



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

Case reference : **LON/00AM/LAM/2019/0007**

Property : **11 King Edward's Road, London E9
7SF**

Applicant : **Ms Pauline Claire Mason**

Representative : **None – Ms Mason In person**

Respondent : **King Edward's Road Freeholders
Limited**

Representative : **Mr Philip Charles Adams - Director**

Type of application : **S24 Landlord and Tenant Act 1987 -
Appointment of a Manager**

Tribunal member(s) : **Judge John Hewitt
Mr Stephen Mason BSc, FRICS, FCI Arb
Mr Alan Ring**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Hearing : **16 & 17 October 2019**

Date of Decision : **1 November 2019**

DECISION

Decisions and orders of the tribunal

1. In accordance with section 24(1) Landlord and Tenant Act 1987 (LTA 1987) Mr Richard Davidoff ('the Manager') of Aldermartin Baines & Cuthbert of 179 Station Road, Edgware, Middx HA8 7JX is appointed as manager of the property at 11 King Edward's Road, London E9 7SF ('the Property') with effect on and from 1 January 2020.
2. The order shall continue for a period of three years from 1 January 2020 so that it will expire on 31 December 2022.
3. The Manager shall manage the Property in accordance with:
 - 3.1 The directions and schedule of functions and services attached to this order;
 - 3.2 The respective obligations of the landlord and the leases by which the flats at the Property are demised by the respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - 3.3 The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager shall register the order against the landlord's registered title number 2678406 as a restriction under the Land Registration Act 2002, or any subsequent Act, in Form L in the following terms:

'No disposition of the registered estate by the proprietor of the registered estate is to be registered before 31 December 2022 without a certificate signed by the Manager, Mr Richard Davidoff, or his conveyancer.'
5. By consent an order is hereby made under section 20C Landlord and Tenant Act 1985 (LTA 1985) to the effect that none of the costs incurred or to be incurred by the respondent in or in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant to the respondent.

Reasons

6. This decision is to be read in conjunction with the decision in Case Reference LON/00AM/LBC/2019/0031 (the Breaches Application). The two applications were heard simultaneously and in large measure the evidence and background is of relevance to both applications.

General background to the Property

7. It is convenient to set out here material background information to set the scene and context. Much of it was not controversial.

8. Numbers 11 and 13 King Edward's Road were originally constructed in mid-late Victorian times as houses. Title to number 11 and part of number 13 King Edward's Road (together now known as number 11) was registered at HM Land Registry on 14 January 1919 with title number 267846 (the Property). Over time adaptations have been carried out to the Property to create six self-contained flats. These flats have all been sold off on long leases for terms of 125 years from 25 March 1984. Five of the leases were granted in 1984 and one lease was granted in 1986.

Mr Philip Adams (Mr Adams) who is now the sole director of the respondent (the Company) is also the lessee of Flat C. Mr Adams acquired the lease of Flat C in 1993.

The applicant (Ms Mason) is the lessee of Flat A. The lease of this flat, which is dated 22 June 1984, demised the top floor. Ms Mason acquired that lease in or about 1999. In circumstances which will be explained shortly, the extent of the demise was increased to include the roof space above it by a deed of variation dated 24 September 2007 (the DoV). By a licence for alterations of the same date (the LfA) Ms Mason was permitted to carry out certain works the effect of which was to create liveable space in what was previously a loft space. HM Land Registry treated the DoV as effecting a surrender and re-grant of the original lease. Thus, on 13 December 2007 Ms Mason was registered at HM Land Registry as the proprietor of the lease of Flat A dated 24 September 2007. The 1984 lease and the DoV have to be read together to establish the various duties and obligations as at today's date.

We have been provided with copies of the lease of Flat A dated 22 June 1984, the DoV and the LfA. We have not seen any of the other leases. There was an assumption by the parties that the six leases were more or less in common form as regards matters concerning the hearing. Clause 4 (iv) is a covenant on the part of the landlord to ensure that the lease of each flat will require the tenant to covenant to observe covenants of a similar nature to those set out in clause 2 and the restrictions set forth in the Third Schedule.

