



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

Case Reference	: CHI/29UQ/LAM/2021/0010
Property	: Stonerock House, High Street, Hawkhurst, Kent TN18 4AG
Applicant	: Rachel Joanna Mary Gold
Representative	: Paul Cleaver, Urban Property Management Limited
Respondent	: Duncan Charles Grigor Anderson & Katherine Elizabeth Anderson
Representative	: Ms Lynne, counsel
Type of Application	: Appointment of Manager: section 24 of the Landlord and Tenant Act 1987
Tribunal Member(s)	: Judge D Whitney Mr M J F Donaldson FRICS Mrs J Herrington
Date of Hearing	: 23rd February 2022
Date of Decision	: 7 th March 2022

Decision

Background

1. The Applicant lessee of Flat 1 seeks an order, pursuant to section 24 of the Landlord and Tenant Act 1987 (“the Act”) appointing a Manager. The proposed manager is Paul Cleaver.
2. Various sets of directions were issued including as to filing of a hearing bundle. The directions have essentially been complied with and the Tribunal had before it a bundle. References in [] are to pages within that bundle.

The Law

3. The relevant law is set out in Section 24 of the Landlord and tenant Act 1987. A copy of the same is annexed hereto marked “A”.

The Property

4. Stonerock House is a large Georgian style Grade II listed building. What was the original main house is of stone construction with a later rear addition of brick and timber construction. The roofs are tiled and slate construction. The communal grounds are principally used as parking. The main house is occupied under a commercial lease as a dentists’ practice. The rear addition has two flats (ground and first floor). The Respondents own the lease of the ground floor flat as well as the freehold of the whole and the Applicant owns the residential lease of the first floor flat.
5. The Applicants lease was granted to her in 2003 for a term of 125 years by the Respondent’s predecessor in title. The lease was in the bundle [54-75]. The Applicant is required to pay 18% of the costs the landlord incurs in arranging insurance and by way of service charges incurred by the landlord for the Property as a whole.
6. It is worth noting that the Applicant disputes certain items relating to the extent of the demise of her flat, but for the purpose of this determination nothing turns on this point.

Hearing

7. The hearing took place in person at Havant Justice Centre. The Applicant attended together with Mr Cleaver. The Respondents attended in person and were represented by Miss Lynne of counsel.

8. At the start of the hearing it was confirmed that Mrs Gold would present her own case with Mr Cleaver there to assist and give evidence as the proposed manager. Mrs Gold sought leave to rely upon a surveyors report she had sent to the Tribunal the day prior to the hearing.
9. The Tribunal indicated it had not read the report. The Respondent objected to its inclusion.
10. The Tribunal declined to admit the same. The Tribunal was satisfied that the directions had afforded Mrs Gold every opportunity to obtain such a report, given her Section 22 Notice (being the first step down the process to appoint a manager) had been served in June 2021. The Tribunal was satisfied it was not in the interests of justice to admit the same.
11. Mrs Gold presented her case. Mrs Gold relied upon her witness statements which the Tribunal confirmed it had read [31-45] and [402-415]. The Tribunal allowed Mrs Gold to speak to these statements.
12. She suggested it was “just and convenient” for a manager to be appointed. The Respondents managed the Property themselves via Mr Anderson who is a retired chartered surveyor. She suggests that there were communication issues and by way of example highlights the Section 22 Notice which she served dated 11th June 2021 [1-8] was ignored.
13. Mrs Gold explained her issues with the Respondent dated back many years. The Respondents purchased the freehold in 2004 and she suggests they have always wished to purchase her flat. She had previously bought a claim to the Tribunal to determine her liability to pay and the reasonableness of service charges. A copy of the decision in case reference CHI/29UQ/LIS/2016/0054 was in the bundle [79-133]. The decision was dated 31st July 2017 and given by Judge Tildesley OBE and was a determination on paper.
14. Mrs Gold had made application to enforce this decision and for other Orders to the County Court. A copy of the transcript of the judgment of Deputy District Judge Bruce was within the bundle [344-349]. The judge determined certain monies were owed to Mrs Gold relating to the findings of the Tribunal and dismissed the remaining claims and counterclaims each party had made.
15. Mrs Gold suggested that the Respondent was seeking to pressure her to install her own water and electric supply. Currently there was a single supply for both which served the whole Property with the costs being shared between the three units (two flats and dentists). This was now managed and undertaken by the dentists in whose name the supplies were registered.

