



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

Case reference	:	CHI/00AW/LAM/2017/0013 & CHI/00AW/LDC/2018/0010
Property	:	112 Finborough Road, London SW10 9ED
Applicant	:	Paul Newberry (Flat 3)
Representative	:	---
Respondent	:	Seyed-Ali Fatahi (Landlord Elisabet Atteryd (Flat 2) Dimitrios Papadimitriou (Flat 1)
Representative	:	---
Types of application	:	(1) Appointment of Manager Section 24 Landlord and Tenant Act 1987 ("the 1987 Act") & (2) Dispensation from consultation Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act")
Tribunal member(s)	:	Judge P J Barber Miss C D Barton BSc MRICS
Hearing Date 11th April 2018 - Venue	:	Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire PO9 2AL
Date of decision	:	23rd April 2018

DECISION

SUMMARY OF DECISION:

1. The Tribunal makes no appointment of a manager in respect of the Property.
2. Dispensation is granted by the Tribunal pursuant to Section 20ZA of the 1985 Act, in respect of consultation requirements relating to proposed roof repair works at the Property.

BACKGROUND:

3. The application for appointment of a manager was made by the Applicant tenant pursuant to a notice served under Section 22 of the 1987 Act and broadly alleged the landlord to be in breach of obligations owed to the tenants under their leases, such as to make it just and convenient to appoint a manager. The disrepair complained of related to flat roof repair work outstanding at the property. Directions were issued variously in this matter on 22nd November 2017, 18th January 2018 and 13th February 2018. All three tenants were originally applicants for the appointment of Mr Neil Maloney as a manager; however the tenants of Flat 1 and Flat 2 subsequently decided to support the appointment of Mr Richard Davidoff, being the landlord's proposed manager and were as a result, removed as Applicants, and joined with the landlord as Respondents.
4. On 29th December 2017, the Respondent landlord subsequently made his own separate application under Section 20ZA of the 1985 Act for dispensation from consultation requirement in relation to roof repairs. Directions were issued in that matter on 8th February 2018; the Tribunal considered that both applications should most conveniently be dealt with together.
5. The bundles for the respective applications included copies of each application, the directions, register entries, and also copies of the three long leases being as follows:

First Floor : Lease dated 4th November 2002 made between South West Developments Limited (1) Michael John Howard Stanley & Upasna Stanley (2) ("Flat 1 Lease")

Second Floor: Lease dated 12th December 2003 made between South West Developments Limited (1) Mo Ghani Kasim (2) ("Flat 2 Lease")

Third Floor: Lease dated 24th January 2003 made between South West Developments Limited (1) Sylvia Dryden (2) ("Flat 3 Lease")
6. The directions dated 8th February 2018 in regard to the Section 20ZA application, provided that the tenants who oppose the application should by 9th March 2018 complete a reply form and send a statement in response. The directions made it clear that if a tenant did not comply

with such requirement, it will be presumed that they do not oppose the application.

THE LAW:

7. Section 24(2) of the 1987 Act provides that:

“The appropriate tribunal may only make an order under this section in the following circumstances, namely-

(a) where the tribunal is satisfied-

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii)...

(iii) that it is just and convenient to make the order in all the circumstances of the case.

...

8. Section 20ZA(1) of the 1985 Act provides that:

“Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

REPRESENTATIONS:

9. There was no inspection; the hearing was attended by Mr Newberry accompanied by his proposed manager Mr Maloney, and also Mr Seyed-Ali Fatahi, his son Mr Toufan Fatahi, and their proposed manager, Mr Richard Davidoff. Miss Elisabet Atteryd, the tenant of Flat 2, was also in attendance.
10. The Tribunal noted at the outset that all parties acknowledged the breach of obligation by the landlord in regard to the outstanding roof repair work at the property; accordingly the issue was whether it would be just and convenient for the Tribunal to appoint either Mr Davidoff or Mr Maloney as manager, or neither of them. The Tribunal further noted that the Section 24 application bundle had been poorly prepared and was partly illegible and out of sequence; however in the circumstances, it was primarily necessary for the Tribunal to hear and make its decision based upon the oral evidence given by each of the two managers proposed. Mr Davidoff advised the Tribunal that the landlord's first preference would be for the private contractual

appointment of Mr Davidoff and his firm, ABC Estates Limited (“ABC”), to be allowed to continue, although if that would not be acceptable to the Tribunal, then the landlord would wish the Tribunal to appoint Mr Davidoff as manager.

