

12051



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

Case Reference : LON/00AH/LVM/2016/0018

Property : 6A-16B Tudor Court, Russell Hill Road, Purley, Surrey CR8 2LA

Applicant : Mr B Vair-Turnbull (leaseholder of Flat 14A)

Representative : In person

Respondents : Mr M Tejada (current manager) and Ms T Sidhu (landlord)

Representative : In person

Also present : Mr J Naylor (proposed new manager), Mr D Dhaliwal, Mr R Liyanarachchi and Mr P Rogers

Type of Application : Variation of order for appointment of a manager

Tribunal Members : Judge P Korn (chairman)
Mr H Geddes (professional member)
Mr L Packer

Date and venue of Hearing : 8th December 2016 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 8th December 2016

DECISION

Decisions of the Tribunal

- (1) The application for the variation of the existing Order is dismissed.
- (2) The application for a cost order under section 20C of the Landlord and Tenant Act 1985 is also dismissed.

The application

1. The Applicant seeks the variation of an order appointing a manager over the Property pursuant to section 24(9) of the Landlord and Tenant Act 1987.
2. Under section 24(9), *“The relevant tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...”*. Under section 24(9A), *“The tribunal shall not vary or discharge an order under subsection (9) ... 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.”*
3. Mr Mark Tejada is the current manager. The existing order expires on 2nd January 2017 and Mr Tejada is not seeking to continue as manager or as managing agent.
4. The Applicant seeks a variation of the existing order such that the term of the order is extended and the existing manager is replaced by Mr John Naylor of HNF Property.
5. Ms Sidhu, the landlord, is happy to appoint Mr Naylor as managing agent and has already been liaising with him. However, she does not wish his appointment to be by way of formal appointment of a manager by the tribunal – she merely wishes to appoint him as her managing agent.

Points arising at the hearing

6. It was established at the hearing that Mr Naylor would be happy to be appointed as manager by the Tribunal but would also be happy to be appointed as managing agent by Ms Sidhu.
7. It also became apparent at the hearing that the Applicant was not in fact opposed to Mr Naylor being appointed by Ms Sidhu as managing agent for the Property. Therefore, it transpired that he was not seeking a formal variation of the existing order (or a new order) and in particular was not seeking a formal appointment of Mr Naylor by the Tribunal itself.
8. Mr Rogers (leaseholder of Flat 12A) said at the hearing that he did wish Mr Naylor’s appointment to be a Tribunal appointment, but it was pointed out to him that he was not an Applicant. Different views were expressed at the hearing as to

how many leaseholders were supportive of Ms Sidhu's proposed approach and how many wanted Mr Naylor's appointment to be a Tribunal appointment.

9. At the hearing the Tribunal noted that its directions had not been complied with. As a result it was missing a large amount of important information and therefore did not have sufficient information in any event to enable it to conclude that it would be appropriate in the circumstances to substitute Mr Naylor or to satisfy itself as to the terms on which any such variation should be made.

Decision

10. As it is now clear that the Applicant does not in fact support his own application, the application must be dismissed. Even if the Applicant had continued to maintain that he wished the existing order to be varied so that Mr Naylor would become a Tribunal-appointed manager of the Property, the Tribunal would not have been able to grant the application without much better compliance with its directions. Those directions serve a purpose and the information required was important to help the Tribunal to assess the merits of the application. It is therefore not "just and convenient in all the circumstances of the case" to vary the order.
11. There was some general discussion at the hearing as to the history, the current manager's performance, handover arrangements and other matters. Whilst it is not for the Tribunal to offer legal advice, we would note that there appears to be a consensus that Mr Naylor should take over the management of the Property, and in the absence of a fresh application before then the parties may wish to see whether they can work together with each other and with Mr Naylor to make a success of the management of the Property. It is, though, open to all or any of the leaseholders to make a fresh application to the Tribunal for the appointment of a manager at a later stage if they feel that this would be the right thing to do. Any person considering such a course of action may wish to seek legal or other professional advice before doing so.
12. In relation to the Applicant's section 20C cost application, as the application has been dismissed and was neither properly thought through nor properly executed it would not be appropriate to make an order limiting the extent to which any costs incurred in this matter can be put through the service charge. However, it does not follow that any such costs have in fact been incurred, nor that any such costs could necessarily be recovered under the terms of the leases or the existing order. It is not for this Tribunal to give a ruling as to whether any such costs would be recoverable under the terms of the leases or the existing order, and in any event we have not been provided with details of what costs (if any) there are and on what basis (if any) a party would be seeking to recover them.
13. There were no other cost applications.

Name: Judge P Korn

Date: 8th December 2016

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.