



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

Case Reference : LON/00AP/LAM/2016/0011

Property : 188 Albert Road, London N22 7AH

Applicant : Residential Management Group Ltd

Respondents : Dr A Sinclair and Mr M Graham,
joint freeholders of the Property
and leaseholders of Flat 6

In attendance : Ms Minhas, Mr Abiade and Mr
Ullam of Residential Management
Group Ltd and Dr A Sinclair and
Mr M Graham

Type of Application : Variation of Order for the
Appointment of a Manager

Tribunal Members : Judge P Korn
Ms S Coughlin

**Date and venue of
Hearing** : 14th July 2016 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 20th July 2016

DECISION

Decision of the Tribunal

The Order for the Appointment of a Manager is hereby varied as set out in paragraph 19 below.

Introduction

1. On 22nd July 2014 the Tribunal made an order (“**the Order**”) appointing Mr James McCaghy of Residential Management Group Ltd as manager of the Property for a period of 3 years. Mr McCaghy has now resigned from his position at Residential Management Group and it appears that he is either unable or unwilling to continue as manager of the Property.
2. The Applicant is now applying pursuant to clause 24(9) of the Landlord and Tenant Act 1987 for the Order to be varied by (a) appointing Mr Terna Ullam of Residential Management Group in place of Mr McCaghy and (b) extending the duration of the appointment to 3 years after the date of the variation if agreed.
3. The Respondents support this application and none of the other leaseholders oppose it.
4. The Applicant has provided brief statements as to Mr McCaghy’s achievements to date and as to Mr Ullam’s future management plan. It has also supplied a copy of its professional indemnity policy, details of Mr Ullam’s experience and confirmation that Mr Ullam will accept the appointment and will comply with the RICS Code of Practice if appointed.

Applicant’s comments

5. Ms Minhas explained that the present manager, Mr McCaghy, had left Residential Management Group and was effectively not able to continue as the manager of the Property. Mr Ullam was available and willing to take over as manager.
6. It was accepted by both parties that Mr McCaghy’s progress in dealing with the problems at the Property had not been as quick as might have been hoped. There were some initial difficulties at the original handover in obtaining information and documentation, and initially there were also difficulties in getting money out of leaseholders. However, things were going much more smoothly now.
7. In order for the proposed new manager to organise the works that are needed to the Property and to get the management of the Property onto a firm footing the Applicant felt that it would be appropriate to appoint

him for a further 3 years from the date of the variation of the Order if agreed.

Respondents' comments

8. The Respondents were fully supportive of Mr Ullam as the proposed new manager and of the proposed extension of the appointment. In fact, they would prefer him to be appointed for longer. In their view the arrangements were working very well, and one big advantage from their perspective was that a manager was not seen as being biased in favour of the freeholders, and therefore the leaseholders as a whole were more likely to respect the manager's decisions and requests as being unbiased.

The proposed manager

9. Mr Ullam said that he had not previously been appointed as a manager by a tribunal. He gave details of his experience in managing similar properties, and the Tribunal asked him a series of questions to establish whether he would be a suitable manager. He talked the Tribunal through his proposals for work to the Property and his analysis as to what breaches of covenant there had been under the various leases.
10. Mr Ullam said that he knew the Property reasonably well, and he would be inheriting Mr McCaghy's assistant – Mr Abiade – who was very familiar with the Property. He would have the support of in-house lawyers at Residential Management Group and various other internal support services, including a 24 hour emergency service.
11. The Tribunal noted, in passing, what appeared to be an unusually high excess on Residential Management Group's professional indemnity cover policy, and Mr Ullam and Ms Minhas confirmed that they would look into this.

Relevant statutory provisions

12. Landlord and Tenant Act 1987

Section 24

(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... .*

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

Tribunal's analysis

13. We note that Mr McCaghy is effectively no longer available to manage the Property. In the circumstances, it would seem to be in the joint interests of the freeholders and the leaseholders for the vacuum to be filled by someone else and for that to happen as soon as possible.
14. Although there were initial handover problems when Mr McCaghy was first appointed, the Applicant and the Respondents are in agreement that the appointment of a manager has been a positive development, and there is no evidence before us that the other leaseholders disagree with this proposition. Likewise, the Applicant and the Respondents are also in agreement that Mr Ullam is a suitable person to be appointed in place of Mr McCaghy, and again there is no evidence before us that the other leaseholders disagree.
15. We found that Mr Ullam came across well when questioned about his experience and his approach. We note that his instincts are generally to take a conciliatory approach to conflict, but we anticipate that he will be able to take a firmer approach where necessary.
16. As regards progress during Mr McCaghy's tenure, this seems to have been relatively modest, but we accept the explanation given for this.
17. The Respondents have expressed an interest in Mr Ullam being appointed for more than 3 years, but we do not consider this to be appropriate. The purpose of appointing or extending the appointment of a manager is not simply to enable a property owner to avoid the responsibility of managing the property himself or herself (or of employing managing agents), and the Applicant itself has not requested more than 3 years. In our view 3 years is an appropriate amount of time in this case. It should enable Mr Ullam to get properly on top of everything and then all parties can take stock at that stage to work out the best way forward from there.
18. We are satisfied that the appointment of Mr Ullam in place of Mr McCaghy and an extension of the duration of his appointment to a period expiring 3 years after the date of our decision would be positive steps forward in the circumstances and will not result in a recurrence of the circumstances which led to the original order being made. We are also satisfied that it is just and convenient in all the circumstances to vary the order in the manner requested by the Applicant.
19. Accordingly, the Order is hereby varied as follows:-

- Mr Terna Ullam to become the Manager in place of Mr James McCaghy; and
- the period of the order to be extended so as to expire on 19th July 2019.

For the avoidance of doubt and based on the Applicant's own written submissions, references to the first, second and third years in clause 4 of the Order shall now be construed as if the starting date of the Order were the date of this decision. Therefore, the fee referred to in clause 4.1 is for the year commencing on the date of this decision and the fee referred to in clause 4.2 is for the two subsequent years.

Cost applications

20. There were no cost applications.

Name: Judge P Korn

Date: 20th July 2016

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.