



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

Case Reference : **LON/00BG/LVM/2015/0007**

Property : **200 & 200a Finnis Street, E2 0DX**

Applicants : **Mr John Fowler**

Respondents : **Mr Doug Harper
Ms Caroline Harper
Mr Grahame Wilkinson
Wilkinson Ventures Limited**

VARIED ORDER FOR THE APPOINTMENT OF A MANAGER

1. In this order:
 - A. "The property" includes all those parts of the property known as 200 & 200a Finnis Street, London E2
 - B. "The Landlord" means Wilkinson Ventures Limited or in the event of the vesting of the reversion of the residential under-leases of the property in another, the landlord's successors in title
 - C. "The Manager" means Mr Laurence Freilich of Moreland Estates Limited

It is hereby ordered as follows:

2. In accordance with section 24(1) Landlord and Tenant Act 1987 the Manager shall be appointed as Manager of the Property (in place of Mr John Fowler) as from 1 July 2015.
3. The order shall continue for a period of three years expiring at midnight on 30 June 2018 unless before that time this order is varied, revoked or extended.
4. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order.

- (b) The respective obligations of the landlord and the leases and/or under leases by which the flats at the Property are demised by the Landlord and in particular with regard to repair, decoration, provision of services and insurance of the Property.
- (c) 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

Mark Martynski (Tribunal Judge)
23 June 2015

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property or the Tribunal.
2. That no later than two weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, Mr Fowler shall transfer to the Manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
3. The rights and liabilities of Wilkinson Ventures Limited arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon commencement of this order become rights and liabilities of the Manager.
4. The Manager is to be entitled to prosecute claims in respect of causes of action accruing before or after the date of his appointment.
5. The Manager shall collect the ground rent in respect of the leases at the Property and shall pay this to Wilkinson Ventures Limited or such person as that Company shall direct.
6. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the Service Charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

Maintain appropriate Property insurance for the Property. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Set, demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees. Instruct solicitors to recover any sums due from leaseholders under the terms of their lease.
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor if required by the Manager. Provide a summary of the accounts to the leaseholders in accordance with the terms of their lease.
- ii. Maintain efficient records and books of account which are open for inspection. Produce for inspection receipts or other evidence of expenditure.
- iii. Maintain on trust an interest bearing account/s at such bank or Property society as the Manager shall from time to time decide into which service charge contributions and all other monies arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- i. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all Property maintenance relating to the services and structure of the Property.
- ii. Give consideration to works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- iii. Set up a planned maintenance programme to allow for the periodic re-decoration and repair of the common parts of the Property. The programme must be put in writing and sent to all leaseholders within three months of the Manager's appointment.

Agreement and Fees

The management agreement will be the standard management agreement of Moreland Estates. The fee shall be £275.00 plus VAT per annum per flat plus any further charges incurred as per Moreland Estates standard terms of business.

Complaints procedure

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



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Property : 200 & 200A Finnis Street, London
E2 0DX

Applicant : Mr John Fowler

Respondents : Mr Doug Harper
Ms Caroline Harper
Mr Grahame Wilkinson
Wilkinson Ventures Limited

Type of Application : Application for a variation of an
order appointing a Manager
(section 24 Landlord & Tenant Act
1987)

Tribunal Members : Mr M Martynski (Tribunal Judge)
Mr A Manson FRICS
Mrs L West

**Date and venue of
Hearing** : 10 June 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 23 June 2015

DECISION

Background

1. 200 Finnis Street ('the Building') is a modern detached building sitting on a corner plot on the junction of Finnis Street and Three Colts Lane. The Building consists of basement, ground and first floors. The Building is separated into a flat at basement level (known as '200a') and maisonette (known as 'East Point') on the ground and first floors.

