



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

Case Reference : LON/OOBG/LVM/2014/0003 and
LON/OOBG/LVM/2014/0004

Property : 200 and 200A Finnis Street, London
E2 ODX

Applicants: : Ms Roisin Dunne Mahoney
(LON/OOBG/LVM/2014/0003)
Mr Grahame Wilkinson
(LON/OOBG/LVM/2014/0004)

Representative : None notified for Ms Mahoney
Brethertons LLP, Solicitors, for
Mr Wilkinson and Wilkinson
Ventures Ltd.

Respondents : Doug and Caroline Harper (0003)
Grahame Wilkinson (0003)
Wilkinson Ventures Ltd. (0003)
Roisin Dunne Mahoney (0004)

Representatives : None notified for Mr D Harper, Ms C
Harper or Ms R D Mahoney.
Brethertons LLP for Mr G Wilkinson
and Wilkinson Ventures Ltd.

Type of Application : S24 (9) of the Landlord and Tenant
Act 1987 (for the variation or
discharge of an order appointing a
Manager)

Tribunal Members : **Judge Goulden**
Mr H Geddes JP RIBA MRTPI
Mr C S Piarroux JP CQSW

Date and venue of Hearing : **4 and 5 June 2014**
at 10 Alfred Place, London, WC1E 7LR

Date of Decision : **23 June 2014**

DECISION

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**REF: LON/OOBG/LVM/2014/0003 and
LON/OOBG/LVM/2014/0004**

PROPERTY: 200 AND 200A FINNIS STREET, LONDON E2 ODX

Decision of the Tribunal

- (1) The Tribunal makes a Variation of the Order for appointment of a Manager under S24 (9) of the Landlord and Tenant Act 1987.

The applications

1. The Tribunal is dealing with an application dated 3 January 2014 (and received by the Tribunal on 8 January 2014) for the variation or discharge of the Tribunal's Order dated 6 June 2013 which had appointed Ms R D Mahoney of Vision Property and Estate Management as the Manager for a period of three years under S24 of the Landlord and Tenant Act 1987 ("the Act"). The reasons for the Tribunal's Order were set out in a Decision dated 6 June 2013.
2. A similar cross application was made dated 3 February 2014 (and received by the Tribunal on 6 February 2004)
3. The parties to the original and cross application are shown on the frontsheet to this Decision.
4. The Tribunal's Directions were issued on 6 February 2014 in which the hearing was listed for 4 and 5 June 2014.
5. The applications relate to Flats 200 and 200A Finnis Street, London E2 ODX ("the property"). The property was stated to comprise 2 flats, a basement flat held on a long lease by Mr D Harper and his sister, Ms C Harper, and a flat on the upper floors held on a long lease by Mr G Wilkinson. The freeholder is a company called Wilkinson Ventures Ltd. The Tribunal's Directions noted "*Mr Wilkinson is the sole director and the controlling shareholder*". For ease of reference Ms Maloney, Ms C and Ms D Harper will be referred to as the Applicants and Mr G Wilkinson will be referred to as the Respondent in the body of this Decision.
6. A copy of each of the two long leases relating to the property was supplied to the Tribunal. The lease for 200 Finnis Street was dated 13 July 2009 and was made between Wilkinson Ventures Ltd (1) and Mr G Wilkinson (2). The lease for 200A Finnis Street was dated 8 February 2008 and was made between Mr G Wilkinson (1) and Ms C L Harper and Mr D E Harper (2). The

leases were in essentially the same form. From an earlier Tribunal Decision dated 3 December 2012 it is noted that *“the property....was built on behalf of Mr WilkinsonOn 8 February 2008 he granted to (Ms C Harper and Mr D Harper) a 125 year lease of the basement flat. He then formed (Wilkinson Ventures Ltd.) to hold the freehold. His interest in (Ms C Harper and Mr D Harper’s) lease was assigned to (Wilkinson Ventures Ltd.). A lease of the remaining upper part of the subject property was also granted by (Wilkinson Ventures Ltd.) to Mr Wilkinson”*

7. The Tribunal did not consider that inspection of the property would assist in view of the issues raised during the hearings and would be a disproportionate burden on the public purse. Photographs were supplied by the Applicants.