The lease structure as regards management and service charges

9. The Building is defined to be the building converted to comprise six flats on the freehold property registered with title number 267846 and the property registered with good leasehold title under title number 267847 together known as 11 King Edward's Road.
10. The term granted is 125 years from 25 March 1984. There is an escalating ground rent. Until the 25 March 2034 the ground rent is £100 per annum. It is payable in advance on 25 March in each year. The reddendum also provides for the payment of an insurance rent. Clause 2 (vii) is a covenant on the part of the tenant with the landlord to pay a yearly sum of 16% of the sum expended by the landlord by way

of premium for insuring the building in accordance with the obligation to effect buildings insurance set forth in clause 4 (ii).

11. There was little controversy about the terms of the lease.

Clause 2 sets out the tenant's covenants. Those of some relevance include:

2 (viii) to pay on account of the future liability, on 25 March in each year, a Contribution (service charge) in a sum amounting to 16% of specified expenditure, which is in fairly standard terms for a residential lease. Sub-clause (i) provides for the power (but not an obligation) to create a reserve fund and sub-clause (k) provides for the payment of further sums on account as the landlord's agent shall certify as being fair and reasonable in the circumstances. Proviso (a) requires the actual expenditure in each financial year to be certified in writing by the landlord's agent as soon as possible after the end of the financial year with any debit balance payable by the tenant to the landlord on the next quarter day after the date of certification. By proviso (b) the tenant has the right to inspect the receipts for all payments constituting the expenditure.

2 (x) not to do or omit to be done or omitted any act or thing in on or respecting the demised premises which shall be a contravention of the Town and Country Planning Acts for the time being in force.

2 (xvii) to pay all costs charges and expenses incurred by the landlord of or incidental to the preparation of a notice under s146 Law of Property Act 1925 requiring the tenant to remedy a breach.

2 (xix) not to do or permit or suffer to be done any act or thing whatsoever whereby the risk or hazard of the demised premises or the Building by any insured risk shall be increased so as to require an additional premium for insuring the building.

2 (xx) to make good all damage caused through the act or default of the tenant:

(a) to any part of the Building or to the appointments of fixtures and fittings thereof; and

(b) to any other occupier or tenant of the Building and to keep the landlord indemnified from all claims in respect thereof.

Clause 3 sets out a number of agreements and declarations.

Clause 4 sets out the landlord's covenants. Those of some relevance include:

4 (i) that the tenant, paying the rent and performing and observing the tenant covenants, shall quietly hold and enjoy the demised premises without any lawful interruption by the landlord.

4 (ii) to insure and keep insured in the joint names of the landlord and the tenant each and every part of the Building from loss or damage by fire and all such risks as are normally included in a household comprehensive insurance policy and other such risks as the landlord may from time to time determine to the full reinstatement value thereof.

4 (iii) (a) subject to the contributions and payments provided for in clause 2 (viii) to use best endeavours to carry out in a proper manner the works specified in clause 2 (viii)

(b) a further provision for payment on account by the tenant of a prospective cost to be incurred.

The First Schedule sets out rights, easements and privileges granted.

The Second Schedule sets out Exceptions and Reservations.

The Third Schedule sets out a number of rules and regulations to be observed.

Enfranchisement and subsequent management

12. Mr Adams and Ms Mason were instrumental in effecting a collective enfranchisement of the Property. The Company was incorporated on 16 November 2006. Mr Adams and Ms Anne Brenckle were appointed as directors and Ms Mason was appointed secretary.
13. On 21 March 2007 the Company was registered at HM Land Registry as proprietor of the freehold interest. The register records the price said to have been paid on 2 January 2007 was £16,000.
14. Evidently solicitors, William Sturges & Co, acted for the Company on the acquisition. Apparently on advice the Company does not itself manage the Property on a day to day basis. We were told that a tenant's association (the Association) was set up and day to day management was delegated to it. The arrangements do not appear to have been put into writing.

So far we could establish the Association is an unincorporated body which does not have a written constitution. Each lessee has been treated as a member/officer and, perhaps until recently was invited to meetings. Some extracts of Association meetings have been included in the papers provided to us.

