



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

Case Reference : CHI/00HH/LVM/2022/0005

Property : Albert Court, Market Street, Torquay, TQ1
3AQ

Applicant : Mr Krzysztof Kazimierz Pilch Flat 3
Mr Jonathan Ruth Flat 5
Mr Anthony Cattermull Flat 6
Mr Hopton Flat 10
Mr and Mrs K Nowasad Flat 11
Mr and Mrs Adrian Suchorski Flat 12
Mr Vince Benney Flat 13
Miss Bryony Croucher Flat 14
Mr and Mrs K Nogas Flat 15
Mr and Mrs Alan Kendrew Flat 18

Representative : Mr Krzysztof Kazimierz Pilch

Respondent : Mr Steven Angus Millar

Representative : Ms Daryna Walker DN Property Management

Type of Application : Appointment of a Manager
Section 24 of the Landlord and Tenant Act
1987 (the Act)

**Tribunal
Member(s)** : Judge C A Rai

**Date type and
venue of hearing** : 12 October 2022
Paper determination without a hearing

Date of Decision : 25 October 2022

VARIATION AND EXTENSION OF A MANAGEMENT ORDER

Interpretation

1. In this Order:-

“The Property” means the flats and other premises known as known as Albert Court Market Street Torquay TQ1 3AQ and shall include the building, lift, grounds drives, pathways landscaped areas, (if any), and common parts.

“The Landlord” shall mean Steven Angus Millar or his successors in title to the reversion immediately expectant upon the Leases.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

“The Leases” shall mean all long leases of flats in the Property.

“The Manager” means Yvette Condren (also known as Yvette Zarezadeh) of Torquay Property Finder and Management Limited of 13 Hyde Road Paignton TQ4 5BW

“The Tribunal” means the First-tier Tribunal (Property Chamber)

ORDER

1. In accordance with section 24(1) of the Act Yvette Condren is appointed as Manager of the Property.
2. The Manager's appointment shall start on 25 October 2022 (“the start date”) and shall end on 31 October 2024 (“the end date”).
3. For the avoidance of doubt this Order does not displace covenants under the Leases and the Tenants remain bound by them.
4. The purpose of this Management Order is to provide for adequate management of the Property which includes taking steps to resolve the following problems of inadequate management identified by the Tribunal:-
 - (a) Disrepair of the lift
 - (b) Nuisance caused by one of Mr Millar's tenants parking an unroadworthy car in car park/yard comprising a common part with his consent
 - (c) Late and insufficient payment of maintenance contributions by Mr Millar for the retained flats
 - (d) Disrepair to the roof
 - (e) Failure of the electric gates
 - (f) No painting or other decoration of common parts
 - (g) Inadequate cleaning of external common parts
 - (h) Failure to provide evidence of buildings insurance
 - (i) Failure to provide and keep service charge accounts prior to the appointment of Mrs Angela Dixon as manager of the Property.
 - (j) Failure by freeholder to demand ground rent regularly and properly

- (k) Failure of the original freeholder and/or his nominated management to respond when contacted by leaseholders when problems were identified which needed resolving.
5. To address the steps identified in the previous paragraph the Manager is empowered to undertake any review of the Property, required by the Tenants and to investigate whether there is any relevant defect in relation to the Property as defined in the Building Safety Act 2022 and if a building safety risk exists to take all appropriate action to carry out remediation works.
 6. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory and statutory requirements.
 7. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out in below;
 - (b) the respective obligations of the Landlord and the Tenants whereby the Property is demised by the Landlord (save where modified by this Order);
 - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) 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; and
 - (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
 8. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
 9. The Manager must act fairly and impartially in the performance of her functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
 10. The Manager must perform her duties under this Order independently and has an overriding duty to this Tribunal.
 11. Where there is a conflict between the provisions of the Management Order and the Leases, the provisions of the Management Order take precedence.
 12. In the event of dispute regarding the conduct of the management of the property by the Manager, the Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
 13. The Manager shall operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

14. Any application to extend or renew this Order must be made before the end date, preferably **at least three months before that date**, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager's appointment will continue until that application has been finally determined.
15. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Where the Manager is in doubt as to the proper construction and meaning of this Order, she is encouraged to do so.
16. Such directions may include, but are not limited to:
 - (a) any failure by any party to comply with an obligation imposed by this Order; and
 - (b) circumstances where there are insufficient sums held by her to discharge the Manager's obligations under this Order and/or for the parties to pay the Manager's remuneration.

