



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

Case Reference : CHI/29UH/LVM/2019/0012

Property : 36-38 Tonbridge Road, Maidstone ME16
8SH

Applicant : Mary Odion Eniolu (Flat 7)
Jonathan Edwin Manser (Flat 3)
Samantha Jayne Ostridge (Flat 5)
Sharon Melanie Kimble (Flat 1)
Levente Barabas and Edit Boglarka Varadi
(Flat 8)
Simon Paul Logan (Flat 6)
Udal Supplies Limited (Flat 2)
Emma Frances Louise Forster (Flat 4)

Representative : Mary Odion Eniolu

Respondent : Latchguard Limited

Representative :

Type of Application : Application to vary Order appointing a
manager

Tribunal Member(s) : Judge Tildesley OBE

Date of Directions : 13 April 2020

DECISION

ALL COMMUNICATIONS WITH THE TRIBUNAL SHOULD BE CONDUCTED BY E-MAIL UNTIL NOTICE IS GIVEN TO THE CONTRARY. THE TRIBUNAL'S EMAIL ADDRESS IS RPSOUTHERN@ JUSTICE.GOV.UK.

Background

1. The Application is to vary the terms of an Order appointing a manager to provide for Joe McAuley to replace Mr K Telfer as the Tribunal-appointed manager for 36-38 Tonbridge Road, Maidstone.
2. The Application was listed for hearing on 30 March 2020. The Applicants' representative had prepared a hearing bundle.
3. On 23 March 2020 the Tribunal cancelled the hearing in view of the Corona Virus Public Health Emergency and directed that the Application be dealt with on the papers unless a party objected within 7 days from the date of the directions. No objections have been received.
4. The Application is made on behalf of the leaseholders of the eight flats at the property. The Tribunal noted that the directions named Udal Supplies Limited and Simon Logan as Respondents. This was incorrect. They requested to be named as Applicants. The Respondent to these proceedings is Latchguard Limited which holds the freehold of the building.
5. The Respondent made no submissions on the substantive application. The Tribunal is satisfied that the Respondent is aware of the proceedings because it had been in contact on subsidiary matters to do with the proceedings. The Tribunal also notes that the Respondent was a party to the proceedings in 2002 and 2003 when Mr Telfer was appointed as manager. At that time The Respondent reluctantly conceded to the appointment of Mr Telfer and did not attend the hearings.
6. The Tribunal understands that the property, 36-38 Tonbridge Road, Maidstone, is on four floors and has been converted into eight flats.
7. The Applicants' representative supplied a copy of the lease for Flat 7 which was made on 9 December 1985 and between A and A Properties Limited of the one part and Richard Trevor Creasey of the other part. The term of the lease is 99 years from 24 June 1984 in return for a rent of £25 per annum.
8. Under Clause 3 of the lease the landlord is required to effect insurance of the building, to maintain and keep in good and substantial repair and condition and (where necessary) renew the main structure of building and other parts of the estate, to decorate the exterior and interior (common parts) of the building, and to engage managing agents and other professionals as may be necessary for the proper maintenance of the building. Clause 3 also gives the landlord the power to set aside

monies as a reserve to meet future liabilities. Under Clause 2(3) the lessee is required to pay an interim charge and service charge in respect of the costs incurred by the landlord in carrying out his obligations under Clause 3.

9. On 30 May 2003 Tribunal appointed Mr Telfer as manager of the subject property with effect from 1 June 2003 on condition that he appointed Phoenix Property Management to be managing agents, to carry out the obligations of the lessor contained in the leases as varied by deeds of variation and to collect from the lessees the interim charge and service charge provided for in the leases and without prejudice to the generality of the foregoing in particular to effect suitable and adequate insurance and arrange for repairs to be carried out bearing in mind the provisions of section 20 of the Landlord and Tenant Act 1985 and guidance contained in the RICS service charge Residential Management Code¹.
10. The Applicants stated that Mr Telfer, the leaseholder of Flat 4, who was appointed as manager had sold his flat and his current whereabouts were unknown. Further the Applicants said that Phoenix Property Management who were appointed by Mr Telfer as managing agents had ceased trading, and that the freeholder has had no involvement in the management of the building since Mr Telfer's appointment.
11. The Applicants maintained that the building required urgent major works. Mr McAuley of Sandersons UK was prepared to organise these works provided he was appointed as manager.

Decision

12. Under section 24(9) of the Landlord and Tenant Act 1987 the Tribunal may on the application of any person interested vary (whether conditionally or unconditionally) an Order appointing a manager.
13. Where an application under section 24(9) is made by a person who is not the landlord, the legislation is silent about the criteria applied by the Tribunal to determine it.
14. The Court of Appeal in *Orchard Court Residents Association v St Anthony Homes Limited* [2003] 2EGLR 28(CA) established that there was a distinction between making and varying an Order and that they dealt with quite separate issues. The Court of Appeal said that under section 24(9) of the 1987 Act it was not necessary for the Applicant to demonstrate again the grounds for making a management order under section 24(2) existed. The Court of Appeal observed that the legislation imposed no criteria on how the Tribunal should exercise its discretion when an application for variation was made by an interested person other than the landlord.