11. In regard to the Section 20ZA application, Mr Maloney indicated that whilst Mr Newberry has reservations concerning the matter, the main concern was for the urgent roof repair works to be proceeded with properly and competently.

APPLICATION TO APPOINT A MANAGER:

12. Mr Maloney gave evidence regarding his experience and advised at the outset that he had himself been a valuer tribunal member, but had resigned on 31st December 2016. The Tribunal members indicated that Mr Maloney was not personally known to them and the Respondent landlord raised no objections in regard to the position.
13. Mr Maloney said that he has had an FRICS surveyor`s qualification since 2000; he said that he acts as an expert witness in landlord and tenant litigation and that he runs his own property management business with 60 staff and 3 offices. Mr Maloney added that he is currently appointed by the Tribunal to manage a property at Camberley in Surrey; he also referred to his professional indemnity insurance in a sum of £2M. Mr Maloney said that he is aware of the individual nature of the responsibilities of a tribunal appointed manager, adding that he he has been a practising surveyor in London for the last 30 years, with experience of managing buildings, comprising between 2 and 400 residential units. Mr Maloney confirmed that he is registered as a general building surveyor, with previous ISVA membership, adding that he qualified in 1988. Mr Maloney confirmed that his firm “*My Home Surveyor*” had purchased the goodwill of Parsons Son & Basley.
14. The Tribunal asked Mr Maloney to provide missing details from the generic draft management order which he had provided; he confirmed that a 2 or 3 year order was envisaged and referred the Tribunal to his “*Brief Condition Report*” at Page 136 of the bundle, regarding the problem concerning water ingress through the flat roof of the building, referring to a sub-standard repair carried out in 2013/14 when the building was the subject of an earlier tribunal manager appointment. Mr Maloney said Mr Newberry`s concern is that the roof repair work should now finally be done properly, but he had no confidence as to the ability of the landlord and the appointed managing agent ABC, to achieve this. Mr Maloney said that his fee in the first year would be £4,000.00 & VAT, reducing to £3,500.00 & VAT in the second year and subject to review and possible further reduction, for the third year. Mr Davidoff questioned the fee level proposed; Mr Maloney said that it will be a difficult building to manage. Mr Davidoff suggested that the problems arising were in regard to Mr Newberry being difficult over the years. The Tribunal reminded the parties at this point that it is not in a

position to address or deal with any history of past differences or ill feelings arising between the parties.