Insurance and Service Charges

17. From the date of her appointment, and throughout the appointment, the Manager must maintain appropriate professional indemnity insurance cover of at least One Million Pounds (£1,000,000) and shall provide copies of the certificate of the liability insurance together with a copy of the policy document to the Tribunal within 14 days of the date of this decision. The certificate must specifically state that it applies to Mrs Condren's duty as a Tribunal appointed manager. In addition, Mrs Condren shall supply the Tribunal with a signed letter from her insurer confirming that it has received notification of the appointment as Manager of the Property within 14 days from the date of this order. (All correspondence and documents must be sent to the Tribunal in an electronic form.)
18. The Manager shall obtain and maintain appropriate building insurance for the Property and ensure that the Manager's interest and the lessees' interest is noted on the insurance policy.
19. The current service charge year shall end on the anniversary of the preceding service charge year.
20. The Manager shall apply all amounts received by her in the performance of the Landlord's covenants under the leases of the flats within the Property.

Accounts

21. The Manager must:-
 - (a) prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees as if such provisions were contained in the leases.
 - (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of

expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;

- (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
 - (d) Account for all monies collected from the lessees in accordance with the accounts regulations as issued by the Royal Institution of Chartered Surveyors. All service charge accounts should comply with Tech 03/11 as defined in the RICS Code.
22. The accounts are to be certified by the external auditor, if required by the Manager or under the Leases;
 23. Following a meeting with the lessees whether “virtual” or face to face, the Manager shall set, demand and collect service charges (including, if agreed, contributions to a sinking fund), insurance premiums and any other payment from the lessees reasonably needed to insure and maintain the building.
 24. The Manager shall collect all service charges and insurance premium contributions payable under the leases as varied by the Order. For the avoidance of doubt, this Order does not displace covenants in the leases and the lessees remain bound by them.
 25. The Manager may demand additional payments on account of the Service Charge during the Service Charge Year if the cost of complying with her obligations exceed the Service Charges already collected during the relevant Service Charge Year.
 26. The Manger may collect all service charge payments due from the leaseholders and the freeholder on account of Service Charge contributions by 12 equal monthly payments on the 25th day of each month or on any other day that fits in with her accounting procedures.
 27. The Manager may recover one twenty fourth share of all costs reasonably incurred in managing the Property from each of the existing eleven leaseholders and the balance of contribution shall be paid by the freeholder in respect of the remaining seven developed flats and the six undeveloped flats, who shall contribute to all costs incurred by the Manager in carrying out her management obligations during the term of the management Order unless and until the freeholder disposes of his interest in any of those flats to a third party.
 28. The Manager shall have no obligation to commission or carry out any work at the Property until the Lessees have put her in funds to cover the costs of those works by collectively paying the sums she has demanded.
 29. The Manager has the right to enforce payment of the service charges and may instruct solicitors to recover unpaid rents and service charges and any other monies properly demanded by the manager and due to her including if appropriate where liability arises prior to her appointment.

30. All rights and liabilities of the Landlord arising under any contracts of insurance, and/or contracts for the provision of services to the Property shall upon the date of the appointment become rights and liabilities of the Manager.
31. The Manager shall 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.
32. The Manager must be astute to avoid any **conflict of interest** between her duties under this order in his contractual dealings or in the discharge of any of her obligations and where in doubt, the Manager should apply to the Tribunal for directions.

Contracts

33. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:
 - (a) the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
 - (b) the Manager has the right to decide in her absolute discretion the contracts in respect of which she will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.
34. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.
35. The Manager shall be responsible for carrying out those functions in the residential Leases concerning approvals and permissions, including those for sublettings, assignments, alterations and improvements, that the Leases provide should be carried out by the Landlord
36. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale or grant of a new lease of a residential flat at the Property

Registration

37. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 66, within 14 days of the date of this Order.

Legal Proceedings

38. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and may continue to bring or defend proceedings relating to the appointment, after the end of her appointment.

39. Such entitlement includes bringing proceedings in respect of arrears of service charge attributable to any of the Flats in the Property, including, where appropriate, proceedings before this 5 tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.
40. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so. If costs are recovered direct from a defaulting Tenant, those costs should be refunded to the service charge account.

