



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

Case Reference : MAN/30UF/LAM/2014/0001

Property : Lindsay Court, New Road
Lytham St Annes FY8 2SR

Applicant : Mr D Bentham

Respondents : Lindsay Court RTM Company Ltd (1)
Mr M Joyce (2)
Tiger Property Estates & Management Ltd (3)
Tiger Banks Surveyors (4)

Type of Application : Landlord and Tenant Act 1987 – section 24(4)

Tribunal : Judge J Holbrook

Date of Decision : 14 March 2016

DECISION

DECISION

The application for directions is refused.

REASONS

Background

1. Pursuant to a decision dated 13 March 2014 the Tribunal appointed Mr David Bentham as manager in respect of the Property for a period of three years. An order to that effect (“the Management Order”) was made under section 24(1) of the Landlord and Tenant Act 1987 (“the 1987 Act”).
2. On 2 October 2014 Mr Bentham applied to the Tribunal for directions in connection with his appointment. In particular, he sought an order for the production of various documents by each of the following named Respondents:
 - (1) Lindsay Court RTM Company Limited (“the RTM Company”, whose right to manage the Property had ceased by virtue of Mr Bentham’s appointment as manager);
 - (2) Mr Michael Joyce (a director of the RTM Company);
 - (3) Tiger Property Estates & Management Limited (“Tiger Estates”, the agents appointed by the RTM Company to manage the Property on its behalf); and
 - (4) Tiger Banks Surveyors (“Tiger Banks”).
3. A case management hearing was held before Judge Mulvenna on 24 February 2015. The Judge recorded that Mr Bentham had apparently agreed a way forward with Tiger Estates and Tiger Banks to address the issues he had raised in relation to the production of management information. That agreement was reflected in directions which the Judge then made for the production of various documents.
4. Judge Mulvenna’s directions were to be complied with by 30 April 2015 with provision for a final hearing to be listed in the event that such a hearing was still required.
5. Various documents were indeed disclosed to Mr Bentham before the end of April 2015. However, Mr Bentham was not satisfied that he had received all that he needed. Nevertheless, a final hearing was not listed for several months because discussions were continuing between the parties (or between some of them at least). A final hearing was eventually listed at my direction.

6. The final hearing before me commenced on 17 November 2015. Mr Bentham represented himself on that occasion. Mr Joyce also attended and both Tiger Estates and Tiger Banks were represented by their solicitor, Mr Aird. There was no appearance by or on behalf of the RTM Company – but this was hardly surprising given that the company had been dissolved on 18 November 2014.
7. The parties informed me at the outset of the hearing that significant progress had been made towards agreeing the issues between them, and that they were hopeful of resolving any outstanding matters amicably. For this reason I agreed to adjourn the hearing to enable those discussions to run their course. By the time the hearing resumed on 8 March 2016, some further progress had been made: indeed, Mr Bentham had by then withdrawn his application against Tiger Banks. However, Mr Bentham continued to seek disclosure orders against the other Respondents. He was represented at the resumed hearing by Mr Byrne of counsel. Tiger Estates was again represented by Mr Aird. Mr Joyce did not attend on this occasion.

The issues

8. Whilst agreeing to adjourn the hearing on 17 November, I had made it clear that my provisional view was that the Tribunal lacked jurisdiction to make the directions which Mr Bentham sought. The question of the Tribunal's jurisdiction was therefore addressed in greater detail when the hearing resumed on 8 March, and I am particularly grateful to Mr Byrne for his submissions on this issue.
9. On the assumption that the Tribunal *does* have the necessary jurisdiction, the resumed hearing went on to address the issues of who it would be appropriate to make orders against, and what the terms of those orders should be.

The Tribunal's jurisdiction

10. Mr Byrne stated that the present application was made by Mr Bentham for the purpose of enforcing the terms of the Management Order, so as to bring effect to the compulsion to produce various documents listed therein. He argued that the power to order third parties to produce documents emerges from section 24(4) of the 1987 Act, which provides:

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.

11. In addition, Mr Byrne argued that the Tribunal has power to make the orders in question by virtue of its general case management powers in rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, in particular rule 6(3)(d). To the extent that it appears to be relevant, rule 6 provides:

(1) *Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.*

(2) *The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.*

(3) *In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may–*

(a) – (c) ...

(d) permit or require a party or another person to provide or produce documents, information or submissions to any or all of the following–

(i) the Tribunal;

(ii) a party;

(iii) ...

12. Before assessing the merits of these arguments, it is necessary to say something more about the Management Order and the proceedings from which it resulted. The Management Order was made in proceedings commenced by an application dated 21 January 2014 made under section 24(1) of the 1987 Act by Lindsay Court Securities Limited (the freehold owner of the Property). The application named the RTM Company as the sole respondent. Although the Tribunal subsequently permitted an individual named Mr Garrad to be joined as a second respondent, the RTM Company remained the principal respondent to the proceedings.

13. The Management Order gave Mr Bentham broad powers to enable him to perform his functions as manager. It also imposed certain obligations on the RTM Company as “the Respondent”. In particular, paragraph 6 of the Order provided that:

“The Respondent and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.”

