunal process and have at no time been legally represented, for which allowances are made. In recognition of this, the Tribunal had given the Applicants numerous opportunities to submit their evidence and even guided on the content. Yet they did not produce or say anything on the alleged breaches of codes of practice. There was no reason for the Respondents to believe that such matters remained in issue. Attempts were then made during the hearing by the Applicants to orally introduce new matters and advance arguments that should rightly have been included within witness statements. This was not acceptable and raised fundamental points of fairness in the conduct of the proceedings. The Tribunal must disregard those oral submissions.

38. The First Respondent had tried within its bundle to pre-empt grounds that might be pursued following the first hearing by providing certain documents. They included the service charge accounts to the year ended 24 June 2023 showing a low figure of around £11,000 in general reserves. This appears reflect the low service charge. A copy of the buildings insurance policy is also supplied. The Tribunal considers the insured amount of nearly £8 million to be appropriate for buildings cover for a property of this construction, size, age, and location. It does not appear "massively under-insured" as Mr Kurz suggested.

39. The Tribunal understands from the hearing that the Fire Service recently attended the property and that several action points were outstanding from the Fire Risk Assessment carried out in September 2023. The Tribunal expects these to be immediately actioned. It is the First Respondent's responsibility to ensure they are done, and the leaseholders notified that all required measures have been carried out.

40. Nevertheless, nothing from the very limited evidence leads the Tribunal to find that issues exist of such magnitude to warrant its intervention by the appointment of a manager.

Conclusions

41. The Applicants have not satisfied the Tribunal of any grounds for making an order as specified in section 24(2) of the Act. Accordingly, it would serve no purpose for the Tribunal to proceed to address the suitability of the nominated appointee.

42. It follows that no order for the appointment of a manager shall be made, and the application must be dismissed.

Application under section 20C and fees

43. The First Applicant applied for an order under section 20C of the 1985 Act so that costs incurred by the Respondents in connection with these

proceedings before the Tribunal cannot be passed on to leaseholders through the service charge.

44. The order was sought for the benefit of all leaseholders of the 35 flats. However, only three leaseholders were a party to the proceedings. The other leaseholders had not confirmed their wish to be included within the section 20C application. The Upper Tribunal has been clear that it would be wrong to make an order in favour of other lessees in the absence of consent or authority given by the non-party lessees to the making on an application on their behalf.

45. An order would only be relevant if provision exists within the tenant's lease to allow for the recovery of the landlord's costs from these proceedings. As it is, the application to appoint a manager has not succeeded with no grounds within section 24(2) demonstrated. In the circumstances, the Tribunal considers that it would not be just and equitable to make an order under section 20C.

46. As the Applicants have not been successful in their application to appoint a manager, the application for reimbursement of Tribunal fees is refused.

Name: Judge K. Saward Date: 12 August 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).