12352

FIRST-TIERTribunal
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/30UF/LAM/2016/0004**
Property	:	**The Breakers, Victory Boulevard, Lytham St Annes, FY8 5TQ**
Applicants	:	**Mr and Mrs JD Ashwood**
Representative	:	**In person**
Respondent	:	**The Breakers RTM Co Ltd**
Representative	:	**Mr D Bentham Homestead Consultancy Services Limited**
Type of Application	:	**Landlord and Tenant Act 1987 – s 24(1)**
Tribunal Members	:	**Judge J.M. Going** **I. James FRICS**
Date of inspection and hearing	:	**19 June 2017**
Date of decision	:	**21 August 2017**

DECISION

The Decision

The Tribunal decided: –

1. The application for a manager to be appointed be dismissed.

2. That it would not be just and equitable for an order to be made under section 20(c) of the Landlord and Tenant Act 1985,

and

3. There should be no order for costs in the present proceedings.

Preliminary

1. On 6 October 2016 the First-Tier Tribunal Property Chamber (Residential Property) "the Tribunal" received an application made by the Applicants for the appointment of a manager in respect of the development known as the Breakers, Victory Boulevard, Lytham St Annes. The Breakers is a development of 32 residential apartments and the Applicants are the long leaseholders of Apartment 16.

2. The Respondent to the application is the Breakers RTM Company Limited "the RTM Company" which acquired the right to manage the development in November 2014. At the time that the application was instigated Generation Property Management "Generation" were acting as the RTM Company's managing agents, but they resigned with effect from the end of December 2016. Homestead Consultancy Services Limited "Homestead" were appointed in their place with effect from 1 January 2017.

3. A case management hearing was held in Manchester on 12 December 2016 before Deputy Regional Judge J Holbrook where the Respondent was represented by Mr Bentham of Homestead.

4. In the directions issued on 14 December 2016 which followed that case management hearing Judge Holbrook set out some of the background stating that:-

"Mr Ashwood explained that, following a protracted and difficult RTM acquisition process and a number of subsequent disagreements about the management of the development, he has little confidence in the ability of the RTM Company to manage the development effectively. He is concerned about the apparently high levels of service charge contributions which have been demanded and budgeted for; the lack of maintenance work which has been undertaken; and the possible non-compliance with statutory consultation requirements.
Mr Bentham explained, that whilst he had had no previous involvement in the management of the Breakers, the RTM Company has recently appointed his Company to take over from the existing managing agent ... and budgets had been prepared and been distributed to all leaseholders. Nevertheless Mr

Ashwood wishes the Tribunal to appoint Mr D Norris of Complete Property Management Solutions Limited "Complete" to be the manager of the development.

Mr Bentham said that both he and the officers of the RTM Company are willing to discuss Mr and Mrs Ashwood's concerns with them with a view to exploring possible solutions to the current dispute. I made it clear that I consider that, notwithstanding the case management timetable set out below, such discussion should be actively pursued".

5. The matter was then listed for hearing at the Tribunal Hearing Centre in Blackpool on 20 March 2016.

6. Prior to that proposed hearing the Applicants wrote to the Tribunal office but it was unclear as to whether the request then being made was as to a withdrawal or stay or postponement and the decision was made by procedural judge to make the proposed hearing into a further case management hearing. This took place in front of Judge J. Rimmer, where "it was suggested that the parties were near to reaching an agreement as to how this matter should proceed and how a further hearing might be avoided if discussions prove fruitful" but "notwithstanding that indication and the willingness of the parties seek to reach an agreed conclusion to the matter extensive consideration of the issues in the case failed to conclude matters to the satisfaction of the parties" following which further directions were issued on 23 March 2017.

7. The Tribunal inspected the development on 19th June 2017. Mr Ashwood was in attendance as was Mr Bentham as well as Mr Harvey, Ms Griffiths, Ms Guest, Mr Clarkson and Mrs Davies, all of whom are understood to be leaseholders within the development. The Tribunal inspected the podium, its entrance gate, the entrances to the 4 quadrants, the staircases, the underground parking areas, the refuse storage areas and were shown the extensive electrical circuit boxes for the automatic door entry systems. The Tribunal also inspected the development from outside and noted in particular the location of flat 16.

