FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UG/LAM/2024/0003
Property	**:**	9A & 9B London Road TN39 3JR
Applicant	**:**	Mr Mark Christopher Scrivener (9B) & Mr Aaron J Tudor & Mr Nathan Q Tudor (9A)
Representative	**:**	Ms Whiteman of Dean Wilson LLP
Respondent	**:**	Assethold Limited
Representative	**:**	Mr S Madge-Wylde, counsel instructed by Eagerstates Limited
Type of Application	**:**	Appointment of a manager
Tribunal Member(s)	**:**	Regional Judge Whitney Mr C Davies FRICS Mr E Shaylor MCIEH
Date of Hearing	**:**	26th March 2024
Date of Decision	**:**	29th April 2024

DECISION

Background

1. The Applicants seek the appointment of a manager. They nominate Mr Gary Pickard.

2. The Property is a terraced converted property comprising commercial premises with flats above. The application contains detailed grounds relied upon and attaches a copy of the Section 22 Notice served. Further the Applicants rely upon a decision of this Tribunal under reference CHI/21UG/LSC/2022/0113 and /0009.

3. Directions were issued on 6th February 2024 listing for a hearing close to the Property with an inspection immediately prior.

4. Whilst the Respondent indicated by an email dated 22nd February 2024 that they had not received a copy of the application, they filed a statement of case on 8th March 2024. On Friday 22nd March 2024 they submitted a witness statement from Mr Ronni Gurvits of the Respondents managing agents.

5. We were supplied with a hearing bundle consisting of 441 pdf pages and references in [ ] are to pages within that bundle.

Inspection

6. The Tribunal inspected the Property immediately prior to the hearing. The Inspection was attended by the Tribunal and their case officer; Ms Whiteman, solicitor for the Applicant's and her assistant; Mr Scrivener and Mr Pickard. The Respondent or their representative did not attend the Inspection.

7. The Property at London Road is on the Western side of Town Hall Square Bexhill. It is a mid terrace Edwardian property with a record shop on the ground floor (and which we are told in the papers has a cellar although we did not access the same) with a doorway to the left hand side of the record shop façade when facing the Property.

8. The front façade is clearly in need of some repair and maintenance. The pointing appears to have failed and there is evidence of historic dropping of the masonry to the second floor. There appears to have been some re-pointing to have taken place but only limited.

9. The front door to the communal hallway has been recently been repainted but to a very poor standard. There is a working intercom to allow access to the two flats on the first and second floors. The communal hallway had been repainted but again the works were not complete and the works were to a very poor standard.

10. Within the communal hallway was some fire safety signage and two cupboards containing electric meters. The cupboards were of poor wooden construction.

11. We accessed the rear of the property via flat 9A. The rear garden is demised to flat 9A. The rear of the Property is rendered and poorly decorated. Foliage was growing out of the render adjacent to a second floor window. There is access to an alleyway to the rear. When looking towards the Property from the garden the boundary wall on the left hand side has had poor quality patch repairs to the render.

12. Overall the impression was of a poorly maintained and managed building.

The Hearing

13. The hearing took place in person at Rother District Council Town Hall which was on the Northern side of Town Hall Square. The hearing was recorded.

14. All who attended the Inspection attended the hearing. Mr Nathan Tudor also was in attendance for the Applicants. Mr Madge-Wyld of counsel appeared for the Respondent.

15. On the day before the hearing, 25th March 2024, the Respondents representative had completed an Order 1 application seeking to adjourn the hearing and attaching a further witness statement of Mr Gurvits. The application stated:

"Contrary to the overriding objective, the manner in which the application has been dealt has prevented the Respondent from participating fully in the proceedings and has not been proportionate to the issues and importance of the case."

16. The Respondent expanded upon these in a continuation sheet and a second witness statement given by Mr Gurvits. Essentially the reasons were that the Respondent had not been afforded sufficient time to prepare for the hearing. Mr Madge-Wyld filed a skeleton argument and drew the Tribunal's attention to the case of Jalay Enterprises Ltd v. Ramsdale [2023] UKUT 247 (LC).

17. Mr Madge-Wyld made his application relying upon his skeleton argument. He explained he had been instructed on Friday although the hearing had been in his diary prior to this date. When questioned by the Tribunal he stated he had no instructions as to why Mr Gurvits was not in attendance to answer questions upon his witness statement in support of the adjournment.