15. The Association has a bank account with the Co Op Bank. Mr Adams believes he is the sole signatory on the account. Mr Adams told us that upon acquisition of the freehold the decision was taken that the Company would not seek payment of the ground rents. Some of the initial meetings of lessees show some confusion as to the role(s) of the Company and the Association. Some inappropriate terms seem to have been used interchangeably, for example KERF Ltd (the Company) and

KERRA (the Association). Mr Adams told us that the accounting regime for service charges as set out in the lease has not been followed.

Evidently as and when funds are required ad hoc requests are made of lessees. The funds collected are paid into the Co Op account and then drawn down to effect expenditure. On some occasions when some lessees have been slow to pay their contributions, Mr Adams has used his own funds to meet expenditure and then recouped it as and when funds were available to enable him to do so. A decision was also taken at an early stage to discontinue the reserve fund strategy adopted by the previous freeholder.

16. From time to time the Association has discussed the appointment of a professional managing agent. This has been resisted by Mr Adams and other lessees largely on account of cost and the wish to keep outgoings to a minimum.
17. It appears that over the years as and when management tasks have been required there has been some volunteering/delegation amongst lessees with varying degrees of success. There does not appear to be a coherent strategy. It also appears that sometimes lessees have carried out tasks or taken actions on their own volition, incurred costs, issued service charge demands all outside what the Association was doing. We infer this may have arisen out of frustration with lack of activity on the part of the Association.
18. Ms Mason resigned as secretary on 2 October 2007 and no new appointment has been made. Ms Brenckle resigned as a director on 1 July 2008 and no new appointment has been made. Thus, since 18 July 2008 Mr Adams has been the sole director and officer of the Company. The latest accounts filed at the Companies Registration Office comprise a balance sheet as at 30 November 2018. It records that: 'For the year ending 30 November 2018 the company was entitled to exemption under section 480 of the Companies Act 2006 relating to dormant companies.' That statement was signed by Mr Adams on 9 August 2019.
19. The above reinforced the strong view we arrived at to the effect that the Company was not managing the Building on a day to day basis and that such management as did take place was ad hoc and effected by the Association.

The 2007/8 building works

20. These works are of some importance in both applications so we set out a summary of what went on.
21. Flat A as originally demised was limited to the top floor flat. Ms Mason wished to acquire the roof space above her flat and create liveable space within it. Some preliminary discussions about this may well have taken place with some lessees at about the time of enfranchisement in January 2007.

22. On 24 September 2007 the DoV was granted. It varied the extent of the demise to include the roof space and also to include a landing and staircase at first floor level which had previously comprised common parts. On the same day the LfA was granted. The permitted works described in the Schedule were:

The construction of a front mansard (with dormer windows) and a dormer rear window finished in matching bricks to the existing building using slates laid onto the mansard;

Party wall to be built up;

Leaded dormer windows;

Construction of an internal staircase to the roof space;

Construction of a new entrance on the first floor landing by erecting a new partition wall and front door to the Premises (i.e. Flat A).

23. The above works commenced in late 2007 and were completed in early 2008. However, at the same time Ms Mason procured works to a different roof within the building. This was a pitched roof at first floor level. That roof was above Flat C, let to and occupied by Mr Adams. We were shown a number of photographs taken before and after these works. It was quite clear, and not in dispute, that original roof above Flat C was pitched, albeit at fairly shallow angle and it was replaced by a flat roof. It was also not in dispute that these works were outside the scope of both the DoV and the LfA
24. Prior to the DoV the pitched roof above Flat C was accessible for maintenance and inspection purposes via a first floor landing window in the eastern flank wall of the building. That landing was then a common part. As a result of the DoV the landing was included within the demise of Flat A since when access to the window and then to the roof has been controlled by Ms Mason.
25. The unauthorised works to the pitched roof were arguably a trespass on that roof. The works were controversial. Evidently, there had been some discussions in January/March 2007 about Ms Mason creating a terrace on the roof above Flat C. Mr Adams objected and the proposal was dropped from plans submitted to the planning authority and also in connection with building control. Ms Mason was recorded as having agreed to put the proposed roof terrace 'on hold'. As noted the LfA made no reference to such works. Nevertheless, Ms Mason went ahead with the works in any event. These works were first flagged up in minutes of a meeting held on 27 November 2007, a meeting at which Ms Mason was not present.
26. The minutes of a meeting on 1 March 2008, at which Ms Mason was present, noted that decking had been placed on the flat roof. Ms Mason is recorded as stating: 'that the maintenance of the decking would not be the responsibility of KERF. Documents to be drafted to this effect.'

