



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

Case reference : LON/00AN/LAM/2020/0002

**HMCTS code
(paper, video,
audio)** : V: CVPREMOTE (Video Hearing)

Property : LYTTON HOUSE, 31 BULWER STREET,
LONDON, W12 8AS

Applicants : (1) SIMON GRESSWELL (Flat 3)
(2) THERESA BREWER (Flat 3)
(3) PRATHEEBA PATMANATHAN
(Flat 4)
(4) DENNIS TOWERS (Flat 5)
(5) ANISHA PATEL (Flat 6)
(6) MAZEN FREIGE (Flat 7)

Representative : Mr MAZEN FREIGE

Respondents : (1) SIMON HEWWITT
(2) JANE BRABYN

Representative :

Type of application : Appointment of Manager, section 24(1)
Landlord and Tenant Act 1987

Tribunal members : JUDGE SHAW
Mr S MASON BSc FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 20th October 2020

DECISION

Covid-19 pandemic: description of hearing

This has been a remote (video) hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held

because it was not practicable and all issues could be determined in a remote hearing, by video. The documents to which the Tribunal was referred were in a bundle of 135 pages, the contents of which have noted. The order made is described at the end of these reasons.

Decision of the tribunal

1. In accordance with section 24(1) Landlord and Tenant Act 1987 **Ms ANNA SANHEDRIN WIECZKOWSKI of BRACKENBURY PROPERTY MANAGEMENT LIMITED** ('the Manager') is appointed as manager of the property at **LYTTON HOUSE, 31 BULWER STREET, LONDON W12 8AS** ('the Property').
2. The order shall continue for a period of **3 (THREE)** years from **29th OCTOBER 2020**. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('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 Leasehold Reform Housing and Urban Development Act 1993.
4. 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.
5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges

Tribunal's Reasons for Decision

1. This application was received by the Tribunal on 21st January 2020. It is an application for the appointment of a Manager of the property, pursuant to section 24 of the Landlord and Tenant Act 1987. Directions were given in the matter by the Tribunal on 25th February at an oral hearing attended by the applicants (with exception of Ms Brewer), and the first-named Respondent (who attended with a McKenzie Friend). The parties were required, in the usual

way to serve Statements of Case. The Respondents failed to serve their Statement of Case by 31st March 2020, as stipulated, and in Amended Directions dated 26th August, it was provided that: *“Before they can take any part in the proceedings, they must write to the tribunal explaining their non-compliance.”* They failed also to comply with that Direction.

2. A hearing of the application took place on 15th October, attended by Mr Mazen, Mr Towers, Mr Gresswell, and the proposed manager, Ms Anna Sanhedrin Wieczkowski attended for the Applicants. The Respondents failed to attend. The brief history of the matter set out below emanates from the Applicants, both in the form of the helpful written statements submitted by all of them, and the documents in the hearing bundle. So far as can be ascertained, the Respondents have played no part in the proceedings, save for the attendance at the first Directions Hearing mentioned above.
3. The 6 Applicants in this case are leaseholders of 5 of the flats at the property. The property is a late Victorian purpose built block of 8 flats. The remaining 3 flats are owned on long leases by the first-named Respondent (hereinafter “Mr Hewitt”), who, together with his former partner (the second-named Respondent) also owns the freehold of the property. The Tribunal was informed that the Respondents have now separated, and Ms Brabyn no longer has any involvement with the Property, although she remains a joint registered owner of the freehold.
2. Until 2015, the property was satisfactorily managed by professional agents. In that year, for reasons unexplained, and without reference to any of the leaseholders, Mr Hewitt dismissed the professional agents, and assumed management of the property himself. The assumption of responsibility seems to have been conceptual only, because on the account of all of the Applicants, Mr Hewitt has done little or nothing to maintain the property ever since. The result has been that, over the past 5 years, the condition of the property has thoroughly deteriorated and there are now multiple aspects of disrepair, some of them requiring urgent attention. In addition, and worryingly, despite repeated requests, the leaseholders have not been provided with a sight of the current insurance certificate, and there are therefore concerns as to whether the property is properly insured.
4. The precise details of the breaches of covenant and other omissions by the freeholder, have been well-tabulated in the section 22 Notice, as appearing at pages 1-8 of the bundle. No purpose would be served by repeating the whole of that material in this Decision, but, by way of example, there has been repeated water penetration through a chimney and outside wall, which has continued for more than 3 years. Flats 5 and 7 have been particularly affected, and Mr Mazen, the owner of flat 7, in frustration at the lack of action by Mr Hewitt, commissioned (and paid for) a report by Mr Richard Hartley FRICS, who inspected on 9th April 2019, and reported on 16th April. He identified the work which was required in a Schedule which appears at pages 95/96 of the bundle. Despite meeting with Mr Hartley at the property and being supplied with a copy of the report, Schedule and photographs in the bundle, Mr Hewitt did nothing to remedy the disrepair – and the leakages continue to date.