¹ Tribunal reference L24/02/KT

15. The Tribunal observes that the order made on 30 May 2003 did not accord with current practice for the making of management orders. The appointment of a leaseholder as manager and not fixing an end date for the Order are unlikely to be contemplated by a Tribunal if making an Order today.
16. The Tribunal observes that there was no dispute about the primary facts supporting the Application, namely, the manager named in the Order is no longer involved with the building and his current whereabouts are unknown, and that the building is in disrepair and requires major works.
17. Mr McAuley, the proposed manager, submitted a statement dated 27 January 2020. Mr McAuley says that he is a property professional with ten years experience in private residential property management and leasehold management, and holds a degree in Rural Enterprise and Land Management. Mr McAuley is currently employed as Head of Block Management with iConn Limited trading as Sandersons UK Limited.
18. The Company has 12 years experience in managing residential properties in Kent and has a portfolio in excess of 300 leasehold units across 22 estates. iConn Limited is a member of the Association of Residential Letting agents (ARLA).
19. Mr McAuley asserts that he fully understands the role, duties and responsibilities of a manager appointed by the Tribunal and is willing to act if so appointed.
20. Mr McAuley states that the annual management fee is £1,800 plus VAT and that his duties as a Tribunal appointed manager would be covered by the Professional Indemnity Insurance issued to Sandersons UK Limited which provides indemnity of £250,000 for any one claim excluding defence costs with an excess of £2,500.
21. Mr McAuley says that he is aware of the urgent repair works required to the roof, soffits, facias and guttering of the property and that Sandersons would comply with the Code of practice published by the Royal Institution of Chartered Surveyors.
22. The Tribunal is satisfied that the Applicants have made out the grounds for making the Order requested. The Tribunal finds that the manager named in the order is no longer involved with the property and that urgent repairs are required which would not take place until a new manager is appointed.
23. The Tribunal places weight on the fact that all leaseholders supported the Application and that the Respondent has not objected to it. Finally Mr McAuley's statement indicates that he has expertise in the management of residential properties and that Sandersons would comply with the RICS Code of Practice.

24. The Tribunal, however, weighs those findings against the terms of the Order which are unusual, the length of the Order and the prevailing circumstances of the Corona Virus public health emergency which has curtailed the Tribunal's scrutiny of whether the proposed manager is a suitable person to be appointed.
25. The Tribunal considers that the appropriate Order to make is an interim Order which would have the effect of appointing Mr McAuley as a manager until 31 December 2020. The Applicants have the right to apply for the Order to be extended provided it is made before the 31 December 2020 which will then give the Tribunal the opportunity to inspect the property and to scrutinize in more detail the suitability of Mr McAuley as manager.
26. The making of an interim order should ensure that action is taken to address the urgent repairs to the building which would probably require section 20 consultation on major works and enable the property to be managed in the intervening period.
27. The Tribunal discharges Mr Telfer as manager on the grounds that he has moved away and is no longer involved.

Decision

28. In accordance with section 24(1) Landlord and Tenant Act 1987 Joe McAuley of iConn Limited trading as Sandersons UK ('the Manager') is appointed as manager of the property at 36-38 Tonbridge Road, Maidstone, Kent ME16 8SH ('the Property'). The Order shall be interlocutory and continue until 31 December 2020. The variation will take effect from 4 May 2020 subject to Mr McAuley confirming that he is willing to accept the appointment on the terms offered and that he confirms the Sanderson's Professional Indemnity Insurance covers the work of the Tribunal Appointed Manager.
29. The terms of the existing order continue in force until the variation is confirmed.
30. Any party may apply for an extension of the Order which should be made before the 31 December 2020.
31. The Manager shall manage the Property in accordance with:
 - i. The directions and schedule of functions and services below (for the avoidance of doubt if the terms of the management order are in conflict with the leases, the management order prevails); and
 - ii. The respective obligations of the landlord in the leases by which the flats at the Property are demised and in particular with regard to repair, decoration, provision of services and insurance of the Property; and

- iii. The duties of a Manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
32. The Tribunal discharges Mr Telfer from his duties as Manager of the Property under the Current Order.
33. The Manager shall register the Order against the Landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act.

DIRECTIONS AND SCHEDULE OF FUNCTIONS

1. The appointment shall be limited to arranging insurance for the building, taking steps to address the major works and dealing with any day to day management issues that require urgent attention.
2. From the date of the appointment and throughout the appointment the Manager shall ensure that Sandersons UK Limited has appropriate professional indemnity cover for the duties of a Tribunal Appointed manager and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
3. The Respondent to use best endeavours to co-operate with the Manager in the discharge of his duties for the interim period.
4. Any person who holds the service charge accounts for the property and any contracts in connection with the service charges shall hand them over to the Manager by no later than 4 May 2020.
5. The Manager shall be entitled to remuneration of £1,800 plus VAT per annum (pro rata), which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property.
6. The Manager shall provide the Tribunal, the freeholder and the lessees with a report on the progress and outcome of the Management Order by no later than 31 December 2020.
7. When the management order is concluded within 28 days of its conclusion, the Manager shall prepare and submit to the Tribunal final closing accounts. The Manager shall also serve copies of the accounts on the freeholder and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed

manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.

8. The Manager shall be entitled to apply to the Tribunal for further directions.
9. The Manager shall inform the leaseholders of his appointment and his powers under the order

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Major Works

- (i) To undertake consultation under section 20 of the Landlord and Tenant Act 1985, to appoint surveyors if need be, and to agree contracts for carrying out the works.
- (ii) To charge an additional fee for the section 20 consultation provided it is agreed beforehand with the Tribunal.

Service charge

- (i) Set Demand and collect an estimated service charge in advance to pay for insurance premiums, his management fee and any other matters under the leases requiring urgent attention. For the avoidance of doubt this power stands outside the terms of the lease
- (ii) Take action and to instruct solicitors to recover estimated service charges imposed under (i) above. The costs of debt recovery and the instruction of solicitors form part of the service charge.
- (iii) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property and in accordance with the lease.

Accounts

- (i) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (ii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which service charge contributions shall be paid.

- (iii) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.
5. **In view of the Coronavirus Emergency all communications with the Tribunal should be by way of email at rpsouthern@justice.gov.uk**