



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

- Case Reference** : CHI/29UL/LAM/2022/0006
- Property** : Leas Court Mansions, 6-8 Clifton Crescent,
Folkestone, Kent CT20 2EW
- Applicant** : Mrs Madeleine Brott
- Proposed Manager** : Julian Alexander BSc.(Hons) FPCS
- Respondents** : LCM (Folkestone)Ltd
Steve Morgan (Flat 1)
David & Nobumi Robins (Flat 3)
Joy Pascoe (Flat 4)
Wilma Fraser (Flat 5)
Vaughan Horsman & Tamlyn Monson (Flat
7)
Suzette Ahmed (Flat 8)
David Stephensen (Flat 10)
Kemi Phillips (Flat 2)
- Representatives** : Vaughn Horsman (Primary contact)
Kemi Phillips (Secondary contact)
- Type of Application** : Appointment of Manager section 24 of the
Landlord and Tenant Act 1987.
S20C Landlord and Tenant Act 1985
- Tribunal Member** : Judge D Whitney
Mr N Robinson FRICS
Mr E Shaylor MCIEH
- Date of Hearing** : 27 October 2022
- Date of Decision** : 10 November 2022

DECISION

Background

1. The Applicant made an application for a manager to be appointed dated 2nd May 2022.
2. The Applicant refers to various failings of management and that relations have broken down. A Section 22(1) Notice was served on 31st May 2021 and the Applicant now seeks an Order appointing Mr Julian Alexander as a manager of the property in accordance with section 24 of the Landlord and Tenant Act 1987.
3. The Applicant is a leaseholder. She is also a shareholder in the First Respondent being a company which owns the freehold and in which each leaseholder is a shareholder. The other Respondents are 8 of the 10 (including the Applicant) leaseholders in the flat. A Mr and Mrs Shaw are the leaseholders of Flat 9. Originally they were also Respondents but subsequently withdrew and have not taken any further part.
4. The Tribunal had before it an electronic bundle of 662 pages and references in [] are to pages within that bundle.
5. The hearing took place at Havant Justice Centre with the panel in person. The parties attended remotely by video.

THE LAW

6. The relevant law is contained within Section 24 of the Landlord and Tenant Act 1985 which is annexed hereto.

THE HEARING

7. The following people attended:
 - The Applicant: Mrs M Brott
 - Mr V Horsman & Ms K Phillips in their personal capacity and as directors of the First Respondent
 - Mr D Robins
 - Dr W Fraser
 - Ms J Pascoe
 - Ms S Ahmed
 - Mr J Alexander
8. All parties attended remotely. Dr Fraser, Ms Pascoe and Ms Ahmed were all present in Dr Fraser's flat. Also present with them was a

former leaseholder and director of the First Respondent Mr T Bertram.

9. Dr Fraser asked if Mr Bertram would be able to make a statement to the Tribunal. The Tribunal confirmed he would not be able to address the Tribunal as he was not a party and had not filed a witness statement in these proceedings. The Tribunal agreed he was free to attend and observe the proceedings which he did.
10. Mrs Brott presented her case. She sought to have a manager appointed and relied upon her statement of case [125-128] and her reply [123-124].
11. She explained she believed the Property's current management needed replacing. Mr Horsman and Ms Phillips as directors of the First Respondent were in her opinion not adequately undertaking the management. She also took issue with what she believed was a heavy handed style of application of the lease terms resulting in her receiving threats of forfeiture. Mrs Brott referred to various instances which she believed constituted harassment of her.
12. Mrs Brott stated she was happy to no longer be a director of the First Respondent as she wished to "have her life back." She accepted when there was what she believed was an issue she would raise it with the directors by email but would not meet with them as she stated she felt threatened.
13. Mrs Brott believed that the appointment of a managing agent was a good idea since in her opinion the company did not have people with the required skill set to manage the Property. In her view the current management was not collegiate.
14. Mr Horsman presented the case for the Respondents. He suggests that one member of the company is trying to sabotage the way the Property is managed. He relied upon the statement of case within the bundle [129-147].
15. He suggested that the Respondents he represented, being all parties save for Flat 9 and the Applicant, did not currently want a managing agent. The Company discussed all major decisions with its members and tried to proceed on a democratic basis.
16. The members of the Company had previously sought the removal of Mrs Brott as a director as they were unhappy with her style of management. He suggested since then Mrs Brott had been openly critical of the management and yet she refused to mediate.
17. Mr Horsman believed that the company was compliant with its responsibilities, had undertaken various reports and had tried to prioritise those matters the directors believed were critical.

