

9328



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

**Case Reference** : **LON/00AW/LAM/2013/0020**

**Property** : **112 Finborough Road, Chelsea,  
London SW10 9ED**

**Applicant** : **Dimitri Papadimitriou Flat 1  
Phillip John Hodgson & Patrizia Di  
Ponti Flat 2  
Paul Newberry Flat 3**

**Representative** : **None**

**Respondent** : **Wadeham Ltd**

**Representative** : **Mr Fatahi**

**Proposed Manager** : **Mr Nick Clarke, Head of Block  
Management, Thamesview Estate  
Agents Ltd**

**Type of Application** : **Appointment of Manager**

**Tribunal Members** : **D Banfield FRICS  
S Mason FRICS  
Mrs L Hart**

**Date and venue of  
hearing** : **9 September 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **10 October 2013**

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**DECISION**

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## **DECISION**

Mr Nick Clarke is appointed under section 24 of the Act as manager of the premises for a period of three years from **1st November 2013**

### **Preliminary**

1. The property which is the subject of this application is a Victorian house situated on 4 floors and now converted into flats. There are three flats numbered 1 to 3 on the upper floors with their own self contained access via a ground floor entrance leading to a staircase. The ground floor accommodation has its own separate access. Each of the upper floor flats is occupied on an underlease and the ground floor flat is held by the head lessor.
2. The Applicants are the long lessees of the upper floor flats.
3. On 16 July 2013 the Applicants served on the Respondent a preliminary notice under section 22 of the Landlord and Tenant Act 1987 ("the Act").
4. On 24 July 2013 the Applicants applied to the tribunal for the appointment of a manager under section 24 of the Act.
5. By a letter dated 19 July 2013 sent in response to the preliminary notice Wadeham Ltd stated that it did not oppose the appointment of a manager although it did not accept that the Company had behaved unreasonably. They wanted confirmation that the costs of such an appointment would be borne by the lessees and suggested that they may ask the tribunal to make an order requiring the manager's remuneration to be paid by the tenants of the premises of which the order is made.
6. In a letter dated 30 July 2013 to Mr Hodgson and Ms Di Ponti Wadeham Ltd confirmed again that they did not oppose the appointment of a manager but denied there were valid grounds for the

- application giving examples of where the applicants' allegations were, he considered, incorrect.
7. On 14 August 2013 Directions were made for the conduct of the case.
  8. A request to adjourn the hearing arranged for Monday 9 September was received in the tribunal offices by email at 16:42 on Friday 6 September on the grounds of ill health.

### **Hearing**

9. The hearing took place at the tribunal office immediately following a hearing with the same parties in respect of an application under s.27A of the Landlord and Tenant Act 1985. As in the previous case the applicants were all present but the respondent was not, having requested an adjournment. Mr Hodgson for the applicants referred to the lack of management of the building. He cited the poor condition of the roof that the lessees had eventually arranged to have repaired themselves, lack of response from the landlord on any matter, the erratic and inflated service charge demands and the bungled attempt to comply with S.20 consultations which have now been withdrawn.
10. Mr Hodgson said that the lessees had chosen the proposed manager as he was part of a large concern that was regulated by the RICS and also had local offices convenient to the property.
11. He said that the lessees were in agreement with the Management plan proposed.
12. Due to Mr Clarke's inability to attend the hearing due to a domestic emergency a telephone interview was held during which all parties present were able to hear both questions and answers. Mr Clarke explained that the company for which he worked had moved in to block management in 2009 following the acquisition of another business. They now managed some 40 small and medium sized blocks. In head office there was him plus 2 administrators who dealt with new business which once set up was managed from one of six local offices. He said that whilst he had not held an LVT appointment before he was aware of the terms of such an appointment.

13. In answer to questions regarding his fees he explained that where expenditure exceeded the S.20 limits a 10% supervision fee would be charged. However, if it were necessary to appoint a surveyor or project manager to act as consultant to deal with some elements then his 10% fee would only be charged on the consultant's fees not the work itself. He also confirmed that he happy to accept an appointment for a period of 3 rather than the 5 years referred to in his draft management order.

