



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

Case Reference : **BIR/OOAW/LVM/2018/0002**

Property : **Flat 4, 1 Palace Gate, London W8 5LS**

Applicant : **Pavel Mikhailovich Teplukin**

Representative : **Irwin Mitchell solicitors**

Respondent : **Michael Maunder Taylor**

Representative : **Gisby Harrison solicitors**

Type of Application : **Section 24 Landlord and Tenant Act 1987**

Tribunal : **Judge D Jackson**

Date of Decision : **1 March 2019**

DECISION

Background

1. On 26th July 2018 the Respondent, Michael Maunder Taylor, was appointed as Manager of 1 Palace Gate, London W8 5LS under section 24(1) of the Landlord and Tenant Act 1987 (“the Act”).
2. The Applicant is the leaseholder of Flat 4 at 1 Palace Gate.
3. By application dated 23rd November 2018 the Applicant seeks an order that pursuant to paragraph 1(c) of the Management Order that the Respondent adjusts the Applicant’s service charge account to give credit for overpayments totalling £46,855.55 in respect of service charge accounting periods 2013/14, 2014/15 and 2015/16.
4. The Tribunal is being asked to determine whether the Respondent is responsible for crediting the Applicant’s service charge account with overpayments (for accounting periods 2013/14, 2014/15 and 2015/16) made prior to the Respondent’s appointment as Manager (26th July 2018).
5. This application has been transferred to Midlands Region from London as the Management Order referred was made by Members of the Midland Region.
6. On 13th December 2018 I issued Directions in relation to the proposed striking out of this application under Rule 9(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 where the Tribunal considers there is no reasonable prospect of the applicant’s case succeeding.
7. I have considered the written submissions of both parties. Neither party has requested an oral hearing. As determination of this application does not involve any contested issues of fact I am able to make my determination without an oral hearing.

The Applicant’s Submissions

8. The Applicant relies on detailed submissions dated 10th January 2019 prepared by Rahul Varma of counsel who most helpfully identifies three reasons supporting the claim that the Respondent is responsible for applying any service charge credit.

(1) The nature of the Application

9. The Applicant is asking for an Order that the Respondent manager conduct an accounting reconciliation and if that process reveals a surplus in the Applicant’s favour to credit the Applicant’s balance. **Kol and others v Bowering** [2015] UKUT 530 (LC) is authority for the proposition that such an order is within the jurisdiction of the Tribunal.
10. Counsel for the Applicant seeks to distinguish **Maunder-Taylor v Blaquiére** [2002] EWCA Civ 1633 on the basis that the relief sought here falls within the ordinary management of the service charge account.

(2) The terms of the Management Order

11. In his application the Applicant relies on paragraph 1(c) of the Management Order which gives to the Manager:

“The power and the duty to carry out the obligations of the Landlord contained in the Leases”

12. In the Applicant's Submissions Counsel also relies on:

Paragraph 1(a) "To receive all service charges, interest and other money payable under the Leases and any arrears thereunder...."

Paragraph 1(f) "The power in his own name or on behalf of the Landlord to bring, defend, or continue any legal action or other legal proceedings in connection with the Leases including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Landlord".

Paragraph 1 (g) "The power to commence proceedings or such other enforcement action as necessary to recover sums due from the Landlord pursuant to paragraph 1(c) of this Order"

Paragraph 1(j) "The power to rank and claim in bankruptcy, insolvency, sequestration or liquidation of the Landlord or any Lessee owing sums of money under his Lease"

Paragraph 1 (k) "The power to borrow all sums reasonably required by the Manger for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears or shortfalls of service charge contributions due from the lessees or any sums due from the Landlord, such borrowing to be secured if necessary on the interest of the defaulting party (i.e. on the leasehold interest of any defaulting Lessee and the freehold of the Premises in respect of the Landlord) ..."

13. It is the Applicant's case that these powers to pursue the Landlord and in default borrow against its property can only relate to matters that pre-date the Management Order. Accordingly, if the Landlord cannot be pursued by the Respondent for any matter predating his appointment then the powers at paragraphs 1(g), (k) and (j) of the Management Order are wholly otiose.