No such documents appear to have been drafted or executed; at any rate none have been produced to us.

27. It seems that at about this time Ms Mason stopped going to meetings of the Association and minutes regularly recorded her apologies for absence. Minutes also made reference outstanding sums payable by Ms Mason.
28. By this time Ms Mason had resigned as secretary of the Company. We infer the above events put a strain on the relationship between Ms Mason and her fellow lessees and in particular Mr Adams.
29. In July 2008 Mr Adams, on behalf of the Company, consulted William Sturges & Co about a number of matters, including Ms Mason splitting her flat into two and unlawfully subletting part and the unauthorised works to the roof above Flat C. On 8 August 2008 that firm wrote to Ms Mason raising a number of issues, including the unauthorised works and breach of planning and stated that the Company required reinstatement of the roof to its previous condition. They also stated that other tenants should have access to the roof as it was a common part. They wrote again on 26 September, 17 October and 10 December 2008. Ms Mason did not respond to the letters. The Company does not appear to have followed up any of the issues in a formal way.
30. William Sturges & Co also raised alleged breach of planning with Hackney Council. The council wrote to that firm on 26 January 2009. The letter was headed: 'Unauthorised works and change of use.' The letter states that a site visit and an investigation was undertaken which revealed: 'No breach of planning control has occurred because there is no evidence of external works and an internal inspection did not provide evidence of a change of use. The owner of the property is a resident along with her lodger/s, under planning control this does not constitute a change of use.' From the reference to 'lodgers' we infer the focus of the letter was subletting and planning and not the roof above Flat C and planning.
31. In October 2013 there was an ingress of rainwater into a bedroom in Flat C. Mr Adams procured a report from The London Roofing Centre. That report dated December 2013 records that the roof was covered in timber decking which was far too heavy for the roof structure and that caused some structural damage. Further it had been poorly fitted and was sitting directly on the roof and not floating. The report also recorded that the water proof covering had been poorly fitted using only basic materials. Remedial works were recommended. Evidently some works were carried out but when and by whom was not made clear to us.
32. Mr Adams made a claim against Ms Mason in respect of the damage to his flat. When Ms Mason had the works carried out in 2007 she had obtained a 10-year warranty issued by Masterbond (Build Assure Ref

18781/W7373). Ms Mason claimed on that warranty and evidently a payment was made to Mr Adams in respect of the damage to his flat.

33. Mr Adams procured a further report on the flat roof. It was prepared by Mr James Bentley BSc (Hons) MRICS of Lamberts Chartered Surveyors. It is dated 25 March 2014. It was not clear to us the purpose to which this report was put.
34. A further leak from the flat roof occurred in late 2018 causing further internal damage to Flat C. Having taken further legal advice Mr Adams, on behalf of the Company, served on Ms Mason a document purporting to be a notice pursuant to s146 law of Property Act 1925 (LPA 1925). A copy is at page 97 of the bundle in the Breaches Application. That document alleged breach of clause 2(xx) of the lease and complained:

‘Specifically demolition of the pitched roof belonging to the common parts and replacement with a flat felt surface overlaid with wooden decking and without the requisite permission of the Freeholder of 11 King Edwards Road.’

The document stated; ‘You are required to remedy this breach as outlined in the supporting letter.’

A copy of that letter is at page 97a. Amongst other things it stated:

‘You are required to reinstate the pitched roof to the standard required by Hackney Building Control.’

Evidently by this time the wooden decking Ms Mason had laid and also planters and other items and possessions which she had placed on the roof in prior years had been removed.