2. The Building is accessed via an electronic gate at Finnis Street. Within the gate is a parking area and frontage leading to the front door of East Point. Next to this are stairs leading down to the front door of 200a. The path leading from the gate at the front of the Building includes a very small bin area and leads to a wall/fence in which there is a gate opening on to a garden area at the side and rear of the Building. This garden area is for the exclusive use of East Point.
3. After the Building was originally built¹, the lease for 200a was created on 8 February 2008. That lease is for a period of 125 Years from 8 February 2008 and is between Mr Wilkinson as freeholder and Mr & Ms Harper (who are brother and sister).
4. The freehold interest in the Building was then transferred to Wilkinson Ventures Limited which, as its name would suggest, was a company controlled by Mr Wilkinson.
5. A lease of East Point was then entered into between Wilkinson Ventures as freeholder and Mr Wilkinson as leaseholder. That lease is dated 13 July 2009. We did not see a copy of this lease.
6. From the information available to us, Mr Wilkinson was a director of Wilkinson Ventures and was then joined by Mr Cook (who, according to Mr Wilkinson, is his nephew) who became a director of the Company in October 2009.
7. In or about 2009, 200a became severely affected by damp. A call was made upon the NHBC guarantee. Remedial works were carried out in 2010. Mr Wilkinson then became personally involved in the building works. The Harpers asserted that Mr Wilkinson had not applied all the money from the NHBC settlement to the works. The Harpers took proceedings against Mr Wilkinson in the County Court in respect of the dispute and that litigation was settled by way of Mr Wilkinson (or Wilkinson Ventures, we are not sure which) agreeing to pay the Harpers £6,300.04.
8. By invoices dating from 10 December 2010 to 22 March 2012, Mr Wilkinson on behalf of Wilkinson Ventures Limited claimed Service Charge contributions from the Harpers amounting to (what appears to be) in excess of £6,000. Those invoices were in respect of work that Mr Wilkinson says that he carried out on handling the insurance claim and building administration.
9. In 2012 the Harpers made an application to, what was then, a Leasehold Valuation Tribunal, challenging the Service Charges levied by Wilkinson Ventures. In a decision dated 12 December 2012, the tribunal found that of the Service Charges levied by the

¹It was built for Mr Wilkinson

Company, only the sum of £250 was payable by the Harpers². The Company was ordered to refund to the Harpers the application and hearing fees that they had paid to the tribunal in respect of their application.

10. In early 2013, the Harpers then made a further application to the Leasehold Valuation Tribunal. That application was for the appointment of a Manager for the Building. The application relied upon the findings of the earlier tribunal.
11. In a decision dated 6 June 2013³, Ms Mahoney of Vision Property & Estate Management was appointed as Manager and Receiver of the Building for a period of three years from 6 June 2013.
12. In making its decision the tribunal found that there had been a number of failings on the part of Mr Wilkinson which justified the appointment of a Manager. Those failings (some of which were described as very serious by the tribunal) can be summarised as follows:-
 - (a) The tone of written communications from Mr Wilkinson was poor
 - (b) There had been a history of unreasonable Service Charges (as found by the earlier tribunal) and it did not appear that Mr Wilkinson had demonstrated his ability to learn from his mistakes
 - (c) Mr Wilkinson found it difficult to separate his identity from the Company's (Wilkinson Ventures Limited)
 - (d) There were many breaches of the RICS code
 - (e) Mr Wilkinson appeared to consider criticisms of his failure to comply with the RICS code as "nit picking"
 - (f) Mr Wilkinson had displayed a lack of understanding of management of leasehold property
 - (g) Mr Wilkinson had left the Building uninsured
 - (h) Mr Wilkinson had made references to an informal agreement with the Harpers in relation to management of the Building but had produced no evidence of the same
13. Again, Wilkinson Ventures was ordered to refund to the Harpers the application and hearing fees that they had paid to the tribunal in respect of their application.
14. Unfortunately Ms Mahoney's management of the Building was not successful. On 3 January 2014 Ms Mahoney made an application to the First-tier Tribunal for a variation of the management order or to be discharged as the Manager. In her application she cited the

²Decision reference; LON/00BG/LSC/2012/0584 – the information set out a paragraphs 7-9 above are taken from this decision

³Decision reference; LON/00BG/LAM/2013/0004

reason for wanting to be discharged as being due to Mr Wilkinson's unacceptable conduct and his refusal to pay monies owed⁴.

15. On 3 February 2014 Mr Wilkinson made a cross-application for Ms Mahoney's discharge and for the management order to be terminated.
16. On 19 May 2014, Mr Wilkinson resigned as a director of Wilkinson Ventures Limited in order to distance himself from the management.
17. The applications were consolidated and were heard on 4 & 5 June 2014. By the time of the hearing, a new Manager had been proposed, Mr Fowler of Stock Page Stock. At the hearing, Mr Wilkinson and the Harpers accepted that a new Manager should be appointed.
18. In its decision dated 23 June 2014⁵, the tribunal varied the management order (originally made on 6 June 2013) by substituting Mr Fowler as Manager for Ms Mahoney. The other terms of the original order were left in place save that Mr Fowler was appointed as '*Manager of the property to include certain functions of a receiver*' rather than as Manager and Receiver.
19. We note that paragraph 18 of the decision recorded the following:-