The Hearings

8. At the hearing on 4 June 2014, there were appearances from Mr D Harper, Ms C Harper, both of whom were unrepresented. Mr G Wilkinson also appeared and was represented, on 4 June 2014 only, by Mr J Bates of Counsel, instructed by Brethertons LLP. The present Manager, Ms R D Mahoney, did not appear on either 4 or 5 June 2014.

9. The proposed new Manager, Mr J Fowler of Stock Page Stock, appeared on both days. It was not in issue that both sides accepted that a new Manager should be appointed, and that manager should be Mr Fowler, but the only evidence on 4 June 2014 provided to the Tribunal was a letter from him to Ms Harper dated 26 March 2014 confirming that he would be willing to be appointed as Manager by the Tribunal. This was wholly inadequate. Mr Fowler was instructed to prepare a full CV, a management plan and be prepared to answer searching questions from the Tribunal as to his suitability. This he did, and his evidence was dealt with on 5 June 2014.

Evidence on behalf of the Parties

The Applicants’ case

10. The Tribunal sets out the Applicants’ evidence in general terms.

11. In the Applicants’ statement of case, it was contended that the present manager had applied to be replaced *“because of Mr Wilkinson’s unacceptable conduct and his refusal to pay monies owed”*. It was also stated, inter alia, *“the day before the case management hearing on 6 February 2014, Mr Wilkinson submitted his own application to have Vision removed as manager and the Order discharged entirely. We consider Mr Wilkinson’s application reactive and an attempt to justify his continuing...behaviour by discrediting Vision rather than because of any real concern he has as to Vision’s management ability or for the correct, professional management of the building. We remain of the strongest opinion that it is appropriate that the Order remains in place and a new manager is appointed”*.

12. Mr Harper said, if possible, he would like a new management order extended to five years or if that was not possible, for a new three year term and also for the management terms as set out in the Order to be varied. The Tribunal explained that the application was for a variation of the existing Order on the same terms as originally drawn (subject as referred to in paragraph 16 below). This was accepted by the Applicants.

13. A statement of Ms R D Mahoney, the present manager, was attached to the statement of case, but she had not appeared at the hearing (see paragraph 8 above), she could not be cross examined and/or questioned by the Tribunal.

The Respondent's case

14. The Tribunal was advised that Mr Wilkinson, represented by Mr J Bates of Counsel, instructed by Brethertons LLP, was no longer a Director and shareholder of Wilkinson Ventures Ltd. The sole Director and shareholder of that company as from 19 May 2014 was now a Mr A Cook. Mr Bates said, on instructions, that the company had been formed in 2008 and Mr Wilkinson had been a joint Director and shareholder with Mr Cook from 2009 to 2014 when the company and shares had been transferred to Mr Cook. Mr Bates said that when it became clear that the proposed consent order between the parties would not be agreed, Mr Wilkinson had received advice to distance himself from the company.

15. Mr Bates also said that there was no objection to the appointment of Mr Fowler as the proposed new manager, but said that the Tribunal would expect far more than Mr Fowler had produced on 4 June 2014, which was accepted.

16. Mr Bates cited the Upper Tribunal case of **PC Residents (Finchley Road) Ltd v Sekinat Abiola and Others [2013] UKUT 0165 (LC)** in support of his contention that, following that case, Mr Fowler could not now be appointed as receiver and manager and the existing Order would have to be varied in this respect. However Mr Bates accepted that the Tribunal had a discretion to appoint Mr Fowler to include certain functions of a receiver.

17. In the statement of case of Mr Wilkinson, he said, inter alia, that having distanced himself from Wilkinson Ventures Ltd, he hoped that any confusion as to his role in respect of the property would end, "*and my rights as a leaseholder will be recognised on an equal footing to the other leaseholder in the building*". Mr Wilkinson complained that Ms Maloney had failed to fulfil the management obligations imposed by the Order and had also failed to comply with the RICS and ARMA Codes of Practice. He described the Applicants' statement of case as "*emotive*".

