



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

Case Reference : CHI/43UK/LIS/2016/0024
CHI/43UK/LAM/2016/0007

Property : Castle Place, Castle Square,
Bletchingley, Redhill, Surrey RH1
4LB

Applicant : Mr P Cove (1)
Mrs J A Cove (2)
Mr S Pamenter (3)

**Applicant's
Representative** : Mr M Walsh of Counsel
ODT Solicitors

Respondent : Castle Place Bletchingley Freeholds
Ltd (1)
Castle Place Bletchingley
Management Company Ltd (2)

**Respondents'
representative** : Mr D Austin

Type of Application : Sections 27A Landlord and Tenant
Act 1985 and section 24 Landlord
and Tenant Act 1987

Tribunal Members : Mrs F J Silverman Dip Fr LL.M
Mr R A Wilkey JP FRICS
Ms J Dalal

**Date and venue of
hearing** : 10 October 2016
Redhill Magistrates Court.

Date of Decision : 26 October 2016

DECISION AND ORDER

- 1 By consent the Applicants' application for the appointment of a manager under s24 Landlord and Tenant Act 1987 is granted.

- 2 The Tribunal declares that the service charge demands for the service charge years 2014-5 and 2015-6 are invalid because the demands have not been served by a party who has authority under the terms of the lease to make such demands. No sums are claimable by the landlord under the present demands.
- 3 The demand for advance payment for the current year 2016-7 is similarly affected and is invalid.

ORDER

- 4 Mr Gary Pickard is appointed as manager of the property for the term of three years commencing with the date of this decision subject to the terms and conditions contained in the attached Management Order.
- 5 The Tribunal makes an order under s20C Landlord and Tenant Act 1985.

REASONS

1 The property known as Castle Place Castle Square Bletchingley Redhill Surrey RH1 6BL ('the property') comprises a large extended mid-Victorian house and grounds currently divided into six apartments of differing sizes held under long leases all granted in similar terms to the tenants. The Applicants are the owners of two of the apartments and the Respondents' representative is the owner of a third apartment. A protracted disagreement has arisen between the Applicants and the owners of the other apartments over the ownership and management of the property as a consequence of which the Applicants issued two applications in the Tribunal on 14 April 2016. The first asked the Tribunal to make a declaration under s27A Landlord and Tenant Act 1985 as to the reasonableness or otherwise of the service charges for the service charge years 2014-2015 and 2015-2016 and the proposed service charges, for the service charge year 2016-2017. The second application requested the appointment of a manager under the provisions of s24 Landlord and Tenant Act 1987.

2 Directions were issued by the Tribunal on 5 May 2016, 27 May 2016 and 27 June 2016. The Directions made on 27 June 2016 ordered that the s24 application made by the Applicants should be conjoined with the s27A application and the two applications should be heard together. This decision therefore relates to both applications.

3 The matter came before a Tribunal sitting in Redhill on 10 October 2016 when the Applicants were represented by Mr M Walsh of Counsel and the Respondents by Mr D Austin.

4 The Tribunal carried out an inspection of the exterior, common parts and grounds of the property immediately before the hearing. The property is situated off a narrow lane leading directly from the main A25 road which runs

through Bletchingley village. It is therefore close to but apart from all local amenities and enjoys stunning views over the surrounding countryside. The bucolic atmosphere is marred by the noise of aircraft from both the local airport at Redhill and on the approach to Gatwick. The gravelled area in front of the building provides a parking area for residents and visitors and also houses the bin store and septic tank unit. This, together with a small well maintained area laid to lawn and shrubs lying to the sides and rear of the property, is known by the residents as 'the inner freehold' and comprises the only land included in the demise. A further extensive area of woodland and scrub surrounding the property and called by the residents 'the outer freehold' is maintained by the residents but does not form part of the demise. A communal boiler room is sited outside the inner freehold area and, having its own freehold title number, is not part of the outer freehold either. Apartment 2 which occupies part of the ground and lower ground floors of the building has its own entrance at ground floor level. The remaining apartments all share a common entrance door at the front of the building and use of the common parts (hallway and staircase). The exterior and structure of the building appeared to be in a good condition and the common parts were pleasant and generally well maintained although there were some scuff marks on the paintwork and the staircase had not been swept.

5 The Applicants' claims are based on s27A and s20C Landlord and Tenant Act 1985, relating to the payability and reasonableness of service charges as between landlord and tenant and on s24 Landlord and Tenant Act 1987 relating to the appointment of a manager. Such matters fall within the jurisdiction of the Tribunal.

6 Five lever arch files of documents were placed before the Tribunal for its consideration. Page references in this document are to pages in the bundles.