### **The Law – Landlord and Tenant Act 1987**

#### **Appointment of a manager by a leasehold valuation tribunal**

14. Section 21 – Tenant’s right to apply to tribunal for appointment of manager

- (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.
- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
- (3) This Part does not apply to any such premises at a time when –
  - (a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or
  - (b) the premises are included within the functional land of any charity.

Section 22 – Preliminary notice by tenant

- (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on –
  - (i) the landlord, and
  - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
- (2) A notice under this section must –
  - (a) specify the tenant’s name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is

- served may serve notices, including notices in proceedings, on him in connection with this Part;
- (b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;
  - (c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
  - (d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
  - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
- (3) A leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.
- (4) In a case when –
- (a) a notice under this section has been served on the landlord, and
  - (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

#### Section 23 – Application to tribunal for appointment of manager

- (1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless –
- (a) in a case where a notice has been served under section 22, either –
    - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
    - (ii) that paragraph was not applicable in the circumstances of the case; or

- (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either -
  - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
  - (ii) no direction was given by the tribunal when making the order.
- (2) .....

Section 24 – Appointment of manager by a leasehold valuation tribunal

- (1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies –
  - (a) such functions in connection with the management of the premises, or
  - (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) A leasehold valuation 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
    - (ii) .....
    - (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;
  - (abb) where the tribunal is satisfied –
    - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, 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.
- (2ZA) In this section “relevant person” means a person –
- (a) on whom a notice has been served under section 22, or
  - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
- (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 the 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.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding –
  - (a) that any period specified in the notice in pursuance of subsection (2)(d) of the section was not a reasonable period, or
  - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to any order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied –
  - (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
  - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.



## **Section 22 Notice**

15. The tribunal was provided with a copy of the notice served pursuant to section 22 of the Act. This notice was dated 16 July 2013 and was served on the Respondent.

## **Grounds for application**

16. In the second schedule to the notice the applicants had set out 10 instances of what they considered to be failings of the landlord company in respect of their obligations under the lease. Included in the grounds were allegations that the landlord was in breach of the repairing obligations to keep in good and substantial repair, has failed to enter in to S.20 consultations in respect of works carried out in 2013, is in breach of the management code of practice and had failed to provide copies of insurance schedules or confirm that the building was insured.
17. In the third schedule to the notice examples are given in respect of the breaches referred to in the second schedule.
18. In the fourth schedule matters included in the third schedule which are considered capable of remedy are set out with the remedy required and the time allowed for their completion, in this case 7 days. The tribunal questioned the applicants as to the reasonableness of the time allowed but it was pointed out that in each case requests for the information now sought had been made some time ago and the respondent had therefore been put on notice and should have the information to hand.
19. The basis for the management order is that the building is in a poor state of repair and that this is as a result of non-compliance by the landlord of its obligations.
20. In a letter to Mr Hodgson and Ms De Ponti dated 30 July 2013 the respondent advised that they did not oppose the appointment of a manager although in a letter dated 22 August 2013 addressed to the tribunal the respondent objected to the appointment of Mr Clarke. The grounds for opposition were that" the applicants had failed to supply management plan, proposed remuneration, details of professional

indemnity insurance, letter from manager confirming he is accepting the appointment and the last confirmation that the manager will comply with the current edition of the Code of Practice Published by the Royal Institution of Chartered Surveyors."

21. By an email timed at 18:41 on 22 August 2013 Mr Hodgson sent an email with attachments covering all the outstanding information to the respondent with a copy to the tribunal.
22. In an email to the tribunal dated 1 September 2013 the respondent objects to the proposed manager on the grounds that his proposals do "not comply with the head lease, as the flat 1,2 and 3 have to pay 75% collectively for the service charges and the other 25% paid by the freeholder" and "I do not accept management appointed by flats 1,2 and 3. I will agree to an independent manager appointed by the LVT."