16. Mrs Gold explained how in her opinion Mr Anderson does not comply with the RICS Residential Service Charge Code.
17. She is not satisfied that he undertakes works properly and shows a disregard for regulations and by way of example she referred to an instance in which Mr Anderson had failed to comply with the requirements for undertaking works to a Listed Building.
18. Mrs Gold explained how in the past she had tried to sell her flat but believed sales had been thwarted by the actions of the Respondent. They had made offers to purchase her flat but at prices she believes do not reflect market value.
19. As a result she suggested she had no trust in the Respondents and believed an independent third party was required.
20. Miss Lynne cross examined Mrs Gold on her witness statements.
21. Mrs Gold accepted the original developer, who granted her lease, had intended to separate the utility supplies. She was happy for the supplies to be split but in her opinion this should not be at her cost.
22. She agreed she had seen that Mr Anderson was indicating he was now looking to appoint a manager. She stated she had no trust that he would actually do so or that he would allow the manager to manage without interference.
23. The Tribunal had no questions for Mrs Gold. The Tribunal adjourned for a short period to provide all parties with a break. Upon resumption Mrs Gold confirmed she had said everything she wanted in respect of her case.
24. Miss Lynne called Mr Anderson to give evidence. He confirmed his witness statement was true and accurate [314-326].
25. The Tribunal agreed Miss Lynne could ask certain additional questions relating to the witness statement in reply filed by Mrs Gold.
26. Mr Anderson explained he had arranged for certain works to be undertaken to the roof of the main part of the building over the dentists. Lead work had split and he had arranged to over board the lead with fibre glass. This was a temporary repair. He had not initially obtained any consents from the Council as he did not think this was necessary. When the Council challenged these works he made an application for retrospective consent which had been granted although certain further works were required. He had not undertaken those works as in his opinion they were not required as the temporary repair was working. No enforcement action had been taken by the Council.
27. Mrs Gold then cross examined Mr Anderson.

28. Mr Anderson explained he was a chartered building surveyor and he had undertaken refurbishment of the commercial parts of Stonerock house when he purchased. He owns the building and has a substantial interest in the same. He would not bodge works that were required. He accepts the permission for works to the roof has lapsed but in his opinion he could renew the same. His view is that the roof is not broken and so there is no need to carry out further fixes although he accepts the repair undertaken is a temporary repair.
29. Mr Anderson accepted he was now aware of the RICS Code but had not read it. He believed he had always tried to act fairly and reasonably. He now wants a manager.
30. Upon questioning by the Tribunal Mr Anderson said he had not appointed a manager as he had been advised by his solicitor to await the outcome of this hearing. He had someone in mind, John Murray, but could not recall his firm's details and his solicitor was recommending a firm in Ashford as well.
31. He explained normally he would visit monthly if not abroad or in Scotland. He thinks it might be beneficial to split the building between the residential parts and the commercial parts as the two flats stand alone.
32. On re-examination Mr Anderson confirmed the dentists pay 63% of the costs, he pays 19% for his flat and Mrs Gold pays the balance of 18%.
33. The Tribunal then heard from Mr Paul Cleaver the nominated manager.
34. He confirmed his statement was true and accurate [303-305].
35. Miss Lynne questioned Mr Cleaver.
36. He confirmed he understood he would be acting under any Order made by the Tribunal and he was required to be independent. He accepted he had corresponded on behalf of the Applicant with solicitors appointed by the Respondent. He stated it was an awkward situation but typically he finds leaseholders do not have the experience themselves to pursue such applications and prepare for tribunals so he assists. If he was appointed he would stand back and manage independently of whomever may have nominated him.
37. He accepted that a perception of bias could be a problem. He relied on the fact he already had a number of appointments and re-appointments. He confirmed none of his re-appointments had been opposed.

38. He confirmed he had read the statements of Mrs Gold and provided some pointers but was adamant 95% of the words were Mrs Gold's. He confirmed he had charged her £1000+vat for his assistance including the cost of attending at the hearing. He would ask the Tribunal to order that this cost could be recovered as part of the service charges.
39. He was referred to an email chain between himself and the solicitor for Mr Anderson [400 and 401]. He accepted an offer was made. He had spoken to his client who instructed him to reject the offer. He felt the solicitors were trying to avoid engaging in the Tribunal process. He accepted his wording may have been strong as frustration was creeping in.
40. He explained that he believes he is impartial. He accepts he has some sympathy with Mrs Gold's position. However if appointed would get on and manage and if he was required to take action against Mrs Gold would do so.
41. Mr Cleaver accepted his management plan was generic. It had been drafted before he had actually visited the Property. He had visited shortly before the hearing. He had seen the leases.
42. On questioning by the Tribunal he described each of the buildings for which he currently is appointed. He explained he had a business in Kent, Westbury Residential, which he had purchased in 2019 which had an office in Folkestone. This business managed about 10 properties consisting of about 200 units.
43. He confirmed he had checked and the insurance he had given details of would cover him in his personal capacity. He proposed to charge £1050 plus vat (£350 plus vat per unit). For this he would typically visit a couple of times a year unless any issues arose requiring more frequent visits. He would also charge a fee of 10% plus vat for consulting and overseeing any major works. Other costs would be on an hourly rate basis. He believes he requires a three year appointment to ensure sufficient time to move forward.
44. Mrs Gold then made closing submissions. She stated Mr Anderson does not take his responsibilities seriously. She is worried that any agent he may look to instruct will not have proper and full instructions. In her submission Mr Cleaver would be independent and has previously had the trust of tribunals who have appointed and -reappointed him.
45. Miss Lynne confirmed that her client took no point over service of the Section 22 notice. In her submissions whilst it is a fault based approach the Tribunal has a broad discretion and should be looking to the future. The appointment of a manager is a remedy of last resort.

