



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

Case reference : CHI/45UH/LAM/2020/0007

Property : Flats 1-20 Hampton Court, Brighton Road,
Worthing, West Sussex BN11 2EF

Applicant : Kirkland Investment Management Limited

Representative : Bate & Albon Solicitors

Respondent : Rushcavern Limited

Representative : Brethertons LLP

Type of application : Appointment of Manager Section 24 of the
Landlord and Tenant Act 1987 (1987 Act)

Tribunal member(s) : Judge Tildesley OBE
Mr W Gater FRICS

Venue : 4 August 2020
Havant Justice Centre
By remote hearing using Full Video Hearing
Platform

Date of decision : 7 September 2020

**MANAGEMENT ORDER FINAL
17 September 2020 Version**

INTERPRETATION

IN THIS ORDER

“The Property” means the flats and other premises known as known as Flats 1 to 20 (inclusive), Hampton Court, Brighton Road, Worthing (BN11 2EF) and registered at HM Land Registry under title number WSX1600 and shall include the building, flats, parking spaces, utility room, common areas, and all other parts of the property.

“The Landlord” shall mean Rushcavern Limited or their successors in title to the reversion immediately expectant upon the Leases.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and "Tenant" shall be construed accordingly.

“The Leases” shall mean all leases and/or underleases of Flats in the Property

“The Manager” means Mr Gary Pickard of Jacksons, 193 Church Road, Hove, East Sussex.

“The Functions” means any functions in connection with the management of the Property including any obligations and powers of the Landlord under the Leases.

It IS ORDERED that

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr Gary Pickard of Jacksons is appointed as Manager of the Property.
2. The Order shall continue for a period of three years from 5 October 2020. If any party or parties interested wish to apply for an extension of the Order they are encouraged to do so at least three months before the Order expires.
3. The Manager shall manage the Property in accordance with
 - a. The directions and schedule of functions and services attached to this Order.
 - b. Save where modified by this Order, the obligations of the Landlord in the leases by which the flats, parking spaces and utility room at the Property are demised ("the Leases") in

particular with regard to repair, decoration, provision of services and insurance of the Property.

- c. The duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development act 1993.
- d. The provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.

4. The Manager shall be entitled to exercise the following powers:

- a. The power to make, vary or withdraw management rules or regulations in accordance with restriction 1/17 in the First Schedule to the Leases.
- b. The power to delegate to colleagues at Jacksons, appoint accountants, architects, solicitors, surveyors and other professionally qualified persons as may be reasonably required to assist him in the performance of his functions and pay the reasonable fees of those appointed.
- c. The power to appoint any agent or servant to carry out such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- d. The power to open and operate client bank accounts in relation to his management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to section 42 of the 1987 Act and to keep an account or accounts established for that purpose of monies received on account of the reserve fund;
- e. The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the parties to these proceedings or of any lessee owing monies under the Leases;
- f. The power to insure the Property as a cost to the service charge fund for the Property; and
- g. The power to raise a reserve fund for the Property.

5. The Manager shall not be personally liable to make any payments due from the Tenants at the Property but shall instead be entitled to demand and collect sums from the Tenants for the purposes of making such payments.
6. The Manager shall register the Order against the Landlord's registered title as a restriction under the Land Registration Act 2002 or any subsequent Act. The wording of the restriction shall be:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration [or their conveyancer] that the provisions of paragraph 11 of the Order of the Tribunal dated 7 September 2020 have been complied with.”

DIRECTIONS

7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
8. Where there is a conflict between the provisions of the Management Order and the lease, the provisions of the Management Order take precedence.
9. That the Landlord shall give all reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of their said rights, duties or powers by due process of law. For the avoidance of doubt this shall not prevent the Landlord from bringing legal proceedings (or any other due process of law) should the Manager act unlawfully and/or negligently and/or contrary to the powers and duties set out in this Order.
10. That the Landlord allows the Manager and his employees and agents access to all parts of the Property in order that the Manager might conveniently perform his functions and duties and exercise his powers under this Management Order.
11. On any disposition [other than a charge] of the landlord's estate in the property registered under title no WSX1600, the landlord will procure from the disponee of the property, a direct covenant with the Manager,

that the disponent will (a) comply with the terms of this order and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from its disponent.

