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		<b>FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)</b>
<b>Case reference</b>	:	<b>LON/00BA/LAM/2017/0014</b>
<b>Property</b>	:	<b>Kilmeny House, 36 Arterberry Road, Wimbledon, London SW20 8AQ</b>
<b>Applicants</b>	:	<b>(1) Mr G Read (2) Mr P Fabbri (3) Ms R Nounou (4) Ms J Bennett (5) Mr R Harris (6) Ms Z Pond (7) Mr N Walker (8) Mr P Jung (9) Ms K Rembiasz</b>
<b>Representative</b>	:	<b>Mr W Barker ARICS</b>
<b>Respondent</b>	:	<b>Kilmeny House Ltd</b>
<b>Representative</b>	:	<b>Mr G Willis, solicitor and consultant with CL Clemo &amp; Co</b>
<b>Type of application</b>	:	<b>For the appointment of a manager</b>
<b>Tribunal member</b>	:	<b>Mr S Brilliant</b>
<b>Date and Venue of hearing</b>	:	<b>5 July 2017, 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision:</b>	:	<b>17 July 2017</b>

## **Decision of the Tribunal**

The Tribunal determines that Mr Mark Blooman of B2 Chartered Building Surveyors Ltd, 9/27 The Broadway, London N8 8DR be appointed manager of the property pursuant to the application.

## **The application**

1. Mr Read, Mr Fabbri and Ms Nounou were the original Applicants to the application dated 25 April 2017 for the appointment of a manager to Kilmeny House, 36 Arterberry Road, Wimbledon, London SW20 8AQ ("the property") pursuant to section 24 of the Landlord and Tenant Act 1987 ("the Act").
2. At the hearing on 5 July 2017 it was agreed that the other lessees, Ms Bennett, Mr Harris, Ms Pond, Mr Walker, Mr Jung, and Ms Rembiasz should also be joined as Applicants.

## **The hearing**

4. Mr Wade represented the Applicants. Mr Willis represented the Respondent. Mr Blooman attended in order to be questioned by the Tribunal. I am grateful to all of them for their assistance, courtesy and constructive attitude.
5. No party requested an inspection and it was not considered proportionate to undertake one.

## **Background**

6. The property consists of a large Victorian villa ("the building"). It contains three floors and a basement. Each floor now contains two flats, and the basement now contains one flat. So, there are seven flats in all. There is an external steel staircase ("the staircase") which is supposed to act as a fire escape. It is in a parlous state of repair. The local authority has served an improvement notice in respect of it under the Housing Act 2004. Attached to the staircase is a redundant lift ("the lift"), formerly used for the removal of rubbish.
7. The property also includes extensive gardens, a roadway, and five garages demised by leases separate to the leases of the flats. I should make clear that in this decision and in the order accompanying it, "the property" includes the whole estate and the garages, not just the building in which the flats are situated.<sup>1</sup>
8. A plan of the property is attached to this decision.

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<sup>1</sup> Cawsand Fort Management Company v Stafford [2008] 1 WLR 371, Schilling v Canary Riverside LRX/41/2007.

9. I have seen a copy of the lease of flat 5 ("the lease"). It is assumed that all leases are in similar form. It is a tripartite lease, made between the then freehold owner, Mr Gernat, the management company, Kilmeny Estates Limited, and the lessee, Ms Cooke. It is dated 31 March 1958. The lease was for a term of 999 years from 25 December 1957.
10. In 1970 the Respondent company was incorporated, and became the registered proprietor of the property. The lessees of the flats are the shareholders of the company. Kilmeny Estates Ltd may have been dissolved, and certainly no longer plays any part in the management of the property.
11. By clause 3 of the lease the landlord and the management company covenanted, amongst other things, to insure the building (but not the rest of the property) against loss or damage by fire or water or aircraft, including burst or leaking pipes or cisterns, to keep the structure and exterior of the property in repair, to keep the roadway and gardens in good repair and order and to keep the lift in repair.
12. By clause 1 of the lease the lessee covenanted, amongst other things, to pay a ground rent of 10 shillings (50p) per year by equal half yearly instalments (25p) on 24 June and 25 December in each year. The lessee also covenanted to pay on the 24 June in each year a proportionate amount of the cost of insurance.
13. By clause 2(g)(i) of the lease the lessee covenanted to pay:
  - (1) a proportionate amount between all the lessees towards the expense of:
 