35. Freeths, solicitors for Ms Mason, responded to the notice by letter dated 13 December 2018. A number of points are made but we need not go into the detail. In the event Ms Mason did not reinstate the roof to its original pitched design. Mr Adams procured the Association to do so as a repair within the service charge regime. The roof was replaced in the spring of 2019 (£5,300) and internal redecorating in Flat C (£2,000) was also carried out. The total cost was £7,300. No s20 LTA 1985 consultation exercise was carried out. The Association sought a 16% contribution (£1,168) from Ms Mason which Ms Mason has paid.
36. Finally, we should mention alleged disrepair of the front valley parapet roof of Flat A. Ms Mason complains that failure of routine repairs has permitted water ingress which has caused internal decorative damage to her flat. A claim on the buildings insurance policy was made. In a letter from the insurer’s Loss Adjusters to the Association, the claim was rejected on the grounds that the water ingress was caused by or arose from:

‘(a) Wear, tear or depreciation or diminution in value;

(c) Inherent vice, latent defect, defective design, plan, or specification or the use of faulty materials;

(d) Faulty or defective workmanship operational error or omission by you or your employees; and

(f) Gradually operating causes, including but not limited to atmospheric or climatic conditions ...'

It was stated that none of the above were insured risks.

37. Ms Mason was unable to persuade the Association to carry out works of repair to the valley and so she arranged for works to be carried at a cost to her of about £4,600. Ms Mason has endeavoured to obtain contributions to that expense from the Association/Company and other lessees but so far without success.

In late September/early October 2019 during a period of exceptionally heavy rainfall, a further water ingress occurred. Ms Mason believes this suggests further investigations and repairs are required.

The section 22 notice, the proceedings and the hearing

38. The s22 LTA 1987 notice is dated 28 December 2018 and it was served in early January 2019. It runs to 13 pages. So far as we are aware the Company did not make any written response to it.

39. The application to the tribunal under s24 LTA 1987 is dated 19 March 2019. Directions were given on 9 May 2019. The Company, acting by Mr Adams, has served a statement of case in answer. Both parties then served supplemental position statements. The other five lessees have each filed very brief statements opposing the application to appoint a manager. No grounds or real detail was provided in any of them.

Mr Depaoli (Flat B) asserted the Property was managed properly by Mr Adams and he was happy for that to continue.

Mr Adams (Flat C) opposed the application and asserted that the proposal (and budget) put forward by Mr Davidoff was onerous.

Ms Molyneaux (Flat D) simply opposed the application.

Mr Foleros (Flat E) – one of the lessees who participated in the 2007 enfranchisement – strongly opposed the application and stated he was happy with the way in which the property was managed by Mr Adams.

Mr Brett (Flat 6) who acquired his lease in December 2015 also strongly opposed the application and asserted that the lessees worked through any issues in a considered, collaborative and successful way. He said he did not see a valid reason to force an external manager on the freeholders.

Other than Mr Adams and Ms Mason, none of the other lessees/shareholders filed witness statements or attended the hearing. We understand that three of the lessees live abroad and one who resides in their flat is in the process of selling.

40. The hearing was originally set for 30 September/1 October and was postponed to 16 and 17 October 2019 to accommodate one of the parties.

On the morning of 16 October 2019 the members of the tribunal had the inestimable benefit of a visit to the Property. We met with Ms Mason and with Mr Adams who together took us over several parts of the Property and drew our attention to a number of physical features. This was extremely helpful to us when it came to understand the history as it had developed since 2007.

41. The hearing commenced at 13:00. Having sorted several housekeeping matters, Mr Davidoff was called to speak to his letter to the tribunal dated 22 May 2019 and the attachments to it. Mr Davidoff spoke of his extensive experience of his management of residential property gained during his 20 years in the family business which has a staff of 40+ and he explained how the business was set up.
42. Mr Davidoff answered questions put to him by Ms Mason, Mr Adams and members of the tribunal. Mr Davidoff was of the view that there is plainly a need for external repairs and redecorations. Scaffolding will be required. Given the cost of scaffolding it should be put to best use. It will take some time for inspections to be carried out, specifications of works prepared and put through the s20 LTA 1985 consultation procedure and out to tender. He considered it may also take time to collect in the necessary funds from the lessees, and he said he would not be able to place a contract for major works until he was in funds to cover the contract price. He thus took the view an appointment of three years would be an appropriate time to enable him to get the Property established and in a good shape and ready for day to day management to be handed back to the Company.
43. Mr Adams was critical of some items in Mr Davidoff's draft budget. We recognise that it was prepared with limited information, more as a guide. Mr Davidoff acknowledged that if appointed a more specific and refined budget would be required. Items that the tribunal drew attention to as being questionable at this stage included the costs of an out of hours helpline at £288 + VAT and accountancy fees of £660 + VAT where audited accounts are not required by the lease and are hardly necessary in a small and relatively straightforward development of just six flats. Some arithmetical errors also required correction.
44. Having had the benefit of the inspection and meeting with Mr Davidoff the tribunal concluded that if it decided to appoint a manager, Mr Davidoff would be a suitable appointment to make.