He [Mr Fowler] was reminded that the Management Order under which he would carry out his duties was the one already in existence, that the order would expire on 6 June 2016, namely 3 years from its start date and the fees would be those as set out in that Order. *He accepted this and said he understood the difficulties in this particular property* [our emphasis].
20. The relationship between Mr Wilkinson and the Harpers has now been very poor for a number of years. One (we suspect of many) issues between the parties is that Wilkinson Ventures has failed to comply with the tribunal's orders referred to above in that it has not refunded to the Harpers the fees paid by them in previous applications nor has it refunded Service Charges found not to be payable by the tribunal. Mr Harper has had to go so far as to sue for the return of these fees in the County Court.
21. Further sources of tension between the parties have been;
 - the bin area situated in the front garden - Mr Wilkinson has been unhappy at the way that rubbish has been put there
 - according to the Harpers, Mr Wilkinson's refusal to allow access to his garden so that the Harpers could deal with a blocked drain flooding their property

⁴As recorded in the tribunal's decision

⁵Reference: LON/OOBG/LVM/2014/0003 & 0004

- again, according to the Harper's, Mr Wilkinson's failure to insure the Building leaving them with uninsured losses resulting from damage caused by vandals in their flat
 - a satellite dish erected on the front of the Building by the Harpers
22. Mr Fowler had been trying to find a solution to the access/bin problem and both parties had agreed in principle to the creation of a separate entrance to the shared patio area at the front of the Building so that the parties would be physically separated for access to the Building. Those negotiations were held up on the question of whether the leases needed to be varied and whether the electricity meter for 200a should be re-sited.

The current application

23. This background now brings us to the current application. This application is made by Mr Fowler. The application is dated 29 April 2015 and in it Mr Fowler states:-

I am not able to devote enough of my time to the property in question to resolve the issues between the parties.

24. Prior to the hearing of this application written statements were submitted by Mr Wilkinson, Mr Cook (the current director of Wilkinson Ventures) and the Harpers (who made a joint statement).
25. The position as put forward by Mr Wilkinson and Mr Cook was not entirely clear. Mr Cook appeared to say in his statement that:-
- an impartial third party needs to resolve the on-going disputes before management passes back to the freeholder
 - there should be no further manager appointed by the tribunal
 - the current management order should be terminated upon the current disputes being resolved
 - if the current Manager were discharged before the end of the term of the order, Mr Cook would attend a course on residential property management
 - if management returned to Wilkinson Ventures, it would undertake to appoint a suitable manager but Mr Cook would continue to carry out regular property inspections and prepare a maintenance schedule
26. In his statement, Mr Wilkinson said:-
- he did not support the appointment of a further Manager
 - the tribunal should direct the Harpers to co-operate with the scheme for access to the Building proposed by Mr Fowler
 - his preference was for the Company to be allowed to appoint a managing agent if Mr Fowler were not to remain in his post

27. As to the Harpers, they were strongly of the view that the management order be kept in place and that a new Manager be appointed. They proposed a new Manager, Mr Laurence Freilich of Moreland Estate Management, and requested that the management order be extended for a further five years.

Inspection

28. We inspected the exterior of the Building on the morning of the hearing and obtained access to all the outside areas.

The hearing

29. The following were present at the hearing:-
- Mr Fowler
 - Mr Freilich
 - Mr Wilkinson (also present on the inspection)
 - Ms Gibson (assisting Mr Wilkinson and also present on the inspection)
 - Mr Harper (also present on the inspection)

Mr Cook was unable to attend the hearing due to a prior commitment.

Mr Fowler

30. Mr Fowler did not wish to remain as the Manager. His reason for this was that his company had taken on other blocks to manage and he no longer had the time to manage the Building. Even if he were allowed to increase his fees, he would still not want to remain as a Manager.
31. We were surprised and disappointed that Mr Fowler now did not want to continue with management and wish to express our disapproval for the following reasons:-
- (a) Mr Fowler took on the management in the full knowledge of the difficulties he faced
 - (b) There was no suggestion that Mr Fowler, other than wanting to deal with the further work that he had taken on since being appointed a Manager, could not carry on with the management (even at a higher fee)
 - (c) Mr Fowler's application meant that all the leaseholders;
 - i. were put to the time and trouble of responding to the application
 - ii. were put to the time and trouble of attending the inspection and hearing
 - iii. were subjected to yet a further dispute (i.e. whether there should be a further manager)

None of this would have been necessary had Mr Fowler honoured his obligations to the parties and to the tribunal.