8. A hearing was subsequently held on the same day at the Magistrates Court in Blackpool. Mr Ashwood represented himself and Mr Bentham represented the Respondent. 23 others, the majority of whom were residents within the development, attended in the public gallery.

Inspection

9. The development, comprising 32 purpose built flats over 4 floors with car parking below, fronts onto the seashore at Lytham St Annes. The brick built structure with a tiled roof, is U-shaped with 4 separate entrances each catering for one of the 4 "quadrants". Each quadrant has a private stairwell and lift. Car parking is in the basement below accessed via a fob operated electric gate and an "up and over" garage door. There are electrically operated vehicular and pedestrian gates to the development. The pedestrian access to the flats is over a paved area known as "the podium" which forms the roof of

the subterranean parking. The podium is an open space, decorated with various pergola type planters.

10. The Tribunal found the development and the various common parts which it inspected to be very clean, tidy and decorated to a high standard, and the gardens and landscaping all very well tended. The Tribunal was not at all surprised to learn that the gardens had been commended as part of "Lytham in Bloom" and the development gave every appearance of being well looked after to high standards.

The Common Lease

11. It is understood that each of the flats is held under a common form of long Underlease ("the Underlease"). The development itself is part of a larger estate known as "Lytham Quays" understood to be made up of 260 residences in total including those in the development. The Underlease refers to each of the flats being held on a term of approximately 900 years having the benefit of and being subject to various easements, subject to the payment of the yearly rent of £300 and further additional rents of a 1/32nd share of the amount... (expended) in effecting or maintaining insurance of the flats, and a 1/32nd share... called the development maintenance payments "to be credited against cost of the Underlessor complying with the Underlessors covenants contained in the Fourth Schedule hereto..." and also a 1/260th share towards the costs of the Estate Management Company's covenants contained in a Management Company Lease

12. The following provisions in the Underlease were pertinent to a consideration of the application.

Included in the obligations for the individual flat owners (the underlessees) was a covenant in clause
3. 8 not to make any structural alterations or additions to the demised premises...

The 4th schedule to the Underlease set out covenants by the Underlessor to : –
...
2. To maintain the Accessways the visitor car parking spaces in the Development and the Landscaped Area in good order and condition and in clean and tidy and free from all obstructions...
4. In respect of the Demised Premises to maintain the walls of the building of which the Demised Premises form part... and the girders timbers foundations and roof thereof and the pipes and wires and the drainage water and electricity services and other conduits and the television aerial in good substantial repair and condition...
5. to paint the exterior wood and iron and cement work of the building of which the Demised Premises form part and all additions thereto with two coats of good paint in a proper and workmanlike and at least once in every three years...
7. to maintain the common entrance hall staircase and passages in good and substantial repair condition and decoration...

8. To maintain in good working order including clean tidy and well lit the lifts...
9. To maintain the security equipment serving the Development and pay for the supply of electricity of such security equipment but not such security equipment as shall exclusively serve the individual flats

The Respondent's and Applicant's submissions

13. Each of the parties provided very extensive written representations. Many related to the history of the development, which whilst providing context, were not necessarily pertinent to the decision to be made by the Tribunal as to whether the Respondent as the Right to Manage Company which had been brought into operation in November 2015 should now be ousted as the manager of the development.

14. The Applicants in their statement of case argued that the Respondent had been in breach of its repair covenants under the Underlease by removing the security element of the podium gate, repositioning that, and not effecting a required repair at a stated cost of £542. It was the Applicants contention that the podium gate was the primary security element to that area of the development.

15. The Applicants also contended that there had been breaches of covenant when there had been a proposal to allow a certain amount of seating on the podium area arguing that there were no formal rights in the Underlease which would give a leaseholder the right to use any such seating.

16. The Applicants also contended that when the Respondents had closed two of the refuse storage areas there was a further breach of covenant.

17. The Applicants further argued that various service charges had been unreasonable, that budgets and demands had been habitually issued late and stated that "the development clearly ran to an annual budget no more than £55,344 under (the original managing agents) yet the RTM Company have now demanded £86,528 for 2 successive years. 2016 saw a 50% increase in the budget."

