



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

Case Reference : CHI/21UD/LVM/2015/0005

Property : 24, Warrior Square, St Leonards on Sea,
East Sussex TN37 6BG

Applicants : Samantha Twomy
James McArdle
Zoe Gregory and Amanda Middleton
Kevin Atkin
Charles Shimwell
Eddie Holland
Elaine Cameron

Representative : James McArdle

Respondent : G & O Rents Limited

Representative :

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

Tribunal Member(s) : Judge D Agnew

Date of Decision : 22nd July 2015

DECISION

Summary of the Decision

1. The Tribunal appoints Mr George Okines AIRPM of Arko Property Management, 77 Bohemia Road, St Leonards on Sea, East Sussex TN37 6RJ as manager to carry out in relation to the Property such functions in connection with the management as set out in the order appended hereto.

Reasons for the decision

2. By an application dated 10th April 2015 Mr James McArdle on behalf of all the lessees of the seven flats at 24 Warrior Square, St Leonards on Sea East Sussex TN37 6BG (“the Property”) applied to the Tribunal for an order appointing Mr George Okines AIRPM as the manager of the Property under section 24 of the Landlord and Tenant Act 1987 (“the Act”).
3. In 2004 an order was made appointing Mr Tony Shields as manager under the Act for an indefinite period. In 2012 the leaseholders sought and obtained a variation of that order and Mr Okines was appointed manager for a period of four years.
4. The lessees (and, presumably Mr Okines) inadvertently allowed the 2012 order to lapse in June 2014. When they realised this, the application for a new order re-appointing Mr Okines was made. This has the support of all the lessees and Mr Okines is willing to continue in the role of Tribunal-appointed manager.
5. The freeholder Respondent has also consented to Mr Okines being re-appointed as manager.
6. In all the circumstances, the Applicant asserts that it would be inappropriate to have to serve a section 22 notice on the landlord and asks the tribunal to make an order notwithstanding that a section 22 notice has not been served.
7. In accordance with Directions issued by the Tribunal, Mr Okines has consented to act in that capacity and has confirmed that he understands the obligations of a Tribunal-appointed manager. He has supplied details of his experience in property management, has disclosed a copy of his insurance cover, his proposed charges and has submitted a management plan for the Property.
8. The Tribunal is satisfied that Mr Okines is suitably qualified to be appointed as manager by the Tribunal. Ideally the Tribunal would have preferred his insurance cover to be at least £1 million instead of £500,000 plus defence costs and this is something that Mr Okines might consider when the insurance cover period expires in August of this year as it might affect any application for him to be appointed as Tribunal-appointed manager of other properties in the future.
9. Strictly speaking, the Act does not give the Tribunal a discretion to make an order where a section 22 notice has not first been served on the landlord unless it is “not reasonably practicable” to serve the landlord (section 22(3) of the Act). This usually means that in order for a section 22 notice to be dispensed with the landlord cannot be found or, if a company, has ceased to exist. That does not apply in this case. However, it is the case that a section 22 notice was served when a manager was first appointed in 2004 and it is only that the lessees

inadvertently allowed the 2012 order to elapse that has made this application necessary. Furthermore, the landlord has consented to the application. In all the circumstances, and taking a pragmatic approach, the Tribunal is prepared to make an order, in this instance, without the lessees having to have served a section 22 notice. The Tribunal takes the view that the landlord has, in effect, waived the necessity for such a notice to be served and no one opposes the application.

10. The application asks that the order, if granted, be open-ended and not time limited. This will save the lessees money in not having to apply to extend the order at or towards the end of its life and (although they do not say so) it will also avoid the matter being overlooked again. The Tribunal generally speaking prefers to make time-limited orders as this usually provides an opportunity for a reconsideration as to whether a renewal of the order is still appropriate. However, having made it clear in the order appended hereto that any person interested may apply to the Tribunal at any time for an order varying or discharging the order the Tribunal is prepared to accede to the Applicants' request in this regard.
11. The appointment of Mr Okines is therefore made in accordance with the Order and Schedule of Functions and Services appended hereto.