32. The tribunal would be surprised if Mr Fowler put himself forward for any Manager appointment in the future, if he does, he should draw the tribunal's attention to this decision and our comments on his actions in particular.

Mr Freilich

33. Mr Freilich was questioned by the tribunal and Mr Harper and Mr Wilkinson. He had spoken to both and had inspected the Building prior to the hearing and had produced a management plan.
34. Mr Freilich is the tribunal appointed Manager in respect of two other properties.
35. Mr Freilich understood the difficulties at the Building and was confident that he could manage the Building and the leaseholders effectively and that he could resolve the disputes. Mr Freilich was content to take over management for the remaining term but was also willing for the management order to be extended.

Mr Wilkinson & Mr Cook

36. Mr Wilkinson did not object to the appointment of Mr Freilich at the hearing (although his preferred position was for the management to revert to the Company and for the Company to appoint Mr Freilich). We were given to understand by Ms Gibson that Mr Cook did not object to Mr Freilich being appointed in place of Mr Fowler.
37. If Mr Freilich were appointed by the tribunal, Mr Wilkinson wanted that appointment to be limited to the current term of the order.

Mr & Ms Harper

38. The Harpers' position remained unchanged at the hearing.

Decision

39. There is no statutory bar or pre-condition binding upon us in relation to our powers to discharge or vary the order. In order to discharge the order we do not have to be satisfied that the discharge of the order will not result in a reoccurrence of the circumstances which led to the order being made; the reason for this is that this restriction on our power to discharge only applies where a 'relevant person' is making the application for a discharge or variation⁶. Mr Fowler made the application; he is not a 'relevant person'.

⁶See sections 24(2ZA) & (9A) Landlord and Tenant Act 1987

40. We do not see any reason why the order should be discharged. The parties' relationship is as bad as it ever was; there are continuing significant disputes between the parties that will not be resolved without a third party being involved.
41. We do not consider that the management should revert to Wilkinson Ventures. That company has not complied with previous tribunal decisions in relation to the re-payment of Service Charges and fees. There remains a failure to separate the Company from Mr Wilkinson. Mr Wilkinson referred to "we" at the hearing in reference to himself and the Company. During the hearing, when there was discussion regarding the payment of an Administration Charge for approval for the sub-letting of the Harpers' flat, Mr Wilkinson spoke of offsetting any such charge against the sums owed by the Company in relation to previous tribunal orders. We are concerned that if management were to return to the Company, Mr Wilkinson may use the Company's position to further his position in the many disputes between the parties.
42. We do not consider that either Mr Wilkinson or Mr Cook is suitably qualified to manage. We are unable to accept an undertaking from the parties to appoint a manager in the future⁷.
43. As to Mr Freilich, we are satisfied that:-
- (a) he has sufficient experience of property management
 - (b) he has experience of being a tribunal appointed Manager
 - (c) he is fully aware of the difficulties he faces in managing the Building
 - (d) he is committed to the management of the Building
 - (e) he has prepared for the management
 - (f) he is aware that his management will have limits in that some of the disputes between the parties may not be within his remit if he is unable to informally resolve those disputes
44. As to the term of the management order, we consider that the order should be varied so as to be extended for a further three years from the present time. We consider this is necessary for the following reasons:-
- (a) The issue as to access to the Building will take a considerable time to resolve, it appears that the resolution will require a lease variation and building work⁸
 - (b) Given that the Building has had two managers in two years, there now needs to be a prolonged period of stable management

⁷*Nogueira v City of Westminster* – [2014] UKUT 0327(LC)

⁸Although we recognise that this may not fall within Mr Freilich's management powers under the order (for example he would not be able to force a lease variation) – he is however to try and resolve the dispute informally

- (c) The remaining term of the current order would only allow for one-year's management, this is generally insufficient for a managing agent to perform all the functions of planning, collection of Service Charges and accounting
45. At the conclusion of the hearing and with Mr Wilkinson and Mr Harper present, we went through the existing order and took the parties' comments on it and possible revisions to it. The order, as varied by us, is now attached.

Mark Martynski, Tribunal Judge
23 June 2015