18. Mr Madge-Wyld referred to the fact that Mr Gurvits had emailed the Tribunal on 22nd February 2024 referring to the fact the

Respondent may wish to rely on expert evidence and seek further time. Mr Gurvits had received no response to the same. He suggested the Tribunal should have replied making Mr Gurvits aware that a completed Order 1 form was required.

19. The Tribunal referred Mr Madge-Wyld to Flat 7, 3-5 The Ridge CHI/21UD/LSC/2022/0028 being a case involving a late application for an adjournment by the Respondent involving the same panel as today. Further the Tribunal referred to 213 Priory Road CHI/21UD/LSC/2023/0085. In this later case Mr Gurvits had confirmed he was a qualified solicitor (although not acting as such when working for Eagerstates Ltd) and had conducted over 100 Tribunal cases.

20. Mr Madge-Wyld explained he assisted with the preparation of the application for an adjournment, hence it was on an Order 1. He suggested the directions ordered a timetable which was far too short to allow his client time to properly prepare. He suggested his client may have wished to call expert evidence as to the state of the building.

21. Ms Whiteman resisted the application. She stated her firm had never received any request to agree a variation to the directions. The application was made only the day before the hearing without any warning. She suggested that Companies House records show the Respondent has property assets of in the order of £20 million. It could have instructed solicitors. The Property in question is modest comprising of a shop and two flats.

22. The Applicants previously made an application for a determination of service charges (CHI/21UG/LSC/2022/0113 and /0009), despite this application substantially finding in their favour all the Applicants had received was a further substantial demand for monies. This they disputed as no credits appeared to have been given for the earlier proceedings.

23. She suggested the Respondents only have themselves to blame. They choose to do nothing until the last moment. It is in her submission proportionate to proceed.

24. In reply Mr Madge-Wyld accepted the original application had been posted but was only emailed on 22nd February 2024 to his client. The directions were in his submission very tight.

25. The Tribunal adjourned to consider. Upon resumption the Tribunal confirmed it would not adjourn and would provide written reasons within this decision.

26. Mr Madge-Wyld confirmed he would wish to make submissions as to the form of any management order if the Tribunal was minded to make such order but had limited further instructions. The Tribunal

acknowledged this but confirmed it would afford him every opportunity to ask questions or make submissions in the normal way.

27. The hearing proceeded.

28. Mr Scrivener gave evidence. He relied upon his two witness statements [176-179 &233-235]. Mr Scrivener explained that neither he nor Mr Tudor had received back any of the funds which he said totalled about £9,500 each which the previous Tribunal had ordered were not payable. Then in March 2024 a further bill for about £3,500 had been received [44&45] which contained inflated amounts and again contained no reference to the credits previously ordered.

29. Mr Scrivener explained that work was never done properly. He is a teacher and so it is difficult for him to take time off. He stated he could not see anything positive and the money he pays appears to disappear into thin air.

30. Mr Madge-Wyld did not wish to cross examine Mr Scrivener.

31. On questioning by the Tribunal he confirmed he understands he will have to take separate proceedings against the Respondent to enforce the earlier service charge decision. He is aware that the Tribunal appointed manager will require monies and the costs will not be low. He however believes that at least work will be done.

32. He explained that for a long time he simply paid. With hindsight he wished he had challenged matters many years ago. The current bill just received is in his opinion not right and he does not wish to put his money with someone who does not know the building and has no interest in it.

33. He suggests that the managing agents simply say pay or the matter will be passed to debt collectors. He gets no meaningful response to enquiries.

34. Ms Whiteman made her submissions relying upon her skeleton argument. She stated that the Section 22 notice was served and her firm received no response. The only response was a direct communication to the Applicants [200] purporting to attach a statement showing how credits had been applied [201 & 202]. However this did not show credits or correlate with the findings of the earlier Tribunal.

35. She suggested there was no transparency or reconciliation in the accounting of the Respondent. Further all the demands issued do not accord with the lease terms as Mr Gurvits now appears to accept in his statement filed on 22nd March 2024.

36. In her submission the demands and accounts are not in accordance with the lease. Further, services are not conducted to a reasonable standard. She submits that these items she has raised also amount to breaches of the RICS Service Charge Management Code. In her submission it is just and convenient for a manager to be appointed.

37. The building is in disrepair and the standard of works undertaken as seen at the inspection is poor yet the costs are inflated and the Respondent's agent uses intimidatory tactics to be paid.

38. In her submission a three year management period is required to allow works to be planned and undertaken.

39. Mr Pickard then gave evidence. He confirmed his statement [216-232] was true and he continued to be willing to accept an appointment.