Dated the 22nd July 2015

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

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

MANAGEMENT ORDER DATED 22nd July 2015

Re: 24, Warrior Square, St Leonards on Sea, East Sussex TN37 6BG

Case Number CHI/21UD/LVM/2015/0005

BETWEEN:

The lessees set out in Schedule 1 attached hereto

Applicants

and

G & O Rents Limited

Respondents

SCHEDULE 1

Samantha Twomy

James Mc Ardle

Zoe Gregory and Amanda Middleton

Kevin Atkin

Charles Shimwell

Eddie Holland

Elaine Cameron

1. In this order:
 - A. "The property" includes all those parts of the property known as 24 Warrior Square, St Leonards on Sea, East Sussex TN37 6BG ("the Property") and registered at HM Land Registry under title number HT11230
 - B. "The landlord" means G & O Rents Limited or in the event of the vesting of the freehold reversion to the property in another, the person in whom such title shall be lawfully vested.
 - C. "The manager" means Mr George Okines AIRPM of Arko Property Management 77 Bohemia Road, St Leonards on Sea, East Sussex TN37 6RJ
2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager is hereby appointed to carry of the functions of a receiver and manager of the Property.
3. The order shall continue for an indefinite period but any person interested may apply to the Tribunal at any time for a variation or discharge of the order, under section 24(9) of the Landlord and Tenant Act 1987.
4. That the manager shall manage the property in accordance with:
 - (a) The Directions attached to this order.
 - (b) The Schedule of Functions and Services attached to this order.

- (c) The respective obligations of the landlord in the leases by which the flats at the property are demised and in particular (but without limitation) with regard to repair, maintenance, decoration, provision of services to and insurance of the property.
- (d) The duties of a manager set out in the Service Charge Residential Management Code (2009) ("The Code") or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

5. No order as to costs.

DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £500,000 for any one claim plus defence costs and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the landlord or the Tribunal.

2. The rights and liabilities arising under any contracts of insurance, shall upon 14 days from the date of this order become rights and liabilities of the manager.

3. That the manager shall apply any amounts received by him (other than those representing his fees) in the performance of the landlord's covenants contained in the said leases but for the complete avoidance of doubt, nothing herein contained shall require the manager to demand ground rent.

4. That the manager shall be appointed and shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the leases of the property) in accordance with the Schedule of Functions and Services attached.

5. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) in the event that there are insufficient sums held by him to pay the manager's remuneration or to otherwise comply with his obligations herein contained.
6. For the complete avoidance of doubt nothing herein shall require the manager to take any steps unless he is first adequately in funds to do so (after payment of his fees, disbursements and any VAT properly owing to him) and nothing shall require the manager to apply his own funds towards so complying.
7. The manager shall apply to the Land Registry to register this order against the freehold title to the property in accordance with section 24(8) of the Landlord and Tenant Act 1987 and all costs and expenses incurred by him in respect thereof shall be charged to the service charge account of the Property.

SCHEDULE OF FUNCTIONS & SERVICES

A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees as per the percentage share under the terms of their respective leases.

- 1.2 Demand and collect service charges, insurance premiums and any other payments due from the lessees (with the exception of ground rent). Demand and collect when necessary a reserve fund separately to the sums payable by the leases and to administer that reserve fund. Instruct solicitors to recover unpaid monies in either case.

- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.

B. ACCOUNTS

- 2.1 Prepare and submit an annual statement of account detailing all monies received and expended by the manager and to instruct a suitably qualified accountant for the purpose.
- 2.2 Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
- 2.3 All monies collected by the manager will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the manager receiving and being entitled to all interest on the monies whilst they are in his client account.

C. MAINTENANCE

- 3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the building. Instruct suitably qualified experts and other professionals for that purpose including, but without limitation, solicitors, barristers, surveyors and architects.
- 3.2 The consideration of works to be carried out to the property in the interest of good estate management.
- 3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts.

D. FEES

4.1 Fees recoverable by the manager for the above mentioned management services will be a basic fee of £188 plus vat per annum per unit for the flats within the property and shall increase annually by the rate of RPI or such other sum that may be agreed with the lessees. The Manager shall be entitled to charge additional fees in accordance with the draft management agency agreement submitted with the Applicant's determination bundle and attached hereto headed "Additional Charges". The additional charges may be added to or varied by agreement of the lessees.

E. RIGHT TO PROSECUTE CLAIMS

5.1 The manager shall be entitled (but may not be compelled) to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.

5.2 Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge attributable to any of the flats in the building and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the First-Tier Tribunal (Property Chamber) under s.27A Landlord & Tenant Act 1985 or s.168(4) Commonhold &

Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

- 5.3 The manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT payable to any solicitors, accountant, counsel or expert on a full indemnity basis.