12. The Manager shall act fairly and impartially in his dealings in respect of the Property.
13. The Manager shall in the performance of his functions under this Order exercise the 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 the said functions.
14. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1 million and shall provide copies of the certificate of liability insurance to the Tribunal and upon request being made by any Tenant of all or part of the Property, and the Landlord.
15. That no later than four weeks after the date of this Order the Landlord shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Landlord shall transfer to the Manager all the accounts, books, records and funds relating to the Service Charge (including reserve fund) and Insurance of the Property.
16. That no later than 28 days after the date of this order the Landlord shall supply the Manager with a closing service charge account for the Property.
17. The Manager is entitled to such disclosure of documents as held by the respondent, the Landlord's advisers or agents as is reasonably required for the proper management of the Property.
18. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon the date of the appointment become rights and liabilities of the Manager subject to the right of the Manager to decide in his absolute discretion which of any contracts he will assume the rights and liabilities and such decision shall be communicated in writing to the relevant parties within 56 days from the date this order.
19. The Manager shall be entitled to remuneration, which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the property in accordance with the Schedule of Functions and Services attached.

20. By no later than six months from the date of appointment the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date providing a copy to the Tenants of the Property and the Landlord at the same time. The Manager shall provide a progress report every twelve months thereafter.
21. Within 56 days of the conclusion of the Management Order the Manager shall prepare and submit a brief written report for the Tribunal on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The Manager shall also serve copies of the reports and accounts on the Landlord, and Tenants who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter the Manager shall reimburse any unexpended monies to the paying parties, or, if it be the case any new Tribunal appointed manager or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
22. The Manager may apply to the First-Tier Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
 - a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;
 - c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.

SCHEDULE OF FUNCTIONS AND SERVICES

The Manager shall undertake all of the Landlord's management functions contained in the leases including the Landlord's power to grant prospective and retrospective grants but not the collection of ground rents and dealing with leasehold extensions and enfranchisement. The Manger shall also undertake the management functions listed below:

Insurance

1. Maintain appropriate building insurance for the Property.
2. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

3. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge demands to the Tenants.
4. Set, demand and collect service charges, insurance premiums and any other monies due under the Leases (other than ground rent).
5. Raise advance and ad hoc service charge demands outside the terms of the Leases, which shall be payable within 21 days of the date of the demands.
6. Collect from the Tenants such sums as he shall specify at his discretion to be fair and reasonable reserve fund contributions as reasonable provision for costs, expenses and outgoings that are not of a recurring nature.
7. Instruct solicitors to recover unpaid service charges, insurance premiums and any other monies due from the Leaseholders (other than ground rent).
8. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.
9. The Manager is not required to investigate the service charges or the accounting position for any period prior to his appointment.

Accounts

10. Prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts to be certified by the external auditor, if required by the Manager.
11. Maintain efficient records and books of account, which are open to inspection by the Landlord and the Tenants. Upon request, produce for inspection, receipts or other evidence of expenditure.
12. Maintain on trust an interest bearing account at such bank or building society, as the Manager shall from time to time decide, into which service charge contributions, Insurance and all other monies arising under the leases shall be paid.
13. All monies collected will be accounted for in accordance with any

relevant Association of Residential Managing Agents (“ARMA) Code of Practice.

Repair and Maintenance

14. 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 Property which includes compliance with all regulatory and statutory requirements and in the interests of good estate management.
15. The setting up and implementation of a planned maintenance programme for 5 years to allow for the periodic redecoration and repair of the exterior and interior common parts of the property.
16. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Property including preparing a specification of works and obtaining competitive tenders.
17. To liaise with the relevant statutory bodies responsible for buildings.
18. To ensure that the Landlord, and the Tenants are consulted on any proposed works to the Property and to give proper regard to their views. Copies of programmes of planned and major works should be sent to the Landlord and Tenants.
19. The Manager has the power to incur expenditure in respect of the provision of all necessary health and safety equipment and in complying with all regulatory and statutory requirements.
20. Instruct a building surveyor in connection with the matters to do with the maintenance of the property.