15. Mr Davidoff pointed out that Appendices 2 & 3 from Mr Maloney's "*Brief Condition Report*" are missing from the bundle. However, Mr Maloney explained that Appendix 2 provides a general proposed service charge budget, inevitably differing from the specific costs proposed in regard to the roof repair. Mr Davidoff asked how the roof repair budget could be reliable, given that at the time it was prepared by Mr Maloney, he had not inspected the roof. Mr Maloney explained that many of the figures in the roof repair budget are marked as being provisional, for that reason.
16. Mr Davidoff submitted that Mr Maloney's proposed fees and costs generally were higher than need be; he added that Mr Newberry had had his chance previously in 2013, when he had applied for a manager to be appointed by the tribunal, and that despite this, costs had been incurred, but a defective roof repair carried out. Mr Davidoff said that to appoint another manager such as Mr Maloney, would be to use a sledgehammer to crack a nut.
17. In regard to his experience, Mr Davidoff readily admitted that he had less formal qualifications than Mr Maloney, but pointed to ABC being a family business run for 28 years, preferring to manage a smaller portfolio of properties, but providing he said, a better service than larger corporates. Mr Davidoff described himself as "*blue collar*" by comparison to Mr Maloney; he said that he is a fellow of the Association of Estate Agents and a member of ARMA and the Institute of Property Managers. Mr Davidoff said that he understood that any appointment of himself as a manager pursuant to Section 24 of the 1987 Act would be in respect of him personally; he added that he has experience as a Tribunal appointed manager and understands the role. Mr Davidoff said that he has professional indemnity insurance cover in a sum of £1.2M, being less than that of Mr Maloney, but he added that his firm's property profile is correspondingly smaller. Mr Davidoff said that he did not see this as a problem property, albeit mentioning the historic difficulties as between the parties. Mr Davidoff said it speaks volumes that two of the three tenants had started as joint applicants with Mr Newberry, then transferred their allegiance to the landlord, in support of Mr Davidoff as manager. Mr Davidoff referred to complex roof works which he has recently successfully managed at a property within a conservation area, by comparison to which he said, this matter is straight forward.
18. Mr Davidoff explained that he first visited the Property in summer 2017, when the two tenants other than Mr Newberry had felt it easier to go along with Mr Newberry's proposals. However by early winter 2017, Mr Davidoff said the other two tenants had contacted him again somewhat to his surprise, asking him to review Mr Maloney's proposals, which he referred to as being fancy and/or overkill. Mr Davidoff questioned the need for managing fees of £4,000.00 & VAT

even for the first year, adding that his charges under his firm's managing agents appointment since January 2018 have been at the rate of only £1,750.00 & VAT per annum, to include not only the three long leasehold units, but also management of three further short lets in the Property. Mr Davidoff explained that by the end of 2017 the two tenants other than Mr Newberry had become reconciled with the landlord's proposals and both agreed the appointment of Mr Davidoff as managing agent. Mr Davidoff said that his firm had moved matters on promptly since January 2018 by issuing consultation notices for the proposed roof repair works, pursuant to Section 20 of the 1985 Act. Mr Davidoff had thought that since Mr Newberry is the top flat owner and therefore most affected by the leaking roof, he would support prompt action. Mr Davidoff said that whilst it may have been just and convenient in 2013 for the Tribunal to appoint a manager, that is not now the position. Mr Davidoff accepted that he is not a fully qualified surveyor like Mr Maloney, but added that the flat roof repairs works are minor works not necessitating the involvement of a surveyor. Mr Davidoff added that the building is now being cleaned, thus addressing another of Mr Newberry's previous complaints. Mr Davidoff said he considers that six months should be more than enough time to enable his firm to get the Property ship-shape.

19. Mr Maloney questioned Mr Davidoff's abilities as a manager, referring to defects in the service charge demands for roof work contributions by way of one lump sum, rather than half yearly in accordance with the leases, and referring to other statutory non-compliances, including defects in the form of the demands. Mr Davidoff accepted that the demands were defective and would need to be re-issued in proper, valid form. Mr Maloney also challenged the suitability of the contractors who had tendered for the work, suggesting that each of PPM Limited and Kaloci Limited have negative asset bases.

DISPENSATION FROM CONSULTATION REQUIREMENTS:

20. Mr Davidoff said that the roof work in 2013 had been a poorly executed patch job; he said that his firm as the landlord's current managing agents, have issued Section 20 notices in parallel with the Section 20Za application, given the practical urgency of collecting funds and effecting a repair. Mr Davidoff referred to Mr Newberry's complaint that the Section 20 notices were defective, by virtue of including an insufficient description of the works intended. Mr Davidoff said the intention was merely to identify in outline what was required, to enable a competent roofer to carry out the repairs. Mr Davidoff said the challenge was spurious and that the work required was described necessarily on a broad scope basis, but was largely self-evident.
21. Mr Maloney said there is some discrepancy regarding validity of the Section 20 notices, but added that it was irrelevant given that the deadline for observations in response to the second notice expires in just a few days' time. Mr Maloney said that Mr Newberry wants the work done as soon as possible and does not object to the formal

requirements of Section 20 being dispensed with, so long as the works are undertaken properly and not in accordance with a lax specification and by questionable contractors. Mr Maloney said that Mr Newberry is not alleging any prejudice to tenants by dispensation being granted, adding that he wants the work done properly under the supervision of an independent manager.

