



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

Case Reference : CHI/21UF/LAM/2014/0005

Property : 71, Lewes Road, Newhaven,
East Sussex BN9 9SH ("the Property")

Applicants : Louisa Mary Miller
James Tobin

Representative : ODT Solicitors LLP

Respondent : James Charles Murray

Representative :

Type of Application : Appointment of Manager: section 24
Landlord and Tenant Act 1987

Tribunal Member(s) : Judge D Agnew

Date of Decision : 27th August 2014

DECISION

Summary of the Decision

1. The Tribunal is prepared to appoint Mr Gary Pickard, senior partner in the firm of Jacksons of 193 Church Road, Hove, East Sussex BN3 2AB as manager to carry out in relation to the Property such functions in connection with the management of the Property or such functions of a receiver or both as shall be set out in a further order to be made by the Tribunal.
2. By Tuesday 9th September 2014 the Applicant's solicitors shall submit a draft of a detailed order setting out the terms they would wish the Tribunal to make in respect of the said appointment to include details of the remuneration Mr Pickard seeks in respect of the management of a "regular nature" omitted from the specimen management agreement appended to his witness statement dated 7th May 2014.
3. The Tribunal makes no order as to costs and no order under section 20(C) of the landlord and tenant Act 1987 ("the Act").

The Applicant's case

4. By an application dated 3rd April 2014 but received at the Tribunal office on 14th May 2014 the Applicants who are two of the three long leaseholders of flats at the Property applied for the appointment of a manager in respect of the Property. The person named as the Respondent, Mr James Charles Murray, was said to be the freeholder of the Property.
5. The grounds of the application were that the Respondent was in breach of the lease in failing to follow the required procedure for the service of audited accounts, had failed to disclose any financial records in respect of expenditure in compliance with the landlord's covenants in the lease, that he was in breach of the RICS Service Charge Management Code in many respects, that he had failed to repair and maintain the Property and that, having been declared bankrupt, he was unfit to administer a trust account in which service charges have to be held and that it would be just and equitable for a manager to be appointed.
6. The application form was accompanied by a file of documents which included a witness statement from the Applicant Louisa Miller, a witness statement by the proposed manager, Mr Gary Pickard, an Official Copy of the Land Registry's registered title of the freehold of the Property, a copy of Louisa Miller's lease, a copy of the section 22 notice and a copy of a report, a schedule of defects, a schedule of work for exterior repair and redecoration at the Property and draft tender documentation which had been prepared by Ross Pocock BSc MRICS. These documents contained photographs showing the physical condition of the Premises. From this evidence it was clear that

substantial works are needed to be carried out to (amongst other things) the roof and the render of the Property.

7. The thrust of the Applicant's case was that it was the Respondent who was the freehold owner of the property (as evidenced by the Land Registry title) and that he had failed in his obligations as freeholder and that it was therefore appropriate for the Tribunal to make an order appointing a manager under section 24 of the Landlord and Tenant Act 1987.

The Respondent's case

8. Directions were issued by the Tribunal on 23rd June 2014. These provided for a copy of the application to be sent to the long leaseholder of the third flat in the Property inviting her to become a party to the proceedings if she so wished. No request to be joined as a party was received from this lessee. The Directions also provided for the Respondent to file a statement of case and for the application to be determined by way of a paper determination unless any party objected within 28 days. No such objection was received.
9. The Respondent did file a statement of case in the form of a witness statement dated 4th July 2014. In that statement, the Respondent set out the history of this matter, his account as to how the management of the Property has been effected and his understanding of the law. His main point was that he is not the freeholder, he has no obligations under the leases and should not have been served with the section 22 notice or been made a Respondent in these proceedings.
10. He states the history as follows. He purchased the freehold of the Property in 1988. It was his intention to convert the Property into flats. He did not obtain planning permission until 1990. After converting the property into three flats he defaulted on his mortgage and was declared bankrupt in October 1991. The trustee in bankruptcy disclaimed the Property in March 1994 and the Respondent was discharged from bankruptcy on 22nd October 1994.
11. In the meantime the flats were being sold to reduce the indebtedness to the mortgagee. The three flats were sold between February 1992 and May 1994. The last flat to be sold was to the Respondent's partner and mother of his children, Linda Joyce McKenzie from whom he separated approximately 14 years ago. The Respondent continues to reside in this flat.
12. By an arrangement between the solicitors for Louisa Miller who bought the first of the three flats to be sold and the solicitors acting for both Mr Murray and his mortgagee (the bank), with the acceptance of the Land Registry, the Respondent was named as landlord under the flat leases, he executed the leases and the three leases are noted on his registered freehold title. This occurred because neither the bank nor the trustee in

bankruptcy wanted to assume the liabilities of the landlord under the leases.

13. With regard to the appointment of a manager, the Respondent says that the procedure is flawed because he has wrongly been named as the freeholder and he was wrongly served with the section 22 notice. Consequently, an order should not be made. He says that repairs and decoration is carried out between the three flat owners on an ad hoc basis and the costs shared.
14. With regard to the law his analysis of the situation is as follows. He says that on becoming bankrupt and a trustee in bankruptcy being appointed the freehold title to the Property vested in the trustee in bankruptcy. The discharge from bankruptcy does not re-vest the property in the debtor. The trustee's disclaimer determined both the trustee's and his own liabilities in the Property and, unless an application is made for a vesting order the property escheats to the Crown. The Crown does not manage or insure escheated properties. The Crown is likely to be amenable to a sale of a new freehold interest to the lessees collectively who could then appoint their own manager.
15. The Respondent says he has made his position clear to the Applicants or their solicitor on a number of occasions and he seeks an order from the tribunal for the recovery of his costs incurred in taking legal advice on the matter in the sum of £1452 including vat.