Management rules and regulations

21. The Manager shall be entitled to make, vary or withdraw management rules or regulations in accordance with restriction 1/17 in the First Schedule to the Leases.

Right to Bring Legal Proceedings

22. The Manager shall be entitled 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 his appointment.

23. 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 property and for which these proceedings shall include any application under Part 7 or Part 8 of the Civil Procedure Rules for judgment in the County Court or High Court including a charging Order or any application made to the First-tier Tribunal under section 27A of the Landlord and Tenant Act 1985 or section 168(4) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 and shall further include any appeal against any decision made in any such proceedings.
24. The Manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT for taking proceedings including any fees payable to solicitors, accountant, counsel or expert on a full indemnity basis. If any of those costs are recovered direct from the defaulting Tenant or Landlord those costs should be refunded to the service charge account.
25. The Manager shall be entitled to an indemnity for any adverse costs order made against him within proceedings, from the service charge account.
26. The Manager has the right to instruct solicitors and counsel and other professionals for the taking of legal proceedings.

Fees

27. For the duration of this order the Manager shall be entitled to charge the following fees:
 - (a) A one-off set up fee of £2,000 (Two Thousand Pounds) plus VAT to cover 20 hours work, plus an hourly rate of £100 plus VAT for any additional time reasonably required to complete the following tasks:
 - (i) Initial inspections of the Property
 - (ii) Consideration of documents
 - (iii) Preparation of proposed management plan
 - (b) An annual management fee of £5,000 (Five Thousand Pounds) plus VAT and disbursements for the basic management duties listed at (i)-(x) below ("the Standard Management Fee"):
 - (i) Collection of service charges

- (ii) Payment of all invoices
- (iii) Maintaining service charge income and expenditure details for handover to an accountant to produce certified year end accounts
- (iv) Managing day to day repair issues, including arranging contractors to carry out repairs with the costs of repairs to be paid for from the Service Charge Fund
- (v) Providing a telephone number for emergency out-of- hours calls of a maintenance nature
- (vi) 4 visits to the Property per annum to carry out on- site inspections
- (vii) Communicating with the lessees but not beyond reasonable correspondence
- (viii) Providing a point of contact for maintenance issues
- (ix) Annual reporting to the applicant and the respondents, in their capacity as the freeholders of the Property
- (x) Oversight of health and safety compliance.

28. The Standard Management Fees may be increased annually, on the anniversary of the order, in line with inflation.
29. Additional fees at the rate of 5% plus VAT and disbursements on any works over £2,738 (Two Thousand, Seven Hundred and Thirty-Eight Pounds) to include, where required, the preparation and service of any notices pursuant to section 20 of the Landlord and Tenant Act 1985 (as amended). For the avoidance of doubt these fees are payable in addition to costs of any architects, surveyors or other appropriate persons for the preparation of specifications and/or schedules of works, including the obtaining of tenders by them and contract administration.
30. An additional charge shall be made for the arrangement, claims handling and brokerage of insurances for the Property, public liability, engineering and employee cover on the basis of a fee of 20% of the insurance premium if the insurance is brokered and handled by brokers for whom Jacksons are authorised representatives in accordance with the requirements of the Financial Conduct Authority.
31. A reasonable additional charge for dealing with solicitors' enquiries on sales and transfers of the flats at the Property, payable by the outgoing lessee.

32. Tasks which fall outside of set-up requirements or the Standard Management Fee are to be charged separately using the following hourly rates; £100 plus VAT for the Manager or a principal of Jacksons, £75 plus VAT for an associate at Jacksons and £60 plus VAT for property managers at Jacksons. The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting lessee of £30 plus VAT for each letter written. The registration of dispositions shall give rise to a reasonable charge to be levied by the Manager's nominated solicitors.
33. The fees at clause 7.6 above may be increased annually on the anniversary of the order inline with inflation.

Complaints procedure

34. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of ARMA.