(3) The Lease

14. Finally, the Applicant also relies on paragraph 2(d) of Part 1 of the Third Schedule of the Lease:

"If the Service Rent as so certified exceeds or falls short of the Interim Building Charge then immediately upon service of such copy the excess shall be paid to the Lessor or the shortfall shall be credited to the Lessee by the Lessor for the succeeding Accounting Period (as the case may require)."

15. The Applicant submits that, if there is a surplus in the Applicant's favour, the combined effect of the Lease and the Management Order is to oblige the Respondent to immediately credit the Applicants service charge account.

The Respondent's Submissions

16. The Respondent relies on Submissions dated 24th January 2019 prepared by its solicitors.
17. Prior to the Management Order 1 Palace Gate was managed by Mr Maloney of My Home Surveyor. Exhibit A to the Respondent's Submission is a copy of the reconciliation balance sheet prepared by Mr Maloney. In email correspondence at Exhibit B Mr Maloney confirmed that he does not hold any funds on behalf of the Landlord and none were transferred (see email of 16th August 2018 Maloney to Maunder-Taylor "we hold no funds at all").
18. The Respondent's case is that none of the provisions of the Management Order provide for the Respondent to carry out a retrospective reconciliation of historic service charge accounts. Further it is argued that as the reconciliation provided by Mr Maloney did not show any funds being held by the Landlord the Respondent is not required to recover historic service charge overpayments from the Landlord.
19. In relation to the Lease the Respondent is not the manager of the Landlord's obligations under the Lease and is under no duty to ascertain or give credit for any surplus under paragraph 2 (d) of Part 1 of the Third Schedule.
20. To the extent that the Manager has any discretion to pursue the Landlord the Respondent points out that receivers have now been appointed in relation to a legal charge secured against the Landlord's interest. In any event there is nothing to prevent the Applicant pursuing the Landlord directly.
21. Finally, the Respondent argues that the application is in fact a request to vary the Management Order to include a duty to investigate the Landlord's historic accounts.

Deliberation

22. At paragraph 41 of **Blaquiere** Aldous LJ said:

"In my view the purpose of Part II of the 1987 Act is to provide a scheme for the appointment of a manager who will carry out the functions required by the court. That manager carries out those functions in his own right as a court-appointed official. He is not appointed as the manager of the landlord or even of the landlord's obligations under the lease. That being so, Mr Maunder Taylor was a court-appointed manager appointed to carry out those duties required by the order appointing him. He did not carry on the business of Guernsey. His claims were made in his capacity as manager."

23. Further at paragraph 50 Longmore LJ said:

"It is clear to my mind that Parliament intended that a manager should, when appointed pursuant to section 24(1) of the Act, come in with a clean sheet and be able to collect service charges due from the tenants and use the money so obtained for repair of the premises. It would make a nonsense of the legislation if any or all of the tenants could set off, against that claim for service charges, claims that they might have against the landlord. Most tenants would have such claims. Some of those claims will have accrued before the appointment of their manager; other claims may be for continuing breaches and thus continue to accrue after the manager's appointment. Mr Blaquiere elected to confine his claims in the present litigation to claims in the latter category. But the logic of his argument applies to claims in both categories. In my judgment, the use of such claims to prevent service charges being

paid to the manager would be an attempt to thwart the plain legislative intent displayed in the relevant sections of Part II of the 1987 Act.”

24. The Applicant relies on **Kol**. At paragraph 21 HHJ Gerald said:

“It will be apparent that the actual point upon which I have to decide this appeal is very narrow. Namely whether or not the F-tT has jurisdiction to order a manager or indeed a receiver appointed under section 24 of the 1987 Act to pay any surplus monies over to the tenants or indeed any other suitable or appropriate party. Implicit within or underlying that decision is a question as to whether or not the F-tT has jurisdiction to determine any disputes which may arise between any of the material parties, usually tenants and the manager or receiver, and that is of course part of a wider question of the nature and extent of the jurisdiction of the F-tT to control and give directions to managers or receivers which it has appointed.”

