



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

Case Reference : CHI/21UG/LAM/2020/0018

Property : Mulberry Court, Devonshire Rd, Bexhill-in-sea, East Sussex TN40 1HG

Applicant : Mr Steven Fletcher

Representative :

Respondent : Star Property Investment & Management Ltd

Representative 2 : Graeme John MIRPM AssocRICs
Godfrey John & partners

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

Tribunal Member(s) : Judge Tildesley OBE
Mr C Davies FRICS
Ms P Gravell

Date of Hearing : 27 April 2021
Havant Justice Centre
Hearing by Means of Cloud Video Platform (CVP)

Date of Decision : 24 May 2021

DECISION

Summary of the Decision

The Tribunal decides that it is not just and convenient to appoint a manager under section 24 of the 1987 Act. The Tribunal dismisses the application.

Background

1. The Applicant seeks an Order appointing a manager to the property in accordance with section 24 of the Landlord and Tenant Act 1987. The Applicant proposed Mr Mark Brockhurst of Brockhurst Property Management Limited as the manager.
2. The Applicant is the long leaseholder for flat 2 Mulberry Court. The Applicant purchased the lease for flat 2 in 2008. The lease is made between Tilebrook Limited of the one part and Marie Rose Love of the other part and dated 24 September 1987. The lease is for a term of 125 years from the 24 June 1987 upon payment of ground rent in the sum of £30 per annum rising to £330 for the remaining 25 years of the lease.
3. Star Property Investment and Management Limited acquired the freehold of the Property in February 2020. Star Property also owned the leaseholds of three residential flats at the Property. Star Property holds a portfolio of commercial and residential properties to the value of around £20M. The Company was established in 2010.
4. Godfrey John & Partners have managed the residential part of the property since 2014. Following the acquisition of the freehold Star Property continued with the engagement of Godfrey John and Partners as the managing agent for the residential part. Star Property valued Godfrey John's knowledge of the property and of the leaseholders. Star Property managed the commercial part of the property.
5. The property is a mid-terrace building located over four floors and is situated close to the centre of Bexhill about 500 metre from the beach.
6. The property was converted around 1987 with commercial premises, a restaurant, on the ground floor and 13 residential flats on the three floors above. There is also a "Coach House" which forms part of the property at the rear.
7. Access to the flats is gained through a common stairway located on Eversley Road at the back of the building. The stairway opens out at each level to steel walkways which lead to the entrance doors of the individual flats.
8. The Applicant originally served section 22 Notices on the previous freeholders, and his application for appointment of manager named the previous freeholders as Respondents. The Applicant asserted that he had not been notified of the proposed sale of the freehold.

9. On 22 January 2021 the Tribunal held a case management hearing and as all the parties were in agreement decided it could proceed with the application against the new freeholder. The Tribunal gave permission for the Applicant to serve a section 22 Notice retrospectively on Star Property, and directed that the application would be heard on 27 April 2021.
10. The Tribunal also directed the Applicant to send the application and directions to the other leaseholders of the property who were required to complete a pro-forma indicating whether they agreed or disagreed with the application.
11. The Applicant attended the hearing on 27 April 2021 in person. Mr Graeme John of Godfrey John represented the Respondent. Ms Vashikeh, Clarke, a Property Manager for the Respondent, and Mr Mark Brockhurst, the proposed manager were also in attendance.
12. The Applicant prepared the bundle of documents for the hearing which included photographs of the property. Pages of the bundle are referred to in [].

The Issue

13. The Applicant contended that the Respondent was in continuous breach of its obligations under the lease. According to the Applicant, the Respondent (1) interfered with the leaseholders' quiet enjoyment of the property; (2) did not keep detailed accounts and send service charge statements; and (3) did not meet its repair and maintenance responsibilities. The Applicant also alleged that the Respondent had not complied with the obligations under the RICS code, namely, the managing agent had no proper complaints procedure, and had failed to keep adequate records relating to service charges. Finally the Applicant relied upon purported failings of the managing agent to justify the existence of other circumstances supporting the making of an order for the appointment of a manager under section 24 of the 1987 Act.
14. Mr John disputed most of the Applicant's allegations made against his firm. Mr John pointed out that the Applicant had not contacted his firm for three years, and that the Applicant owed arrears of service charges presently standing at £19,011.31 [18]. Mr John stated that his firm's ability to manage the property had been constrained by the lack of funding from the previous freeholder and the high service charges arrears owed by three leaseholders. Mr John said that the Respondent since acquiring the freehold was committed to its investment and had financed urgent repairs and maintenance to the property by way of freeholder's loans. Mr John asserted that the majority of the leaseholders at the property were content with the present arrangements for managing the property and did not support the application for the appointment of a manager.

