



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

Case Reference : CHI/45UB/LVM/2020/0005

Property : 37 Buckingham Road, Shoreham by Sea,
West Sussex BN43 5UA

Applicant : John Williams & Paul Meredith

Representative : John Williams

Respondent : Peter Bigge

Representative :

Type of Application : Application to discharge tribunal
appointed manager

Tribunal Member(s) : Judge D. R. Whitney
Mr M Ayres FRICS
Mrs J Herrington

Date of Determination : 2nd October 2020

DETERMINATION

Background

1. The Applicant seeks an order discharging the appointment of Mr Bigge. Mr Bigge was appointed by a tribunal decision dated 3rd March 2020 under reference CHI/45U/LAM/2020/0002. The Application was dated 4th June 2020.
2. The Applicants are the freeholders of the building. Mr Bigge was the tribunal appointed manager. The original application was made by Ms L Whitenall and Mrs M Bean who were the other leaseholders at the property.
3. The Applicants contend notwithstanding the current pandemic no progress has been made by the Respondent manager and he has not complied with the terms of the Order. The Applicants suggest that the order should be discharged but the application contains no detail as to what alternative management they propose.
4. Directions were issued on 10th July 2020 providing for the matter to be dealt with by way of video hearing on Friday 18th September 2020. The parties have substantially complied with those directions and references in [] are to pages in the bundle.

Hearing

5. The hearing took place by video to which all parties consented. The below is a record of the important points and evidence raised by the parties and a note of everything that took place.
6. Initially only Mr Williams and Mr Meredith attended the video hearing. Mr Williams confirmed he had heard nothing from the other leaseholders.
7. The Tribunal determined that it would proceed with the hearing but its clerk was asked to try and make contact with Mr Bigge. The Tribunal was satisfied given Mr Bigge had responded to the directions which contained details of the hearing that he had notice of the same.
8. Mr Williams explained that between Mr Bigge's appointment in March and May he had no contact. He was concerned that matters were not moving forward. Once he did hear he did not accept that Mr Bigge would not have had his or Mr Meredith's contact details. Further he was concerned that Mr Bigge appeared to be going off at what he described as a tangent in not simply instructing Mr David Smith and Cambridge Construction to undertake the major works as provided for in paragraph 8 of the Schedule to the Management Order [6].

9. At this point in the hearing (approximately 10.50am) Mr Bigge attended. He confirmed he had seen the bundle but did not believe he had received the link for the hearing. Mr Bigge was in a hotel room and had some issues with connectivity. As and when Mr Bigge's connection failed the Tribunal would stop until he was able to rejoin.
10. The tribunal précised the points made by the Applicants so far and Mr Williams confirmed that this was an accurate summary.
11. Mr Williams explained that he did speak on the telephone with Mr Bigge and raised his concerns over the additional costs which would be incurred by not proceeding with the current major works, preparing a new specification and then having to undertake a further section 20 consultation. Mr Williams also was concerned about the need for a forensic assessment of the costs.
12. Mr Williams contended that Mr Bigge was failing to follow the terms of the management order by not simply getting on with appointing Mr Smith and Cambridge Construction. He also raised concern that the insurance was still not in the name of Mr Bigge which is what the management order required.
13. Mr Williams said that he and Mr Meredith felt they were deliberately being excluded by Mr Bigge who appeared to speak with the other leaseholder notwithstanding their ownership of the freehold and leasehold units in the Building. Mr Williams believed if the contractors had been appointed the works could by now have been completed.
14. It was Mr Williams case that Mr Bigge had failed to follow the order and he should be discharged. Mr Williams and Mr Meredith intended to appoint Home Leasing Letting Agents of Hove to manage the building .
15. Upon questioning by the Tribunal Mr Williams confirmed that if the Tribunal did not accept his application to discharge the appointment they would resist any extension of the current order. Mr Williams stated that whilst he accepts the country went into lockdown shortly after the order was sent out he would have expected to have had some communication by mid May when he chased Mr Bigge. In his opinion this delay was unacceptable, he felt "lockdown" was used as a default for not doing anything.
16. Mr Meredith stated to the Tribunal that he failed to see how Mr Bigge could make the management of the building pay at the rates agreed. Mr Meredith suggested that Mr Bigge will make his appointment pay by undertaking many other services such as reviewing the accounts and re-opening the proposed major works.