18. The papers also revealed complaints as to the RTM Company pursuing a claim to arrears from the Applicants which in the event it decided it could not sustain. The Applicants stated the RTM Company were wrong to have taken the actions that it did including making reference to the same in certain accounts. The Applicants objected to solicitors letters seeking repayment, and in particular that stating that the Respondent was not prepared to consider a separate application by the Applicants for approval to carry out certain alterations to their flat pending payment of the claimed arrears.

19. The Applicants also complained that the RTM Company had "never undertaken any Section 20 consultations for major works or long-term agreements" and that various external painting had not been undertaken within the timescales specified in the Underlease.

20. The Applicants also referred to what they regarded as various breaches of the different codes of practice for managing long leasehold properties, and in particular the apparent belief that when the RTM Company was initially incorporated that it could use its own bank account as opposed to a designated trust bank account for the collection of service charges.

21. The Respondent did its best to provide explanations and responses within the papers to each of the points made by the Applicants even when the reasons for some of the Applicants complaints were not always easy to follow.

22. The Applicant's main concern seemed to be the changes to the podium gate entry system. It was explained by the Respondent that there had been calling point malfunction from the very beginnings of the development and it was stated that at one stage 21 of the 32 apartments reported faults. There was clearly documented history of attempts being made to investigate and repair the system, with 5 different companies being involved. The Respondent stated that after several unsuccessful attempts it was given an estimate of £11,000 for necessary repairs which included replacement wiring and equipment. Following legal advice and discussion with the then managing agents it was decided that the cost of trying to repair the system again was wildly disproportionate to any resultant loss of security. The Respondent also argued that the original calling system at the pedestrian podium gate was very much a secondary security facility and that the main security for all of the flats was their individual front doors, the communal door entry phone system, and the communal door locks for each of the four quadrants. It was also noted that additional locks to the door between the reception and the garage, lock protectors on the main entrance lobby doors and CCTV covering the main gate and roller shutter door entrance to the communal garage had all been added.

23. At the hearing Mr Ashwood was asked why he had nominated Mr Norris to be the manager of the estate and as to why he objected to Mr Bentham and Homestead. He explained that he had reservations about Mr Bentham and Homestead because they also acted as managing agents for the Lytham Quays estate as a whole, which he considered as a potential conflict of interest. He felt that there had been a lack of transparency and consultation and was looking for fresh start and approach, and had thus chosen Mr Norris and Complete.

24. Mr Norris kindly gave evidence and confirmed that whilst he and the Complete did not have professional qualifications they always aim to work closely with their clients and follow the guidelines of ARMA and RICS. He explained that the Company had 20 employees having been formed in 2004. The Company office is based in Longridge near Preston and whilst it did not presently manage any flats in Lytham it was responsible for approximately 65 developments in North Wales, Lancaster, Derbyshire, Manchester, the Wirral and Liverpool. He stated that such developments were predominately of residential flats, some of which were gated and ranging from between 4 to 250 units. He gave details of what the Company's management service would include and its cost schedules. He emphasised that communication with the individual flat owners was seen as being essential and particularly as to the

obligations under the relevant leases. He confirmed that he had not previously been appointed as a manager by the Tribunal, and had not personally been involved with the Applicants preparation of the Draft Order in the written papers, but nonetheless confirmed a willingness to act if appointed. It was noted that the Complete had tendered both when the RTM Company had gone through its appointment exercise before appointing Generation at the end of 2014, and again before appointing Homestead.

25. Mrs Sharman from Generation also gave evidence at the hearing. She explained that Generation was a small family company with a hands-on personal approach to the work. She explained that in February 2015 when dealing with the handover from the previous managing agents Hadrian, there was a large amount of correspondence from the Applicants, which she said continued and which she described as being "relentless". She said that she found the residents generally very good but the volume of correspondence from the Applicants and one other individual both of whom were not members of the RTM Company had made it very difficult. One of the issues that she had to deal with on the handover was a claim to historic service charge arrears from the Applicants. It was explained that those service charge arrears were eventually written off although Mr Ashwood complained that he had still been left in limbo.

