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

**Case Reference** : LON/00AH/LAM/2013/0016

**Property** : 6-16 Tudor Court, Russell Hill  
Road, Purley CR8 2LA

**Applicants** : Rasath Liyanarachchi and 7 others  
(details in Schedule)

**Representative** : Mr H Webb, Counsel

**Respondent** : Ms T Sidhu

**Representative** : Mr P Mendelsohn, Solicitor

**Type of Application** : For the determination of an  
application for the appointment of  
a manager

**Tribunal Members** : Judge P Korn (chairman)  
Mr F Coffey FRICS  
Mr O N Miller BSc

**Date and venue of  
Hearing** : 3<sup>rd</sup> December 2013 at 10 Alfred  
Place, London WC1E 7LR

**Date of Decision** : 2<sup>nd</sup> January 2014

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal is satisfied that Mr Mark Tejada is a suitable appointee as manager of the Property.
- (2) The tribunal determines that the appointment shall be for 3 years. Mr Tejada shall be responsible for the insurance of the whole of the building and shall have the power to issue consents in relation to alterations, etc. Neither the Respondent nor the former managing agent, Mr Dhaliwall, shall be entitled to charge for their time spent in relation to handover or co-operating with Mr Tejada.
- (3) The Respondent shall be entitled to 28 days within which to make documentation available to the manager and to give details of service charge sums held by her.
- (4) The management order shall not contain a provision entitling the manager to charge the Respondent for collecting ground rents and it shall be for the manager and the Respondent to come to an arrangement between them as to whether and, if so, on what basis the manager should be responsible for collecting the ground rents.
- (5) Accordingly the tribunal appoints Mr Mark Tejada as manager of the Property for a period of 3 years from the date of this decision on the terms of the management order attached to this decision.

## **The application**

1. The Applicants seek the appointment of a manager over the Property pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").

## **The background**

2. This is a supplemental decision, as it follows a previous decision dated 23<sup>rd</sup> September 2013 between the same parties and with the same case reference (and which was heard at the same time as a separate application under section 27A of the Landlord and Tenant Act 1985 for the determination of the reasonableness of certain service charges).
3. In its previous decision, the tribunal determined that a manager should be appointed over the Property but was not satisfied that the manager originally proposed by the Applicants would make a suitable appointee. Therefore further directions were given with a view to the Applicants proposing an alternative manager and providing a draft order setting out the proposed basis of his or her appointment. The Respondent was given an opportunity to comment on the suitability of the proposed manager and the terms of the draft order, and there was then a further

half day hearing at which the relevant issues were aired and the tribunal was able to cross-examine the proposed manager and consider the draft order and the Respondent's comments thereon.

### **The hearing**

4. The Applicants were represented by Mr H Webb of Counsel and the Respondent was represented by Mr P Mendelsohn, solicitor.
5. The Applicants' proposed manager was Mr M Tejada of HML Andertons. There was initially some confusion as to whether the Respondent had approved the Applicants' new choice of manager. After some discussion and an adjournment it was established that the Respondent did not object to the Applicants' choice of manager. It was also established that the issues to be determined by the tribunal were as follows:-
  - whether the tribunal itself was satisfied that the proposed manager would make a suitable appointee; and
  - if it was so satisfied, on what terms an order for his appointment should be made.

### **The proposed manager**

6. The tribunal cross-examined Mr Tejada regarding his qualifications, his experience, his knowledge of the Property and his knowledge of property management issues generally.
7. No objections to Mr Tejada's appointment were received from or on behalf of the Respondent. The tribunal was satisfied with the answers received from Mr Tejada to its various questions and accordingly is satisfied that he would make a suitable manager.

### **The terms of the draft order – Applicants' position**

8. Most of the terms of the draft order proposed by the Applicants were not contested by the Respondent. The contested issues were summarised by Mr Webb for the Applicants as follows:-
  - Should the new manager insure the whole building (including the commercial units)?
  - Should the freeholder (the Respondent) be entitled to charge for co-operating with and/or assisting the manager, and if so at what rate?

