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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	LON/00AK/LAM/2016/0001 & LON/00AK/LVM/2019/0003
Property	:	Arnos Grove Court, Palmers Road, London N11 1RA
Applicant	:	Mr Matthew Young (tribunal- appointed manager)
Respondents	:	1) Edlington Ltd (freeholder) 2) Arnos Grove Court RTM Co Ltd 3) The Occupational Leaseholders of Arnos Grove Court 4) The Garage Leaseholders (not included at point 3)
Type of application	:	Appointment of manager
Tribunal members	:	Judge Timothy Powell
Date and venue of hearing	:	15 February 2019 at 10 Alfred Place, London WC1E 7LR
Date of Interim Decision	:	20 February 2019

INTERIM DECISION
*to clarify the term of the manager's appointment and to grant
an interim extension of that appointment*

Summary of the tribunal's decisions and orders

- (1) I determine that the original management order made on 22 February 2016 will expire on 21 February 2019; but
- (2) I make a further order that the existing management order is to be extended on the same terms until four weeks after the determination of Mr Young's application for a variation of the order, or until further order of this tribunal;

- (3) I do not direct but make a request to Mr Young that he assists leaseholders in their Right to Manage application, to the extent that they need assistance;
- (4) I make no order that would prevent Mr Young from claiming his costs of the application and hearing on 15 February 2019 through the service charge, or to limit those costs; which must, in any event, be reasonable; and
- (5) The next stage is for me to issue directions for the determination of the manager's substantive application for a variation of the management order; and these will follow soon, in a separate document.

Background

1. This was an application to clarify the terms of a management order made by this tribunal on the 22 February 2016 in respect of Arnos Grove Court, Palmers Road, London N11 1RA ("the Property") and for a variation of that management order.
2. At the hearing on 15 February 2019 the applicant, Mr Matthew Young, the manager of the Property appointed by the tribunal on 22 February 2016, was represented by Ms Rayan Imam of counsel; and the occupational leaseholders were represented by Mr John Fitzgerald and Mr Ian Davis, with other leaseholders being present. There was no appearance by Mr Young himself, nor by or on behalf of the freeholder company, Edlington Limited.
3. In 2015, the leaseholders at the Property were dissatisfied with the freeholder's management and applied to this tribunal for an order under section 24 of the Landlord and Tenant Act 1987 to appoint a manager. The tribunal dealt with that application under case reference LON/00AK/LAM/2016/0001. The lead applicants were Mr and Mrs Fitzgerald, who were both before me today. They put forward Mr Young as their proposed manager and a hearing took place on 22 February 2016.
4. Up until that point, the freeholder company had played no part in the proceedings, but a director, Mr G Kingham, attended the final hearing. Although initially opposed to the appointment of a manager, Mr Kingham eventually consented to the tribunal making an order. The applicants' solicitors presented the tribunal with a draft management order, expressed to be for a period of 36 months, i.e. three years. After interviewing Mr Young, the tribunal decided to appoint him as manager of the Property under the 1987 Act.
5. It appears that, due to the urgent need for an appointment to be made, the tribunal issued a "Decision Summary" on the day of the hearing, i.e. on 22 February 2016; and it then provided a fully reasoned decision on

9 March 2016. Both documents approved the terms of the management order that had been supplied, save in one respect, that is: "The Order shall have effect for a period of two years, but that period may be extended to three years by a further application..." Both the Decision Summary and the fully reasoned decision were issued to the parties annexing the approved management order which, unfortunately and inconsistently, still referred to the appointment being "for 36 months from 22 February 2016", without amendment.

6. For whatever reason, none of the parties realised that there was inconsistency between the tribunal's decision and the management order. Certainly, nobody thought it necessary to apply for a variation or extension of the management order before the expiry of two years on 21 February 2018. Mr Young continued to act as manager of the Property after that date, relying it seems on the 36-month term specified in the management order. The discrepancy only appears to have become a problem at the very end of 2018 and an urgent hearing was sought to clarify whether the management order was still in existence, or whether it had expired.

Submissions made at the hearing

7. At the start of the hearing on 15 February 2019, I heard from Mr Fitzgerald, who described unhappiness with Mr Young's tenure as tribunal-appointment manager. He said that in 2017 an application had been made by leaseholders to claim the Right to Manage under the Commonhold and Leasehold Reform Act 2002, but that (for an unspecified reason) this had not succeeded. Despite this failure, a majority of leaseholders still wished to manage the Property for themselves; but, at the same time, they did not want a situation to arise where there would be no effective management of the Property.
8. Mr Fitzgerald said that the freeholder company was hard to contact and it took no active interest in the Property. Although, in their opinion, the original management order had only been for two years, leaseholders recognised that Mr Young had been the effective manager for the whole period since his appointment. i.e. for three years, less seven days. At this stage, leaseholders were less interested in what had happened in the past and were far more interested in what would happen in the future. Above all else, they wished to avoid a situation where Mr Young's appointment were terminated precipitously, leaving them with no management at all and with insufficient time to put together alternative arrangements, whether it be a fresh application for a manager or another attempt at exercising the Right to Manage.
9. On behalf of the manager, Ms Imam of counsel referred to informal correspondence with the tribunal in November and December 2018 and January 2019, concerning the inconsistency between the tribunal's decision and the management order; and the differing views expressed

by a judge as to whether the order was for two years or three years. Ms Imam was concerned that those letters sought to vary the management order and she submitted that it would be unfair to amend the management order at this stage under the “slip rule”, quoting the decision of the Upper Tribunal (Lands Chamber) in *Clarise Properties Limited* [2012] UKUT 4 (LC).

