10394

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

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| **Case reference** | : | **LON/00BK/LVM/2014/0013** |
| **Property** | : | **GROUND FLOOR SHOP AND BASEMENT, 385 HARROW ROAD, LONDON W9 3NA** |
| **Applicant** | : | **KRISTOF KAROL** |
| **Representative** | : | **TEACHER STERN LLP** |
| **Respondent** | : | **BERKELEY CREDIT AND FINANCE LTD** |
| **Representative** | : | **SEAMUS GAVIN (IN HOUSE LAWYER)** |
| **Type of application** | : | **APPLICATION UNDER SECTION 24(4) AND/OR SECTION 24(9) LANDLORD AND TENANT ACT 1987 FOR VARIATION OF A MANAGEMENT ORDER** |
| **Tribunal member(s)** | : | **Tribunal Judge Lesley Smith**<br>**Mr P Roberts, DipArch, RIBA**<br>**Mr J Francis** |
| **Date and venue of hearing** | : | **Thursday 13th November 2014 at 10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | : | **13th November 2014** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal determines that the management order dated 5 October 2009 should be amended in accordance with the draft attached

## The application

1. The Applicant seeks a determination pursuant to sections 24(4) and 24(9) Landlord and Tenant Act 1987 ("LTA 1987") for a variation of the order made by the Tribunal on 5 October 2009 (amending earlier orders) relating to the appointment of the Applicant as manager of the building at 383-385 Harrow Road, London W9 2NA ("the Building"). The Building encompasses 6 residential flats above 2 commercial premises. It is in relation to the commercial premises at 385 Harrow Road ("the Property") that the variation is sought.

## Background to the application

2. On 25 September 1998, two tenants of the Building applied to what was then the Leasehold Valuation Tribunal ("LVT") for an order appointing as manager of the Building a Mr Maloney of Granville & Co. By a determination dated 17 May 1999 ("the First Order"), the LVT made an order to that effect. By the First Order, Mr Maloney was appointed as manager of the Building for a period of one year. Appendix A to the First Order provided for Mr Maloney to have the functions of a "Rent Collection Service", Appendix B provided for him to have the functions of "Property Management", Appendix C provided for him to carry out "Additional Services" and Appendix D "Professional services". It is worthy of note at this point that at paragraph 6 of its determination, the LVT referred to there being an issue about the collection of advance payments towards the Reserve Fund and the fact that the residential leases for the flats in the Building permitted that recovery but the leases for the commercial premises did not. In this regard, the LVT decided that it "*had no power to make orders which would alter the effect of those provisions in the leases*".

3. On 6 May 2008, three tenants of the Building made an application to vary the First Order by replacing Mr Maloney with a new manager (as he had resigned as a director of Granville & Co) and to vary the terms of the First Order. This application was overtaken by events in relation to replacement of the manager as a Residents Management Company ("RCM") had by then been established and Mr Karol of that RCM was proposed as the new manager. Mr Karol, the Applicant in this case, was duly appointed. There was some amendment to the terms of the First Order by agreement annexed to the LVT's decision ("the Second Order"). The Second Order provided that Appendix A (Rent Collection Service) should relate only to the residential units in the Building and it was only those units who were made liable to pay for the manager's

fees. Appendix B (Property Management) related to all units in the Building and included the function of managing the Building and demanding payment for service charges. Appendix C provided for functions of works which fell within section 20 Landlord and Tenant Act 1985.

4. On 1 September 2009, Mr Karol applied for variation of the Second Order in particular to enable him to issue proceedings for recovery of service charges and to collect service charges from the commercial units in the Building. The Respondent to this application objected to that variation. The LVT rejected the Respondent's objection, finding that *"the terms of its existing lease will remain in force"*. The LVT made an order ("the Third Order") which was in a wholly different form to the Second Order. It provided at paragraph 4 that the manager would have the power to enforce the obligations of the leases against both the residential and commercial tenants, except for recovery of the annual rents of the commercial units. At paragraph 5, it provided that the manager could take legal action where a commercial or residential tenant was in breach of lease (except for arrears of commercial rent). Paragraph 10 provided that the manager was entitled to payment of his fees by such sums as could lawfully be charged to the residential or commercial tenants as part of the service charge provisions in their respective leases, or by his inherent powers as receiver or under s24(5)(c) LTA 1987 for his fees. Paragraph 12 provided for the manager to be reimbursed in respect of reasonable cost, disbursements and expenses which included legal fees of and incidental to legal proceedings to enforce the terms of the leases *"but only insofar as the terms of the respective leases allow"*.