22. In his closing statement, Mr Davidoff said that PPM Limited's proposed works are on the basis of two surveyors' reports; he said that the Section 24 application pivots on whether it is just and convenient to take away management because the landlord is in breach. Mr Davidoff said the landlord has learned from the historic situation and has demonstrated his willingness to instruct an independent professional firm, experienced, with three offices and 40 staff. Mr Davidoff said that he has found the landlord to be willing to listen and sometimes adjusting his view in consequence. Mr Davidoff added that he is confident that his firm can come up to speed with management of the Property within six months, if the current voluntary appointment is allowed to continue. Mr Davidoff submitted that a formal manager appointment is not just and convenient, but added that if the Tribunal requires it, then he would be more than capable of carrying out the role. In regard to the Section 20ZA application, Mr Davidoff said that the Tribunal should grant dispensation in the interests of all the tenants, given that there is a leaking roof in urgent need of repair, that Section 20 notices have been served, and no issue of tenant prejudice would arise. Mr Davidoff said that the grant of dispensation would enable prompt advancement of the work which he is confident can be done swiftly and correctly, leaving the Property then, as a simple building to run.
23. In his closing statement, Mr Maloney said that in regard to Section 24, all the tenants had been in favour of a manager being appointed and that as the tenant of the top flat, Mr Newberry is disproportionately, the most affected by water ingress. Mr Maloney said it was not enough simply to point to the last three months, adding that it is just and convenient to take a longer view and that the landlord has not learned from the past. In regard to the Section 20ZA application, Mr Maloney said that the second notice expires in three days, adding that the main issue is to allow the landlord to get the work done in a reasonable manner and at reasonable cost. Mr Maloney said dispensation should only be granted where he is appointed as manager, adding that the proof will be in the pudding in three days' time, but that Mr Newberry may still challenge actual costs later on.
24. Miss Atteryd, the tenant of Flat 2 who said that she is also appointed by Mr Papadimitriou to represent his views, said that in their view, the landlord has changed, and that he has opened up a dialogue and listened. Miss Atteryd said that Mr Newberry on the other hand, showed no willingness to compromise. Miss Atteryd added that there has been good communication recently; she said it is three against one, saying that this represents the whole issue.

CONSIDERATION:

25. In regard to the Section 24 application, the Tribunal notes that the flat roof repair work envisaged is not work of a self-evidently complex nature. The Tribunal accepts that Mr Maloney is well professionally qualified and that Mr Davidoff is less so, but nevertheless considers that the roof repair involved is relatively straight forward work not necessarily requiring high level supervision and oversight. The Tribunal notes Miss Atteryd`s comments and takes into account the fact that two of the three long leaseholders decided to change sides and to support the landlord, part way through the proceedings. The Tribunal further notes that ABC appear to have acted promptly since their appointment in January 2018, in moving matters forward from a practical perspective, and at a reasonable cost. In all the circumstances, the Tribunal does not consider that it would be just and convenient overall for the parties, for a formal appointment of a manager now to be made, incurring significantly higher costs and in relation to works which are not of the greatest magnitude.

26. In regard to the Section 20ZA application, the Tribunal notes that no evidence of any prejudice to tenants was asserted and also that some efforts have been made to consult, albeit with some differences arising as to formal statutory compliance. The Tribunal further notes that an initial Section 20 notice had been served on the tenants on behalf of the Respondent landlord, on 27th December 2017, and also a notice of intention to carry out the works, on 9th March 2018. The landlord appears to propose instructing PPM Specialist Works Limited to carry out the works, being the lowest priced of the three bidders. In the circumstances the Tribunal is unable to find evidence that the tenants would be prejudiced by dispensation being granted and accordingly it determines that all the consultation requirements in regard to the proposed roof works are dispensed with. It is pointed out however that the determination is in regard only to such dispensation and does not approve the proposed costs, or prevent possible subsequent challenge of such costs as and when they may arise.

Judge P J Barber

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).