40. Mr Madge-Wyld did not question Mr Pickard.

41. Mr Pickard confirmed to the Tribunal he had 5 current appointments. He explained typically he takes 20% insurance commission but was happy to agree not to as per his statement.

42. He explained he would require an indemnity as to costs. He believes he has this in his other appointments.

43. His appointment at Longridge Court is a mixed residential and commercial development with 12 flats above 5 or 6 shops.

44. He explained he would look to phase any works to assist with the leaseholders' ability to fund the costs. He suspects he would look to attend to the rear elevation first and then the front.

45. He employs 5 property managers and assistants and 5 accounts staff. He has been a property manager for the past 45 years.

46. Mr Madge-Wyld made submissions as to the form of an order if the Tribunal was persuaded to make the same.

47. The proposed draft order with the Applicant's amendments is too wide. In particular the indemnity proposed at paragraph 19 goes beyond what would typically be included. Paragraph 18 already gives sufficient protection in his submission.

48. He suggests a period of three years is excessive. He accepts works are needed but in his submission works could be begun sooner and if there were legitimate delays the manager could apply for an extension. He suggested if we were satisfied it was just and convenient to remove the Respondent's property rights then a period of 2 years would be difficult to take issue over.

49. He suggested the definition of the Property should not include the commercial parts. He accepted it was not impossible for an order to include but would be unusual. Further the commercial tenants were not present to comment.

50. As to paragraph 38 (requirement to hand over documents etc) he would suggest 21 days is insufficient. At least a further 2 weeks would be required. Further paragraph 39 is very broad and in his judgment is not required.

51. In respect of paragraph 46 (insurance) he suggests Mr Pickard ought to have at least £2 million of cover.

52. Ms Whiteman made short submissions in response.

53. She suggested it would be wrong to divide out the commercial lease which was held on a 999 year lease. She suggested the other amendments were reasonable and appropriate in the circumstances of the case.

Decision

Refusal of adjournment

54. We were not persuaded that an adjournment was in the interests of justice or in accordance with the overriding objective as set out in Rule 3 of the Tribunal Procedure Rules 2013.

55. The Respondent and its managing agent in the guise of Mr Ronni Gurvits are experienced litigants before this Tribunal. Mr Gurvits is a qualified solicitor and has acted in over 100 Tribunal applications.

56. We do not find the decision in Jalay to be of assistance as the circumstances were different. In this instance whilst late the Respondents filed a statement of case and a witness statement. This was an application to adjourn a hearing. When each were sent to the Applicant (and Tribunal) no suggestion was given that the Respondent would be seeking an adjournment or a variation to the directions.

57. We accept the timetable was short. However this is a modest building and it is incumbent upon the Tribunal to use its resources proportionately and to bring matters to hearing as soon as is reasonably practicable. Mr Madge-Wyld refers to the email from Mr Gurvits of 22nd February. This states:

"Dear Sirs,

Further to the below, if there is a need for expert witness we need time to review the application first before responding, we note the date of the directions but having not had sight of the Application we cannot comment.

We would therefore also request a variation to paragraph 19 to allow 14 days after the receipt of the documentation for a response to be provided"

58. Mr Gurvits has acknowledged in his earlier email receipt of the directions and the Statement of Tribunal Rules and Procedures. These make clear that if a case management application is to be made it must be placed upon an Order 1 form. Mr Gurvits as an experienced litigator before this Tribunal and this Region is aware of this requirement. We refer to the two cases we put to Mr Madge-Wyld.

59. We note that this application for an adjournment was not made until 13.20 on Monday 25th March 2024. This was the day before the hearing. Even on Friday 22nd March 2024 no indication was given that an adjournment would be sought, the Respondent simply filed a late witness statement from Mr Gurvits.

60. Whilst we accept that Mr Madge-Wyld only received his brief on Friday 22nd March 2024 he indicated the hearing had been in his diary for sometime prior. Plainly the Respondent had taken steps to ensure they had representation and we agree with the submissions of Ms Whiteman on this point that the Respondent had sufficient resources to avail itself of whatever advice and assistance it required.

61. Further Mr Gurvits had given a witness statement in support of the application and yet failed to attend. Mr Madge-Wyld indicated he had no instructions as to why Mr Gurvits was not in attendance.

62. It could be said an application as late as in this case is a deliberate and calculated attempt to derail a hearing for which the Respondents had notice since at least 22nd February 2024, in the hope the Applicants may withdraw. We find such a late request without any notice to be little more than a cynical ploy, particularly given Mr Gurvits did not afford the Tribunal the courtesy of attending to answer any questions it might have had of him.