26. Mrs Sharman confirmed that during Generation's tenure money had been saved on the costs of cleaners and window cleaners, and new gates and roller shutters and CCTV had been fitted. Despite her efforts she felt however that she could "never do right" for 2 of the residents who were always complaining and that as a small business Generation could not cope. She did not understand or know why Mr Ashwood had not joined the RTM Company. Mrs Sharman confirmed that she had a high regard for Mr Bentham and Homestead's abilities, and that on occasions asked for their help in respect of certain technical matters. She said that Mr Bentham and Homestead's work was well regarded within the locality.

27. Mr Ashwood said he could not criticise Mr Bentham as an agent and that his only criticism was that he might have a potential conflict due to Homestead also acting for the Lytham Quays development as a whole.

28. Mr Crawford gave evidence and confirmed that he had made initial contact with Mr Bentham because of feeling that he had been doing a good job on another development. Mr Crawford took advice from Mr Bentham on the issues of the management of the development, which advice had often been emailed on to the Applicants and used in their emails of complaint to Mrs Sharman. Notwithstanding that Mr Crawford appeared to value Mr Bentham's advice he still appeared concerned that Mr Bentham might be complicit in allowing what he saw as "the old ways" continuing. Mr Crawford clearly did not like some of the decisions of the RTM Company.

29. Mr Ashwood gave evidence as to the issues associated with the podium gate workings.

30. Mr Harvey, who had been a Director of the RTM Company, and whose electrical qualifications and expertise were set out in the written papers explained that the podium gate had a magnetic spring-loaded lock and release on the other side which could be easily accessed by leaning over the gate, and could thus be said to have never been fully secure. He confirmed that his and others very time consuming investigations had shown that the system (which is in fact was 3 systems which were not able to be properly integrated) was not up to specification even from the outset. It was explained that the electronics were damaged by leaks through the podium and replaced in or around 2008. The system then was at least 4 years old and parts became difficult to obtain. One security firm made several unsuccessful attempts to try and fix it.

31. Mrs Davies, another Director of the RTM Company, set out a history of her involvement with the management of the development and how initially a residents forum had been established, and that amongst other things, it had been instrumental in pressuring the original developer, Kensington, to sort out various problems following construction, including repeated problems with leaks from the podium to the garage below. She explained that these problems had eventually been sorted out with the installation of a replacement membrane and where it was understood that the total cost of the necessary remediation works had exceeded £250,000. She also confirmed that it had been when discussing problems about the original managing agents Hadrian, that it had been Mr Ashwood who had mentioned the possibility of the residents forming a right to manage company. She felt that the RTM company and its directors had in fact achieved a lot. She confirmed that she and the other directors had always tried to work closely with the managing agents and communicate with all of the residents. Only 2 or 3 of the 32 had not chosen to be members and shareholders in the RTM company. She confirmed that Mr Ashwood and Mr Crawford had both been invited to be members of the RTM Company but had stayed outside the same.

32. Mr Ashwood felt there was poor communication between the RTM Company and the flat owners that he had not been involved sufficiently in day to day issues. The Respondent gave evidence as to all of the flat owners whether or not members of the RTM company having received the information required under statute.

33. Evidence was also given as to the changes made to some of the quadrant entrances and staircase balustrades prompted by those within the particular quadrants who had wanted to pay for their aesthetic improvement.

The relevant Statutory Provisions

34. The following statutory provisions are pertinent to the Tribunal's decision.

Section 24 of the Landlord and Tenant Act 1987

(1) The appropriate Tribunal may, on an application, for an order under this section,..... 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) The appropriate 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
.....
(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;

(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 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.

(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 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.....

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

Section 20(c) of the Landlord and Tenant Act 1985

(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)

.....

(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.

Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

(1) the Tribunal may make an order in respect of costs only –

...