- Should the new manager deal with consents for alterations etc?
  - Should the new manager be entitled to charge for collecting ground rents?
  - Should the appointment be for 2 years or 3 years?
  - What should the mechanism be for handover and the deadline for compliance by the Respondent?
9. As regards building insurance, Mr Webb referred the tribunal to section 24(11) of the 1987 Act which states that “*References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises*”. Based on this wording he argued that insurance was a core management function and therefore should be controlled by the new manager. In his submission it made much more sense for the manager to control and organise the insurance of the whole building and then he could deal with the apportionment of the premiums between the residential and commercial units. All of the leases referred to the insurance of the whole building and so it was logical for it to be dealt with as a whole. In addition, some of the leases contained different methods of insurance premium calculation, and there were other questions such as whether loss of rent insurance applied to residential units, and these issues needed to be sorted out. The manager was independent and therefore best placed to decide these issues and also to deal with the insurers.
10. As regards the Respondent’s wish to charge for her time and/or for that of the former managing agent for handover or continuing issues, Mr Webb submitted that this was not reasonable nor what Parliament could have intended. Furthermore, Mr Tejada said that he did not envisage needing much help from the Respondent or the former managing agent.
11. As regards the manager dealing with consents, Mr Webb submitted that this was a core management function and had been included in orders for the appointment of a manager in previous decisions. In this regard Mr Webb referred to the decision of the Residential Property Tribunal (as it then was) in *Metropolitan Housing Trust Limited v Laxcon Development Limited* (Ref: LON/00AY/LAM/2010/0013) and the decision of the Upper Tribunal in *PC Residents (Finchley Road) Limited v Sekinat Abiola and others* (Ref: LRX/85/2011). Mr Webb argued that it was appropriate to transfer this power to the manager as an independent thirds party.
12. As regards the ability of the manager to charge for collecting rents, Mr Webb submitted that it was more time-consuming than collecting commercial rents because of the various statutory protections for

residential tenants and that it was appropriate for the manager to be able to charge for his time. 10% of the rents actually collected was Mr Tejada's standard charge.

13. As regards the length of the appointment, 3 years was considered to be a reasonable length and Mr Tejada himself felt this to be the right length of time to deal with the existing problems and get the management back onto a reasonable footing. It would also avoid the tribunal having to become involved again in 2 years' time.
14. As regards the mechanism for handover and the deadline for compliance by the Respondent, the Applicants felt that a period of 14 days for the Respondent to make all relevant details available to the manager was sufficient and that it was reasonable to require all of the information and actions set out in paragraphs 4 to 6 of the Applicants' draft order. Mr Webb added that there was a typographical error in paragraph 6 of the draft order in that the second word should read "Respondent".
15. Mr Webb added that the Applicants were unclear what the Respondent was seeking to achieve by adding the words (just prior to paragraph 1 of the draft order) "*without prejudice to the Leases of the residential parts of the property which are not deemed to be varied hereby and which are to remain in full force and effect*".

#### **The terms of the draft order – Respondent's response**

16. As regards insurance, Mr Mendelsohn said that the Respondent was obliged under the commercial leases to insure the building and that therefore she should control the insurance herself.
17. As regards the Respondent's wish to charge for her time and/or for that of the former managing agent for handover or continuing issues, Mr Mendelsohn submitted that the former managing agent should be paid for any work that he did, although he made the concession that Mr Dhaliwal would be prepared to accept a lower rate of pay than that payable to the manager as Mr Dhaliwal had no relevant qualifications. Mr Mendelsohn did not bring any specific authority for his submissions on this issue.
18. As regards the manager dealing with consents, Mr Mendelsohn noted the cases cited by Mr Webb but added that there were also cases pointing the other way, although he did not cite any specific cases or other authority. In his view it was not necessarily the case that the giving of consents to alterations etc was a normal management function. The Respondent's main concern was that a decision might need to be made which would impact on the commercial units or on the

interface between the residential and commercial parts and that she would be better placed to make this decision.

19. As regards the ability of the manager to charge for collecting rents, Mr Mendelsohn said that it was not fair to charge the **landlord** for this function and that it should instead be part of the management fee.
20. As regards the length of the appointment, the Respondent would prefer 2 years and Mr Tejada had, as Mr Mendelsohn understood it, originally said that 2 years should be sufficient if the service charge monies were successfully collected in.
21. As regards the mechanism for handover and the deadline for compliance by the Respondent, the Respondent felt that 28 days was more reasonable and that the manager was not entitled to copies of the documents relating to the commercial parts.
22. As for the proposed addition of the words "*without prejudice to the Leases of the residential parts of the property which are not deemed to be varied hereby and which are to remain in full force and effect*", these words were merely intended to provide clarification but they were not regarded as crucial.

