



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

**Case Reference** : LON/OOAG/LVM/2014/0008

**Property** : Sutherland House, 2 Greencroft Gardens, London NW6 3LR

**Applicant** : Salter Rex LLP Chartered Surveyors and Estate Agents

**Representatives** : Mr Ben Preko MIRPM ARICS and Mr Emmet Brady AIRPM

**Respondent** : 1. Five Star Finance Corporation (Freeholder)  
2. Leaseholders as per attached list

**Representative** : Ms G Farrell (flat 14) and Mr L Nabarro for Mr Candey (flat 8) attending

**Type of Application** : Variation of the order of Appointment of a manager

**Tribunal Members** : Mr Jeremy Donegan (Tribunal Judge)  
Mr Peter Roberts Dip Arch RIBA (Professional Member)

**Date and venue of Hearing** : 19 June 2014 at 10 Alfred Place, London WC1E 7LR

**Date of Decision** : 02 July 2014

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**DECISION**

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## **Decision of the tribunal**

**The tribunal varies the orders made by the Leasehold Valuation Tribunal (LVT) dated 05 July 2001 (the First Order) and 06 December 2002 (the Second Order) upon the terms set out in the attached order.**

## **The background**

- (1) The First Respondent is the freeholder of Sutherland House, 2 Greencroft Gardens, London NW6 3LR (the Property), which contains 20 flats. The First Respondent also owns or controls a number of flats at the Property. The remaining Respondents are the long leaseholders of other flats at the Property.
- (2) The Applicant, Salter Rex, seeks a variation the Second Order pursuant to section 24 (9) of the Landlord and Tenant Act 1987 (the 1987 Act)
- (3) The First Order appointed Mr John Meek FRICS of JW Meek Chartered Surveyors, as the Manager of the Property upon the terms set out within the order.
- (4) The Second Order varied the First Order by appointing Mr Edward Stanley Tech RICS of Salter Rex as the Manager of the Property, in place of Mr Meek.
- (5) Mr Stanley retired from Salter Rex in October 2013.

## **The application**

- (6) On 13 March 2014, Salter Rex submitted an application to the tribunal to vary the Second Order. That application sought the appointment of Salter Rex or Mr Ben Preko, as the Manager of the Property in place of Mr Stanley. Given that the Second Order was a variation to the First Order, the application has proceeded upon the basis that Salter Rex is seeking to vary both orders.
- (7) A case management conference (CMC) took place on 24 April 2014 when directions were given. Mr Preko and Mr Brady of Salter Rex attended the CMC, as did two of the Respondents, Mr Candey and Ms Farrell. Mr Candey, who is the leaseholder of Flat 8 and a solicitor, stated that he opposed the application and would be proposing an alternative Manager. Ms Farrell is the leaseholder of Flat 14.
- (8) Paragraph 2 of the directions provided that the Applicant should serve its documents by 09 March 2014.
- (9) Paragraph 3 of the directions provided that any Respondent who opposed the application and wished to propose an alternative Manager should serve their documents by 16 May 2014.

No.	Ex	Name	Property
1		Mr M Aftab	FLAT 01 SUTHERLAND HOUSE
2		Masouma Investment Co Ltd	FLAT 1 SUTHERLAND HOUSE
3		Dukes Estates	FLAT 2 SUTHERLAND HOUSE
4		Gladewater Holding Limited	FLAT 3 SUTHERLAND HOUSE
5		Mr V Littke & Ms A Aritao	FLAT 4 SUTHERLAND HOUSE
6		Dukes Estates	FLAT 5 SUTHERLAND HOUSE
7		Miss Kimiko Oe	FLAT 6 SUTHERLAND HOUSE
8		Mr & Mrs N A Frankel-Pollen	FLAT 7 SUTHERLAND HOUSE
9		Mr A D Candey	FLAT 8 SUTHERLAND HOUSE
10		Mr P & Mrs G Sheeter	FLAT 9 SUTHERLAND HOUSE
11		Gladwater Holding Limited	FLAT 10 SUTHERLAND HOUSE
12		Mr B Patel & Mr R Patel	FLAT 11 SUTHERLAND HOUSE
13		Ms J Klevenhagen & Mr R	FLAT 12 SUTHERLAND HOUSE
14		Ms G E Farrell	FLAT 14 SUTHERLAND HOUSE
15		Dukes Estates	FLAT 15 SUTHERLAND HOUSE
16		Gladewater Holding Limited	FLAT 16 SUTHERLAND HOUSE
17		Mr J A Adamthwaite	FLAT 17 SUTHERLAND HOUSE
18		Ms R Brown	FLAT 18 SUTHERLAND HOUSE
19		Mr Sigurjon Halldorsson	FLAT 19 SUTHERLAND HOUSE
20		Dukes Estates	FLAT 20 SUTHERLAND HOUSE