10. I indicated that that I would pay no attention to the informal letters from the tribunal, but would consider the matter completely afresh today and make up my own mind from the facts and submissions that I heard. In any event, I did not consider that this was a matter of amending the order under the slip rule: if the true position was that the order expired after two years, it would be too late to amend it under the slip rule now; but, if the true position was that the management order still existed, there would be nothing to amend.
11. Ms Imam then referred me to several well-known decisions that touched on the issues before me. Most important of these was the judgment in *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633, where the Court of Appeal made abundantly clear that it is the management order itself from which a manager’s functions and powers are derived. She urged me to say that the management order which provided for a term of 36 months prevailed, even though it was inconsistent with the tribunal’s reasoned decision.
12. When asked whether I should not look at the reasoned decision and the management order as a whole, when deciding what the term of the order was intended to be, Ms Imam emphasised that the order itself had been untouched for all but three years, it had not been appealed and there had been no application to vary that order. She emphasised that the order was crucial to the manager’s functions and was unequivocal in its terms.

My conclusions

13. The inconsistency between the tribunal’s reasoned decision and the management order, which were made at the same time in 2016, is unfortunate. If, as appears to be the case, the tribunal intended that the management order should only run for two years, it should have made an appropriate amendment, by hand if necessary, to the approved management order. With hindsight, the parties should have made application either to appeal the three-year term, or to vary the wording of the management order, but no such steps were taken. It is clear that the inconsistency was overlooked and that all parties have proceeded on the basis that the management order, expressed to be for a period of 36 months, was the basis of the manager’s appointment. It is only very recently that a question mark has been raised and my decision is now being sought, only seven days before the end of the three-year period.

14. It my judgment, it must be correct that the terms of the management order are what count. The Court of Appeal has made that clear in its decision in *Maunder Taylor v Blaquiere* (ibid). That is the order that the tribunal made and which all parties relied upon until very recently; and, in my judgment, the express 36-month term in the order must prevail, notwithstanding the inconsistency of the reasoned decision.
15. Therefore, for the avoidance of doubt, I determine that the original management order made on 22 February 2016 will expire on 21 February 2019.
16. The next question is what to do about the management order in the interim, pending the hearing of the manager's application for an extension, being dealt with under reference LON/OOAK/LVM/2019/0003. After discussion with the parties, all present were concerned that Mr Young's appointment should continue until at least that application was heard; but the leaseholders wished there to be yet more time, to enable them to find an alternative manager to replace Mr Young, or to exercise the Right to Manage.
17. With regard to the latter, I note that there have been communications recently between leaseholders and Mr Young; and, at paragraph 9 of the application for a variation of the management order, Mr Young does not appear to oppose the Right to Manage, but seeks a variation of the management order "to reflect that and facilitate an effective transfer at a convenient time."
18. The leaseholders said that Mr Young had even suggested that he would assist them with the Right to Manage application and they sought a direction from this tribunal that he should do so.
19. The key objective in all of this is to avoid a situation where the Property is without management. Therefore, I make a further order that the existing management order is to be extended on the same terms until four weeks after the determination of Mr Young's application for a variation of the order, or until further order of this tribunal. That should protect everybody's position until the manager's application is heard, or a fresh manager is found to replace him, or the Right to Manage has been claimed and obtained by leaseholders.
20. I am not willing to make a direction to Mr Young that he must assist the leaseholders in their Right to Manage application, not least because this was raised for the first time at the hearing, Mr Young has had no notice of it and he is not present to give me his comment. However, I am willing to make a request to Mr Young that he assists leaseholders in their Right to Manage application, to the extent that they need assistance. I leave it, at this stage, to the good judgement of Mr Young and the leaseholders to achieve this, in a spirit of mutual co-operation, for the benefit of the Property as a whole.

21. However, the leaseholders may yet decide to avail themselves of numerous free sources of legal advice about the Right to Manage, not least on the website of the government-sponsored Leasehold Advisory Service (LEASE), and to consider whether they should not forge ahead with their Right to Manage application, if they so wish.
22. The last issue that I had to deal with was an application by leaseholders either to prevent Mr Young from claiming his costs of the application and the hearing on 15 February 2019 through the service charge, or to limit those costs.
23. Having heard argument, I am not willing to make such an order. Had it been realised by any party, within 18 months or so of the original management order being made, that a variation might be needed, the cost of such variation would have been incurred at that stage, in any event. Furthermore, leaseholders are already protected against any unreasonable costs and charges by their ability to challenge service charges under sections 19 and 27A of the Landlord and Tenant Act 1985.
24. The next stage is for me to issue directions for the determination of the manager's substantive application for a variation of the management order, and these will follow soon, in a separate document.

Name: Judge Timothy Powell **Date:** 20 February 2019

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).