63. Given we had a statement of case and witness statements from Mr Gurvits and there was no clear reason to believe that an expert condition report was required over and above material already in the Respondent's possession (see para 70 below) we were not persuaded that the hearing should be adjourned. To do so would cause the Applicants and the Tribunal significant inconvenience

and expense. These features alone would not prevent an adjournment but given there was no good reason given as to why the statement of case and witness statement given by the Respondents were not sufficient taking account of all matters we exercised our discretion under our case management powers and refused the request for an adjournment.

Appointment of a Manager

64. In making our determination we make clear we have taken account of the two witness statements filed by Mr Gurvits.

65. We find that the previous tribunal determination under case reference 9A and 9B London Road, Bexhill-on-Sea, East Sussex, TN39 3JR CHI/21UG/LSC/2022/0113 and /0009 provides evidence as that the Respondent has issued unreasonable service charge demands which are not in accordance with the lease terms. The Respondent then suggests it has applied this decision and given credits. It relies on statements exhibited marked exhibit 1 of the first statement of Mr Gurvits. These are frankly unintelligible and do not show how the Tribunal decision has been applied to the sums determined given the payments already made by the Applicants.

66. We note that it is these statements which are effectively the only reply to the Section 22 Notice served [18-21] dated 26 October 2023. Originally it appeared the Respondent denied receipt however it seems this point was conceded. Even if it was not conceded we are satisfied given the proof of delivery [247] that the Notice was posted and delivered.

67. We are satisfied that the Applicants were entitled to bring the application and that the same has been made by the two residential leaseholders of the Property. The Section 22 Notice sets out what their complaints are and how these may be addressed and we are satisfied complies with the statutory requirements.

68. The Respondents quite rightly state that the deprivation of a landlord's right to manage their property should be a last resort.

69. We have taken careful note of Mr Scrivener's evidence, particularly the length of time matters have been unsatisfactory and the fact he has felt compelled to pursue the various tribunal applications. His evidence was compelling.

70. We have also taken account of our own findings from the Inspection. The Property has been poorly maintained and such poor maintenance has plainly been ongoing for some time. The disrepair issues are not new. Mr Gurvits relies upon a "General Health & Safety and Fire Risk Assessment" dated 14th September 2023, a drone survey dated 13 January 2023 and a "Planned

Preventative Maintenance Schedule" dated March 2020 (all exhibited to Mr Gurvits' statement of 22nd March 2024). All recommend works and yet it is apparent little or no proper works have been undertaken to a reasonable standard.

71. Further we note it seems that the Respondent has paid no heed to the earlier tribunal decision. The recent demand sent fails to comply with the lease terms. The Respondent acknowledges this, which was a matter raised within this application and still sent out the same in March 2024. This Tribunal does not believe that the Respondent will comply with the lease or its statutory obligations.

72. Taking account of all the evidence we are satisfied that it is just and convenient for a manager to be appointed.

73. The object of such appointment will be to put in hand all of the necessary works and to allow the Applicants to take any necessary enforcement action to ensure the Respondent complies with the earlier Tribunal decision. We raise the later point given it seems that each Applicant may be entitled to the refund of not insignificant sums of money.

74. We turn now as to whether Mr Gary Pickard should be appointed. We note the considerable expertise Mr Pickard has in acting as a tribunal appointed manager. He satisfied us he understands the role of a Tribunal appointed manager and the responsibilities such a role brings.

75. We are satisfied Mr Pickard should be appointed.

76. Looking at the form of Order in our judgment the initial appointment should be until 30th June 2026. This provides a proper balance between the needs of the parties. At the end of that period if necessary an application can be made for an extension. If the Respondents can demonstrate they have complied with the earlier Tribunal application and have now a proper plan for the future maintenance and management that would be something a Tribunal would consider carefully in weighing up whether or not to extend such an appointment. We say that given that appointments of a Tribunal Manager should be for the shortest period necessary.

77. As to the other terms we attach the Order we make. We do not grant the indemnity Mr Pickard sought. We believe the indemnities included are sufficient and if at any time issues arise Mr Pickard may make application to this Tribunal for further direction or variation of the order.

78. We do not agree to his receiving a commission on the insurance. In our judgment this is not appropriate in the circumstances.

79. We are however satisfied that Mr Pickard should have management of the commercial parts in respect of maintenance and the like. To do otherwise would render any order unworkable in our judgment taking account of the terms of the commercial lease.

80. The management order shall start from 1st May 2024 and expire on 20th June 2026.

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 written 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.