*...the proper and reasonable maintenance repair support and cleansing of the roof structure (including all gutters and downpipes) main walls fire escape party walls main timbers and main drains and those parts of the main building drainage system electricity system and water system used in common by more than one lessee... And of painting the exterior parts thereof usually painted and also keeping in repair the drive or carriageway and the walls and fences of the said ground and of keeping in order and planting the garden in the said ground and providing the necessary tools therefore including replacement and repair thereof...*
  - (2) a proportionate amount between the lessees of flats 2-6 towards the expense of:
 

*... papering painting and decorating the porch entrance hall passages and staircases usually papered painted and decorated and of renewing when necessary the floor covering of the entrance hall and staircases and the cost of cleaning and lighting the entrance hall and staircases...*

- (3) a proportionate amount between the lessees of flats 3-6 towards the expense of:

*... maintaining and keeping in repair the lift in the main building The cost of any necessary surveyors' or architects' fees in connection with the A4 said repairs to be included in the costs*

14. It will readily be appreciated that this is a very old-fashioned and inadequate service charge clause. There is no provision for a budget being produced by the landlord in advance of a particular service charge year, for the building up of a sinking fund and/or a reserve fund, for advance payments to be levied to pay for the budgeted costs and a contribution towards the sinking fund, for certification by an accountant of the actual service charge at the end of the service charge year, and for a balancing payment to be made (either by the landlord or the lessee) depending on whether the amount actually spent in any given service charge year was greater than or less than an the advance payment already made based upon the budget.
15. There is one further inadequacy. There is no provision enabling a managing agent or other professional person advising the landlord to be paid by the service charge.
16. The inadequacy of the lease has, understandably, given rise to very serious problems relating to the proper management of the property. The state of the staircase is now of considerable concern as it is no longer safe. The Court of Appeal has confirmed that a manager appointed by the Tribunal may be given powers or duties which are not present in the leases.<sup>2</sup> For example, the order appointing a manager may empower the manager to collect service charges, or recover fees, for which defective leases make no provision or inadequate provision.
17. Matters came to a head when, on 22 April 2016, Mr Read, Mr Fabbri and Ms Nounou made an application to the Tribunal under s.27A of the Landlord and Tenant Act 1985 in respect of the liability to pay and reasonableness of service charges for the years ending 31 July 2011 until 31 July 2017. This dispute was settled at a mediation conducted by Prof Driscoll on 19 January 2017. One of the agreed terms was that the Respondent would appoint a suitably qualified managing agent as soon as possible and no later than 28 February 2017.
18. Difficulties arose as to the appointment of a manager because of the inadequate service charge clause in the lease, which as we have seen did not enable the manager to be paid by the service charge.

### **Decision**

19. I am satisfied that the circumstances I have set out above make it just and convenient for me to make an order for a manager to be appointed

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<sup>2</sup> Maunder-Taylor v Blaquiere [2003] 1 WLR 379.

to carry out such functions in connection with the management of the property as I shall set out below. The power to make this order derives from section 24 (2)(b) of the 1987 Act.

20. At the hearing, I was told that all the parties, save the Mr Read, agreed that Mr Blooman should be appointed as a manager.
21. Mr Read objected on several grounds. First, that Mr Blooman was not a qualified associate, member or fellow of RICS. In fact, Mr Blooman is a member (MRICS). Secondly, that Mr Blooman was too far away. Thirdly, that Mr Blooman too expensive. Fourthly, that he could not attend at short notice (this is really a repeat of the second objection). Fifthly, that he was a sole trader. Sixthly, that Mr Parnell, a local surveyor, would be a better appointment.
22. I do not accept these objections, and having questioned Mr Blooman in detail I am satisfied that he is a proper person to be appointed as the manager. He has considerable experience as a building surveyor, and in managing a substantial portfolio belonging to one of his client's. He is not a sole trader, but a director of the company. His fees have been agreed by all the other lessees.
23. Accordingly, in accordance with section 24(1) of the Act, Mr Mark Blooman of B2 Chartered Building Surveyors Ltd, 9/27 The Broadway, London N8 8DR is appointed as manager of the property.
24. The order shall continue for a period of three years from the date of this order. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
25. The manager shall manage the property in accordance with:
  - (a) The directions and schedule of functions and services attached to this order.
  - (b) The respective obligations of "the Lessor" and "the Company" by which the flats at the property are demised by the Respondent. In particular, the manager is to have regard to the obligations relating to repair, decoration, provision of services and insurance of the property, as modified and extended by the directions and schedule of functions and services attached to this order.
  - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
26. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

27. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

**Name:** Simon Brilliant

**Date:** 17 July 2017

### **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).

## DIRECTIONS

1. 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.
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 (if any)).
3. 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 days from order become rights and liabilities of the manager.
4. Subject to paragraph 5 below, the manager shall account forthwith to the Respondent for the payment of ground rent received by him (if any) 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 leases.
5. As the collection of the very low ground rent may be uneconomical, the manager has a discretion as to the extent to which, if at all, he incurs costs in attempting to recover the ground rent from any of the lessees.
6. 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.
7. The manager shall forthwith produce a statement of condition in respect of the lift and a schedule of any remedial works necessary to the lift pursuant to the leases.
8. Within 90 days of this order the manager shall produce a statement of condition in respect of all parts of the property other than the lift and a schedule of any remedial works necessary pursuant to the lease.
9. By no later than 31 July 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. At the same time, the manager must serve a copy of his report on each lessee of the property and on the Respondent. The manager must do the same by no later than 31 July in each year for so long as this order remains in force.

10. 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 Respondent 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.
11. 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. For the avoidance of doubt, this includes areas and structures outside the footprint of the building itself as well as the building. The insurance is to cover all usual modern risks, including terrorism.
- (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) The manager has the power to adopt a service charge year starting on the 1st day of January in each year and ending on the 31st day of December in each year.
- (iii) The manager has the power to collect an interim service charge in advance.
- (iv) The manager will prepare his first estimate of the service charge for the period 01 September 2017 to 31 December 2018.
- (v) Interim payments of the service charge will be due on 01 September 2017 and 01 July 2018.
- (vi) Thereafter, the manager will prepare an estimate of the service charge for the year commencing 01 January 2019 and each successive year.
- (vii) Interim payments of the service charge will be due on the 1st day of January and the 1st day of July in each year.
- (viii) Demand and collect ground rents (in so far as he considers it economic to do so), service charges (including contributions to a



sinking fund), insurance premiums and any other payment due from the lessees.

- (ix) After the actual expenditure in any service charge year has been certified by an accountant, to demand any shortfall or repay or give credit for any surplus paid.
- (x) 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.
- (xi) The proportion of the total service charge which is to be borne by each flat is as follows:

1.	11.60%
2.	15.88%
3.	14.24%
4.	14.73%
5.	12.66%
6.	15.54%
7.	15.35%

### **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 (if available) 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 interior common parts of the property.
- (iv) In respect of the staircase, the manager is to carry out tendering in respect of its repair within six weeks of his appointment. If necessary he is to apply to the Tribunal for dispensation of the consultation requirements.
- (v) The manager is at liberty to remove the lift if he considers it appropriate so to do. He is under no obligation to replace it, as it is now redundant.
- (vi) The manager has power to incur expenditure in respect of the provision of all necessary health and safety equipment, and in complying with all regulatory and statutory requirements.
- (vi) The Respondent is entitled to recover through the service charge the cost of any surveyors', architects' or other professional persons' fees incurred by the manager whilst carrying out his functions.

#### **Right to prosecute claims**

- (i) The manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.
- (ii) Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the building and which purpose "proceedings" shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the First tier-Tribunal under section 27A Landlord and Tenant Act 1985 or section 168(4) Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

#### **Fees**

- (i) Fees for the above mentioned management services will be a basic fee of £400 per annum per flat. 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 the following charges:

##### Preparation of specifications:

£1 - £20,000	By agreement but not exceeding £750
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£20,001 - £50,000	£1,000
£50,001 - £150,000	£2,000
£150,01 - £500,000	£3,000
£500,000+	£5,500

Obtaining competitive tenders, tender reports and administering all major works:

£1 - £20,000	14% subject to £750 minimum
£20,001 - £50,000	12% subject to £2,800 minimum
£50,001 - £150,000	10% subject to £6,000 minimum
£150,01 - £500,000	9% subject to £15,000 minimum
£500,000+	7% subject to £45,000 minimum

All charges under this section will be discounted by any amounts paid under the earlier section.

- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (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

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

ARTERBERRY ROAD



BLOCK PLAN

KEY	
MAIN BUILDING	PINK
TOP FLOOR FLATS	RED SOCCO
CARDEN	GREEN
ACCESS	BROWN
COAL STORE	RED HATCHED

KILMENY 36 ARTERBERRY RD., WIMBLEDON S.W. 20.

PLAN K3  
DECEMBER 1957