25. Further at paragraph 37 HHJ Gerald held:

“In short, I allow this appeal and hold that the F-tT has power to determine all matters relating to the discharge by the tribunal appointed receiver-manager of his or her functions including, but not limited, to the provision of all, including final accounts and the payment of any surplus”

26. The issue before me, succinctly stated by Rahul Varma at paragraph 16 of the Applicant’s Submissions, is that the Tribunal is being asked to determine whether the Respondent is responsible for crediting the Applicant’s service charge with any overpayments made prior to the Respondent’s appointment. It is argued that this is “as envisaged in **Kol**”. I do not agree. **Kol** concerned a very narrow point. It is authority for the proposition that the Tribunal has jurisdiction to determine disputes between tenants and the manager. In particular **Kol** concerns “full and proper accounting by [the manager] of the financial aspects of [his] tenure as manager and receiver over the [...] period as well [as] final determination of any challenges thereto” (paragraph 11 of **Kol**).
27. HHJ Gerald was concerned with determination of the final accounts, repayment of any surplus thereby identified and “completion of the management and resolution of any disputes” (see paragraph 29 of **Kol**). The manager “must remain accountable until the whole matter has been concluded” (paragraph 28 of **Kol**).
28. None of this assists the Applicant. This is not an application relating to the failure of a manager to properly conclude his appointment by way of preparation of final accounts. Rather the Applicant seeks to require the Respondent to conduct an accounting reconciliation for the service charge accounts in relation to 2013/14, 2014/15 and 2015/16 all of which substantially predate the Respondent’s appointment as Manager on 26th July 2018. I can see nothing in **Kol** which would require the Respondent to carry out an historic accounting reconciliation of that sort.
29. The application dated 23rd November 2018 offends against the principle in **Blaquiere** that the manager should “come in with a clean sheet”. The Respondent does not carry on the business of the Landlord and “He is not appointed as the manager of the Landlord or even of the Landlord’s obligations under the Lease”.
30. I therefore find that submission (1) *The nature of the Application* fails because the order sought is not one which, on my analysis, is anywhere supported by the decision of HHJ Gerald in **Kol** which was concerned with the narrow issue of the orderly conclusion of the tenure of a manager.

31. I am further supported in my findings that the manager should “come in with a clean sheet” by the facts before me namely that Respondent has never held any funds on behalf of the Landlord as none were transferred by the previous manager (“we hold no funds at all”).
32. Submission (2) *The terms of the Management Order* also fails. I agree with the Respondent’s Submissions that none of the Provisions of the Management Order provide for the Respondent to carry out a retrospective reconciliation of historic service charge accounts. The power to borrow contained with the Management Order is specifically referred to in **Blaquiere** at paragraph 43: “Further, it must be possible for the manager to obtain funds necessary to manage the property even though the tenants, or some of them, had a right to refuse further payment e.g. where they have paid and the landlord has absconded with the money”. I find no support for the proposition that the Manager is under a positive duty to pursue the Landlord in relation to any surplus service charges not handed over on commencement of management either in the Management Order itself or in **Blaquiere**.
33. Submission (3) *The Lease* seeks to argue that the strictures of **Blaquiere** do not frustrate the application because paragraph 1 (c) of the Management Order gives the Respondent “The power and duty to carry out the obligations of the Landlord contained in the Leases”. However, paragraph 1 of the Management Order when read in full provides the Respondent “is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the [Landlord]”. I agree with the Respondent’s Submissions that paragraph 1(c) does not give rise to a duty or power to retrospectively review service charge accounts in relation to historic service charge years which predate the Management Order. For that reason, the principle in **Blaquiere** applies – the manager carries out his functions in his own right as a Tribunal appointee, he is not the manager of the Landlord’s obligations under the Lease.

Decision

34. I find that there is no reasonable prospect of the applicant’s case, or any part of it, succeeding.
35. These proceedings are struck out under Rule 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends this written Decision to the party seeking permission.