F. COMPLAINTS PROCEDURE

- 6.1 The manager shall operate a complaints procedure in accordance with the requirements of ARMA. Details of the procedure are available from the institution on request.

- 7.3 In either case the manager shall be entitled to conduct an insurance valuation with the costs of the same being recoverable as if they were a service charge item within the leases and/or under leases.

G. COMPLIANCE WITH STATUTE

- 8.1 The manager shall comply with all /any statutory requests and with any notice or order served in accordance with or pursuant thereto.

APPENDIX III

ADDITIONAL CHARGES

ADDITIONAL SERVICES	FREQUENCY	CHARGING BASIS where not included in the Services plus VAT
<ul style="list-style-type: none"> Licence to sublet if required by the lease regulations 	As required	£60
<ul style="list-style-type: none"> Providing specifications, and obtaining tenders including meeting contractors on site. For works exceeding the consultation threshold 	As required	Contracts up to £5,000 fee = £400 From £5,001 to £10,000 fee = £600 From £10,001 to £20,000 fee = £900 £20,001 up to £30,000 fee = £1,500
<ul style="list-style-type: none"> Supervising major works 	As required	£30 per hour (min charge 1 hour)
<ul style="list-style-type: none"> S20 consultations. 	As required	Fixed charge £600.00 plus £30 per unit
<ul style="list-style-type: none"> Advising and providing information on the transfer of leases and or pre-contract enquiries. 	As required	£180.00 payable by the lessee additional enquiries £25.00 each
<ul style="list-style-type: none"> Administrative/handling requests for any necessary approvals, lease extensions and variations. 	As required	£90
<ul style="list-style-type: none"> Dealing with any major insurance claims where Arko arrange the insurance 	As required	Covered by commissions received (12.5%)
<ul style="list-style-type: none"> Dealing with any major insurance claims where Arko do not arrange the insurance 	As required	£50.00 per hour
<ul style="list-style-type: none"> Supplying additional copies of the accounts and other documents. 	As requested	£5 discretional
<ul style="list-style-type: none"> Dealing with requests for improvements or alterations by leaseholders and related party wall matters 	As requested	£50 per hour
<ul style="list-style-type: none"> Legal recovery of unpaid service charges or ground rents. All work in connection with breach of lease with leases including instructing solicitors and preparing for attending Court/Tribunal. 	As required	Director - £100 per hour Admin staff £30 per hour
<ul style="list-style-type: none"> Administration charge for reminders sent in relation to unpaid service charge and ground rent 	As required	£25.00 per reminder 1st reminder free of charge
<ul style="list-style-type: none"> Tribunal/Court attendance by a senior member of staff i.e. A Director or Manager 	As requested	£150 for the first hour and £100 per hour per attendance Plus travel and accommodation expenses
<ul style="list-style-type: none"> Company Secretarial Services:- Acting as Company Secretary to the Client Issuing membership or share certificates Secretary for minute taking 	As requested	£200 per annum to act as Company Secretary £30 per certificate £30 per hour for secretary to take minutes
<ul style="list-style-type: none"> Holding meetings with residents out of hours 	As requested	£50 for first hour, £30 thereafter
<ul style="list-style-type: none"> Out of hours visits to the property required in emergency. Please note that normal working hours are between 9am and 5pm Monday to Friday, any time a visit is requested out of these hours on the emergency number provided it will be charged at the rate listed. Travel time is not included and is charged for. 	As required	£90 call out and £30 per hour thereafter
<ul style="list-style-type: none"> Fees of specialist advisers. Including financial and legal advisers 	As required	Disbursement cost
<ul style="list-style-type: none"> Providing any form of services to the Client over and above this Management Agency agreement in relation to the any legal matter including exercise by the lessees of Enfranchisement or the Right to Manage and service charge recovery. 	As required	£100.00 per hour

<ul style="list-style-type: none"> • Answering of queries from the lessees where excess work arises from the unreasonable expectations of those lessees. 	As required	£50 per hour
<ul style="list-style-type: none"> • All costs and expenses incurred in connection with the recovery of overdue service charges including surveyors, solicitors, Barristers or any other professional services reasonably required. 	As arising	£100 per hour plus disbursement costs
<ul style="list-style-type: none"> • All surveyors' fees in connection with the management or maintenance of the property. 	As arising	Disbursement cost
<ul style="list-style-type: none"> • Venue Hire for meetings 	As required	At disbursement costs