



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

Case Reference : **CAM/00KA/LAM/2019/0008**

Property : **Malzeard Court, Malzeard Road, Luton LU3
1BN**

Applicants : **Saeed Ahmed (Manager)**

Respondent (1) : **Peak Holdings Ltd (Landlord)**
Representative : **IB Management Services Ltd**
Respondent (2) : **The Long Leaseholders named in the
Application**

Date of Application : **29th August 2019**

Type of Application : **An application for variation of an Order
Appointing a Manager (Section 24(1)
Landlord and Tenant Act 1987)**

Procedural Judge : **Judge JR Morris**

Date of Directions : **1st October 2019**

Date of Decision : **9th December 2019**

DECISION

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Decision

1. Having by the variation of a previous Order dated 14th April 2014 appointed Ahmed Saeed as Manager and Receiver of the Property with effect from 1st August 2017 until 30th April 2020 the Tribunal hereby makes a further variation and appoints him until 30th April 2024 or until such earlier time as the Tribunal revokes or varies the Order. The Applicant and the Respondents shall each have liberty to apply to the Tribunal for further directions.
2. The Tribunal varies the Order by adding paragraph 4(e) as follows:
“The Manager shall appoint an accountant to prepare the service charge accounts referred to in paragraph 8(c) and the reasonable fees of such accountant shall be a payable by the Lessees as part of the Service Charge.”

Application

3. On 14th April 2014 the Tribunal appointed James Shoemith as Manager for four years, from 1st May 2014 until 30th April 2018 or until such time as the Tribunal revoked or varied the Order. On 19th April 2017 James Shoemith and Saeed Ahmed made an application to vary the Order Appointing a Manager by appointing Saeed Ahmed as Manager in place of James Shoemith from 1st August 2017 to 30th April 2020. On 1st August 2017 The Tribunal appointed Saeed Ahmed from 1st August 2017 to 30th April 2020.
4. On 30th August 2019 Saeed Ahmed applied for the Management Order to be extended for a further four years.
5. The Procedural Judge noted from the previous decisions that:
6. Clause 3 (6) of the Lease is a very basic provision for a variable service charge and has serious shortcomings which are detrimental to both the Landlord and the Leaseholders. In particular the Lease lacks authority to levy advance service charges; or to re-charge management fees or appoint a managing agent, which is particularly necessary as the landlord was a company in Gibraltar. The Landlord and Managers had found it hard to get work done as the flats at the Property are sub-let and in the past the Leaseholders have been reluctant to agree to extensive works and therefore more minor repairs had to be undertaken.
7. This might be remedied by obtaining a variation of the lease; however, this would take time and incur additional costs for all. The two previous Tribunals had therefore sought to remedy the difficulty in the Lease by including in the order authority for the Manager to claim reimbursement. In addition, a requirement was included that a schedule of maintenance should be set out and a reserve fund established to meet the cost of maintenance works. Also, an annual estimate of the maintenance and running costs must be made which is then to be paid by the Leaseholders with provision for the production of accounts and the payment of any under payment or crediting of any overpayment of the advanced Service Charge.
8. The Procedural Judge having considered the previous decisions and orders is of the opinion that a tribunal would be minded to extend the Management Order for a further four years subject to the following Directions:
 1. The Applicant shall by 5.00 p.m. on 15th October 2019 serve on the Respondents, the Service Charge accounts for the past two years together with a brief report on the condition of the Property and any planned works.
 2. The Respondents may by 5.00 p.m. on 29th October 2019 serve on the Applicant any representations in respect of this Application.
 3. The Applicant may by 5.00 p.m. on 12th November 2019 serve on the Respondents a reply to any representations made by them.
9. It was added that the Tribunal would be content to deal with the matter without a hearing and that a determination and decision will be made on or

after 29th November 2019. However, if a party wants an oral hearing, arrangements will be made as soon as a request in writing is received at any time prior to 31st October 2019.

10. With his Application Mr Saeed supplied the contact details of the current Leaseholders of flats at the Property. The Tribunal sent a copy of the Application and the Directions together with a copy of the varied Order appointing Mr Saeed Ahmed as Manager in place of James Shoemith from 1st August 2017 to 30th April to each of the Leaseholders.
11. Mr Saeed emailed the Tribunal Office on 25th November to inform the Tribunal that he had not received any representations from the Respondents. By way of confirmation, the Tribunal Office in turn wrote to the 14 Leaseholders and the Landlord and its Representative asking if they had any comments and to reply by return.
12. The Tribunal received an email dated 27th November 2019 from the Landlord's Representative stating that "On behalf of Peak Holdings Limited, we have no objection to Saeed Ahmed being re-appointed".
13. The Tribunal received no communications from the Respondent Leaseholders.