7 A copy of the first and second Applicants' lease dated 27 January 2012 is included at page 35 of file 1 of the hearing bundle and includes tenants' service charge covenants at Clause 4(17). It is understood that leases for the other five apartments are in similar form.

8 The lease is a tri-partite document made between the then landlord/freeholder Camille Marie Foster, the first and second Applicants as tenants and Bletchingley Castle Management Ltd as the management company responsible for performing the landlord's repairing and maintenance covenants under the lease. The lease contains provisions whereby the repairing and maintenance obligations revert to the landlord in the event of the insolvency of the management company.

9 Following a dispute between the tenants and Ms Foster, the first Respondent, a company wholly owned by the tenants in their role as Directors and shareholders, bought the freehold reversion from Ms Foster and as a separate title acquired freehold ownership of the boiler room site. The resolution of this dispute was purportedly contained in a settlement agreement ('the settlement agreement') dated 18 June 2014 (file 1 page 24) to which the second Respondent was intended to be a party.

10 At the date of the settlement agreement Bletchingley Castle Management Ltd had been dissolved and had been struck off the register of companies. It no longer existed as a legal entity and its obligations under the lease had reverted to the landlord ie Ms Foster and latterly the first Respondent.

11 One of the stated intentions of the settlement agreement was that, in return for a sum of money, Ms Foster should be released from her repairing and maintenance obligations under the lease which would thereafter be assumed by the second Respondent, a new company formed for that purpose.

12 The Applicants maintained that defects in the drafting and execution of the settlement agreement rendered it ineffective for its intended purpose of transferring the landlord's maintenance and repairing obligations to the second Respondent. That being so, they argued that the responsibility for performance of the landlord's repairing and maintenance covenants in the lease remained vested in the first Respondent. According to the Applicants the service charge demands issued by the second Respondent were a nullity because the second Respondent had no rights or responsibilities under the terms of the lease. The Applicants further argued that even if the Tribunal were to find that the second Respondent was the body properly responsible for the performance of the landlord's repairing and maintenance covenants, that the Applicants should not be required to pay the total sums demanded by the second Respondents because some of the demands failed to comply with s47 Landlord and Tenant Act 1987 (landlord's name and address), others had charged the wrong proportions of the sums due, some lacked compliance with s20 (consultation about major works) and others charged sums relating to works to the boiler room and/or outer freehold neither of which areas fall within the property demised under the leases.

13 The Respondents maintained that the settlement agreement was a legally binding document which had transferred responsibility to the second Respondent and therefore the service charge demands issued by or on behalf of the second Respondent (some were issued by a managing agent instructed by the second Respondent) were valid. They also disputed the other grounds for non-payment propounded by the Applicants.

14 Before examining the individual service charge demands it was necessary for the Tribunal to consider the validity and effect of the settlement agreement (file 1 page 24). In order to transfer the obligations of the landlord to the second Respondent it is necessary to establish privity of contract and or of estate between the parties. At the date of the settlement agreement it was not possible for Bletchingley Castle Management Ltd to assign its responsibilities to the second Respondent because the former no longer existed in law and in any event Clause 10 of the lease (file 1 page 62) would render such a transfer ineffective. The settlement agreement itself names the second Respondent as a party and recites the intention to make the second Respondent responsible for the management obligations under the lease. Recitals are however only introductory and do not form part of the document itself which contains no reference to the management obligations, no covenant by the second Respondent taking over those responsibilities and no variation of Clause 10 of the lease. Those defects apart, the settlement agreement is not properly executed. Because the document affects responsibilities relating to land in that it varies the terms of the lease it must be executed as a deed. The testimonium clauses do not provide for the document to be executed as a deed, neither are the tenants' signatures witnessed and there is no provision at all for the second Respondent to attest the deed by the signature of a director and the secretary of the company. The second Respondent was never a party to the document because it never signed it or gave any covenants within it. That being so no privity of contract exists between either the landlord or the tenants with the second Respondent. No privity of estate exists either because the second Respondent has no legal interest in the land demised.

15 The Respondents asserted that they had been advised by several different solicitors that the settlement agreement was valid but were unable to produce evidence of that advice to the Tribunal. They asserted that the second Respondent did not need to sign the agreement because its shareholders were

the same persons as the tenants who had signed the document. This argument is fallacious because the company is a legal entity in its own right, separate from the persons who comprise its membership and needs to execute the document in compliance with the provisions of the Companies Acts.

16 In the light of the above the Tribunal finds that the management responsibilities for repair and maintenance imposed by the lease were not transferred to the second Respondent under the settlement agreement which was ineffective for the purpose for which it was intended. Since none of the service charge demands which are the subject of this application have been issued by the correct landlord or management company none is valid and the Tribunal does not therefore need to investigate the reasonableness of the various sums claimed. No sums are currently payable by the Applicants in respect of any of the demands which are the subject of this determination and they can never be liable under the terms of the present leases for sums attributable to the maintenance or repairs to the boiler room or land forming the outer freehold, neither of which are included within the demise.