5. The Respondent is the tenant of the Property. It has failed to make payment of various service charges, payments towards the reserve fund for the Building and legal and administrative costs incurred by the Applicant in seeking to recover the arrears. Proceedings were issued in the Northampton County Court by the Applicant against the Respondent for arrears in the sum of £2725.51 together with interest and costs. The Respondent has filed a defence denying liability to pay service charges, contributions to the reserve fund or legal fees on the basis that there is no provision in its lease for recovery of the same. It has also indicated in without prejudice correspondence that it would be permissible for it to recover payments made by the Respondent to the Applicant to which the Applicant is not entitled. The Respondent has been making payments for service charges and reserve fund contribution for about 15 years. The proceedings were transferred to the West London County Court and have been stayed pending the outcome of this application until 29 December 2014.

## The application

6. By this application, the Applicant seeks variation in 3 respects:-

(a) A variation to make clear that the Respondent is obliged to pay service charges under clause 2.33 of the lease and/or clause 2.5 of the lease

(b) A variation to require the Respondent to pay towards the reserve fund for the Building

(c) A variation to require the Respondent to reimburse the Applicant's legal fees

7. The Respondent did not attend the hearing. It indicated by a letter dated 30 October 2014 that its representative who is an in-house lawyer was away ill and it was seeking to arrange alternative legal representation. It did not seek any adjournment on this basis. The Applicant attended the hearing represented by Mr Upton of Counsel.

**Payment of service charges**

8. The Applicant relies on clause 2.33 of the Respondent's lease. That requires the Respondent to pay 6.25% of "*the expense and costs as assessed by the Lessor's Surveyor providing the services as set out in the Fifth Schedule*". This clause is expressed to be "*without prejudice to the generality of any other covenant by the Lessee*". The service charge schedule is in fact the Fourth Schedule, the Fifth Schedule being the rent review mechanism under the lease. It is on this basis that the Respondent seeks to avoid its obligation to pay any service charges. The Applicant also relies on clause 2.5 which requires the Respondent to "*pay a fair proportion to be determined by the Surveyor for the time being of the Lessor whose determination shall be binding upon the Lessee of the expenses payable in respect of constructing repairing and cleansing all party walls fences roofs foundations sewers drains road pavements and other things the use of which is common to the demised premises and to other premises*". The Fourth Schedule requires the Respondent to pay *"All reasonable costs and expenses properly incurred by the Lessor in providing all or any of the following services to the building..*". The list following this provision sets out the requirements on the Lessor to repair etc, decorate the Building externally, maintain sewers, drains etc, employ staff and retain managing agents and contractors and pay rates etc.

9. It is abundantly clear that the reference in clause 2.33 is intended to refer to the Fourth Schedule and not the Fifth Schedule and on any plain reading of the lease that is the view that any sensible, objective reader would reach. Accordingly, the Tribunal has no hesitation in agreeing that clause 2.33 requires the Respondent to pay the percentage specified of the service charge. That is the percentage which has in fact been charged although clause 2.5 would also require the Respondent to pay a "fair proportion" of some of the repairing etc

obligations of the Lessor. The Tribunal therefore agrees to the variation sought in the recital to the draft order and paragraph 4(i).

10. There is no provision in the lease for the method of calculation, save for assessment by the Lessor's Surveyor, nor for dates when payment should be made. The Applicant has sought to amend the management order to require payment on 1 January and 1 July each year which is the dates when the Respondent had been making payment and to link calculation of the payment to the service charge account. It seems to the Tribunal that the only reasonable way to interpret the lease would be to permit calculation to be on the basis of the service charge account and for payment to be made on the same dates as payment of the rent under the lease that is to say the usual quarter days in advance. However, the proposed amendment at paragraphs 4(iii) and 4(iv) of the draft order are wider in terms and amount to a redrafting of the lease. The Tribunal does not therefore make those amendments.