(b) if a person has acted unreasonably in bringing defending or conducting proceedings in –

(ii) a residential property case, or

(iii) a leasehold case;

The Tribunal's Reasons and Conclusions

35. Under section 24 (2) of the Landlord and Tenant Act 1985 the Tribunal may only appoint a manager in various specified circumstances including where the Tribunal is satisfied:

- 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 part ; or
- that unreasonable service charges had been made, or proposed or likely to be made; and
- that it is just and convenient to make the order in all the circumstances of the case

The first question for the Tribunal to answer is as to whether any of the grounds for making an order as specified in section 24 (2) have been made out

36. The Applicants contended that there had been various breaches of obligations owed under the terms of the Underlease

37. The Tribunal first considered the alleged breaches of the terms of the Underlease set out in the Applicant's statement of Case relating to proposals to put some seating on the podium forecourt, the temporary closure of 2 of the refuse stores, pursuing some service charge arrears, not consulting under Section 20 of the Landlord and Tenant Act 1985, the painting of some of the outside iron work, and not immediately opening a separate trust bank account for service charge payments.

38. Mr Ashwood agreed that the complaint about the podium seating could no longer be said to be an issue because there was no such seating at the time of the inspection. The Tribunal was not in any event convinced that the

provision of such seating, even if it could be legitimately said to impact on some of the ground floor flat owners' privacy, would have necessarily been a breach of the terms of the Underlease

39. It was also noted at the inspection that all of the refuse stores were open to the different flat owners, and those which were inspected by the Tribunal were found to be clean tidy and by the standards of their use, extremely hygienic.

40. The Tribunal also noted that the terms of the Underlease did not necessarily mean that the refuse storage areas had to be exclusively used for the storage of refuse. Whilst the naming of the areas as such provides a clear implication of an intended use, the provision in the Underlease simply refers to a right "to use the refuge storage areas provided on the Development". The wording does not specify limitations as to the use, simply that the areas must be open to all the flat owners. In just the same way as a domestic garage may be used for something other than the storage of a car the Tribunal found that the terms of the Underlease would allow for the refuse storage areas to be used other than just storage of refuse, and could for example be legitimately used for storage of cleaning materials and possibly storage generally.

41. The Tribunal felt it was quite open for the RTM Company or whoever was responsible for managing the premises to make decisions within the terms of the Underlease, hopefully in most cases and if possible on a democratic and consensual basis, for the good estate management of the development.

42. The Tribunal considered the Applicants complaints about the Respondent's pursuit of and references to their non-payment of historic service charges. Whilst the Tribunal would question the initial advice apparently given by solicitors to the Respondent and did not agree with the solicitors attempt to use the Applicants separate application for consent to alterations as a means of obtaining payment, the Tribunal did not find that the actions of the then managing agents or the directors of the RTM Company unreasonable when referring to service charge arrears in their accounts, taking into account the advice that they had been given.

43. The Tribunal noted the Applicant's assertion that there had been a breach of obligation in respect of consultation, but could find no evidence within the papers of long-term contracts or indeed sets of works which had resulted in annual payments of £250 from each of the leaseholders and as such no need for the statutory consultation under section 20 of the Landlord and Tenant Act 1985.

44. The Tribunal also found all the external ironwork of the premises to be well painted.

45. The Tribunal then went on to consider the initial holding of service charge payments in other than a trust bank account. The explanation given by the Respondent was that there was inevitably a time delay after the bringing into being of the RTM Company before the appropriate arrangements could

be made at the bank. The Tribunal is clear that it is a clear statutory obligation endorsed under the appropriate codes of practice for service charge payments to be kept in a separately designated client trust bank account. Nevertheless the evidence was that if there had been a breach it had long since been rectified.

46. Section 24 (2) (a) (i) of the Landlord and Tenant Act 1987 makes it clear that a Tribunal may only make an order appointing a manager if it is satisfied that the relevant person "is" not "was" in breach of an obligation. In other words it is a necessary precondition to making such an order that a breach has to be still subsisting.

47. In none of the instances referred to above did the Tribunal find that it would be just and convenient to make a management order.

48. Dealing next with what appeared to be Applicants main allegation of a breach of the obligations owed to them, being the changes to the door entry system and thereafter their concerns as to whether unreasonable service charges have been made or are proposed or likely to be made.

