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

**Case Reference** : LON/00AG/LVM/2013/0002  
LON/00AG/LVM/2013/0005  
LON/00AG/LVM/2013/0027

**Property** : Palace Court, Finchley Road,  
London NW3

**Applicant** : (1)Mr A & Mrs D Brown (Flat 19)  
(2)Mathew Joseph (Flats 15 & 15A)\*  
(3)Dr Pirlanti Omar Ali (Flat 27)\*  
(4)PC Residents (Finchley Road)  
Limited (Freeholder)\*  
(5)Christopher Stevens (Flat 17A)\*  
(6) Shidah Aminae (Flat 11)  
(7) Chris Okonowo (Flat 23)\*  
(8) Ms Z Newton (Flat 24)  
(9) Samer Elkhodair (Flat 12)\*  
(10) Ms H Svansdottir (Flat 16A)  
(11) Drs B J, D & A G Sbrano (Flat  
26)\*

[\* Applicants in  
LON/00AG/LVM/2013/0027]

**Representative** : Mr Stenhouse, counsel

**Respondent** : (1) Mr Maunder-Taylor (LVT/FTT  
appointed manager  
(2) Sekinat Abiola (Flat 25)

**Representative** : (1) In person  
(2) Mr Isaac, counsel

**Types of Application** : (1)Discharge of an appointed  
manager  
(2) Variation of appointment of a  
manager

**Tribunal Members** : Judge Tagliavini  
Ms M Krisko FRICS, valuer  
member  
Mr O Miller, lay member

**Date and venue of  
Hearing**

**: 23 & 24 September and 13  
November 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision**

**: 7 January 2014 [*Front sheet  
amended 24 January 2014*]**

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## DECISION

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### **LON/00AG/LVM/2013/0002 (heard on 23 & 24 September 2013)**

1. This is an application by the applicants seeking the discharge of a management order made by the Leasehold Valuation Tribunal appointing Mr Maunder Taylor for a period of three years from 3 February 2011 and that the management of the property reverts to the freeholder.

### **LON/00AG/LVM/2013/0005 (heard on 23 & 24 September 2013)**

2. The second respondent, Ms Abiola, makes an application seeking to extend the period of Mr Maunder-Taylor's appointment.

### **LON/00AG/LVM/2013/0027 (heard on 13 November 2013)**

3. The applicant also makes an application seeking the appointment of Premier Management Partners as Manager in the place of place of Mr Maunder Taylor.

*Pursuant to the provisions of the Landlord and Tenant Act 1987*

### **Decisions of the tribunal**

4. The tribunal finds that the applicant has failed to show that Mr Maunder-Taylor has failed to fulfil the terms of the management order made previously by the tribunal.
5. The tribunal determines that the appointment of Mr Maunder Taylor should not be extended.
6. The tribunal determines that Ms Louise Berwin of Premier Management Partners is appointed as manager with effect from 3 February 2014 as per the Management Order attached.

### **The premises**

7. The subject premises comprise a purpose built block of flats with 11 residential units and six commercial units, and a second block comprising eight residential units.

### **Preliminary matters**

8. Mr Stenhouse made a number of preliminary applications, namely:

- (i) The recusal of the tribunal judge and the other members of the tribunal on the basis of bias and unfitness.
  - (ii) Permission to rely on the reports of Mr Leo Horsfield BSc(Hons) MRICS FCIOB MBEnd dated 18 July 2013 and Mr Colin Rickard FRICS dated 17 July 2013.
9. Mr Stenhouse submitted that the judge had indicated bias when commenting in the opening stages of the application that the discharge of the management order or a refusal to extend it would leave the lessees “*in limbo*” pending any determination of the applicants application for an appointment of a new Manager. This application had been issued after the previous two applications and was not yet ready to be heard. Mr Stenhouse submitted that this comment indicated that the judge had already made up her mind as to the outcome of the application, without hearing or considering any of the evidence. Mr Stenhouse went on to submit that all the tribunal members were incompetent and unfit to determine these applications although he did not specify in what way or manner the tribunal reached this asserted level of incompetency or unfitness. Mr Isaac made no submissions on this application.
10. Mr Stenhouse submitted that Mr Rickard’s report was a factual report and he was available to give evidence to the tribunal and be cross-examined. The tribunal could attribute the appropriate weight to Mr Horsfield’s report.
11. The tribunal considered Mr Stenhouse’s application and dismissed it as the tribunal was satisfied that Mr Stenhouse had failed to demonstrate a real danger of bias or prejudice or incompetence on the part of the tribunal. Permission to appeal this decision was refused.\*

***NB: This application was made at the hearing of the first two applications only. It was not renewed at the hearing of the third application held on 13 November 2013.***