- (10) Paragraph 5 of the directions provided that any Respondent who opposed the application should serve a statement by 02 June 2014, stating why the appointment of Salter Rex/Mr Preko was opposed.
- (11) In accordance with the directions, Salter Rex served its documents on 08 May 2014. Neither Mr Candey nor any of the other Respondents proposed an alternative Manager or served any documents or statements.
- (12) The full hearing of the application took place on 19 June 2014. Mr Preko and Mr Brady appeared on behalf of Salter Rex. Ms Farrell attended in person. Mr Candey did not attend but was represented by one of his colleagues, Mr Leo Nabarro, who is also a solicitor.
- (13) The tribunal was supplied with a hearing bundle that included copies of the application, the second Order, directions, a sample lease, the Applicant's evidence, various service charge accounts and documents relating to proposed external works at the Property.
- (14) The relevant legal provisions are set out in the Appendix to this decision.

### **The inspection**

- (15) On the morning of the hearing the tribunal inspected the exterior of the Property, the internal common-ways and the communal rear gardens in the presence of Mr Brady.
- (16) The Property is a Victorian, five-storey, red-brick, end of terrace house that has been converted into flats. There are a total of 20 flats with 4 flats on each floor.
- (17) There are signs of structural movement to the brickwork around the entrance porch and repairs are needed to the brickwork at the front and rear of the Property and the rainwater goods. The external woodwork and metalwork require redecoration. The brick pier adjacent to the communal dustbin store has been damaged and also requires repair.
- (18) The internal common-ways, particularly on the ground floor, are in poor decorative condition. However the carpets in the common-ways are generally in good condition
- (19) There is a large communal garden running down the back of the terrace of houses, which is maintained by the local authority. All houses in the terrace contribute to its upkeep.

### **The hearing**

- (20) At the start of the hearing, the tribunal queried if Ms Farrell and Mr Candey opposed the application. Ms Farrell advised that she is content for Salter Rex to continue managing the Property but would prefer it if Mr Brady was appointed as the Manager. Mr Nabarro explained that

he had simply been given a watching brief by Mr Candey and was not in a position to formally oppose the application. He enquired whether the tribunal were aware of the condition of the Property and was advised of the inspection earlier that day. No alternative manager was proposed.

### **The Applicant's case**

- (21) Mr Preko explained that a variation to the previous orders was required, as Mr Stanley had retired and was no longer working in the property industry. Salter Rex wish to continue with their management of the Property, in which case a new Manager needs to be appointed.
- (22) The tribunal queried if the proposed Manager is Salter Rex or Mr Preko. Mr Preko's preference is that Salter Rex is appointed, for the sake of continuity. That way the appointment could continue were he to leave Salter Rex. Mr Preko believes that there have been other cases where Salter Rex had been appointed as Manager. The tribunal explained that it is normal for an individual, rather than an organisation, to be appointed as Manager. Mr Preko acknowledged this and said that he was content to be appointed, if the tribunal felt this was appropriate.
- (23) Mr Preko suggested that a five-year appointment for the Manager would be appropriate.
- (24) Mr Preko then gave the tribunal details of his experience and qualifications. He is an associate partner at Salter Rex and has been the head of its residential management department for approximately 8 years. The department manages approximately 500 buildings of differing sizes and types. In total there are approximately 3,500-4,000 units under their management. There are five property managers within the department. Mr Brady is the current manager for the Property and will continue in this role, under Mr Preko's supervision, if the application is granted.
- (25) Mr Preko holds a diploma and BSc in Estate Management and an MSc in Property Investment. He is a Member of the Institute of Residential Property Management and an Associate Member of the Royal Institution of Chartered Surveyors. Mr Preko has approximately 18 years' experience in the property sector and worked for Benjamin & Co, Hawksworth Management Company Limited and Haywards Property Services before joining Salter Rex.
- (26) Salter Rex has professional indemnity insurance with Axis Specialty London. The level of cover is £2,000,000 on any one claim excluding costs and expenses and a copy of the policy schedule was included in the hearing bundle.
- (27) Salter Rex charge a fee of £285 plus VAT per flat, per annum for managing the Property (total £5,700 plus VAT per annum). Mr Preko explained that typically Salter Rex charge £275-350 plus VAT per flat,