17 It is clear to the Tribunal that the terms of the existing leases are patently unsatisfactory. In addition to the problems of the extent of the demise and the relationship between the management company and other parties, a number of further ambiguities remain in relation to the ratio or division of various charges between the tenants, parking arrangements, discrepancies in plans and the existence of an increasing ground rent. Since the tenants between them now own the reversion (in the form of the first Respondent) it is recommended that they take independent legal advice with a view to correcting these problems.

18 The Tribunal makes this decision with a certain amount of reluctance since it is aware that the outcome, which is legally correct and over which it has no discretion, does not resolve the differences between the parties. The tenants in their role as tenants cannot be required to pay any of the service charges for the reasons stated in the preceding paragraphs. The liability for payment therefore reverts to the landlord. Since the tenants are all shareholders in the first Respondent company which owns the reversion, they will have to bear the cost of the service charge expenditure among themselves in their roles as shareholders. The reasonableness of the charges as between the parties in their capacities as shareholders is not a matter which falls within the jurisdiction of the Tribunal.

19 The Applicants made an application under s20C Landlord and Tenant Act 1985. The Tribunal explained the provisions of the section to the Respondents' representative who opposed the application. Having considered the matter the Tribunal decided that in view of the fact that the Applicants' arguments had been successful it would be reasonable to make such an order and does so accordingly.

20 The Applicants' second application was for the appointment of a manager under s24 Landlord and Tenant Act 1987. It is not necessary for the Tribunal to rehearse the Applicants' arguments in support of their application because the Respondent agreed in principle to the appointment. They did not object to the Applicants' nominee, Mr G Pickard and made no alternative suggestions for the appointment. They did express a number of reservations about the terms of the appointment all of which were discussed with both parties during the hearing as summarised below. Because there was a measure of agreement between the parties the Tribunal dealt with this matter before dealing with the contested s27A application.

21 The Respondent's representative asked the Tribunal to appoint the Manager for a period of one year whereas the Applicants had asked for a five year term. The Tribunal considered that a one year term would be insufficient (particularly as the current service charge year has less than six months to run) for the manager to deal effectively with the property. Conversely, a five year period might be too long (although the tenants retain the right at any time to make an application to the Tribunal to remove the manager) and decided that a three year term would be appropriate in these circumstances.

22 The Applicants conceded that within 90 days of appointment the manager should be asked to undertake an inspection as to the state and condition of the property and not a full survey.

23 It was also agreed that clause 4.3 of the draft Schedule should be deleted because its provisions relating to fees on transfer of the leases were not relevant to the functions of a manager.

24 The Tribunal declines to limit insurance revaluations to once in three years as requested by the Respondents, considering that the manager should use his own discretion to determine the necessity or otherwise for a valuation.

25 The Tribunal explained to the Respondents that the manager would be appointed by the Tribunal and would be answerable to the Tribunal. He would consult with the tenants and discuss matters with them but did not take instructions from them. The manager was in effect standing in the shoes of the landlord and was bound by the same statutory obligations as applied to the landlord. Similarly, the tenants' statutory rights remained unaffected during the terms of the appointment (eg to challenge the reasonableness of service charges and to be consulted about major works).

26 Mr Pickard was present at the hearing and was questioned by the Tribunal who were satisfied as to his competence and suitability. He confirmed his willingness to accept the appointment and that he had adequate indemnity insurance cover to meet the requirements of the appointment given the high value of the property.

27 The Tribunal therefore decided to appoint Mr Pickard as Manager for the term of three years commencing on the date of this order and on the terms annexed hereto.

28 The Law

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and

- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987 s24 (as amended)

Appointment of manager by the court.

- (1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
 - (a) such functions in connection with the management of the premises,
or
 - (b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii)

.....
(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section “relevant person” means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions

under the order, and

(b) such incidental or ancillary matters, as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the tribunal may by order direct that the entry shall be cancelled.

(9A) the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

Judge F J Silverman as Chairman
Date 26 October 2016

Note:
Appeals

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.