### **Tribunal's analysis**

23. As stated above, the tribunal is satisfied that Mr Tejada would make a suitable manager.
24. Regarding insurance, having considered the submissions made on behalf of both parties the tribunal is of the view that it would be best for Mr Tejada to be responsible for organising the insurance. The tribunal agrees with Mr Webb that insurance is a management function and considers that in the context of this Property and the factual history it would be best for the proper management of the building and for relations between the various parties if the new manager – as an experienced property manager and an independent party with duties to both the leaseholders and the freeholder – were to be in full control of this function. The Respondent can continue to liaise with her commercial tenants, and it does not seem to the tribunal that giving the manager this power should compromise her ability to comply with her insurance obligations under the commercial leases. Instead of directly effecting the insurance she will be relying on the manager to do so, and if at any point he fails to do so then there is a mechanism for her to procure that he does so.
25. Regarding the Respondent's wish for the manager to pay her and, in particular, the former managing agent for their time in relation to handover and future co-operation, the tribunal is surprised that the

Respondent should be seeking such payment. The decision to appoint a manager is not one that was taken lightly by the tribunal. It is a fault-based remedy and the decision has been taken in large part because of serious management failings on the part of the Respondent and the former managing agent over an extended period of time. Some of the details of those failings are set out in the tribunal's previous decision, and one of the concerns previously expressed by the tribunal was the lack of transparency of, and difficulty to justify, previous management charges. No case law or other authority has been brought to support the Respondent's wish to be paid, and the tribunal's view is that – in the aftermath of an appointment which is directly linked to the poor nature of the previous management – the previous management should not be paid simply for co-operating with the new manager in his role of remedying the problems created (or not adequately addressed) by the previous management. In any event, Mr Tejada has given evidence stating that he does not expect that he will need very much (if any) assistance from the Respondent or the managing agent, and so it seems highly unlikely that either the Respondent or the managing agent will be called upon to spend significant time in providing such assistance.

26. Regarding whether the manager should be the one to give consents in relation to alterations etc, the tribunal notes the cases cited by Mr Webb for the Applicants. Neither case is particularly compelling in that in neither case was the specific point argued and therefore the relevant Tribunal has not sought (or been asked) to make a specific decision on the point. Mr Webb effectively acknowledged this, and as the tribunal understands it his argument was that neither Tribunal objected to the inclusion of this power in a management order.
27. As noted above, Mr Mendelsohn did not bring specific examples of cases in which a management order did not contain a power on the part of the manager to give consents in relation to alterations etc, although he hinted at their existence. As regards what the tribunal understands to be the Respondent's main concern on this issue, the tribunal does not accept that the Respondent is better placed than Mr Tejada to make a judgment on requests for consent to alterations which could affect the commercial units. On the contrary, Mr Tejada is independent, has a lot of relevant property management experience and appropriate qualifications whereas the Respondent and Mr Dhaliwall have none of these and there is a history of mismanagement of the Property and friction with the leaseholders. It is considered to be in the best interests of the proper management of the Property and the building for the role of the Respondent and Mr Dhaliwall to be minimised.
28. Regarding the collection of rents, here the tribunal has some sympathy with the Respondent's position. It is not considered to be a necessary part of a management order that it should provide (a) that the manager will collect ground rents and (b) that the cost of collecting ground rents will come out of the ground rents themselves. Therefore, the tribunal considers that this section of the Applicants' draft order should not be

replicated in the actual order and that Mr Tejada should liaise with the Respondent as to whether he should collect ground rents on her behalf and, if so, on what basis.

29. Regarding the length of the appointment, 3 years seems an appropriate length of time to the tribunal. Whether or not Mr Tejada at one point said that 2 years might be enough if the service charge monies were to come in, his considered view is that 3 years is a more appropriate length of time and the tribunal agrees with him. There are serious problems with the management of the Property, and Mr Tejada is entitled to have 3 years to turn things around and then, if all goes well, to introduce a period of stability.
30. Regarding the mechanism for handover, the tribunal considers that the items and tasks set out in paragraphs 4 to 6 of the Applicants' draft order are perfectly reasonable and that Mr Tejada should be given such information as he considers is necessary for the management of the Property.
31. However, regarding the deadline for compliance by the Respondent, the tribunal considers that 14 days is unfair on the Respondent. Whilst it is true that the tribunal determined back in September that a manager should be appointed, the Respondent will not have known until the date of this supplemental decision whether – and as from what date – Mr Tejada would be appointed as the actual manager. Therefore, the tribunal agrees with the Respondent that the deadline for compliance should be 28 days. In view of this change to the deadline for the Respondent to comply the tribunal considers it appropriate to change the manager's deadline in paragraph 15 of the order to 6 weeks.
32. Regarding the Respondent's proposed addition of wording stating that the order does not vary the leases, the proposed wording is in the tribunal's view unclear, and in any event the tribunal considers it unnecessary.
33. In all other respects the tribunal considers the Applicants' draft order acceptable and it is not inclined to amend it (save for a small amount of tidying up of the wording) given that – in these other respects – it is not contested by the Respondent.