11. The Applicant sought to make the effect of paragraph 4 of the draft order retrospective. Counsel for the Applicant relied in this regard on the case of ***Brickfield Properties Ltd v Botten [2013] UKUT 0133 (LC)***. This was a case concerning lease variation and not a management order. The Tribunal does not consider that it assists since the ratio of the decision relates to the Tribunal's powers in relation to variation and also to the fact that the parties to the lease could have agreed to vary the lease retrospectively. However, the Tribunal does not have any difficulty with the proposed backdating of the provision in paragraph 4 since in the view of the Tribunal, it is simply stating what the lease has always provided (subject to what is said below about the reserve fund) and is therefore not affecting the obligations of the parties.

**Reserve Fund**

12. It appears to be common ground that there is no provision in the lease for contributions to the reserve fund by the tenants of the commercial units. This is in contradistinction to the provisions in the residential leases for the Building which do include a specific clause to that effect. That this may be an issue was noted as far back as the First Order and, as noted above, the Tribunal there decided that it had no power to vary the effect of the lease in that regard. Counsel for the Applicant contended that the Tribunal had erred in that regard.

13. Counsel for the Applicant asked the Tribunal to vary the management order notwithstanding the absence of such a clause in the lease and argued that the Tribunal's jurisdiction to do this arose from section 24(1) which gives the Tribunal power to appoint the manager to carry out any function in connection with management of premises and functions of a receiver. Counsel argued that this must be read as meaning that the Tribunal can accord functions to a manager which he

would not otherwise have under the lease which he requires to manage premises and to receive money for "good estate management". He suggested that this power had been exercised in other cases where there was no reserve fund provision in the lease at least in relation to residential premises but provided no authority to this effect. Whether this is so in relation to residential premises though is nothing to the point in relation to commercial premises. In relation to residential premises, the Tribunal has the power to vary a lease under LTA 1987. It has no such jurisdiction in relation to commercial leases.

14. Although the Tribunal has much sympathy with the Applicant's predicament, it does not consider that it has the jurisdiction to do something which in its view would amount to a variation of a commercial lease. It can interpret the effect of a commercial lease to give effect to functions conferred by a management order but it cannot rewrite the lease. The Tribunal does note that clause 2.5 allows the lessor to claim expenses "payable" rather than simply those paid, expended or incurred and this may entitle the Applicant to recover sums in advance of payment. It is also clear from what is said above that the Applicant is entitled to recover service charges and therefore the Respondent will be obliged to pay sums in that regard once due and in advance. There may also be an estoppel issue. However, those are matters for the Court and not for this Tribunal. The Tribunal therefore considers that it is not able to make the amendments to the draft order sought at 4(ii).

**Legal costs and expenses**

15. The draft order in this regard at paragraph 15 provides 3 options. The first is simply to delete the words *"but only insofar as the terms of the respective leases allow"*. The other two options are more specific and require the Respondent to make payment specifically for this application whether the lease allows it or not.

16. Again, the difficulty which the Tribunal faces in this regard is that what the Applicant is inviting is the rewriting of the lease. It is possible that clause 2.34 of the lease which provides for the Respondent to pay to the lessor *"a sum equal to ten per cent (10%) of all costs and expenses incurred by the Lessor by virtue of this Lease and the Lessor's obligations hereunder for administration expenses"* is sufficiently widely drafted to permit recovery (although of course this would only permit recovery of ten per cent). However, there may be other bases in law for recovery of costs as an administration charge or otherwise outside the provisions of the lease and of course the Applicant should be entitled to recover whatever costs he is able to in the Court proceedings linked to this application or other such proceedings. Section 24(5)(c) LTA 1987 does also permit the Applicant to recover as manager his remuneration. The Tribunal therefore considers it

appropriate to delete the words *"but only insofar as the terms of the respective leases allow"*.