The changes to the podium door entry system.

49. The Applicants argued that the Respondent in not repairing the podium door entry system was in breach of the obligations set out in clause 9 of the 4th schedule to the Underlease "to maintain the security equipment serving the development..."

50. Mr Ashwood at the hearing acknowledged that the Underlease itself makes no explicit reference to the podium door entry system. He argued however in his statement of case that it had been the primary security element to that area of the development.

51. The Respondents papers clearly showed that the matter had been carefully thought about, the subject of various questionnaires and polls put to each of the flat owners, that there had been multiple attempts to understand and repair the same, but that a management decision had eventually been made that it would be uneconomic and imprudent to continue with a system which had failed on many occasions. The Tribunal found that this was a decision that the RTM Company was entitled to make, and that the manner in which it had been decided was reasonable and justifiable.

52. It was also noted that there are various secure barriers to the development. These include locked doors to each of the 4 quadrants, and each of the flats own locked front doors. There are also CCTV cameras in the vicinity of the up and over garage door and locked gates to the vehicular access to the car parking area.

53. The Tribunal did not find that the terms of the relevant covenant in the Underlease mean that exactly the same facilities that had been installed at the outset had to be maintained throughout the 900 year term of the lease. To do

so would have been nonsensical. The Tribunal found that the RTM Company had been both justified and reasonable in the actions that it had taken.

54. Only very few of the Applicants assertions of a breach of obligation were found to have been made out, and none were found to be ongoing. Nor were any such that the Tribunal would have felt that it was just and convenient to make an appointment of a new manager.

The applicant's complaint of unreasonable or potentially unreasonable service charges

55. The Tribunal noted the Applicants contention that the increase in the service charge budgets in the last 2 years were unreasonable.

56. The Tribunal also noted from the evidence that there had been ongoing and acknowledged problems with some of the roofing tiles, exacerbated no doubt by the location of the development immediately next to the sea and the various prevailing heavy winds.

57. The Tribunal was not necessarily surprised to see service charge budgets being increased some years after a development has been established and completed, particularly as the needs for proper reserves become more apparent. The Tribunal is aware of many cases where service charges are often lower, possibly more than they should be, during the initial years of a development when a developer is still establishing and handing over the development.

58. The Tribunal did not find anything unreasonable in how Mr Bentham and Homestead had decided to set the current year's budget.

59. Because the wording of the Underlease refers to the need to "maintain" the Development rather than "improve" the structure and common parts the Tribunal would have had reservations if aesthetic improvements wanted by some to the quadrant staircases had been paid for through the service charge budget as opposed to having been exclusively funded by those in a quadrant that wanted the works undertaken. However Mr Ashwood confirmed at the hearing that the cost of the improvement works in his quadrant had been paid for without any contribution being sought from the Applicants.

60. On the basis of the evidence before it the Tribunal was not satisfied that unreasonable service charges had been made or are proposed or are likely to be made, or that it would be just and convenient to make an order in all the circumstances of the case.

61. The Applicants were both advised and are aware of the ability under statute to make a separate application to review the reasonableness and payability of service charges under section 19 of the Landlord and Tenant Act 1985.

62. Having concluded that none of the threshold conditions set out in section 24 (2) of the Landlord and Tenant Act 1987 had been made out, it was

not necessary for the Tribunal to further consider the application for a new manager. Nevertheless it would be remiss not to make some reference to the Tribunal's conclusions as to the attributes of those involved in the proceedings.

The proposed managers

63. Mr Norris was questioned extensively by the Tribunal, which was grateful for his attendance at the hearing. Whilst the Tribunal was concerned that the Applicants had not sought to involve Mr Norris in the preparation of their draft order of appointment, the Tribunal was satisfied that if a new managing agent were to be appointed, Mr Norris had the capability to be a suitable appointee.

64. However the Tribunal was also impressed by Mr Bentham, and saw no reason why he and Homestead could not discharge their duties properly. Mr Bentham was a member of the RICS and ARLA registered, demonstrated a clear and proficient understanding of the relevant legislation, the constraints of the terms of the Underlease, and the needs of the development and the various flats owners. It was significant that he was also endorsed by Mrs Sharman who appeared to the Tribunal to be an honest, painstaking and credible witness.