Applicant's Statement of Case

14. In accordance with the Directions Mr Saeed confirmed that he had served on the Respondents, the Service Charge accounts for the past two years together with a brief report on the condition of the Property and any planned works.
15. Mr Saeed provided a Report on the condition of the Property as follows.
16. As at 4th October 2019 the following works had been carried out:
Main Block
 - Guttering now repaired
 - Both entrance doors painted and in good working order
 - Staircase is clean and cleaned regularly
 - Communal electricity paid and up to date
 - Emergency lighting working in good order, some lights recently replaced
 - Communal staircase planned painting
 - Roof will be inspected as some damage is visible so repair will be required
 - Overall condition is good in the main block
 - Safe secure and well maintained
 - No hazardsFront Block
 - Minor repairs completed to the concrete stairwell
 - Front lawn is well kept all year round
 - Flat roof in good order will be inspected this year and any repairs will be scheduled
 - Planned painting outside
 - Overall condition is good, safe and secure

- Well maintained
- No hazards

Car Park

- Has always been a target for fly tipping, all waste is regularly removed
- Condition good
- Car park wall has been repaired
- Regular maintenance done to keep car park clean and safe
- Daily checks undertaken
- No hazards
- Well maintained

17. Mr Saeed submitted that Lessees are satisfied with the services and all service charges are up to date and being paid in instalments.
18. Mr Saeed provided copies of the accounts for the two years for which he had been managing the Property being the years ending 30th April 2018 and 2019. These are summarised below:
19. The accounts for year ending 30th April 2018 are:

Year ending 30th April 2018	Budget	Main Block	Front Block	Shared Drive
	£	£	£	£
<i>Ongoing Maintenance</i>				
Cleaning	780	900		
Repairs	4,080	2,276	900	
Rubbish Clearance	1,000			1,570
Grounds Maintenance	700	600		200
Electricity	670	450	60	91
Manager's Expenses	150	110	40	
Manager's Remuneration	2,400	2,000	400	
Administration	0	226	90	
Total		6,562	1,490	1,861
<i>Accountancy fees</i>	0	429	171	
<i>One Off Costs</i>				
Door Entry system		1,215		
Roof repairs		950		
Total		2,165	0	
<i>Shared drive allocation</i>		1,329	531	-1,861
Total Payable		10,485	2,192	
Amount received	11,280	9,600	1,680	
Deficit for year		(885)	(512)	

20. Mr Saeed added three notes:
- (1) The charge for the clearance of rubbish was higher than the previous year due to excessive fly tipping
 - (2) Repair work had been carried out on the roof but it was apparent that further work would be required
 - (3) An accountant had been employed to prepare the necessary accounts.

21. The accounts for the year ending 30th April 2019 are:

Year ending 30th April 2019	Budget	Main Block	Front Block	Shared Drive
	£	£	£	£
<i>Ongoing Maintenance</i>				
Cleaning	780	800		
Repairs	5,200	950	440	
Rubbish Clearance	1,000			1,000
Grounds Maintenance	700	600		200
Electricity	670	788	94	169
Manager's Expenses	150	110	40	
Manager's Remuneration	2,400	2,000	400	
Administration	0	0	0	
Total		5,248	974	1,369
Accountancy fees	600	429	171	
Shared drive allocation		978	391	-1,369
Total Payable		6,654	1,537	
Amount received	11,500	7,003	1,638	
Surplus for year		349	101	

22. Mr Saeed added three notes:
- (1) Roofing and guttering work on the Main Block was carried out during the year but the snow had meant that additional work will be required.
 - (2) The electricity bill was higher than in previous years.
 - (3) Flytipping continues to be a problem. Additional signage would be put in place and Leaseholders were warned that action would be taken against them if they were found flytipping.