17. The Tribunal has decided therefore to grant the application in part and agrees the amended draft management order in the form attached hereto. The Applicant is asked to amend the typewritten draft order in accordance with these amendments for signature by the Tribunal.

**Name:** L Smith **Date:** 13 November 2014

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
CASE REF: LON/00BK/LVM/2014/0013

PREMISES: 383-385 HARROW ROAD, LONDON, W9 2NA

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 24(4) AND 24(9) OF THE LANDLORD AND TENANT ACT 1987

BETWEEN

KRISTOF KAROL

Applicant

-and-

BERKELEY CREDIT AND FINANCE LIMITED

Respondent

---

*DRAFT* ORDER

---

UPON HEARING Counsel for the Applicant and upon the Respondent not appearing and not being represented

AND UPON reading the Application and the witness statement of Mr Karol both dated 3 September 2014 and the bundle of documents filed with the Tribunal

AND UPON the First-tier Tribunal (Property Chamber) ("FTT") determining that, on the proper construction of clause 2.33 of the lease of the Ground Floor shop and basement at 385 Harrow Road, London W9 3NA dated 9 February 1996 made between (1) Anthony Arthur Charles Tillbrook and (2) Berkeley Credit and Finance Limited, the Respondent (and its successors in title) is liable to contribute towards the cost of the provision of services set out in the Fourth Schedule to the said lease

IT IS ORDERED:

1. This Order supersedes in its entirety the Order for the Appointment of a manager at 383-385 Harrow Road, London W9 3NA dated 17 May 1999, as varied by the Orders dated 3 November 2008 and 5 October 2009.

*General management powers and duties*

2. The FTT appoints Mr Kristof Karol (hereinafter called the manager) of 294 King Street, London, W6 0RR to receive the rents, profits and other monies payable under the leases of the residential parts of the property known as 383-385 Harrow Road, London, W9 2NA ("the property") and all monies (save for the annual rent) payable under the leases of the commercial parts of the property. ~~Schedule 1 of this Order sets out the details of both the residential and commercial parts of the property.~~

3. In respect of both the residential and commercial parts of the property, the FTT appoints the manager to manage the same in accordance with the rights and obligations of the leaseholders and the reversioner thereof.

*Ground Floor Shop and basement at 385 Harrow Road, London, W9 3NA*

4. As regards the lessee of the Ground Floor shop and basement at 385 Harrow Road, London W9 3NA ("the Commercial Unit at 385"):

   (i) For the avoidance of doubt, the manager is entitled to collect a service charge in respect of providing the services set out in the Fourth Schedule to the lease dated 9 February 1996 ("the Lease") between (1) Anthony Arthur Charles Tillbrook and (2) Berkeley Credit and Finance Limited from the Tenant of the Ground Floor shop and basement at 385 Harrow Road, London W9 3NA ("the Commercial Unit at 385")

   ~~(ii) The manager is entitled to demand and [redacted] reasonably~~ required for the performance of his repairing and maintenance obligations pursuant to this Order

   (iii) The manager is entitled to demand and receive the service charge payable pursuant to clauses 2.5, 2.33 and 2.34 of ("the Lease") and paragraph 4(ii) of this Order in advance by two equal instalments on the first day of January and the first day of July in every year. The manager shall as soon as is reasonably practicable after the end of the relevant period:

      a. prepare and furnish on the lessee of the Commercial Unit at 385 a service charge account showing the expenditure and income relating to the property

      b. where the service charge exceeds any payments made on account, demand ~~the deficit from the lessee of the Commercial Unit at 385~~

c. [redacted] lessee of the Commercial Unit at 385, allow a credit to the lessee's service charge account

(iv) The lessee of the Commercial Unit at 385 shall pay any balancing payment within [redacted] ed.

5. Paragraph 4 hereof shall have effect from the date of appointment of Neil Maloney as a manager in respect of the Property on 17 May 1999 (Case References: LVT/AOM/014/025/98 and LVT/SCC/014/024/00).