17. The Tribunal adjourned at 11.40am to provide all parties with a break.
18. The Tribunal resumed at 12.02.
19. Mr Bigge explained he was not concerned that he was not local. His company to whom he has delegated day to day management has blocks all over the country.
20. He explained Covid had some effect on the running of his business. The provision of information from the previous agents had been patchy to say the least. In particular the accounts had been very late in being produced and he asked his account to review the same as he had significant concerns. It was his view that he needed to know what figures were accurate.
21. He explained that concerns had been raised over issues at the building. He referred to a pipe at the rear of building which he believed required work. Further the survey relied upon was some 18 months old. He therefore determined it was best to start with a clean sheet and arrange for a fresh survey to be undertaken to ascertain what works were required. He accepted there was no trust between the parties at the building.
22. He was concerned that it had been suggested to him that there were links between the Applicants, Mr Smith and Cambridge Construction.
23. He believed his approach was the correct approach for the building.
24. Mr Bigge confirmed he would be happy for the order to be extended. He further confirmed to the Tribunal that if so directed he would appoint Mr Smith and Cambridge Construction.
25. All parties were afforded opportunity by the tribunal to question the other party.

Determination

26. The Tribunal considered carefully all of the documents within the bundle. In particular close regard was had to the Management Order [1-7] and the previous Tribunal decision [8-13] dated 3rd March 2020.
27. The Tribunal notes that the decision was received about a fortnight before the lockdown due to the Covid 19 pandemic began. All parties agree that it was not until mid April that Mr Bigge had been provided with information from the previous managing agents. The Applicants then made this application on 4th June 2020, three months after the management order.

28. The Tribunal has considered all matters carefully. Certainly the Tribunal had concerns over certain aspects of the management. Whilst we will set out these below overall we were satisfied that Mr Bigge is a competent manager who wished to manage in a proper manner.
29. It was unfortunate that contact had been made by Mr Bigge with the other leaseholder and not also with the Applicants. Be that as it may and whilst we note Mr Williams comments that the previous agents had his and Mr Meredith's contact details we must take account of what was happening in the country at that time. The fact that no contact had been made directly within a month of receiving the handover documents in the circumstances of April/May 2020 was not in this Tribunal's determination unreasonable.
30. Mr Bigge explained he was concerned that since the original specification had been undertaken by Mr Smith [76-98] further degeneration may have occurred. We accept this is a valid concern however we note at the earlier hearing it would appear the other leaseholder had agreed to pay their share of the funds required to undertake these works if Mr Bigge was appointed and the management order specifically tasked Mr Bigge with proceeding with those works.
31. We accept in some circumstances reviewing and starting again might be the correct approach.
32. The Applicants appear to accept their previous agents failed. They themselves refer to taking court proceedings against those agents. Whilst they have suggested they will appoint other agents' little detail was provided including as to the experience of the agents whom they proposed.
33. This Tribunal is satisfied that a change of agent now would not be in the best interests of the building as a whole. The tribunal is not satisfied on the basis of the evidence that it would be appropriate to discharge the Tribunal appointed manager by way of an application made only three months after the original decision appointing Mr Bigge. The Tribunal refuses the application and remains of the view that in all the circumstances of this case and building it is just and convenient for a manager to be appointed.
34. Mr Bigge is reminded that he is an appointee of the Tribunal. It is the management order which sets out his authority and he must follow the same. If he requires further direction or amendment he may apply to the Tribunal. The Tribunal reminds him that under paragraph 8 of the Management Order he should appoint Mr Smith and Cambridge Construction to undertake works upon which a previous section 20 consultation had been undertaken.

35. This Tribunal requires and directs Mr Bigge to do so. It was the undertaking and completion of these works which were key to his appointment. The other leaseholders had told the previous tribunal they were happy to pay their proportion of the costs of such works.
36. We accept other works may be required but it seems imperative to this tribunal that the works identified in Mr Smith's specification are undertaken as soon as possible.
37. Finally the tribunal has considered whether it should extend the current order. The current order was for 12 months. The tribunal is not convinced that the previous tribunal in making the Order was aware of the likely effects of the current pandemic. We also wish to afford Mr Bigge time to ensure completion of the works referred to above. Therefore we extend the term of the Order until 30th June 2021.