14. Paragraph 7 of the Order provided that:

“(a) The Respondent, whether by itself, its agents, servants or employees, shall within 14 days of the date of this order deliver to the Manager all such accounts, books, papers memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are necessary to the management of the Premises as are within its custody, power or control together with any such as are in custody, etc of any of its agents, servants or employees in which last case it shall take all reasonable steps to procure delivery from its agents, servants or employees.

(b) – (d) ...

(e) The Respondents shall by 14 days of date [sic] of this order give full details to the Manager of all sums of money it holds in the service charge fund and any reserve fund in relation to the Premises, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager. If the Respondent shall thereafter receive such sums under the Leases of any Lessee it shall forthwith pay such sums to the Manager without deduction or set-off.”

15. It is thus clear that the Management Order obliged the RTM Company to produce and deliver various documents to Mr Bentham. The imposition of such obligations is plainly within the contemplation of section 24(4) of the 1987 Act. However, it is equally clear that those obligations did not extend directly to anyone other than the RTM Company. I do not consider that the wider references to others in paragraph 6 of the Order created directly enforceable obligations against third parties, or that an order under section 24 would be capable of doing so in any event.

16. It follows that, to the extent that Mr Bentham now asks the Tribunal to make orders against persons other than the RTM Company, he is not seeking to *enforce* the Management Order, but rather to achieve its objectives by other means. The question is whether the Tribunal has power to assist him in this, either by giving directions under section 24(4) or by making orders under rule 6(3).

17. Section 24(4) of the 1987 Act contemplates the Tribunal exercising its powers in two different scenarios: the first is where it makes an order under section 24(1) (in which case it can include provision in the order with respect to the matters mentioned in paragraphs (a) and (b)); and the second is where, subsequent to making such an order, the appointed manager applies to the Tribunal for directions. In this second scenario, the Tribunal may give “him” (the manager) directions with respect to the provisions of the original order. It seems plain to me that this wording precludes the Tribunal from giving directions to any person other than the manager. Whilst it would, in theory, be open to the manager to apply for a variation of the order itself (by making an application under section 24(9) of the 1987 Act) there would still be limits on the obligations which could properly be imposed on third parties.

18. For these reasons I do not consider that the Tribunal's powers to give Mr Bentham directions under section 24(4) are sufficient for it to make the orders he now seeks. Nor do I consider that rule 6(3) of the Tribunal's rules is apt for this purpose. Although, on its face, rule 6(3)(d) empowers the Tribunal to require a party or another person to provide documents to the Tribunal or to a party, that power may only be exercised "in relation to the conduct or disposal of proceedings" (rule 6(2)). It seems to me that this must be a reference to proceedings which are ongoing when the power is exercised. The only relevant proceedings which are currently ongoing concern the application for directions which was made by Mr Bentham on 2 October 2014. For the reasons explained in paragraph 17 above, it would be inappropriate to order disclosure by third parties in these proceedings. Moreover, the powers in rule 6 cannot now be invoked in relation to the earlier proceedings which led to the making of the Management Order: those were separate proceedings (as is obvious from the fact that, with the exception of the RTM Company, they concerned entirely different parties on both sides). In any event, those proceedings have been finally disposed of.

The substance of the proposed directions

19. My conclusions in relation to the jurisdictional issue are such that the application for directions must be refused. Nevertheless, in case I am wrong about the proper reach of the Tribunal's powers, I have considered whether, if the Tribunal did have the power to do so, it would be appropriate to order any of the Respondents to produce or deliver documents to Mr Bentham. I have concluded that it would not be appropriate to do so.
20. As noted above, the RTM Company has been dissolved. Addressing any orders to that company would clearly be a pointless exercise.
21. Turning to the position regarding Mr Joyce, I noted during the hearing on 17 November 2015 that Mr Joyce had given the Tribunal an assurance that he had already handed over to Mr Bentham his personal file containing all documentation he possessed concerning the management of the Property. I remarked at the time that, unless any other party could show reason why I should not do so, I would accept Mr Joyce's assurance in this regard. No indication was given that I should not do that. Although Mr Joyce did not attend when the hearing resumed on 8 March 2016, Mr Byrne conceded that, in these circumstances, no arguable case remained for ordering further disclosure by Mr Joyce.
22. The application against Tiger Banks has been withdrawn. This only leaves Tiger Estates as the possible subject of an order for disclosure. Mr Bentham did not provide a draft of the order he says the Tribunal should make against Tiger Estates (it being acknowledged that the draft directions produced for the hearing on 17 November 2015 had been overtaken by subsequent events). However, he did produce a list of issues relating to the handover of management of the Property which he considered to be outstanding. Those issues had apparently been discussed at a meeting between the parties in January 2016, and I was referred to a letter sent to Mr Bentham by Mr Aird in February, setting out his clients' position on each issue. There is clearly a

degree of mistrust between the parties, and some uncertainty about what (if any) additional management information exists and about who might possess it if it does exist. However, I was not shown evidence which leads me to believe that Tiger Estates still possesses relevant documents or information which it is refusing to hand over to Mr Bentham.

Costs

23. Prior to the final hearing resuming on 8 March 2016, Mr Aird notified the Tribunal that his client may wish to apply for a costs order against Mr Bentham. To date, no such application has been made. However, in the event that any party now wishes to apply for a costs order, they may do so within 28 days by sending the application to the Tribunal and to the person against whom the order is sought to be made. Any such application must be accompanied by a statement of the reasons why a costs order should be made and a detailed breakdown of the costs applied for.