5. The internal common parts are shabby and poorly maintained, there is cracking in the front elevation, and in the balcony wall of Flat 5, the window frames are rotting, and no external decoration or maintenance has taken place since 2005. There is a fuse-box in the communal hallway, with only masking tape around individual fuses, and no fireproof enclosure. The Applicants are not aware of any recent fire risk assessment, or maintenance of fire extinguishers.
6. There are numerous breaches of the RICS Management Code. Mr Hewitt has failed to send out service charge or ground rent demands since 2015. He does not respond to communications from the leaseholders, and letters sent (even by recorded delivery) are returned unopened.
- 7.¶ In some respects there is concern about Mr Hewitt, who may not be in good health. The Tribunal was informed that, although he owns the freehold and 3 flats at the property (which are let) he resides in the basement area of the property. This is not an authorised residential unit, is not properly equipped for accommodation, and may present a Health and Safety Hazard.
8. The Tribunal heard nothing from the Respondents, and no documents were submitted on their behalf. The Tribunal heard evidence from each of the Applicants attending, and read the statements of those not in attendance – together with the hearing bundle prepared by the Applicants. The Tribunal found each of the Applicants completely persuasive (indeed restrained) in their evidence, and has no hesitation in accepting their evidence.
9. The Tribunal is satisfied that the Applicants have made out their case, and that a Manager should be appointed. The Tribunal is satisfied on the evidence referred to above that there have been breaches of section 24(2)(a), (ac), and (b) of the Act. The Tribunal considers that it is just and convenient under each of these grounds to make an order, specifically because of the various breaches mentioned, and also generally, given the complete disengagement by Mr Hewitt from management of the property.
10. The Manager proposed by the Applicants was Ms Anna Sanhedrin Wieczkowski, a Director of Brackenbury Property Management Limited. In a sense, Ms Wieczkowski comes with the best possible recommendation, because Mr Gresswell, the joint owner of Flat 3 is an experienced local estate agent, who gave the Tribunal the impression that he had not always had outstandingly good experience with property managers. He nonetheless described Ms Wieczkowski (whose services he uses for clients) as “*Efficient, knowledgeable, practical and reasonably priced.*” He said that he had had “*very positive feedback*” from his clients in respect of her work.
11. The Tribunal interviewed the proposed manager at some length. Although Brackenbury has been trading for only 6 years, she has long experience in the construction industry. The company is IRPM registered, and she has a particular expertise, as a member of the Institute of Occupational Safety and Health. The company has proper Indemnity Insurance (£1,000,000) and maintains separate bank accounts for each property it manages. The company has 45 different properties with which she is involved in West London, some of them very large properties (one a development of 180 flats). Her offices are very

local and she has a tried and tested list of local contractors whose work she trusts. Quite apart from Mr Gresswell's recommendation, the Tribunal independently found Ms Wieczkowski impressive, and although she has not had Tribunal appointments before, the Tribunal was satisfied that she is a suitable person to be appointed as Manager, on the terms, and in accordance with the **Decision of the Tribunal**, as set out above.

Name: JUDGE SHAW

**Date: 20th
OCTOBER
2020**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that she has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondents or the Tribunal.
2. No later than 14 days after the date of this order, the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondents shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondents arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon **29th October 2020** become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondents for the payment of ground rent received by her and shall apply the remaining amounts received by her (other than those representing her fees) in the performance of the Respondents' covenants contained in the said leases.
5. 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.
6. By no later than one year from the date of this order, 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 lessees of the Property and the Respondents at the same time.
7. Within 28 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 report and accounts on the lessor and lessees, who may raise queries on them within 14 days of the date of the report. The Manager shall answer such queries within a further 14 days of the date of request. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment, falling due after the date of commencement of this order, due from the lessees.
- (iii) Demand and collect her own service charge payable by the Respondents (as if they were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondents.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies, falling due after the date of commencement of this order, to the Respondents.
- (v) 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.

Accounts

- (i) Prepare and submit to the Respondents and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) 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.

- (ii) Consider works to be carried out to the Property in the interest of good estate management and make the appropriate recommendations to the Respondents and the lessees.
- (iii) Set up a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

These will be in accordance the documents headed Basic Terms and Specific Terms, used by Brackenbury Property Management Limited, attached to this Decision and Order, and appearing at pages 106-117 of the aforesaid hearing bundle, supplemented in so far as may be necessary by the following provisions:

- (i) Fees for the abovementioned management services will be a basic fee of £300 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 2% of the cost (subject to a maximum fee of £600). This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works for which additional professional fees will be payable. Where the manager undertakes project management services directly a fee of 10% of the cost of the works will be payable.
- (iii) An additional charge, (subject to a maximum of £250) for dealing with solicitors' enquiries on transfer will be made on a time related basis payable by the outgoing lessee.
- (iv) VAT is to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for at the Manager's usual hourly rate, and on a time spent basis or at appropriate rates payable to separately appointed external professional consultants.

Complaints procedure

The Manager shall operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.