18. Mr Wilkinson set out some issues which he said had not been dealt with by the Manager, whom he described as ineffectual including rubbish deposited on his doorstep, vexatious and unjustifiable reports to the police, allegations of criminal damage, trespass, blocking of drive and operation of heavy machinery at night at Flat 200A. Mr Wilkinson also alleged that Ms C Harper and Mr D Harper had, inter alia, misled the previous LVT, had colluded with the present Manager appointed, and had refused to engage in mediation

19. Mr Wilkinson said *“Mr Harper has recently offered to sell his flat to me, for a price of £20,000 in excess of market value, and I consider that this reveals a possible motivation behind his unhelpful behaviour.....whilst I remain of the view that it would be just and convenient for the Management Order to be discharged (and for the company to be allowed to appoint its own experienced managing agent), in the interests of moving forward and avoiding unnecessary costs, I have consented to the appointment of Mr Fowler for the remaining term of the management order”*.

The proposed Manager

17. Mr Fowler gave most of his evidence on 5 June 2014, since he had not been in a position to give evidence on 4 June 2014, as detailed in paragraph 9 above. On 5 June 2014, he provided a supplemental bundle which set out the management proposals, draft management order, agreement of conditions of engagement, a copy of his personal indemnity insurance and partial details of the previous occasion on which he had been appointed a Manager by the Tribunal, which was in 2012.

18. He was reminded that the management Order under which he would carry out his duties was the one already in existence, that the Order would expire on 6 June 2016, namely 3 years from its start date and the fees would be those as set out in that Order. He accepted this and said he understood the difficulties in this particular property.

19. Mr Fowler was asked several questions by the Tribunal who advised that they expected him to act in a robust manner. He described the number of employees within the company and his own role. He was an accountant by training and, having considered the accounts he said that there was very little in the bank account (some £200 to £300), but this would be increased if the amount outstanding by Mr Wilkinson, namely £2,382.16, was paid.

The Tribunal’s Determination

20. The appointment of a Manager is a draconian step and the threshold is high. It is surprising that following the appointment of Ms Mahoney, the appointment had apparently failed badly and in so short of time.

21. Mr Wilkinson’s connection with the freeholder, Wilkinson Ventures Ltd. appears opaque. As stated in paragraph 5 above, the Tribunal noted in Directions that he was the sole director and controlling shareholder of that company. He had said he was not, but there was no evidence of rebuttal of the Tribunal’s statement in the case file. Mr Wilkinson said that he had received recent advice *“once it became clear that the consent order would not be approved”* that he should *“distance”* himself from the company. It is noted that this distancing took place on 19 May 2014 ie shortly before the substantive hearing.

22. A sticking point was that Mr Fowler advised, having looked through the statements, that although the tenants of Flat 200A, Ms C Harper and Mr D

Harper, were up to date with service charges, the tenant of Flat 200, Mr G Wilkinson, was in arrears in the sum of £2,382.16. The Tribunal discussed this with Mr Wilkinson and was pleased to note that during the hearing he had arranged a bank transfer of that sum on 5 June 2014, which was subsequently verified by Mr Fowler.

23. Mr Fowler was told that if appointed, and particularly since the previous appointment had failed so quickly and the problems had been significant, the Tribunal would expect him to deal with issues relating to the property in a robust manner. In particular, he was told that he was to issue demands forthwith for the service charge year 1 July 2014 to 30 June 2015, if no payment had been received one week after the payment was due on 1 July 2014, he was to give a 14 day notice letter and if payment had still not been made, he was to instruct solicitors on 21 July 2014. Although the Tribunal is unable to advise the parties, if there were significant issues material to the property, Mr Fowler was to consider reverting to the Tribunal for Further Directions, although there was no guarantee that a Procedural Judge would progress these. It is not the Tribunal's duty to manage the operation of a Management Order.

24. It is hoped that with goodwill on both sides, this property can be managed properly, failing which the building and the flats could suffer from neglect which may possibly result in a reduction of capital values.

25. On the basis of the Tribunal's comments as set out above, the Management Order was varied by the substitution of Mr John Fowler of Stock Page Stock until the expiry of the term.

26. Accordingly Paragraph 1C of the Order is varied and will now read as follows:

“C. “The manager means John Fowler of Stock Page Stock”

27. Paragraph 2 of the Order is also varied and will now read as follows:

“2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as manager of the property to include certain functions of a receiver”

28. In all other respects the Management Order will remain as drawn.

29. In order to assist the parties appearing before the Tribunal, the Tribunal retired and on its return, advised the parties of its decision orally, although they were advised that the written Decision would be sent at a later date.

Name:	J Goulden	Date:	23 June 2014
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