12. Mr Isaac for the second respondent submitted that both reports had been served late i.e. the Friday before the hearing and therefore prejudice was caused, particularly as Mr Horsfield was not available to be cross-examined on his report. Further, the requirements of relying on Mr Horsfield’s “expert” evidence were not satisfied.
13. The tribunal determined that the report of Mr Rickard FRICS could be relied upon as he was in attendance and available to give evidence to the tribunal. However, in light of the directions made on 6 June 2013, which contained no provision for the reliance upon any expert report, and the lack of any timely request or service on the tribunal and respondent’s by the applicants of Mr Horsfield’s report it was determined that it was both unnecessary and unfair to allow a second report on essentially the same subject matter to be admitted and no

exceptional circumstances had been identified by the applicants. Therefore, the tribunal allowed the application in so far as permission to rely on Mr Rickard's written and oral evidence was permitted, as this was limited to a factual opinion on which he could be questioned and cross-examined.

***Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*** applied in accordance with *Schedule 3(3) of the Tribunals and Enquiries England and Wales – The Transfer of Tribunal Functions*.

### **The applicant's case**

14. The applicant asserts that there have been shortfalls in the management of Mr Maunder Taylor as:

- (i) Works to Palace Court have not been completed to an acceptable standard.
- (ii) Mr Maunder-Taylor has not acted impartially between lessees when dealing with service charge arrears.
- (iii) There has been a failure to provide full and accurate information to new purchasers of leases at Palace Court in respect of service charge arrears.
- (iv) There have been general inadequacies in the upkeep of Palace Court since the appointment of Mr Maunder Taylor, despite a vast increase in the amount of service charge demanded and paid.

15. For the hearing, the tribunal was provided with, a large lever arch bundle of documents, by the applicant. This included detail of the alleged shortfalls in Mr Maunder-Taylor's management together with a report from Mr Leo Horsfield BSc (Hons) MRICS FCIOB MBEng dated 18 July 2013 commenting on the standard and extent of the major works carried out on the instruction of Mr Maunder-Taylor. The tribunal was also asked to consider a report from Mr Colin Rickard FRICS dated 17 July 2013 together with a number of photographs taken by him

### **The hearing and evidence**

16. The tribunal were provided with a witness statement from Mr Maunder-Taylor dated 9 August 2013 setting out the actions he had taken in respect of the subject premises since being appointed as manager by the tribunal. In addition Ms Abiola set out in her Statement of Case dated 21 August 2013, her reasons for opposing the application and her request that the management order appointing Mr Maunder-Taylor to be extended.

17. The tribunal heard the oral evidence of Mr Joseph, Mr Rickard, Dr Ali and Dr Elkhodair in support of the application in addition to their respective witness statements. The tribunal was also provided with a witness statement of Mr Maunder-Taylor dated 9/8/2013 and also heard his oral evidence and that of Ms Abiola in response.
18. At the outset of this application Mr Maunder-Taylor made it clear to the tribunal that his role was neutral in so far as neither supported nor opposed the applications made and if his appointment was to be extended, he did not object to this course of action if determined appropriate by the tribunal. Ms Abiola submitted that there should be no discharge of the current Management Order and that it should be varied to extend the appointment of Mr Maunder-Taylor. Ms Abiola asserted that since the appointment of a Manager, the provision of and the collections of service charges had improved and necessary major works had finally been carried out.

### **Reasons for the decisions of the tribunal**

19. The tribunal preferred the evidence of Mr Maunder-Taylor to that of Mr Rickard in its consideration of the works that had been carried out at the subject premises. The tribunal finds that Mr Rickard's evidence was less than satisfactory as he had no written instructions, no copy of the specification of works and no copy of the contract for works that had been commissioned and carried out on the instruction of Mr Maunder-Taylor. A copy of the lease was not provided to him and therefore Mr Rickard made assumptions as to the repairing responsibilities for the flat balconies at the properties. The tribunal, therefore, finds Mr Rickard's evidence to be of limited assistance. Further, the tribunal finds the evidence of the other main witnesses Dr Ali and Mr Joseph to lack clarity and credibility. The tribunal noted that Dr Ali was one of the lessees that had owed substantial service charge arrears and had been successfully pursued to judgment by Mr Maunder-Taylor against whom the allegations of inequality of treatment of lessees had been made.
20. The tribunal also noted that Dr Ali, as a previous Board Member of the freehold company, was less than exemplary when replying to requests for documentation held by her as a Board Member and Mr Joseph's assertion that that the Board with the support of a number of lessees wished in any event to appoint Premier Management as its managing agents.
21. Having heard the evidence provided by the parties, the tribunal prefers that of Mr Maunder-Taylor and accepts his opinion that the purpose of the management order has been fulfilled. The tribunal finds that:
  - Substantive works of repair to the subject property have been carried out within the budgetary limitations imposed and having

regard to the lessee's wishes and concerns. The tribunal accepts that the major works project was stripped back at the insistence of the lessees due to costs issues.

