



12368

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

Case reference : LON/00AY/LAM/2017/0015

Property : 34/36 Prescott Place /The Manor Works Clapham London SW4 6BU

Applicant : Dr A Darling and Ms E Barker

Representative : Paul Darling QC

Respondent : Constantine Batin

Representative : Imran Ahmad Solicitor (Bloomsbury Law)

Type of application : Appointment of Manager – Case Management Conference

Tribunal member(s) : Judge Professor Robert M. Abbey (Solicitor)

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 27 March 2018

DECISION and ORDER

1. **IF YOU THE WITHIN NAMED RESPONDENT CONSTANTINE BATIN DO NOT COMPLY WITH THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF THIS TRIBUNAL AND IMPRISONED OR FINED, OR YOUR ASSETS MAYBE SEIZED.**
2. On 1st September 2017 I ordered that in accordance with section 24(1) Landlord and Tenant Act 1987 Richard Davidoff of 240 Station Road Edgware Middlesex HA8 9LY ('the Manager') is appointed as manager of the property at 34/36 Prescott Place/The Manor Works Clapham London SW4 6BU ('the Property').

3. The terms and conditions of the appointment were clearly expressed within the order and directions attached to it to the intent that the Manager shall manage the Property in accordance with the directions and schedule of functions and services attached to the order as well as 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.
4. On 2 March 2018 written application was then made to this Tribunal by the Manager for Directions as a consequence of the alleged failure on the part of the Respondent to comply with the terms of the decision of 1 September 2017 regarding his appointment as Manager. In particular there was a complete failure to comply with Direction 2 –

“That no later than four weeks 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 Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).”

5. Mr Davidoff, the Manager, who was in attendance at the hearing informed me that the only item that he had been able to resolve was with regard to the insurance of the building. He was able to confirm that the buildings insurance had been taken over and that the insurance was in place and valid until May this year. However, nothing else had been resolved and as such he had not received any further information from the Respondent.
6. After his late arrival to the hearing Mr Ahmad for the Respondent stated that nothing further had to be supplied as there was nothing more to hand over. However, he did also confirm that this had not yet been confirmed in writing.
7. In the circumstances I did say to the parties that there being a subsisting breach of the terms of the appointment of the manager on the part of the Respondent that I would re-issue the decision directions and include with it a penal notice. (The reissued decision directions are set out below.) I confirmed that there was authority for me to utilise a penal notice and advised the parties of the supporting authorities namely *Octagon Overseas Limited v Alan Coates* [2017] EWHC 877 (Ch) but more particularly *Alan Coates v Marathon Estates Limited* [2018] UKUT 0031 (LC) at paragraphs 84 to 87. Essentially a penal notice is to be used to “warn a party of the consequences of disobedience to its order, whether that order be a final order or a case management order”. I have therefore inserted at the top of this decision a penal notice directed at the Respondent.

8. One other issue arose out of the hearing today and that was in relation to the 30% liability for service charges that remains with the respondent as the freeholder in respect of the ground floor premises not yet subject to long leases. I reminded the parties of the lease provision at clause 5.6.2 which states that

"The landlord will for the period that any flats or other premises in the Building are not let on terms similar to this lease observe covenants similar to those set out in Clauses 3 and 4 in respect of all such flats or other premises".

Accordingly it seems to me that it is open to those parties with an interest in the leases to enforce this provision as they see fit.

Name: Prof Robert M Abbey

Date: 27 March 2018

DIRECTIONS

9. 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 £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal. The Manager will produce to the Tribunal and the Respondent confirmation of Public Liability insurance with cover of at least £1,000,000 by 14 September 2017
10. That no later than four weeks 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 Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
11. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 14 September 2017 become rights and liabilities of the Manager and by that date the Respondent will supply complete insurance details and copy insurance schedules policies and premium receipts to the Manager.
12. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
13. 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.

14. By no later than 21 August 2018, 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.
15. 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. 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, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
16. 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 due from the lessees.
- (iii) Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (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 Respondent 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) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and common parts of the Property.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £225 per annum per flat/unit. 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 10% of the cost where work is conducted in-house by the Manager and with a cap of 15% where outside agents/consultants or professionals are utilised. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee. Hourly rates will be as stipulated to the tribunal namely

Administration at £50 ph, Managers at £100 ph and Department Managers at £150 ph.

- (iv) VAT 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 a time basis.

Complaints procedure

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

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).