



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

Case Reference : **LON/00AN/LVM/2016/0021**

Property : **10 Askew Road, London W12 9BH**

Applicant : **Mr Bernard Bortey & Mrs Shannel Bortey pursuant to an application under rule 10 of The Tribunal Procedure Rules 2013**

Representative : **In person**

Respondent : **Ms Patricia Roberts Executor of Iris Shoucair Aikman (Deceased)**

Representative : **Represented by Mr J Cato of Askew Property Services**

Type of Application : **For the determination of the Appointment of a manager under Section 24 of the Landlord and Tenant Act 1987**

Tribunal Members : **Judge Daley
Mr S Mason FRICS**

Date and venue of Hearing : **18 January 2017 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 January 2017**

DECISION

Decisions of the tribunal

- a. The Tribunal determined that in all of the circumstances of this case that grounds existed for the continued appointment of a manager.
- b. The Mr C Newell appointment will be extended for a period of 1 year from 20 March 2017-until 19 March 2018
- c. That Mr Newell set out his plans in a letter to the Tribunal. **Within 21 days of this determination.**
- d. The Tribunal makes no order under section 20C .

The application

1. On 3 November 2016, the Applicant leaseholder Laura Barnett sought an Application under s24 of the Landlord and Tenant Act 1987 ("the 1987 Act), for the existing management order to be varied by an extension for a period of a year.
2. The grounds were that the order was due to expire on 7 November 2016, and the Applicant sought continuity of management to ensure that a recurrence of the circumstances which led to the order did not arise following the discharge of Mr Newell's appointment.
3. On 8 November 2016, Directions and an Interim Order was made extending the appointment of Mr Newell until 20 March 2017, to allow for a manager to be in place, until this matter could be properly determined by the Tribunal. The matter was set down for hearing on 18 January 2017.
4. On 12 January 2017, the Tribunal granted an application to the new leaseholders of the leasehold title Bernard and Shannel Bortey to be substituted as applicants in this matter
5. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

6. At the hearing the Applicants appeared in persons, Mr Newell was also present; the Respondent's estate was represented by Mr J Cato of Askew Property Services.
7. The Applicants stated that they sought an extension of Mr Newell's appointment on the basis that they had had difficulties obtaining

responses to the Buyer's enquires from the landlord and were not confident that without a tribunal appointed manager, that the property would continue to be managed competently and appropriately. They had noted that major work had been carried out at the property. However they were aware that there were works required following a fire risk assessment and wished for continuity of management.

8. At the hearing Mr Cato opposed the extension of the order; he cited:-
 - Difficulties in communicating with Mr Newell, in that Mr Newell had not advised him that the major works were completed or met with him at the property to discuss the standard of the work.
 - He had been concerned about the costs of the major works, although he conceded that following the appointment of Willmot surveyors to inspect the property on the freeholder's behalf, the costs of the work had been agreed to be reasonable.
 - Mr Cato was concerned that the costs of management were too high, and had asked Willmots to manage the Property, for a fee of £1000.00 plus VAT. He admitted that they had declined the appointment, and wanted the Tribunal to give him time to find an alternative manager.
9. The Tribunal also considered Mr Cato's statement dated 5 January 2017.
10. The Tribunal also heard from Mr Newell. He stated that he had met with Mr Cato on appointment to receive handover of the documents (such as bank accounts and insurance etc) in relation to the management of the property. As there had been no paper work he had started with a clean slate, and had obtained a reinstatement valuation for the property prior to insuring it and had commissioned a survey prior to the major works.
11. He stated that prior to his management works had been carried out at the property and these had been very poorly done and he had advised both the leaseholder and freeholder's agent in respect of this.
12. He stated that he had had complied with the requirements under section 20 and had issued a demand for the costs of the work, following this there had been delays in carrying out the works which had resulted in solicitors being instructed. He stated the works had been completed in October 2016; he had inspected the property and was satisfied of the standard of workmanship.

13. He stated that he had tried to contact Mr Cato by email and had left messages and sent texts to his mobile phone, however he had resorted to sending letters as Mr Cato had not responded to the former.
14. He had made enquires of Mr Cato on what the arrangements would be at the end of his appointment so that he could affect a hand over, however no response had been forthcoming from Mr Cato until just prior to the hearing.
15. He indicated that he was prepared to continue to act as manager for a period of a year, at a fee of £1700.00 plus VAT. He stated that he had carried out a fire risk assessment, and that these works had been scheduled to be undertaken after the major works, although temporary measures had been put in place to safeguard the occupants. He had served a section 20 notice in respect of this. He stated that once the defects liability period had expired he would complete the final account.
16. The accounts for the year ending 2016 had also to be finalised.
17. The Tribunal was also assisted by his witness statement together with the appendices.

The tribunal's decision on whether grounds exist for the appointment of a manager

18. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal makes the following determination.
19. The Tribunal are satisfied that there are grounds for the appointment of the manager to be extended for a period of 1 year.
20. The Tribunal were concerned that there were no proper arrangements in place to allow for continuity of management of the building at the end of Mr Newell's appointment.
21. This is of particular importance given that the property is managed by an executrix who lives abroad, and it was not always clear what the ambit of Mr Cato's instructions/authority was.
22. The Tribunal noted that Mr Cato had a somewhat relaxed approach to management which had allowed the circumstances which had existed at the property to arise. The Tribunal had some sympathy with Mr Cato as it appeared to be difficult to obtain instructions. Nevertheless Mr Cato had known for sometime that the management order was due to expire and

had had an opportunity to make arrangements on the landlord's behalf so as to appoint a manager he had not done so.

23. The Tribunal was impressed with Mr Newell's efforts at the property and his evidence and consider that in all the circumstances it is appropriate to continue with his appointment for a period of 1 year from the expiry of the interim order until 19 March 2018

Application under s.20C and refund of fees

24. At the end of the hearing, the Tribunal noted that neither Mr Newell nor Mr Cato intended to charge for this application. accordingly no order is made under section 20C. The Tribunal also make no order for a refund of the fees that had been paid in respect of the application/hearing¹.

Name:

Date:

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. 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.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

S24 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 court thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—
- (a) where the court 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) that it is just and convenient to make the order in all the circumstances of the case; or
 - (ab) where the court 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;
 - (aba) where the tribunal is satisfied—
 - (i) that unreasonable variable administration 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 court 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;
 - (b) where the court 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).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the court 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 court thinks fit; and, on any subsequent application made for the purpose by the manager, the court 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 court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (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 court 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 2002 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 2002, the court may by order direct that the entry shall be cancelled.
- (9A) The [tribunal] 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, improvement or insurance of those premises.[...]*

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