15. The appointment of a manager under section 24 of the 1987 is a remedy of last resort. The effect of such an order is to deprive the landlord of its responsibility to manage the property and to put a manager in place who is answerable to the Tribunal. Under section 24 the Tribunal must be satisfied on the balance of probabilities that the freeholder is at fault and that it is just and convenient to make an order for the appointment of manager. In this case the Applicant's complaints were predominantly against the managing agent. The Applicant cited various Tribunal decisions which he said criticised the competence of the managing agent. The Tribunal explained at the hearing that its focus was on the Respondent and whether it was at fault with the management of the property. In the Tribunal's view, the Applicant's concerns with the managing agent were peripheral to the central issue, and that the previous Tribunal decisions involving the managing agent were not relevant to the matters that it had to decide in relation to this property and to this freeholder.

The Facts

16. The Tribunal considers first the Applicant's grounds for the appointment of manager. The Applicant alleged that the Respondent interfered with the quiet enjoyment of his tenant living at flat 2 by regularly sending contractors to the property without notice. The Tribunal finds that there was no substance to the Applicant's allegation. Mr John accepted that contractors visited the property generally to carry out works on the common areas, which did not impact upon individual owners or tenants. Where the works have impacted upon the tenants, the managing agent had given notice in accordance with the lease.
17. The Applicant referred specifically to the occasion where the tenant had to vacate the flat because of works to the gas pipes. In this instance the managing agent had held a meeting with the leaseholders in August 2017 with Council officers in attendance to explain the necessity for the works and if they were not done the Council would take enforcement action. The managing agent gave notice on 1 December 2017 for the Applicant to vacate the property by 22 January 2018 [172], and when the Applicant complained the managing agent offered to put the Applicant in touch with landlord who had a two bedroom unfurnished flat to let [46]. The Tribunal notes that this incident happened under the ownership of the previous freeholders.
18. The Applicant asserted that the managing agent did not keep detailed service charge accounts and failed to send out service charge statements. Mr John explained that records of service charge income and expenditure and draft accounts had been kept but there were no funds to pay for the certification of the accounts and for his fees. This was because of the failure by some leaseholders including the Applicant to pay the service charges due and of the previous freeholder's refusal to fund court action against the defaulting leaseholders. Mr John insisted that demands for service charge on account had been issued in

accordance with the terms of the lease. Mr John pointed out that the Respondent since taking over had funded the certification of the accounts and had agreed to take court action to recover the outstanding arrears.

19. The Applicant argued that the property had fallen into disrepair and was in a dilapidated state. The Applicant produced photographs showing corrosion on the underside of the steel walkways, the poor condition of the laundry room which was a shared facility for the residential flats, and the temporary roof on the entrance to the stairwell.
20. Mr John explained that when his firm took over as managing agent in 2014 the property was in a state of disrepair. The managing agent decided to prioritise the replacement of the steel walkways and the installation of an interlinked fire alarm system and instructed a local firm of surveyors to supervise the works. The managing agent also had detailed discussions with the local authority and the Fire Service in connection with the fire alarm system requirements. The works also involved the replacement of the gas pipes and a renewal of the flat roof over the restaurant. Mr John said the works were completed in 2018 despite the previous freeholder not providing the funds up front.
21. On acquiring the freehold the Respondent agreed a plan of action to remedy the disrepair, and has so far funded the following works:
 - Electrical safety: £3,626.82
 - Main roof repair: £4,560.00
 - Another roof repair: £2,160.00
 - Scaffolding chimney stack: £1,320.00
 - Additional roof repair: £3,677.00
 - Fire risk assessment: £1,044.42
 - Door entry: £3,038.80
 - Fire Alarm: £3,762.00
22. Ms Clarke explained that the Respondent had given precedence to works which made the property watertight and safe. In this regard the Respondent had agreed a further advance of £5,000 for fire doors and windows. Once this had been achieved the Respondent intended to refurbish the laundry room and carry out the necessary redecoration of the property.
23. Mr John had arranged in April 2021 a site visit of the contractors which installed the steel walkway to inspect the apparent corrosion of the steel walkway as seen in the photographs. The contractors stated that the steel walkways had been galvanised which offered the best protection against all elements and would withstand any corrosion for 50+ years if undamaged. In the contractors' view the residue to the underside of the walkways appeared to be water staining from the landings above and

not corrosion which could easily be cleaned with routine maintenance (181).