The Applicants' response

15. The Applicants' solicitors responded to this witness statement with a second witness statement from Louisa Miller. This asserted that her lease was granted specifically on the basis that the Respondent would be liable for the landlord's covenants under the lease. She says that as the Respondent is "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" and that therefore under section 22 (1)(ii) of the Act the section 22 notice was properly served on the Respondent. She objects to the Respondent's application to be re-imbursed his legal costs. Further, in a letter to the Tribunal dated 30th July 2014, the Applicants' solicitors debate whether or not Part II of the Act applies in this case as the property has been escheated to the Crown and conclude that it does and they ask that the Tribunal considers dispensing with a section 22 notice under section 22(3) of the Act, if it finds that the section 22 notice was not served on the correct person.

The Law

16. Section 24(1) of the Act states that:
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.*

17. Subsection (2) sets out a number of grounds upon which the tribunal may make such an order and subsection (2)(b) enables the Tribunal to make such an order where it is satisfied that there exist other circumstances which make it just and convenient for the order to be made.

18. Section 22 of the Act provides that no application shall be made for an order appointing a manager unless a notice is served on the landlord and 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. However, by section 22(3) a tribunal may (whether on the hearing of an application or not) by order dispense with the requirement to serve such a notice where the Tribunal is satisfied that it would not be reasonably practicable to serve such a notice on the person.

The determination

19. The Tribunal agrees with the Respondent's analysis of the legal situation in that the freehold of the Property vested in his trustee in bankruptcy on the trustee's appointment and that when the trustee disclaimed the Property it was escheated to the Crown. It did not re-vest in the Respondent upon his discharge from bankruptcy. The Respondent was not therefore the "landlord" on whom the section 22 notice was to be served and is not appropriately made the Respondent in these proceedings. The question therefore arises whether the Crown should have received the section 22 notice and be made a Respondent in the proceedings? The Tribunal is aware from other cases that, as stated in the extract from Burges Salmon's Guidance Note by the Crown Estate exhibited to the Respondent's witness statement, the Crown "will not manage, insure, repair or look after" escheated land. Nor will they take any part in Tribunal proceedings for the appointment of a manager. Strictly speaking, therefore, although the section 22 notice should in theory have been served on the Treasury Solicitor or Burges Salmon as solicitors to the Crown Estate and the Crown should have been the Respondent to the proceedings, the fact of the matter is that this would have achieved absolutely nothing. Consequently, the Tribunal is prepared to exercise its discretion under section 22(3) of the Act to dispense with the service of the section 22 notice it not being reasonably practical to serve such a notice on the Crown.

20. The Tribunal recognises that by this analysis of the legal situation it does bring into question the correctness of the scheme devised by the solicitors for Louisa Miller and Mr Murray and his bank with the acquiescence of the Land Registry that it was legally effective and

appropriate for Mr Murray to grant the leases of the three flats whilst subject to the bankruptcy order. However, that is not a matter that the Tribunal has before it. The practicality of the situation is that here we have a building that is badly in need of significant repair and redecoration work and where there is no one currently responsible for effecting that work. It is in everyone's interest, including the Crown's, that the Property is effectively managed to bring it back into a reasonable state of repair.

21. The Tribunal is prepared, therefore, to make an order appointing a manager on the ground that there exist "other circumstances "(that is other than in sections (2)(a) to (ac) of the Act) "which make it just and convenient for the order to be made". The Tribunal wishes to hear from the Applicants' solicitors, possibly in conjunction with input from the proposed manager, as to what specific powers they consider should be contained within the order and therefore adjourn the case part heard for that to be done by 9th September 2014.
22. With regard to costs, the Tribunal has some sympathy with Mr Murray. He has been brought into these proceedings when he should not have been. However, the situation is not a straightforward one legally and it is understandable that he having been named as the lessor and having executed the three leases whilst still subject to a bankruptcy order and still being registered as proprietor of the Property at the Land Registry, that it was thought that he should be served with the section 22 notice as retaining the landlord's obligations under the leases. This Tribunal is generally a "no-costs" forum for the determination of disputes between landlord and tenant and, although the Tribunal now has the power to order a party to pay costs to another party under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 this may be done only "if a person has acted unreasonably in bringing, defending or conducting proceedings. This Tribunal considers that the bar as to what is unreasonable is a fairly high one and although Mr Murray did assert that he was not the freeholder and yet the Applicants' solicitors pressed on insisting that he was, in my judgment this did not amount to a degree of unreasonableness that would justify a costs order being made. Conversely, the Tribunal does not consider that an order under section 20C as requested by the Applicant is appropriate either. It is difficult to see how costs of these proceedings might be added to any future service charge as no landlord has incurred costs.
23. Upon receipt of the draft order the Tribunal will give urgent consideration to the same and issue its order as soon as possible.

Dated the 27th August 2014.

Judge D. Agnew

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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.
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 party making the application is seeking