per annum for the blocks under their management. The level of the fee will depend upon the type of property involved. In Mr Preko's experience these fees are competitive and towards the lower end of the market rate.

(28) Salter Rex charge additional fees for major works, details of which were included in the hearing bundle and which are summarised below:

- Contract value below £5,000: fees will depend upon the level of input required from in-house surveyors and the scope of the works. (Mr Brady and Mr Preko explained that low value works are normally arranged by the property manager, in which case a flat fee of up to £500 plus VAT is charged).
- Contract value of £5,000-15,000 plus VAT: 15% of contract value with a minimum fee of £2,000 plus VAT and disbursements.
- Contract value of £15,000-30,000 plus VAT: 12.5% of contract value with a minimum fee of £2,500 plus VAT and disbursements.
- Contract value of £30,000-100,000 plus VAT: 10% of contract value with a minimum fee of £3,750 plus VAT and disbursements.
- Contract value over £100,000 plus VAT: 8% of contract value with a minimum fee of £10,000 plus VAT and disbursements.
- CDM Coordinator's fees (where appropriate): 3% of contract value

(29) The tribunal queried the minimum fees, pointing out that this could give rise to very high charges. For example on a contract value of £6,000 plus VAT, a minimum fee of £2,000 plus VAT would apply. This equates to 33.33% of the contract value. Mr Preko explained that the minimum fees are not applied rigidly and that each case is looked at individually to ensure that the fees are reasonable, having regard to the nature of the works involved.

(30) Mr Preko and Mr Brady supplied the tribunal with brief details of proposed external works to be undertaken to the Property during the summer of 2014. Section 20 notices have been served on the leaseholders and copies of the notices and specification were included in the hearing bundle. The anticipated cost of the work, including supervision fees and VAT, is approximately £80,000. Salter Rex demanded the leaseholders' contributions on 26 February 2014. They have not yet received contributions for the flats owned or controlled by the First Respondent and may have to institute debt recovery action to collect these contributions. Salter Rex have received contributions from a majority of the other leaseholders.

(31) Mr Brady also informed the tribunal that major works to the internal common-ways were planned for 2015 or 2016.

### **The Respondents' case**

- (32) There were no written objections to the appointment of Mr Preko or Salter Rex and none of the Respondents had nominated an alternative Manager.
- (33) Ms Farrell informed the tribunal that she would prefer it if Mr Preko was not appointed as the Manager. She was unhappy that he had ignored an incident that she had raised in the past. Ms Farrell also felt that Mr Preko had been argumentative at the CMC. In response Mr Preko stated that he was unaware of the issues referred to by Ms Farrell. He also apologised if his behaviour had caused offence.
- (34) Ms Farrell is generally happy with the day to day management of the Property by Salter Rex. She had some concerns about the redecoration of the internal common-ways in 2008, when Salter Rex had not adopted the paint colour proposed by the leaseholders. However this work took place before Mr Brady started to manage the Property.
- (35) Mr Nabarro did not oppose the appointment of Mr Preko or Salter Rex, on behalf of Mr Candey. He mentioned that Mr Candey was involved in separate proceedings relating to the condition of the Property. However the tribunal were not supplied with any information or documents relating to those proceedings.

### **The tribunal's decision**

- (36) The tribunal orders the LVT orders dated 05 July 2001 and 06 December 2002 are varied upon the terms set out in the attached order.