*Specific management powers and duties*

6. The manager will manage the property in a proper and business-like manner.

7. The manager will be responsible for carrying out the reversioner's obligations under the leases of the residential and commercial parts of the property and for enforcing against the tenants of the residential and commercial leases their obligations under the same (other than the recovery of the annual rents payable under the leases of the commercial parts of the property).

8. The manager may take any legal action which is reasonably required when a leaseholder, whether of the commercial or residential parts of the property, is reasonably believed to be in breach of a covenant under the lease (save as excluded in paragraph 7 above). This includes, but is not limited to:
   (a) legal action to recover monies due;
   (b) legal action to determine that a breach of covenant has accrued;
   (c) legal action to prevent a further breach of covenant;
   (d) any application to the FTT which the manager deems necessary in the interests of the effective management of the property.

9. The manager is empowered to enter into (and to terminate) any contract or arrangement and/or to make any payment or take any step which is necessary, convenient or incidental to the performance of his functions. Any sums due under such contracts or arrangements shall be paid from the monies collected under the terms of this order.

10. Save that the manager cannot be required to effect any contract or arrangement where the same would, in his reasonably opinion, result in the service charge account going into deficit.

11. The manager shall deal in a reasonable fashion with all items of repair and maintenance for which the reversioner is responsible provided that, in respect of works or agreements falling within the scope of s.20 *Landlord and Tenant Act 1985*, the manager shall be entitled to reasonable additional remuneration, not to exceed 12.5 % (plus VAT) of the costs of the works (before VAT) involved.

12. The manager is empowered to make and agree reasonable adjustments and other reasonable compromises with any tenant under a lease (whether of the residential or commercial parts of the property) in respect of any service charges or other sums payable under the terms of the lease (save that paragraph 8 of the Decision dated 5 October 2009 shall apply where the parties seek to agree a variation of a lease which would affect the interests of other lessees in the building).

*Provision for payments to the manager*

13. Payment to the manager of all sums to which he is entitled under this order shall be made as follows:

    (a) in the first instance, insofar as any such payments may be lawfully charged to the leaseholders of the residential and / or commercial properties mentioned above, by virtue of the provisions in their respective leases for the payment of service charges, they shall be made by such leaseholders as part of their service charges;

    (b) by virtue of his inherent powers as a receiver, and further or alternatively, by virtue of s.24(5)(c) of the *Landlord and Tenant Act 1987*, from moneys payable by tenants by way of the service charges, rents, interest on arrears of service charges and any other moneys which the manager may receive as manager and receiver of the property;

    (c) if and insofar as the above moneys may be insufficient to pay the sums to which the manager is entitled, they shall be paid by the leaseholders of the residential

and commercial premises by virtue of s.24(5)(c) of the *Landlord and Tenant Act 1987*.

*Remuneration of the manager*

14. The manager is directed to pay himself £210 per annum in respect of each residential unit, plus any VAT due on the same.

*Legal and professional costs*

15. The manager is further directed that he is to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) of and incidental to any application or proceedings, (including these proceedings) whether in the court or LVT, to enforce the terms of the leases mentioned above ~~([redacted] insofar as the terms of the respective leases allow)~~.

~~OR:~~

~~15. The manager is further directed that he is to be reimbursed in respect of reasonable costs,~~ disbursements and expenses (including, for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) of and incidental to any application or proceedings, (including these proceedings) whether in the court or FTT, to enforce the terms of the leases mentioned above (but only insofar as the terms of the respective leases allow) save that that the lessee of the Commercial Unit at 385 shall be required to reimburse the manager in respect of all legal fees and surveyor's fees incurred by the manager incidental to any app[redacted]roceedings whether in the court or the FTT to enforce the terms of the Lease of the Commercial Unit at 385 notwithstanding whether the terms of the respective lease allows the same.

16. Further, the lessee of the Commercial Unit at 385 shall reimburse the manager in respect of the costs, disbursements and expenses (including for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) in respect of the manager's application to the FTT dated 3 September 2014.

~~17. Further, and for the avoidance of doubt, the aforementioned provisions apply equally to~~ applications or proceedings commenced by the manager or proceedings to which he is a respondent.