Decision

23. The Tribunal considered the background to the Application. It noted that on the two previous occasions (May 2014 and August 2017) the matter has come before the Tribunal there was a hearing when Judge Morris sat with two Surveyors. On the first occasion the Tribunal appointed Mr Shoesmith, who, although not a surveyor, nevertheless, had good experience. On the second occasion it was a joint application to vary the Order to appoint Mr Ahmed in Mr Shoesmith's stead. Similarly, he is not a surveyor, but had experience of letting and managing individual flats. He had been shadowing Mr Shoesmith prior to their joint application in 2017, and appeared to have a good understanding of the difficulties with regard to this particular block. Overall, the Tribunal found he had sufficient competence to do the job. In addition, it was felt he had a vested interest in this block because he was the leaseholder of two flats.
24. The Tribunal recalls the condition of the Property on the first occasion of its visit in 2014 when it was found to be in a poor condition. This was due in no small part to the provisions of the Lease which vitiated against effective maintenance work being carried out. The Tribunal found on its second visit in

2017 that the management had effectively improved the condition of the Property. Mr Saeed has provided the Tribunal with a schedule of works carried out to date. There have been no dissenters to the veracity of this list and therefore the Tribunal finds that the Property is continuing to be maintained. has taken in to account the previous decisions and considered all the evidence put forward.

25. It is noted that there are problems with the roof and that it is anticipated that significant works will need to be undertaken. Taking into account the age of the Property the Tribunal is reassured that the Management Report recognises this as a maintenance issue as it is likely that the cost will require a section 20 procedure to be followed.
26. The Tribunal finds that the accounts provided set out the costs clearly and the apportionments appear appropriate. The Tribunal makes no finding as to the reasonableness of the costs incurred although no representations have been raised by the Leaseholders.
27. The Order seeks to ensure that the Property is well managed for the benefit of the Landlord and the Leaseholders and particularly those who occupy the flats as their home.
28. The Tribunal finds that the Leaseholders have tacitly raised no objections and the Landlord has said that it raises no objections to the variation of the Order to appointment Mr Saeed as Manager.
29. The Tribunal noted that Mr Saeed now employs an accountant to prepare the Service Charge referred to in paragraph 8(c) of the Order. The Tribunal determines this to be reasonable to comply with the most recent edition of the Service Charge Residential Management Code (“the 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. Whereas this may be implied by paragraph 4(b) of the Order there is no express authority for this in the Order. The Tribunal therefore varies the Order by adding paragraph 4(e) as follows:
“The Manager may appoint an accountant to prepare the service charge accounts referred to in paragraph 8(c) and the reasonable fees of such accountant shall be a payable by the Lessees as part of the Service Charge.”
30. Therefore, having by the variation of a previous Order dated 14th April 2014 appointed Ahmed Saeed as Manager and Receiver of the Property with effect from 1st August 2017 until 30th April 2020 the Tribunal hereby makes a further variation and appoints him until 30th April 2024 or until such earlier time as the Tribunal revokes or varies the Order. The Applicant and the Respondents shall each have liberty to apply to the Tribunal for further directions.

Judge JR Morris



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

Case Reference : **CAM/00KA/LVM/2017/0001**

Property : **Malzeard Court, Malzeard Road, Luton LU3
1BN**

Applicants : **James Shoemith (Retiring Manager)
Saeed Ahmed (Proposed Manager)**

Respondent (1) : **Peak Holdings Ltd (Landlord)**
Representative : **IB Management Services Ltd**
Respondent (2) : **The Long Leaseholders named in the
Application**

Date of Application : **30th August 2019**

Type of Application : **An application for variation of an Order
Appointing a Manager (Section 24(1)
Landlord and Tenant Act 1987)**

Procedural Judge : **Judge JR Morris**

Date of Directions : **1st October 2019**

Date of Decision : **9th December 2019**

Date of Original Order : **14th April 2014**

Date of 1st Variation : **1st August 2017**

Date of 2nd Variation : **9th December 2019**

APPOINTMENT OF MANAGER ORDER

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UPON considering the evidence of the Applicant

IT IS ORDERED THAT:

1. Saeed Ahmed (“the Manager”) of 5 Landsdowne Road, Luton, Bedfordshire LU3 1EE having by the variation of a previous Order dated 14th April 2014 been appointed Manager and Receiver of the Property with effect from the 1st August 2017 until 30th April 2020 the Tribunal hereby make a further variation and appoint him until 30th April 2024 or until such earlier time as the Tribunal revoke or vary the Order. The Applicants and the Respondent shall each have liberty to apply to the Tribunal for further directions.
2. The Manager shall provide the service set out below. If for any reason the Manager is unable or unwilling to carry out the service he will inform the Tribunal. At the end of the period of this Order the Manager shall either secure a new order or the management will return to the Landlord or its successor in title and shall pass all relevant and necessary documentation to the subsequent manager.
4. The Manager shall manage the Property in accordance with:
 - a) The respective obligations of the Lessor and the Lessees under the Leases by which each of the flats at the Property are demised
 - b) The duties of a Manager as defined by and set out in the Service Charge Residential Management Code (“the 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.
 - c) During the period of appointment, the Manager shall comply with all statutory requirements, including those included in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987 [as amended].
 - d) The Manager shall prepare a maintenance plan for the repair and redecoration of the common parts of the Property and obtain a Health and Safety and Fire Report in relation to the Common Parts and carry out the recommendations and requirements of such Report.
 - e) The Manager may appoint an accountant to prepare the service charge accounts referred to in paragraph 8(c) and the reasonable fees of such accountant shall be payable by the Lessees as part of the Service Charge.
5. The Manager shall receive all sums by way of payment of Service Charges arising under the said Leases but shall not receive sums by way of ground rent or premiums for insurance which shall be collected directly by the Lessor.
6. It is agreed between the Lessor and the Manager that;

- a) The Lessor agrees not to register any transfer, assignment, mortgage or charge received until it has received written confirmation from the manager that there are no arrears of advance or other payment of service charges in respect of the Property outstanding and due from the assignor, and
 - b) The Manager agrees not to accept payment of any service charges whether by advance or other payment from any assignee until the Lessor has confirmed in writing that the correct notice to register any transfer, assignment mortgage or charge has been received.
7. The Manager shall be entitled to the following fees under the Service Charge:
- a) An annual Management Fee of £200 per year in respect of each of the 10 Main Block Flats and £100 per year in respect of each of the 4 Front Block Flats plus VAT if applicable, the fee to be paid by quarterly instalments.
 - b) Reimbursement of reasonable incidental expenses of up to £150.00 per annum.
 - c) A fee of £40.00 per hour:
 - i) For work connected with the collection of Advance of Annual Service Charges unpaid by the due date but only if any such amounts are recovered from the Lessee concerned and time spent on proceedings to recover service charges or enforce covenants.
 - ii) For any work reasonably required in order to fulfil the management duties outside the scope of the Order (for example the answering of requisitions in connection with any purchase or sale of any flat)
 - d) The Manager will not be reimbursed for professional, public or product liability insurance.
8. The arrangements for the Service Charge shall be as follows:
- a) As soon as practicable at the commencement of the financial year the Manager will send to the Lessees a budget for estimated expenditure for that financial year, together with a narrative explaining the costs to be incurred.
 - b) The Manager shall then issue an invoice to each Lessee for an Advance Payment of Service Charge based on each flat's due proportion of the estimated expenditure. The Advance Payments are payable in full within one calendar month of their date of issue. The Lessees may agree in writing with the manager to pay by equal monthly instalments.
 - c) As soon as practicable at the end of each financial year the Manager shall prepare accounts, copies of which shall be sent to each Lessee. The Manager shall prepare a Statement of Account showing the

Lessee's proportion of the total expenditure and any Advance Payment made by the Lessee. If the Lessee's proportion of the total expenditure exceeds the Lessee's Advance Payment the Manager shall invoice the Lessee for the Lessee's proportion of the difference which will be payable within one calendar month from the date of invoice. If the Lessee's Advance Payment exceeds the Lessee's proportion of the total expenditure the difference shall be offset against the following years Advance Service Charge payment.

- d) The Manager shall take such action as is necessary to recover any unpaid Service Charge from the Lessees and shall be entitled to the remuneration as stated at paragraph 7(c) of this Order. In addition, the reasonable legal costs and fees for such action shall be recoverable from the Lessee in default.
- e) The apportionment of the Service Charge shall continue to be:
 - For all costs relating to the Main Block divided equally between the 10 flats
 - For all costs relating to the Front Block divided equally between the 4 flats
 - For all costs relating to the Common Driveway divided equally between the 14 flats
- f) The Manager shall set out a planned maintenance schedule with costings and establish a reserve fund for the undertaking of major works.

Judge JR Morris