46. Miss Lynne accepted that the legislation allows an order to be made in respect of mixed use premises as exist here but in her submission an order over commercial parts should not be made as a matter of course.
47. Miss Lynne accepted that the Respondent had made mistakes but was now looking to appoint a manager. He did however retain the confidence of the commercial tenants whom contributed the largest proportion of the service charges.
48. If we are against her she objects to the appointment of Mr Cleaver. In her submission the way he behaved during the course of the application means her client will not view him as being impartial. The test is whether he is impartial and appears to be so. His tone in correspondence means her client cannot be confident he will be impartial.
49. Mrs Gold indicated she wished to recover the monies she had paid to Urang (Mr Cleaver's company) for pursuing the application.
50. Miss Lynne objected indicating that effectively Urang were the Applicants advisers and costs should not be paid.

Decision

51. The Tribunal advised the parties at the hearing that it refused the application. These are the reasons for that decision.
52. In his statement of case and witness statement [314-401] Mr Anderson candidly made various admissions as to his conduct. These included the fact that he had not properly communicated and that his interpretation of the lease was wrong.
53. The Tribunal was particularly troubled by his communication or lack of. He had deliberately put obstacles in the way of Miss Gold by refusing her communication. In his evidence he admitted he had not read the RICS Service Charge Management Code and yet regularly referred in the documents within the bundle to the fact he was a chartered surveyor, all be it retired. The Tribunal was satisfied that Mr Anderson's attitude in dealing with Mrs Gold had certainly led to many of the problems which had arisen prior to this application.
54. We more than understand the frustration which Mrs Gold felt and which led to the application. She endeavoured to engage with Mr Anderson and her attempts were rebuffed. This had led to the earlier Tribunal proceedings and the decision of Judge Tildesley OBE. It certainly appeared Mr Anderson had not understood that decision or applied the same leading to Mrs Gold having to seek to enforce this at the County Court. Both parties raised additional

claims but the court dismissed the same. We do not look behind that judgment.

55. Mr Anderson gave evidence he was going to appoint a manager. We accept his evidence that he will do so. We find that he has found the whole process bruising and realises his limitations.
56. Mrs Gold sought to rely upon issues relating to the roof and the failure to decorate. Looking at the roof it is a matter of fact that Mr Anderson undertook works without the appropriate listed building consent. We accept however he did works believing that these were appropriate. There is no evidence that the local authority has taken any further action and we are satisfied with the explanation offered.
57. As to the redecorations Mr Anderson now accepts these are his responsibility as the landlord under the lease. He explains he had placed all works on hold given the pandemic and that his commercial tenants had requested this to ensure they could re-open their dental practice. We accept over the past two years given the pandemic normal activities have been difficult and in our judgment delaying the works was not unreasonable and a decision a reasonable landlord could reach.
58. It was clear to the Tribunal that there is a history of animosity. We accept the submission of Miss Lynne that the appointment of a manager is a remedy of last resort. We were satisfied that whilst there are failings by Mr Anderson, most of which he has now belatedly admitted and accepted, generally the Building as a whole seemed to the Tribunal to be managed in a reasonable and proper manner.
59. We were not persuaded that it was currently just and convenient for a manager to be appointed by this Tribunal on the evidence given by all parties.
60. Even if we had been so persuaded we would not have appointed Mr Cleaver.
61. Whilst we were impressed with Mr Cleaver in giving evidence we were not satisfied on the facts of this case he could demonstrate that he would appear impartial to the Respondent's. In so finding we do not question his impartiality. We were satisfied, and impressed, by his explanation of his understanding of the role of a Tribunal manager and the need to be independent.
62. We accept that leaseholders do on occasion require assistance in bringing applications such as this. However the person nominated as a manager is seeking to be appointed as an independent party. In a case such as this where it is only one single leaseholder it is inappropriate in our judgment for the nominated manager or his firm to act as the representative and conduct the application and

correspondence as was the case here. Plainly the other parties will question the impartiality. The nominated manager has to be impartial and appear so to all parties. The correspondence to which we were referred with the Respondents solicitor demonstrated a tone which Mr Cleaver himself accepted was unfortunate. It is to avoid such situations that in our judgment a proposed manager should not act as the representative for those bringing the application.

63. Finally the Applicant sought to recover the costs she had incurred in bringing the application. The Tribunal does not generally make orders for costs. Given we have not appointed Mr Cleaver we do not order that the costs Mrs Gold paid to his firm may be recovered as part of the service charge. Again even if we had been persuaded to appoint Mr Cleaver we would not have ordered these costs to be recovered as part of the service charge. These costs were the costs Mrs Gold incurred in taking advice and obtaining representation from Urang.
64. We have considered whether or not the Tribunal fees paid by Mrs Gold should be reimbursed. Any such order is at the discretion of the Tribunal. In this instance we note that Mrs Gold has not been successful. That of itself is not determinative of the issue but is a matter for us to take account of. The Respondents have admitted errors in their management. Standing back and looking at the evidence and submissions as a whole we decline to make any order.