### **Cost applications**

34. There were no cost applications.

**Name:** Judge P Korn

**Date:** 2<sup>nd</sup> January 2014



## **Schedule of Applicants**

Rasath Liyanarachchi (Flat 8A)

John Munford and Clive Munford (Flat 8B)

Miriam Davis (Flat 10A)

Helen Rogers (Flat 12A)

Edwina Bland (Flat 12B)

Brian Martin (Flat 12C)

Victoria Alford (Flat 16A)

Nicholas Allison (Flat 16B)

## **Present at the hearing**

Mr H Webb, Counsel for Applicants

Mrs Davis (Flat 10A)

Mr and Mrs Rogers (Flat 12A)

Ms Alford (Flat 16A)

Mr and Mrs Allison (Flat 16B)

Mr N Pellegrini (Flat 14B)

Mr M Tejada of HML Andertons Ltd, proposed manager

Mr P Mendelsohn, Solicitor for the Respondent

Mrs T Chonin, Trainee Solicitor

Ms T Sidhu, the Respondent

Mr D Dhaliwal, husband of, and managing agent for, the Respondent

**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)  
CASE REFERENCE: LON/00AH/LAM/2013/0016**

**IN THE MATTER OF PREMISES AT 6-16 TUDOR COURT (EVENS)  
RUSSELL HILL ROAD PURLEY SURREY CR8 2LA (“the Property”)**

**Applicants**

**Rasath Susiji Liyanarachchi (8A)**

**John Victor Munford and Clive Sydney Munford (8B)**

**Miriam Davis (10A)**

**Helen M Rogers (12A)**

**Edwina Bland (12B)**

**Brian Reginald Martin (12C)**

**Victoria Alford (16A)**

**Nicholas E J Allison (16B)**

**Respondent**

**Tarinder Sidhu (the Freeholder)**

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**ORDER UNDER SECTION 24 OF THE LANDLORD AND TENANT  
ACT 1987 FOR THE APPOINTMENT OF A MANAGER**

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**ORDER**

**Upon hearing the Applicants and the Respondent and having heard  
evidence from the proposed manager Mr Mark Tejada of HML  
Andertons Ltd  
AND upon the Tribunal being satisfied that the grounds for the  
appointment of a manager under Section 24 of the Landlord and**

**Tenant Act 1987 (“the Act”) have been made out and that it is just and convenient to make an Order**

**IT IS ORDERED THAT:**

Mr Mark Tejada of HML Andertons Ltd (“the Manager”) be appointed Receiver and Manager for a period of 3 years from the date of this Order in connection with the performance of all contractual and statutory management functions required under the term of the residential leases relating to the property know as 6 to 16 Tudor Court (Evens) Russell Hill Road Purley Surrey CR8 2LA (“the Property”).

**DIRECTIONS**

**Without prejudice to the generality of the foregoing it shall be directed that:**

1. From the date of the appointment and throughout the appointment, the Manager must ensure that he has appropriate professional indemnity cover to a level of £5,000,000 for any one claim, and shall provide an annual copy of the cover note upon a request being made by the Tribunal, the landlord or the tenants.
2. The Respondent and her husband the former managing agent shall give all reasonable assistance and cooperation to the Manager while acting in accordance with his duties, functions, rights and powers under this Order.
3. The Respondent shall allow the Manager all reasonable access to those parts of the Property retained by her in order that the Manager might conveniently perform all his functions and duties and exercise his powers under this Management Order.
4. No later than 28 days after the date of this Management Order the Respondent shall make available to the Manager all such books, papers, memoranda, records, computer records, minutes, correspondence, electronic mail and all other documents as are necessary for the management of the Property.
5. No later than 28 days after the date of this Management Order the Respondent shall give full details to the Manager of all sums of money it holds or which are due to the Applicants following the Tribunal hearing decision of

23<sup>rd</sup> September 2013 (CASE REFERENCE LON/00AH/LSC/2013/0122), including giving copies of any relevant bank statements.