18. Mr Horsman explained that the company had a programme in place to undertake major works some of which were currently underway. Upon questioning he acknowledged that the current scaffolding had been up longer than initially expected but hoped works would be complete by the end of November.
19. Mr Horsman explained that the lease for flat 9 was an “old” form of lease and did not have all the same covenants as the rest of the Property. It was hoped upon the current sale of that flat proceeding that a new lease adopting the same form as the other flats at the Property would be adopted.
20. Mr Horsman accepted that Mrs Brott had received lawyers’ letters in respect of alleged breaches of her lease. He accepted this was different to other leaseholders but suggested it was due to the fact that he and the other director could not discuss matters with Mrs Brott due to her confrontational style.
21. Mr Horsman explained the accounting spreadsheet provided by Mrs Brott when he and Ms Phillips became directors ran to some 200 pages. He explained they could not make head nor tail of the same and neither could their external accountant.
22. Ms Phillips then gave evidence confirming her statement was true and accurate [151].
23. Ms Phillips explained that at meetings every member is given opportunity to put their own point provided that they are respectful. She readily accepts that not everyone has to be friends. In her view the Property is well managed.
24. She explained that members will not be able to afford the costs of a managing agent on top of what they are currently paying. She suggests the plan is to get the cyclical maintenance pattern in place with current major works completed and then the company may revisit the instruction of a managing agent once matters are better controlled and on a level footing.
25. She explained when she first came to the Property she got on well with Mrs Brott but relations have deteriorated. She remains willing to consider mediation.
26. Each of the other Respondents present confirmed they support the company’s position and do not wish for a manager to be appointed. All were supportive of Mr Horsman and Ms Phillips.
27. Mrs Brott in reply stated that she does not wish to be a director. She is seeking a quiet life. She stated that she is trying to find a solution where no one person has control of the Property.
28. Mr Alexander was then questioned by the Tribunal.

29. He explained he still wished to be appointed and had a BSc in Estate Management. He was no longer a member of RICS but adhered to the approved Code of Conduct. He confirmed he held client money protection and was a member of the Property Redress Scheme.
30. Mr Alexander had been in business for about 25 years and he oversees the day to day function of his firm of which he is the sole owner. He manages about 720 units across 53 blocks predominantly in the Folkestone/Hythe area. Including himself his block management department consists of three people.
31. He stated that having heard the evidence he felt the current management were trying hard and “I’m not sure there is a need for a manager in this situation.” His view was that the issue currently was a breakdown of communication with Mrs Brott which required mediation to resolve. He felt a period of reflection for all sides may be useful with then everyone getting around a table and agreeing a way forward.
32. He confirmed when he saw the Property work was underway and is clearly ongoing. There was nothing he saw which raised an immediate concern. He stated he could not pick any holes in the current management.
33. At the end of the hearing the Tribunal confirmed with all parties they had opportunity to make any and all statements they wished to make.

DECISION

34. We thank the parties for their measured submissions. It was apparent to the Tribunal that there was a degree of hostility between the parties and strong feelings were expressed.
35. The First Respondent accepted they had been served with the Section 22 Notice.
36. This Tribunal was not satisfied that it was just and convenient to appoint a manager and for the reasons below the application is dismissed and no further orders are made.
37. We are cognisant of the fact that the freeholder and 8 of the 10 leaseholders actively oppose the application. We heard from 7 leaseholders, only one of whom, being the Applicant, objected to the current management structure. At one time the application was opposed by all interested parties save for the Applicant with the other flat withdrawing due to a change in their circumstances.

38. Whilst this is not determinative it does provide a flavour as to the issues. Essentially the issue is that communications with Mrs Brott have broken down to the extent that the local police have been involved in dealing with accusations and counter accusations. Mr Alexander summed this up when responding to the Tribunal's questions when he stated that it was not a manager that was required but mediation between the principal parties.
39. Mrs Brott clearly takes issue with the way the Property is run. This seems to be that the current directors do not manage in the manner she adopted as a director. Whilst it may be that there are some technical breaches in the way the building has been managed in our judgment these are de minimis.
40. Mrs Brott was adamant that she wished to play no part personally in the management yet it was clear from the emails within the bundle she was happy to criticise and offer little assistance to any reasonable requests for information made by the Directors. Notwithstanding this the evidence before us and contained within the bundle showed that the current directors had taken steps to address various issues including proceeding with a programme of major works.
41. The First Respondent is proceeding with a programme of works. There was no suggestion that this was unreasonable in scope, type of work or costs raised by the Applicant. We heard from a number of leaseholders who accepted this approach as being proportionate and reasonable notwithstanding that all leaseholders are, we are told, being required to pay substantially higher service charges than they have previously. Mrs Brott does not seem to challenge the need for such works within her case. All parties seem to accept works are required to the Property.
42. The overwhelming evidence was of a Property which is being appropriately managed in the circumstances. Given the current management has only been in place since 2020 in our judgment they must be afforded time to proceed with works. In the two years since they were appointed the directors do appear to have got to grip with issues within the Property. This being said we make clear it is vital the directors ensure they are fully compliant with their legal obligations including as to the approved Code of Practice and the lease and if they are unsure we would urge them to take independent advice.
43. For the above reasons the application is dismissed and no further orders are made. Finally we thank Mr Alexander for attending and his evidence.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.