65. The Tribunal did not find that Homestead and Mr Bentham's involvement with the Lytham Quays development was necessarily a conflict and indeed felt that if anything there could be useful synergies between the two positions. If potential conflicts did occur then it was felt that Mr Bentham would and should be professional enough to deal with them with probity.

66. A further relevant factor that the Tribunal took into consideration was the visible support for Mr Bentham by a clear majority of the leaseholders as well as the RTM Company, which had gone through a detailed and apparently rigourous application process before deciding which managing agent to appoint. The RTM Company had interviewed Mr Norris and his company on more than one occasion and preferred others when making its appointment. The Tribunal found nothing perverse in that decision.

Generally

67. On the evidence before it, the Tribunal found that the directors of the RTM Company had been diligent in their management of the development. There was clear evidence of a democratic engagement before many of the decisions. and no evidence that any of their decisions had not been genuinely made in the interests of good estate management or any that that appeared to be perverse.

68. It was unfortunate that Mr Ashwood and Mr Crawford did not feel that they wanted to be members of the RTM Company and sadly the Tribunal was left with the impression that they preferred to be on the outside criticising rather than genuinely engaging to reconcile differences.

69. It is in the nature of any form of shared ownership particularly where there are over 30 parties involved that it is not possible to please everyone all of the time or to have unanimity on all decisions. This however is not a justifiable reason for overturning the relatively recent acquisition by the RTM Company of the right to manage the property.

70. The Tribunal is clear that it would not be just and convenient to make the order that been applied for in all the circumstances of the case.

71. As a consequence of all of the above the Tribunal decided that the application for a new manager to be appointed should be dismissed.

Costs

72. Turning next to the request for an order under Section 20C of the 1985 Act. The Tribunal having regard to its decision and to what is just and equitable in all the circumstances determined that an order under Section 20C should not be made and that the Respondent should not be precluded from including within the amounts of the service charge payable by the Applicants, or any other person, the costs of the present proceedings before the Tribunal.

73. The Tribunal has a further jurisdiction as to costs under paragraph 13 of The Tribunal Procedure (First-tier Tribunal Property Chamber) Rules 2013 which provides that a Tribunal may determine that one party to the proceedings pays costs incurred by the other party in the limited circumstances set out in that rule, if that party has acted unreasonably in bringing, defending, or conducting those proceedings.

74. The Tribunal carefully considered the case the Upper Tribunal decision of Mather v Christchurch Gardens (Epsom) Limited 2017 UKUT 0056 (LC) referred to by Mr Bentham in his closing submissions when asking the Tribunal to make an order under rule 13 against the Applicants. That case upheld the Tribunal decision to order the losing party to pay a contribution of albeit less than 7% of the other party's costs and provides an example of the high threshold required to give the Tribunal jurisdiction to make an order for costs under rule 13 (1) (b) against an unrepresented party. The Tribunal also noted that there are a number of distinguishing factors between the facts of that case and the present application.

75. The Tribunal also had regard to the general and very useful guidance on the jurisdiction conferred by rule 13 (1) (b) as set out in the previous Upper Tribunal decision of Willow Court Management Company (1985) Limited v Alexander 2016 UKUT 0290 (LC)

76. Whilst the Tribunal did find the number of the Applicants arguments ill founded, repetitive and prolix, it also noted that the written material provided by the Respondent exceeded that provided by the Applicants by a considerable margin. The Respondent may well have had legitimate complaints as to the extent and repetition of the Applicants complaints made to the RTM Company and its successive agents, but the Tribunal reminded itself that it is only the conduct within the proceedings which can be the subject of an order under

rule 13. The Tribunal found that each of the parties had throughout made their points politely and certainly conducted themselves in an orderly manner during the hearing. The Tribunal in reaching its decision has also taken into account the fact that the Applicants were unrepresented and feel a genuine though misplaced sense of grievance about some of the decisions taken by the RTM Company.

77. The Tribunal has decided that on balance and in the circumstances of this case, it would not be appropriate to make a costs order.