45. Mr Davidoff then left. It was the intention of the tribunal then to go through each of the alleged breaches set out in the Second Schedule to the s22 notice. Some were withdrawn by Ms Mason when it was explained to her that what she asserted as a breach of covenant was not supported by the facts relied upon. Examples include the alleged breach of the covenant for quiet enjoyment and the alleged breach of failure to comply fully with the covenant to insure. We would however comment that we were concerned that Mr Adams was unable to clarify whether the insured was the Company or the Association and thus he was unable to confirm that the Property was insured in the joint names of the landlord and the six lessees, as required by the lease.
46. We began to go through the alleged failures of day to day management and how any shortcomings we might find might be addressed. In doing so it quickly became apparent that the Company did not manage the Property on a day to day basis and that the Association managed it on an informal and ad hoc basis. During this exercise most of the history recounted above began to emerge.
47. Members of the tribunal made a number of observations to the parties about management going forward. And in particular that the tribunal would require to be confident that there was a real and genuine prospect that going forward the Property would be managed by the Company broadly in line with the regime set out in the leases. The tribunal adjourned early to give both parties a good opportunity to reflect on what had been said to them and, for Mr Adams in particular to consult with other lessees. We were concerned that the strong impression given to us was that none of the other lessees had an interest in becoming a director of the Company and taking an active part in day to day management and that the overriding objective was to keep expenditure to the bare minimum.
48. The hearing resumed at 10:00 on Thursday 17 October 2019. Mr Adams explained that he had not spoken with any of the other lessees and that the hearing was a wake-up call which needed to be given some thought and discussion. Mr Adams did not know when that might occur. Also, he did not appear to appreciate that the service of the s22 notice in January 2019 was the wake-up call and the hearing was the opportunity for the Company to put forward its clear and coherent strategy for effective management going forward.
49. It was also clear to us that there remained resistance to the appointment of a professional managing agent. Mr Adams preferred to retain day to day control and to manage projects himself. We asked Mr Adams to talk us through a s20 LTA consultation process in relation to the external repairs and redecorations that were plainly required. He did not give us confidence that he could do so.
50. It was also fairly clear to us that there was no prospect of Ms Mason voluntarily paying further sums to the Association to fund future costs and certainly not significant sums. Thus, we concluded it was

improbable that the Association or the Company was going to be in a position to effect reasonable and proper day to day management going forward. Mr Adams was simply unable to give us the confidence we required. An example was the changing of a light bulb. Evidently a light bulb on a common parts staircase recently failed and required to be changed. Mr Adams was not able to explain who was responsible to manage the changing of the bulb. Mr Adams shrugged and asked the rhetorical question; 'Do you expect me to change the bulb?' We infer that the staircase is one not used by Mr Adams to get to and from the street door to the front door of his flat and so it was not something which affected him personally. We infer Mr Adams' view was that changing the bulb should be down to the lessees or occupiers of the flats who used the subject staircase.

51. No service charge accounts have been issued since 2007 when the Company acquired the freehold interest. There is however a schedule included in the file of papers prepared by Ms Mason which was signed by Mr Adams on 30 September 2019 which purports to set out expenditure incurred since 2006 and the name of the lessee(s) who led on the expenditure.