Reporting

41. The Tribunal has received two written reports from the Manager during 2022. By no later than 31 October 2023 the Manager shall prepare and submit a brief written report to the Tribunal updating it on the progress of her management of the Property up to that date and provide the Tenants and the Landlord with a copy at the same time.
42. The Manager shall send a copy of the annual service charge accounts to the Tribunal at the same time as these are sent to the Tenants and the Landlord.

End of Appointment

43. No later than 56 days before conclusion of the Management Order (howsoever terminated), the Manager must:-
 - (a) apply to the tribunal for directions as to the disposal of any unexpended monies;
 - (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a "Final Report"); and
 - (c) seek a direction from the Tribunal as to the mechanism for determining any unresolved disputes arising from the Manager's term of appointment (whether through court or tribunal proceedings or otherwise).
44. Unless the Tribunal directs otherwise the Manager must within two months of the end date:
 - (a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord and Tenants, who may raise queries on them within 14 days; and
 - (b) answer any such queries within a further 14 days.
45. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date

46. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

Remuneration

47. The Manager's fees for the above mentioned management services will be a basic fee of £210 per annum (plus VAT) per flat for the first year of her appointment and thereafter subject to an annual review. Those services shall include the services set out in paragraph 3.4 of the RICS Code.
48. Any additional works not covered by the basic fee may be charged at an hourly rate not exceeding £40 per hour but the Manager will not make this charge without first giving written notice to all the Tenants as to the reasons an additional charge will be levied.
49. Commissioning and supervising 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) may be charged for on a time basis at the hourly rate disclosed.
50. Any charges by the Manager for dealing with solicitors' enquiries on transfer will be made on a time related basis and will be payable solely by the outgoing lessee.
51. VAT will be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing
52. The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above, may be charged for on a time basis at the hourly rate disclosed.
53. The fees are to be collected from the Tenants and the Landlord under the service charge mechanisms of their lease.

Ground Rent and Service charge

54. The Manager shall collect the ground rents payable under the residential Leases.
55. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.
56. The Manager shall have the authority to:
- (a) demand payments in advance and balancing payments at the end of the accounting year;
 - (b) collect service charges in monthly instalments
 - (c) establish a sinking fund to meet the Landlord's obligations under the Leases;
 - (d) allocate credits of service charge due to Tenants at the end of the accounting year to the sinking fund;
 - (e) alter the accounting year

57. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in the Property retained by the Landlord.
58. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by her whilst carrying out her functions under the Order.

Administration Charges

59. The Manager may recover administration charges from individual Tenants for her costs incurred in collecting ground rent, service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Disputes

60. In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
61. In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.

DIRECTIONS TO LANDLORD

62. The Landlord must comply with the terms of the Order above.
63. On any disposition [other than a charge] of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will:-
 - (a) comply with the terms of this Order; and
 - (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
64. The Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of her functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.

65. The Landlord is to allow the Manager and his employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Order.

DIRECTION TO CHIEF LAND REGISTRAR

66. To protect the direction in paragraph 37 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is ordered to enter the following restriction in the register of the Landlord's estate under title no(s) DN621549 The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after the 28 day of May 2022 insert the date of the application to the tribunal. "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 57 of an Order of the Tribunal dated 24 October 2022 have been complied with"



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PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

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3AQ

Applicant : Mr Krzysztof Kazimierz Pilch Flat 3
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Representative : Mr Krzysztof Kazimierz Pilch

Respondent : Mr Steven Angus Millar
Representative : Ms Daryna Walker DN Property Management

Type of Application : Appointment of a Manager
Section 24 of the Landlord and Tenant Act
1987 (the Act)