- The tribunal also accepts that the major works required were properly tendered for and carried out and that throughout the Directors of the Freehold company have been kept fully informed throughout.
  - arrears of service charge have been successfully and fairly collected from all defaulters with one notable exception although this has been kept under review;
  - there has been a change in the make-up of the Board of Directors since the appointments of Mr Maunder Taylor leading to a more cohesive and proactive outlook on the upkeep of the subject premises.
  - The tribunal finds no grounds on which to revoke the management order appointing Mr Maunder Taylor having regard to the requirements of *section 24* of the Landlord and Tenant Act 1987.
  - The tribunal finds that there remains a potential for the previous acrimonious relationships between lessee's to resurface and therefore does not shorten or otherwise vary Mr Maunder-Taylor's period of appointment.
22. The tribunal heard the oral evidence of Ms Louise Berwin as to her qualifications and experience in relation to property management in addition to having the benefit of her written statement dated 11/10/2013. From her extensive oral evidence and the questioning by the tribunal together with Ms Abiola's acceptance of the need to appoint a manger and a concession that a tribunal appointed manager is preferable to having no manager appointed at all, despite the reservations raised to Ms Berwin's suitability in Ms Abiola's witness statement of 5 November 2013, the tribunal finds:
- that in all the circumstances that it is reasonable and appropriate to appoint Louise Bevin as the new manager with effect from the cessation of the current management order. The tribunal has regard to the neutral stance adopted by Mr Maunder Taylor in these applications and the apparent agreement by both the applicants and the second respondent that an order appointing a tribunal appointing a manager is made.

- The tribunal is satisfied that although the situation at the subject premises regarding its management has improved since the current appointment, there remains a need for a tribunal appointed manager to oversee the successful future running of the subject building. The tribunal is also satisfied that without such the appointment of a manager that is answerable to this tribunal that the services required and provided for under the terms of the lease may go unfulfilled and that strong personalities among the lessees may seek to sway the direction of the management of the building to the detriment of other lessees.

23. In conclusion, the tribunal dismisses both the applicants' and the second respondent's applications to discharge the current management order dated 3 February 2011. However, the tribunal appoints Louise Bevin as the manager of the subject property for a three-year period with effect from 3 February 2014.

Signed: Judge Tagliavini

Dated: 7 January 2014



**Section 24(9) of the Landlord and Tenant Act 1987 (excerpts)**

(1) A leasehold valuation tribunal may, on the 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 obligations owed by him to 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) .....

(b) where the tribunal is satisfied that other circumstances exist which it make it just and convenient for the order to be made.

(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 direct that the order be cancelled.

[9A] The tribunal shall not vary or discharge an order under subsection (9) on the application of a 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) .....

## **In the First Tier Property Tribunal**

**Case Ref: LON/00AG/LVM/2013/0027**

**Premises: Palace Court, 250 Finchley Road, London NW3 6DN**

### **Management Order**

1. The tribunal appoints Ms Louise Berwin AssocRics MIRPM of Premier Management Partners Limited whose registered office is 13 Station Road, London N3 2SB, as Manager (“the Manager”) for a period of three years from 3 February 2014 of Palace Court 250 Finchley Road, London NW3 6DN (“the Premises”) pursuant to section 24 of the Landlord and Tenant Act 1987 and is given for the duration of her appointment all such powers and rights as may be necessary and convenient and in accordance with the leases of the flats at the Premises to carry out the management functions of the Freeholder in relation to the subject Premises in compliance with the relevant legislation and professional Codes and in particular:
  - 1.1 The right to receive all service charges, interest and other moneys payable by the flats and the commercial units, save for ground rent, subject to the duty to account quarterly to the Freeholder for all monies so received and, with the exception of service charges, on account service charges (however so defined) and interest accruing thereon, to account to the Freeholder for all such monies received, and is therefore given the right to recover from the tenants any arrears of any such sums properly due whether accruing before or after her appointment.
  - 1.2 The right to demand and receive service charges and any additional sums as provided by the terms of the leases(s).
  - 1.3 The right to demand and receive details of and, where permitted, control over any bank accounts into which service charges have been paid by the previous tribunal appointed manager, Mr Maunder-Taylor.
  - 1.4 The right to receive all accounts, service charge demands and record of sums received and arrears, if any, from Mr Maunder-Taylor, the Freeholder and its servants and agents and all lessees who might hold such matters.
  - 1.5 The power and duty to exercise all obligations and receive all benefits provided by the lease(s) including the obligation to arrange insurance with a reputable insurer.
  - 1.6 The power to appoint any agent or servant to carry out such functions or obligations which the Manager is unable to perform herself or which

can more conveniently be done by a servant or agent and the power to dismiss such servant or agent.