[OR]

15. The manager is further directed that he is to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) of and incidental to any application or proceedings, (including these proceedings and the manager's application to the FTT dated 3 September 2014) whether in the court or FTT, to enforce the terms of the leases mentioned above ~~(but only insofar as the terms of the respective leases allow)~~. It is expressly recorded that the lessee of the Commercial Unit at 385 shall be required to reimburse the manager in respect of all legal fees and surveyor's fees incurred by the manager incidental to any application or proceedings whether in the court or FTT to enforce the terms of the Lease of the Commercial Unit at 385 notwithstanding whether the terms of the respective lease allows the same.

16. Further, and for the avoidance of doubt, the aforementioned provisions apply equally to applications or proceedings commenced by the manager or proceedings to which he is a respondent.

*Successors in title*

17. The terms of this order shall be binding on the current reversioner and leaseholders of the residential and commercial parts as well as their successors in title.

*Duration of order*

18. This order shall continue until further order ~~commence on 5 October 2[redacted]rms of this order shall supersede all existing and previous orders in respect of the property~~.

*Liberty to apply*

19. The manager and/or the lessees of the Property shall be entitled to apply to the FTT for further variations and/or directions in respect of this Order.

IN THE FIRST-TIER TRIBUNAL
(PROPERTY CHAMBER)

CASE REF: LON/00BK/LVM/2014/0013

PREMISES: 383-385 HARROW ROAD, LONDON, W9 2NA

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 24(4) AND 24(9) OF THE LANDLORD AND TENANT ACT 1987

BETWEEN

KRISTOF KAROL

Applicant

-and-

BERKELEY CREDIT AND FINANCE LIMITED

Respondent

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*DRAFT* ORDER

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UPON HEARING Counsel for the Applicant and upon the Respondent not appearing and not being represented

AND UPON reading the Application and the witness statement of Mr Karol both dated 3 September 2014 and the bundle of documents filed with the Tribunal

AND UPON the First-tier Tribunal (Property Chamber) ("FTT") determining that, on the proper construction of clause 2.33 of the lease of the Ground Floor shop and basement at 385 Harrow Road, London W9 3NA dated 9 February 1996 made between (1) Anthony Arthur Charles Tillbrook and (2) Berkeley Credit and Finance Limited, the Respondent (and its successors in title) is liable to contribute towards the cost of the provision of services set out in the Fourth Schedule to the said lease

IT IS ORDERED:

1. This Order supersedes in its entirety the Order for the Appointment of a manager at 383-385 Harrow Road, London W9 3NA dated 17 May 1999, as varied by the Orders dated 3 November 2008 and 5 October 2009.

*General management powers and duties*

2. The FTT appoints Mr Kristof Karol (hereinafter called the manager) of 294 King Street, London, W6 0RR to receive the rents, profits and other monies payable under the leases of the residential parts of the property known as 383-385 Harrow Road, London, W9 2NA ("the property") and all monies (save for the annual rent) payable under the leases of the commercial parts of the property.

3. In respect of both the residential and commercial parts of the property, the FTT appoints the manager to manage the same in accordance with the rights and obligations of the leaseholders and the reversioner thereof.

*Ground Floor Shop and basement at 385 Harrow Road, London, W9 3NA*

4. As regards the lessee of the Ground Floor shop and basement at 385 Harrow Road, London W9 3NA ("the Commercial Unit at 385"):
    (i) For the avoidance of doubt, the manager is entitled to collect a service charge in respect of providing the services set out in the Fourth Schedule to the lease dated 9 February 1996 ("the Lease") between (1) Anthony Arthur Charles Tillbrook and (2) Berkeley Credit and Finance Limited from the Tenant of the Ground Floor shop and basement at 385 Harrow Road, London W9 3NA ("the Commercial Unit at 385")

5. Paragraph 4 hereof shall have effect from the date of appointment of Neil Maloney as a manager in respect of the Property on 17 May 1999 (Case References: LVT/AOM/014/025/98 and LVT/SCC/014/024/00).