24. The Tribunal finds that the disrepair of the property occurred during the ownership of the previous freeholders, and that the current managing agent did its best in challenging circumstances to address priority works which included the installation of new walkways and gas piping to the individual flats. The Tribunal is satisfied that since acquiring the freehold the Respondent has implemented a repair and maintenance programme and completed most of the priority works which has rendered the property safe and watertight.
25. The Applicant made a series of allegations of incompetence against the managing agent which the Applicant said breached the RICS Code and were not compliant with professional standards. The Applicant asserted that the managing agent did not have a proper complaints procedure and had not responded to his follow up complaint of 28 October 2020 [73]. The Tribunal observes that the managing agent had supplied a response on 8 October 2021 to the Applicant's originating complaint. The Tribunal also notes that the managing agent gave details of how to make a complaint on its website including the right to refer a complaint to the Property Ombudsman. The Applicant also alleged that the managing agent did not keep proper service charge accounts which the Tribunal has already dealt with at [18].
26. The Applicant raised various concerns about the managing agent's professional conduct, such as, sending correspondence to incorrect addresses, discourteous and threatening letters, and disregarding leaseholder's safety.
27. Mr John acknowledged that a member of his staff had not updated the Applicant's contact details when the property portfolio was transferred by the previous managing agents in 2014, and that correspondence had been sent to the Applicant's previous address until 2017 when the Applicant got into contact about the walkway. Mr John, however, pointed out that the Applicant had not got in touch during that period of three years and that the Applicant had not updated his address at HM Land Registry. Mr John also referred to the high service charge arrears owed by the Applicant and that he had made no payment towards the service charges since 2014. Mr John denied that his firm had compromised the safety of leaseholders.
28. The Applicant accepted in evidence that he had not taken an active interest in the property for long periods of time. The Applicant said that he was naive about the proper management of leasehold properties which was due to him having a missing landlord of the first leasehold property he had purchased. The Applicant challenged the reasonableness of the service charges but gave no convincing explanation for allowing the arrears to mount up.

29. The Tribunal finds there was no compelling evidence that the managing agent fell short of the expected professional standards. The Tribunal is satisfied that the Applicant's concerns with the performance of the managing agent were not shared by the other leaseholders with the exception of Mr Roy. The Tribunal concluded that the Applicant's complaints stemmed from his dispute with the managing agent about the non payment of service charges.
30. The Tribunal received responses from the leaseholders of flats 3, 4, 6, 7, 8, 9, 10, 11 and 12, the leaseholder of The Coach House and the leaseholder of the restaurant. The leaseholder of flat 1 responded directly to the Applicant believing that she was emailing the current manager. Mr Roy of flat 8 was the only leaseholder who supported the application.
31. The Applicant considered that the process of asking the other leaseholders was flawed and unfair. The Applicant pointed out that the Respondent owned flats 3, 4 and 11. The Applicant considered that the views of the restaurateur and the leaseholder of the Coach House were not relevant and should be excluded. The Applicant questioned whether the managing agent had exerted undue influence over the other leaseholders.
32. The Tribunal does not share the Applicant's concerns about the validity of the responses of the other leaseholders. The Tribunal finds that there was no evidence that pressure had been exerted on leaseholders to respond in a particular way to the application. The Tribunal is satisfied that the leaseholders' responses were genuine and showed their approval except Mr Roy to the current arrangements for managing the property. The Tribunal acknowledges that the Respondent had a vested interest in preserving that status quo but that is not a reason for the Tribunal to ignore its views about the competence of the managing agent. The Tribunal also considers pertinent that the Respondent once it became the freeholder continued with the same managing agent who had been in place when the Respondent's sole interest in the property was as a leaseholder.

Decision

33. The Tribunal's findings demonstrate that the Respondent since acquiring the freehold had fulfilled its responsibilities as a landlord and had ensured that the property was managed effectively. Further the Applicant identified no serious failings on the part of the Respondent which would justify depriving the Respondent of its right to manage the property.
34. The Tribunal is satisfied that the Applicant's quarrel was with the managing agent and that the Applicant relied principally on events that happened under the previous freeholder which was not prepared to commit funds to the property. The Tribunal has found that the

Applicant's criticisms of the managing agent did not have the support of the other leaseholders except Mr Roy. The Tribunal also notes that the Respondent has confidence in the agent's competence to manage the property.

35. The Tribunal decides on the facts found that it is not just and convenient to appoint a manager under section 24 of the 1987 Act. The Tribunal dismisses the application.
36. Given the Tribunal's decision it is not necessary for the Tribunal to decide whether Mr Mark Brockhurst is a suitable person to be appointed as a manager. The Tribunal is grateful to Mr Brockhurst for attending the hearing to give evidence. The Tribunal acknowledges that Mr Brockhurst would have had the necessary experience and competence to manage the property. The Tribunal, however, would have held reservations about his understanding of the role of a Tribunal appointed manager if it had considered him for appointment.
37. The Applicant applied under section 20C of the 1985 Act to prevent the Respondent from recovering the costs of these proceedings through the service charge. The Tribunal decides that it is not just and equitable to make an order under section 20C in view of the Applicant being unsuccessful with his application for the appointment of a manager.

Rights of appeal

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 must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk.

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).