**Tribunal
Member(s)** : Judge C A Rai

**Date type and
venue of hearing** : 12 October 2022
Paper determination without a hearing
:

Date of Decision : 24 October 2022

DECISION

1. This decision was made without a hearing following receipt of an application dated 28 May 2022 made by the Applicants, who are leaseholders of eleven flats within the Property for the variation of the Management Order dated 27 August 2021 by which the Tribunal had appointed Yvette Condren as Manager of the Property from 1 September 2021 until 31 August 2022.
2. The Applicants applied to vary the existing management order by extending it on the grounds that the Applicants are happy with the management. The Applicants did not specify the length of the extension period they wanted.
3. Directions dated 28 June 2022 made by Mr D Banfield, Regional Surveyor, which broadly directed that the Tribunal would determine if it is just and convenient to vary the existing management order and that pending its determination that order would remain in force with full effect.
4. The Application form was signed by Mr Pilch. Following the issue of Mr Banfield's Directions all of the other Applicants confirmed they wished to be joined as Applicants. The Landlord's agent, Ms Darynya Walker, wrote to the Tribunal on 30 June 2022 to confirm that the Landlord had no objection to the variation of the Management Order.
5. The Tribunal had received two reports from Mrs Condren in March and May 2022 about her progress with regard to the management of the Property since she had been appointed.
6. In their application, the Applicants confirmed that they wished to continue to work with Ms Condren and are very happy that "we are going in right direction". The Application confirmed that the Manager had managed to recover arrears for the units from the owner and was organising landlord and leaseholder meetings which enabled discussions about plans and needs which made them feel that they "are in good hands now".
7. Mrs Condren sent a letter the Tribunal dated 14 September 2022 enclosing a copy of her current Professional Indemnity Insurance. She said she would be willing to accept the appointment for two years from September 2022.
8. The documents received by the Tribunal comprised:-
 - (a) The Application with the additional applicants' list
 - (b) Emails from all the applicants (save for Mr Pilch who signed the Application) confirming they supported the Application and were content to be represented by Mr Pilch.
 - (c) Email sent from or on behalf of the Landlord.
9. The Property is a converted three storey Victorian building located in the centre of Torquay. The Property fronts on to Market Street. A yard behind the building is accessed through two sets of electronically

controlled gates. The flats within the building front all face the yard. The ground floor of the building, formerly shops, has not been converted. During previous hearings tribunal were told that the developer intended to construct an additional six flats. The eighteen existing flats are located on the first, second and third floors. Eleven flats have been sold to leaseholders. The Respondent retained ownership of the other seven flats and lets these to tenants. External walkways front the eighteen flats at three levels. A lift, constructed as an external addition to the original building, is located next to the external concrete staircase which also provides access to all the flats. (This description mirrors that contained in the previous decision but the Tribunal chairman has inspected the Property albeit some years prior to the date of this decision).

The Law

- 10.** Under section 24(9) of the Act the Tribunal may, on the application of any person interested, vary ...(whether conditionally or unconditionally) an order under this section; and if he order has been protected by an entry registered under the Land Charges Act 1972 or the [Land Registration Act 2002], [the tribunal] may be order direct that the entry shall be cancelled
- 11.** Section 24(9) A states that the Tribunal shall not vary or discharge an order under subsection (9) on the [application of any relevant person] unless it is satisfied-
 - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order

The Decision and reasons

- 12.** The Application for the variation of the existing order by extending it for a period of two years has been supported by all eleven of the existing long leaseholders. The other seven converted flats are owned and let by the Landlord and the ground floor of the Property remains undeveloped although it potentially be developed as six additional flats. The Landlord retains ownership and control of these properties as part of his freehold. All of the leaseholders and the Landlord, as freeholder, support this Application.
- 13.** The Tribunal has received confirmation from Ms Condren that she is prepared to be appointed as Manager for a further period of approximately two years.
- 14.** The Tribunal has asked for confirmation that Ms Condren has provided it with up to details of her current Professional Indemnity Insurance Certificate but has in any case made the disclosure of this a condition of the Management Order.

15. The Tribunal is satisfied on the basis of what it received that Ms Condren complied with her obligations to the Tribunal in relation to the existing Management Order.
16. Where appropriate she has in the past sought clarification from the Tribunal in relation to the Management Order.
17. Taking account of all its dealings with both the Applicants and Ms Condren in her role as Tribunal Manager, since her appointment, the Tribunal is satisfied that it is just and convenient to appoint Ms Condren as Manager of the Property for a further two years. The period of Ms Condren's appointment is set out in the Variation of the Management Order which precedes this decision. That Order is in a similar form to the previous Management Order but has been updated to take account of recent Tribunal Practice Statements and developments in Landlord and Tenant legislation.

Judge C A Rai.

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the person making the application is seeking.