*Specific management powers and duties*

6. The manager will manage the property in a proper and business-like manner.

7. The manager will be responsible for carrying out the reversioner's obligations under the leases of the residential and commercial parts of the property and for enforcing against the tenants of the residential and commercial leases their obligations under the same (other than

the recovery of the annual rents payable under the leases of the commercial parts of the property).

8. The manager may take any legal action which is reasonably required when a leaseholder, whether of the commercial or residential parts of the property, is reasonably believed to be in breach of a covenant under the lease (save as excluded in paragraph 7 above). This includes, but is not limited to:
    (a) legal action to recover monies due;
    (b) legal action to determine that a breach of covenant has accrued;
    (c) legal action to prevent a further breach of covenant;
    (d) any application to the FTT which the manager deems necessary in the interests of the effective management of the property.

9. The manager is empowered to enter into (and to terminate) any contract or arrangement and/or to make any payment or take any step which is necessary, convenient or incidental to the performance of his functions. Any sums due under such contracts or arrangements shall be paid from the monies collected under the terms of this order.

10. Save that the manager cannot be required to effect any contract or arrangement where the same would, in his reasonably opinion, result in the service charge account going into deficit.

11. The manager shall deal in a reasonable fashion with all items of repair and maintenance for which the reversioner is responsible provided that, in respect of works or agreements falling within the scope of s.20 *Landlord and Tenant Act 1985*, the manager shall be entitled to reasonable additional remuneration, not to exceed 12.5 % (plus VAT) of the costs of the works (before VAT) involved.

12. The manager is empowered to make and agree reasonable adjustments and other reasonable compromises with any tenant under a lease (whether of the residential or commercial parts of the property) in respect of any service charges or other sums payable under the terms of the lease (save that paragraph 8 of the Decision dated 5 October 2009 shall apply where the parties seek to agree a variation of a lease which would affect the interests of other lessees in the building).

*Provision for payments to the manager*

13. Payment to the manager of all sums to which he is entitled under this order shall be made as follows:

    (a) in the first instance, insofar as any such payments may be lawfully charged to the leaseholders of the residential and / or commercial properties mentioned above, by virtue of the provisions in their respective leases for the payment of service charges, they shall be made by such leaseholders as part of their service charges;

    (b) by virtue of his inherent powers as a receiver, and further or alternatively, by virtue of s.24(5)(c) of the *Landlord and Tenant Act 1987*, from moneys payable by tenants by way of the service charges, rents, interest on arrears of service charges and any other moneys which the manager may receive as manager and receiver of the property;

    (c) if and insofar as the above moneys may be insufficient to pay the sums to which the manager is entitled, they shall be paid by the leaseholders of the residential and commercial premises by virtue of s.24(5)(c) of the *Landlord and Tenant Act 1987*.

*Remuneration of the manager*

14. The manager is directed to pay himself £210 per annum in respect of each residential unit, plus any VAT due on the same.

*Legal and professional costs*

15. The manager is further directed that he is to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of counsel, solicitors and expert witnesses) of and incidental to any application or proceedings, (including these proceedings) whether in the court or FTT, to enforce the terms of the leases mentioned above.

15. Further, and for the avoidance of doubt, the aforementioned provisions apply equally to applications or proceedings commenced by the manager or proceedings to which he is a respondent.

*Successors in title*

16. The terms of this order shall be binding on the current reversioner and leaseholders of the residential and commercial parts as well as their successors in title.

*Duration of order*

17. This order shall continue until further order.

*Liberty to apply*

18. The manager and/or the lessees of the Property shall be entitled to apply to the FTT for further variations and/or directions in respect of this Order.

**Dated this 13th day of November 2014**

**Signed** .....

TRIBUNAL JUDGE LESLEY SMITH

**Dated** .....24 November 2014.....

IN THE FIRST-TIER TRIBUNAL
(PROPERTY CHAMBER)

CASE REF: LON/00BK/LVM/2014/0013

PREMISES: 383-385 HARROW ROAD, LONDON, W9 2NA

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 24(4) AND 24(9) OF THE LANDLORD AND TENANT ACT 1987

BETWEEN

KRISTOF KAROL

Applicant

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BERKELEY CREDIT AND FINANCE LIMITED

Respondent

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# ORDER

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