### **Decision**

23. In considering the respondent's request for an adjournment we were mindful of the lateness of the application and that the respondent did not oppose the appointment in principle. We determined therefore that the request be refused.
24. We then went on to consider the circumstances put forward by the Applicant to support the request that a manager be appointed on the grounds that a relevant person is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises or any part of them and that it is just and convenient to make the order in all the circumstances of the case (section 24(2)(a) of the Act).
25. The leases of flats 1,2 & 3 are in similar form and require the landlord to carry out repairing obligations. There is no lease for the ground floor.
26. It is clear from the findings made in the decision in the s. 27A application heard the same day (LON/00AWL/LSC/2013/0302) that a breach in the landlord's obligation to repair has occurred.

27. Mr Fatahi initially did not object to the application and in his email of 1 September 2013 his objection seemed to relate to the terms of the appointment rather than the appointment itself.
28. The tribunal is therefore satisfied that the grounds set out in section 24(2)(a) of the Act have been established and that it is just and convenient to make the order in all the circumstances of this case.
29. We have considered the draft management order put forward by the Applicant in which Mr Nick Clarke, Head of Block Management for Thamesview Estate Agents Ltd is named as Manager.. In our opinion an individual should be appointed as a manager and not a firm, as the manager is accountable to the tribunal and the appointment is made on the basis of the evidence provided to the tribunal.
30. Although Mr Clarke asked for a five year appointment we consider that based on the management plan provided an initial period of three years is appropriate in this case. In the management plan provided by Mr Clarke it was anticipated that following s.20 consultations repairs should be carried out to the roof, the building should be decorated, electrical installations in the common parts should be certified a Fire, health and safety report provided. The manager can at any time apply to the tribunal under section 24(9) for the order to be varied. The tribunal's powers are set out in section 24(9A).
31. We emphasise that the references in this order to the "management" of the premises includes references to the repair, maintenance, improvement or insurance of those premises (section 24(11) of the Act).
32. We accept that the manager is not limited to carrying out the functions of the landlord under the leases of the three flats. This is clear from the judgment in the case of Maunder Taylor -v- Blaquiere.
33. The three underleases of the flats require the each lessees to pay one third of the interim charge and further interim charge which in itself is 75% of the total expenditure on the building. Effectively therefore each

- of the three lessees and the freeholder contribute 25% of the costs and we determine this to be fair and reasonable.
34. For the avoidance of doubt we confirm that the manager is appointed to manage the whole of the building including that retained by the freeholder and that in addition to maintaining the structure he will also be responsible for insuring the building.
  35. In those circumstances we determine it is reasonable that all four owners/lessees pay 25% of the costs which are to be incurred by the manager.
  36. Accordingly Mr Nick Clarke is appointed under section 24 of the Act as manager of the premises for a period of two years from **1st November 2013** date on the terms set out in the order which is attached to this decision.

**Section 20C of the Landlord and Tenant Act 1985: Limitation of service charges in relation to the cost of the proceedings**

37. Section 20C of the Landlord and Tenant Act 1985 provides that 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 leasehold valuation tribunal 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. The tribunal may make such order on the application as it considers just and equitable in the circumstances.
38. The Applicant has applied for such an order to be made in relation to the costs of the present application and the tribunal determines that it is just and equitable that such an order be made as the Applicant has been successful in its application. The costs incurred by the landlord in connection with this application under section 24 of the Act are not to be regarded as relevant costs to be taken into account in determining any service charge payable by any leaseholder of any of the flats 112 Finborough Road.

### **Reimbursement of fees**

39. Regulation 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 (“the Fees Regulations”) provides that in relation to any proceedings in respect of which a fee is payable under the Regulations the tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
  
40. The Applicant has applied for the reimbursement of fees paid to the tribunal. The application fee paid was £190 with no additional hearing fee as this was heard as part of the s. 27A application. The tribunal determines that the Respondents shall reimburse the Applicant the sum of £190 in respect of the fees paid on the grounds that this application has been successful.

D D Banfield FRICS, Chairman,

Dated 10 October 2013