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

Application Number: CHI/43UK/LAM/2016/0007

MANAGEMENT ORDER DATED 26 October 2016

Re: Castle Place, Castle Square, Betchingley, Redhill, Surrey

BETWEEN:

Paul Cove (1)

Judith Cove (2)

Stephen Pamerter (3)

Applicants

Castle Place Betchingley Freehold Limited (1)

Castle Place Betchingley Management

Company Limited (2)

Respondents

BY CONSENT:

1. In this order:

- i. **“The property”** includes all those parts of the property known as Castle Place, Castle Square, Betchingley, Redhill,

Surrey RH1 4LB and registered at HM Land Registry under title number SY163401.

ii. **“The manager”** means Gary Pickard of Jacksons, 193 Church Road, Hove, East Sussex BN3 2AB.

iii. and any reference to “the Applicants” or “the Respondents” shall be a reference to them both jointly and severally and the obligations on each of their parts shall be owed respectively jointly and severally and shall include their respective successors in title.

It is hereby ordered as follows:

1. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as manager of the property.
2. The order shall continue for a period of 3 years from the date of this order.
3. That 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 Lessor’ and ‘the Company’ as defined by the leases and/or under-lessees by which the flats at the property are demised by the landlord and in particular with

regard to repair, decoration, provision of services to and insurance of the property.

- (c) The duties of manager set out in the Service Charge Residential Management Code (3rd Ed.) (“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 of the Leasehold Reform Housing and Urban Development Act 1993.

DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £5,000,000 and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the Applicants, the Respondents or the Tribunal.

2. That not later than 14 days after any such request (such request to be made no later than 14 days from the date of this order) the parties to this application shall provide all / any information reasonably requested by the manager to allow and permit an orderly transfer of responsibilities to him and in particular, but without limitation (and whether requested or not), the Respondents shall within 14 days of this order deliver to the manager all the accounts, books, third party contracts, correspondence, financial records and funds currently held by them or any agent on their behalf and in connection with the property.

3. The rights and liabilities of the Respondents arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall upon the date 7 days from the date of this order become rights and liabilities of the manager.

4. Within fourteen days of receipt the manager shall account to the First Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondents' covenants contained in the said leases.
5. That he shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the under-leases and/or leases of the property) in accordance with the Schedule of Functions and Services attached.
6. Within 90 days of this order the manager shall produce statement of condition in respect of all parts of the property and a schedule of any remedial works necessary pursuant to the lease.
7. That on the 26 October 2017 (and each 12 months thereafter for so long as this order remains in force), the manager shall prepare a brief written report for the Tribunal on the progress of the management of the property up to that date and shall submit the same to the Tribunal by no later than 30 November in each year and at the same time serve a copy of his report on each tenant of the property and on both Respondents to this agreement.
8. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant

Act 1987, with particular regard (but not limited to) the following events:

- (a) any failure by any party to comply with paragraph 2 of these directions and/or;
- (b) (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
- (c) in the event that there are insufficient sums held by him to pay the manager's remuneration;
- (d) any other matter in connection with the management of the Property including *inter alia* his entitlement to be remunerated in respect of any matter or step he is required to take in the exercise of his functions hereunder.

SCHEDULE OF FUNCTIONS AND SERVICES

A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of under the terms of their under-lease.
- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the under-lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the landlord upon the landlord's instructions.
- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.

B. ACCOUNTS

- 2.1 Prepare and submit an annual statement of account detailing all monies received and expended on its behalf.
- 2.2 Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
- 2.3 All monies collected on the Respondents' behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the Respondents.

C. MAINTENANCE

- 3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the building.
- 3.2 The consideration of works to be carried out to the property in the interest of good estate management and making the appropriate recommendations to the Respondents and the under-lessees.

3.3 The setting up of a planned maintenance programme to allow for, including but not limited to, the recurring re-decorations of the exterior and interior parts.

D. FEES

4.1 Fees for the above mentioned management services will be charged in accordance with Jacksons standard terms and conditions relating to the appointment of a managing agent appended to the manager's witness statement dated 13 May 2016 at Exhibit GP2 ("the Terms") those services to include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS. Any work carried out over and above those services to be charged at the hourly rates set out in the Terms.

4.2 Major works carried out to the property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees informing them of the works and supervising the works) will be also be charged according to the Terms (subject to a minimum fee of £250.00). This is in addition to the professional fees of any architect, surveyor, solicitor or other appropriate person in the administration of a contract for such works.

- 4.3 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 4.4 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged at the rate set out in the Terms.
- 4.5 If the manager shall so choose, and if it shall be expedient to do so in his reasonable opinion, he shall be entitled to instruct Jacksons to manage the building on his behalf provided that he do so strictly on the Terms.

E. RIGHT TO PROSECUTE CLAIMS

- 5.1 The manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.
- 5.2 Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the building and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the First Tier Tribunal under s.27A Landlord & Tenant Act 1985 or s.168(4) Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

5.3 The manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT payable to any solicitors, accountant, counsel or expert on a full indemnity basis.

F. COMPLAINTS PROCEDURE

6.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.

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