6. The Respondent shall forthwith proceed to establish accurately the balance held in the service charge account and shall transfer the balance to the Manager within 28 days of the date of this Order.
7. The rights and liabilities of the Respondent and her husband the former managing agent arising under any contract of insurance to the property shall upon the date 28 days from the date of this Order become the rights and liabilities of the Manager.
8. The Respondent's costs of and incidental to this application and order are not considered to be relevant costs to be taken into account when determining the amount of any service charge.
9. The Manager shall have the right to demand and receive from the tenants and their successors in title half-yearly service charge contributions in advance on account of actual expenditure to be incurred by the Manager on the first date of this Order in such sum as the Manager shall reasonably determine, having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year and for avoidance of doubt shall have the same right in respect of each subsequent service charge financial year.
10. The Manager is authorised to give notice to the tenants and raise an initial interim service charge as soon as he deems necessary in order to fulfil any of his duties contained in this Order.
11. The Manager shall have the right to demand and collect building insurance premiums due from the residential tenants.
12. The Manager will be entitled to engage a surveyor, engineer or other appropriate person to assist him if necessary to carry out the obligations contained in the residential leases and will be entitled to recover the costs thereof through the service charge.
13. The Manager shall have the power to receive, consider, grant or otherwise deal with applications for consents or licenses or alterations requiring the consent of the landlord under the residential leases. In relation to such applications the Manager shall where applicable use his best endeavours to secure a reasonable open market premium and shall account to the landlord therefor. Where the Manager has confirmed that any such consent or licence will be granted, the landlord shall execute all necessary documents to give effect thereto without delay or request for payment, PROVIDED THAT the

Manager shall give reasonable notice to the landlord of any such applications and the terms thereof which he proposes to grant, with the intent that the landlord shall have the opportunity of making observations to the Manager on such applications and proposed consents.

14. The Manager shall be entitled to apply to the Tribunal for further directions in accordance with Section 24 (4) of the Act, with particular regard (but not limited) to the event that any party fails to comply with the terms of this Order, or there are sufficient sums held by him to pay the Manager's remuneration or carry out necessary repairs to the Property.

**It shall be the duty of the Manager for the duration of the appointment:**

15. To finalise the management plan as to the action taken during the period of appointment, including a planned maintenance programme and specification of what action he intends to take. This plan shall be sent to the landlord and tenants within 6 weeks of the date of appointment.
16. To open and operate bank accounts in relation to the residential management of the Property, and to hold those funds received from the tenants of the flats in the Property pursuant to section 42 of the Act. All monies collected will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution of Chartered Surveyors, with interest accruing to the tenants.
17. To prepare an annual service charge budget, administer the service charge and provide appropriate service charge accounts to the tenants as per the percentage share under the terms of their respective residential leases.
18. To prepare and submit to the landlord and tenants an annual statement of account detailing all monies received and expended. The accounts shall be audited by an accountant.
19. To collect the various sums made payable by the tenants under the residential leases of Tudor Court, including service charges and insurance.
20. To carry out all the obligations of the landlord under the residential leases only with regard to repair, maintenance, decoration, renewal and provision of services to and insurance of the Property.
21. To place, supervise and administer contracts and check demands for payment for goods and services supplied for the benefit of the residential leases within the service charge budget.

22. To comply with all statutory requirements including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended and with the requirements of the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
23. To give consideration to works to be carried out to the Property in the interest of good estate management, and make the appropriate recommendations to the landlord and tenants.
24. To, upon request, produce for inspection receipts or other evidence of expenditure.
25. To deal with all enquiries, requests, reports and correspondence with the landlord, tenants, solicitors, accountants and other professional persons in connection with the residential management of the Property.
26. To operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.
27. To exercise all reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of his functions and duties and the exercise of his powers.
28. If Major Works are to be carried out to the Property, to prepare (where it is appropriate) a summary specification of works, obtain tenders, and serve all relevant notices on tenants informing them of the works and supervise the works.

## **REMUNERATION**

**The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charge under the residential leases of the Property):**

29. The sum of £3,445.00 per annum exclusive of VAT and split according to the residential lease provisions by percentage, by way of basic management fee, to include the basic services as outlined in paragraph 2.4 of the Service Charge Residential Management Code published by the RICS. This rate to increase annually on the anniversary of the financial year by no less than RPI.
30. In the case of works falling outside his duties set out in this order, the Manager shall be remunerated at an hourly rate of £170.00 (plus VAT) or less

for junior assistants at ranging £75.00 to £125.00 per hour, dependant on experience.

31. The Manager shall have the power to bring any action or other legal proceedings in connection with the Leases in respect of service charges or other moneys due under the Leases, SAVE THAT the Manager shall not have the right or responsibility against any party and to make any arrangements on behalf of the landlord commenced before the date of this Order.
32. An additional charge for dealing with solicitors' enquiries on transfer will be made at a rate to a maximum of £325.00 (plus VAT). Many packs can be obtained for less subject to standard questions being applied and documents being retained by tenants.
33. An additional charge for dealing with registration of deeds or notices of transfer will be made at a fixed rate of £75.00 (plus VAT where relevant) payable by the tenant.

Dated: 2<sup>nd</sup> January 2014