- 1.7 The power to appoint solicitors, accountants architects, surveyors and other such professionally qualified persons as may be reasonable be required to assist in the performance of the functions as Manager.
- 1.8 The right to enter into contracts in her own name for the benefit of the lessees in the Management of the subject property.
- 1.9 The power to bring (in her own name or in the name of the Freeholder in both cases on behalf of the Freeholder) and to defend (on behalf of the Freeholder) any action or other legal proceedings in connection with the leases of the subject premises, and to make any arrangement or compromise on behalf of the Freeholder; to recover and retain for her own benefit any such legal fees or costs properly recoverable; to inform and keep the Freeholder informed of her intention to bring or defend any such legal proceedings and the progress of such legal proceedings.
  - 1.1.1 The power to open and operate bank accounts in her own name in relation to the management of the subject premises and to hold or invest any sums received in respect of service, administration charges or other sums provided for in the lease in accordance with the terms of the lease or pursuant to all relevant legislation.
  - 1.1.2 The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any lessees owing monies due under the terms of their lease.
  - 1.1.3 The power to deal with any lessee's application for any consent or licence as may be required by their lease and to execute all necessary documents without delay and to levy such administrative fees as may be required in line with the terms of the lease and the terms of this Order.
  - 1.1.4 The power to recover from the service charge fund her management fees and other properly and reasonably incurred fees including fees incurred outside of the normal daily management duties.
  - 1.1.5 The right to borrow all sums reasonably required by the Manager for the performance of her functions and duties and the exercise of her powers under the terms of this Management Order in the event of their being arrears of, or a shortfall in the service charge contributions and to keep the lessees and the Freeholder fully informed of such borrowing.
  - 1.1.6 The duty to arrange the repayment, whether from the monies held in the service charge fund account or otherwise, of any sums still outstanding to Mr Maunder-Taylor as a result of his having taken out a loan in his own name for the benefit of the Freeholder or the lessees,

and to arrange to have removed any registration recorded against the subject property on satisfaction of any such debt.

- 1.1.7 The right to receive from the Freeholder, its servants or agents, Mr Maunder-Taylor as the previously tribunal appointed Manager, or any lessee all books, accounts minutes of meetings, computer records, correspondence, facsimile correspondence, electronic mail, specifications, tenders and any documents or records that relate to the management of the Premises and the Estate, however held within a reasonable time from when any demand is made relating to matters relevant to the management of the subject premises including but not limited to all specifications, tenders, planning permissions pertinent to the subject premises.
- 1.1.8 The right to require the Freeholder, its servants or agents to grant her access to all parts of the subject premises, whether controlled by the Freeholder or demised or licensed to a lessee, as may be reasonably required including but not limited to store rooms, basement, roof areas, gardens, grounds and areas housing any meters and conduits for, or concerning the supply of water, gas and electricity and any other services.
2. The Manager shall be paid a fee of £300 per annum for each flat and shop unit comprising the subject premises plus VAT and shall be entitled to appoint any suitable surveyor, engineer, contract supervisor and other suitable persons in connection with any major works as may be required and be entitled to recover the fees of such persons including VAT including the fees of the Manager for any works carried outside of the normal duties of the Manager. The Manager has the right to seek an increase in the annual fees for each of the second and third years of this Management Order. The Manager shall be paid £175 per hour plus VAT for any work carried outside of the normal dues of the Manager necessary for management of the Premises and the performance of her duties or functions. All such fees are without prejudice to the rights of the lessees or the Freeholder to challenge the reasonableness or need for any such works.
3. The Manager shall carry out her duties with all reasonable care and skill and in accordance with the Royal Institute of Chartered Surveyors (RICS) Code of Conduct and any other relevant codes or applicable legislation as are in force at the date of this Order or as may subsequently updated or amended.
4. The Manager shall maintain for so long as may be necessary, an insurance policy in relation to professional indemnity insurance in an amount of not less than £1,250,000 (one million two hundred and fifty thousand pounds sterling) in respect of one occurrence or series of occurrences arising out of one event, to cover her obligations and liabilities under or in connection with her appointment. Such policy to be held with a reputable insurance office or reputable underwriter and

shall where required provide the freeholder with evidence that such a policy is being maintained.

5. The Manager shall report to the Board of Directors of the Freeholder in writing at reasonable intervals the progress made in the Management of the subject property and at least every four months.
6. The Manager shall provide contact details to all lessees and provide a reliable and convenient method of communication and response to all issues raised by all or any of the lessees.
7. The Manager shall act fairly and impartially in her dealings with the lessees and the Freeholder.
8. The Manager and all other persons having an interest in the subject premises or part of them shall have liberty to apply to the first-tier Tribunal for further or other Orders or directions.

Dated this 24th day of January 2014

Judge LM Tagliavini