Conclusions

52. The members of the tribunal gave careful consideration to the provisions of s24(2) of the LTA 1987. We were satisfied that the Company was in breach of its obligations to the lessees in the management of the Property in a number of different respects, and there was little prospect of the Company complying with those obligations going forward. We are also satisfied that it is just and convenient in the circumstances to make an order appointing a manager. Effective management is required within the short-term.
53. We wish to make some concluding remarks. We were disappointed that Ms Mason did not comply with directions and page number her bundle of documents for use at the hearing. Mr Adams did page number the bundle to be prepared by him but in a slightly odd fashion. The content of both bundles was rather haphazard and not always logical. Some documents were not complete and some had been partly redacted. The overall impact was that the combinations of failings caused the hearing to be managed less efficiently than would normally be the case.
54. Further, Ms Mason had improperly and inappropriately included witness statements made by her to the police and made allegations of harassment of her and her son by Mr Adams. Those allegations were hotly contested by Mr Adams and no police action has been taken. This material was not directly relevant to what the tribunal had to decide and it was unhelpful to include it, save to say that it did demonstrate the depth to which the relationship between Ms Mason and Mr Adams has sunk.

Equally of little relevance was details of civil proceedings commenced by Ms Mason against Mr Son, Mr Adams' partner in relation to the trespass of securing closed the landing window now included in Ms Mason's demise mentioned in paragraph 24 above. Those actions may have been the fruit of frustration with Ms Mason failing to grant access to the roof above Flat C to enable inspections and repairs to be carried to deal with leaks from the roof into Flat C below. But, they were not material to the matters we had to determine.

Judge John Hewitt

1 November 2019

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the respondent or the tribunal.
2. That no later than four weeks after the date of this order the parties to this application and the Association and Mr Adams shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, those persons shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund of uncommitted service charges whether held by or under the control of Mr Adams, the Company and/or the Association).
3. The rights and liabilities of the Company and/or the Association arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 January 2020 become rights and liabilities of the Manager.
4. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
5. By no later than 31 December 2020 the Manager shall prepare and submit a brief written report for the tribunal on the progress of the management of the Property up to that date. A further brief report shall be submitted by no later than 31 December 2021.
6. The Manager shall be entitled to apply to the tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property;
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charges

- (i) Adopt an accounting period of a calendar year commencing on 1 January.
- (ii) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (iii) Demand and collect service charges (including contributions to a reserve fund where appropriate), the insurance, rent and any other payments due from the lessees. The lessees shall pay to the Manager on 1 January in each year such sums as the Manager reasonably demands on account of their liability for contributions to the cost of services likely to be incurred in the course of the year. The lessees shall pay to the Manager within seven days of demand any further sum or sums on account of anticipated expenditure as the Manager may reasonably require.
- (iv) The Manager shall not be responsible to collect any sums or arrears of service charges that may have arisen payable to or which have been demanded by the Company and/or the Association prior to 31 December 2019. To that extent the Manager shall open clean account as of 1 January 2020.
- (v) Instruct solicitors to recover unpaid sums and service charges and any other monies due and payable by any lessee to the Manager pursuant to the terms of this order.
- (vi) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended.
- (ii) Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust in an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into

which service charge contributions and all other monies arising under the leases shall be paid.

- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Repairs, Maintenance and Redecoration

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management principles.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- (iv) Procure such periodic risk assessments as may reasonably be required in compliance with statutory requirements and in accordance with good practice.
- (v) Whilst we noted the list of matters that might require attention set out in the draft order presented to us, we have decided not to order the Manager to execute those specific tasks. We are content that the Manager shall use his professional skill and judgment for the carrying out of those and other works if and when they may be required.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £1,800 per annum. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS. In the first year of management the Manager shall be entitled to an initial set-up fee of £500.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost where the Manager appoints his in-house team to manage the project

Where external professional fees are incurred, for example those of an architect or building surveyor, the fee payable to the professional shall be 10% of the cost of works. In addition, the Manager shall be entitled to a fee for administration and the s20 consultation for the project of 5% of the cost of the works. In all three cases the 'cost of works' shall be the cost exclusive of VAT.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.

- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

ANNEX - RIGHTS OF APPEAL

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify parties about any rights of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to this tribunal - the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the date on which the tribunal sends out to the person making the application the written reasons for the decision.
4. 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.
5. 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.
6. If the tribunal refuses permission to appeal, a further application for permission may be made directly to the Upper Tribunal (Lands Chamber)