### **Reasons for the tribunal's decision**

- (37) Mr Stanley's retirement in October 2013 means that a new Manager needs to be appointed. The Respondents have not nominated any alternative Manager and have not put forward any grounds for opposing the application, in writing. The only opposition advanced were the oral representations made by Ms Farrell at the hearing and she is generally happy with the day to day management of the Property.
- (38) It makes sense for Salter Rex to continue managing the Property, given that they have managed it for a number of years and have arranged major external works that are due to commence this summer. However the tribunal believes that it is appropriate for an individual within Salter Rex to be appointed, rather than the firm as a whole, to ensure accountability. The only individual that has been nominated is Mr Preko.
- (39) The tribunal is satisfied that Mr Preko has the requisite experience and qualifications to undertake the role as a tribunal appointed Manager. In the absence of any other candidate and accepting that Mr Stanley

cannot maintain the role, having retired, the tribunal appoint Mr Preko.

- (40) The tribunal accepts that the appointment of Mr Preko should last 5 years and this is reflected in the attached order. The order also provides that Mr Preko can charge a standard management fee of £285 plus VAT per flat, per annum, during his first year of management. Thereafter the fee may increase in line with inflation.
- (41) The tribunal feels that it would be unduly prescriptive to specify the additional fees that Mr Preko proposes. Rather these fees must be reasonable, having regard to the additional work involved. In the tribunal's experience it is normal for managing agents to charge a percentage of the contract price for implementing and administering the carrying out of major works. Equally it is normal for the CDM co-ordinator to charge an additional fee as a percentage of the contract price. The amount of these percentages may vary, depending upon the nature and extent of the works. In the tribunal's experience it is rare for a minimum fixed fee to apply, except for very low value works.

**Name:** Jeremy Donegan –  
Tribunal Judge

**Date:** 02 July 2014





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Gardens, London NW6 3LR**

**Applicant** : **Salter Rex LLP Chartered  
Surveyors and Estate Agents**

**Respondent** : **1. Five Star Finance Corporation  
(Freeholder)  
2. Leaseholders as per attached list**

**The Manager** : **Mr Ben Preko MIRPM ARICS**

**Tribunal Members** : **Mr Jeremy Donegan (Tribunal  
Judge)  
Mr Peter Roberts Dip Arch RIBA  
(Professional Member)**

**Date of Order** : **02 July 2014**

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**ORDER**

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1. The orders of the Leasehold Valuation Tribunal dated 05 July 2001 and 06 December 2002 are varied as follows:
  - (a) Mr E J Stanley Tech RICS is discharged as Manager and Receiver of the Property with effect from (*date of order*).
  - (b) Mr Ben Preko MIRPM ARICS is appointed as Manager of the Property.
  - (c) The appointment shall start on 03 July 2014 and end on 02 July 2019 (the End Date).
  - (d) Mr Preko shall be entitled to the following remuneration, which will be recoverable as a service charge:

- (i) During the first 12 months of this appointment, an annual fee of £285 per flat for performing the duties set out at paragraph 2.4 of the RICS Service Charge Residential Management Code;
  - (ii) During the second and subsequent years of his appointment he shall be entitled to increase his annual fee in line with the Retail Prices Index;
  - (iii) A reasonable fee for undertaking any additional duties covered by paragraph 2.5 of the RICS Code, including implementing and administering the carrying out of major works that are subject to statutory consultation; and
  - (iv) VAT due on the above fees.
2. During the period of the appointment, Mr Preko must hold appropriate professional indemnity insurance of at least £2,000,000 for any one claim, excluding costs and expenses.
  3. Mr Preko shall register this order against the registered title to the Property in accordance with section 24(8) of the 1987 Act.
  4. Any application under section 24(9) of the 1987 Act to extend or renew this order should be made at least 3 months before the End Date and must include a detailed report of the management of the Property during the period of this appointment.

**Name:** Jeremy Donegan –  
Tribunal Judge

**Date:** 02 July 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1987 (as amended)**

#### **Section 24**

- (1) The appropriate 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.

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- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) The appropriate 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