



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

Case reference : **LON/00BK/LAM/2019/0023**

Property : **Arthur Court, Queensway, London
W2 5HW**

Applicant : **Ms Frances McGarry**

Representative : **Mr Adrian Carr of Counsel (direct
access)**

Respondents : **(1) Arthur Court Management Ltd
(2) Arthur Court Freehold Ltd
(3) The leaseholders of Arthur Court**

Representatives : **(1) & (2): Mr Jonathan Upton
instructed by Howes Percival LLP (3)
as set out below**

Interested Party : **Arthur Court (Queensway) RTM
Company Limited**

Type of application : **Appointment of a manager**

Tribunal members : **Judge N Hawkes
Mr T Sennett FCIEH
Mr L Jarero BSc FRICS**

**Dates and venue of
hearing** : **14 & 15 January 2020 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **4 February 2020**

DECISION

Decision of the Tribunal

The Tribunal determines that it will not appoint a manager.

The application

1. The Applicant, Ms Frances McGarry, seeks an order appointing Mr Tony Hymers MRICS, FIRPM as the manager of Arthur Court, Queensway, London W2 5HW (“Arthur Court”) under section 24(2)(b) of the Landlord and Tenant Act 1987 (“the 1987 Act”).
2. A preliminary notice under section 22 of the 1987 Act, in the form of a draft application, was served on Howes Percival LLP, solicitors acting for the First and Second Respondents, in early August 2019. By a decision dated 10 September 2019, Judge Vance found that this satisfies the requirements of section 22(2) of the 1987 Act.
3. Directions were given on 9 October 2019 by Judge Powell which include a direction that:

“As the applicant is a director of the freehold and management companies, which do not object to the application, those companies shall take the following steps on behalf of the applicant, namely:

 - (i) By 18 October 2019 send to each of the leaseholders, by hand delivery, first-class post or email, as appropriate, copies of the application form dated 18 September 2019, management plan prepared by Tony Hymers, letters from Frances McGarry and Howes Percival LLP (prepared for an earlier application, now superseded) and these directions;*
 - (ii) Display a copy of these documents in a prominent position in the common parts of the premises; and*
 - (iii) By 23 October 2019, file with the tribunal a certificate to confirm that these have been done and stating the date(s) on which they were done.”*
4. Accordingly, in following these directions Howes Percival LLP, solicitors for the First and Second Respondents, were not acting under the instructions of the Applicant as was suggested at the hearing but rather they were simply complying with Directions made by Judge Powell.
5. On 11 December 2019, Judge Vance determined that a company, Arthur Court Victims Limited, would not be added to this application as an interested party. Accordingly, Arthur Court Victims Limited has no standing to make representations in these proceedings, although it has nonetheless attempted to do so.
6. On 6 January 2020, Judge Vance determined that Arthur Court (Queensway) RTM Company Limited would be added to the application as an interested party.

The hearing

7. A hearing took place on 14 and 15 January 2020 at which the Applicant was represented by Mr Carr of Counsel and the First and Second Respondents were represented by Mr Upton of Counsel. Of the Third Respondents, Mr Mumford, Ms Birkinshaw, Mrs Saada and Mr Ghazaleh attended the hearing in order to

make oral submissions and other lessees attended as observers. Some of these oral submissions were made on behalf of a number of lessees, including on behalf of lessees who were not present.

8. The First and Second Respondents support this application. Mr Upton stated that he agreed with the contents of Mr Carr's skeleton argument, which was read out in opening. Mr Carr confirmed to the Tribunal that there were no areas of difference between him and Mr Upton and that he adopted the entirety of Mr Upton's oral submissions. The lessees other than the Applicant who took an active part in these proceedings opposed the application.
9. Mr Hymers, the proposed manager, attended the hearing on 14 January 2020 and he was questioned by the Tribunal and by the parties.

The Tribunal's determination

10. Section 21(1) of the 1987 Act provides:

21.— Tenant's right to apply to court for appointment of manager.

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to the appropriate tribunal for an order under section 24 appointing a manager to act in relation to those premises.

11. The potential grounds for making an order are set out in section 24(2) of the 1987 Act:

24.— Appointment of manager by a tribunal.

...

(2) 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

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

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

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

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

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

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

12. The Applicant does not allege there has been a breach of any obligation on the part of the First and Second Respondents and she makes no criticism of the Ringleys Group (“Ringleys”), the managing agents who are currently instructed to manage the block. The Applicant relies upon section 24(2)(b) of the 1987 Act and submits that, whilst no fault is alleged, other circumstances exist which make it just and convenient for a management order to be made.
13. Mr Carr and Mr Upton submitted that section 24(2)(b) of the 1987 Act gives the Tribunal “a broad and unfettered power” and that section 24 is not an exclusively fault-based jurisdiction.
14. In *Kol v Bowring* [2015] UKUT 530 (LC), HHJ Gerald made the following statement of general principle at [22]:

22. The purpose of the power granted by section 24 of the 1987 Act to appoint managers or receivers in respect of residential property is to enable that property to be managed subject to the control of the tribunal in circumstances where the landlord's management or discharge of its obligations under the provisions of the lease have been found wanting. Looking at matters very broadly, the whole purpose of the jurisdiction is to enable the F-tT to ensure that that what has hitherto been done inadequately and perhaps improperly is done adequately and properly. It is for that reason that the F-tT is granted very wide powers as to how the manager should exercise his functions under the order and also such incidental or ancillary matters as it thinks fit: see section 24(4). Those are expanded by subsection (5) which lists other matters which the order may encompass, all of which are “without prejudice to the generality of subsection (4)”.

15. At the commencement of the hearing, the Tribunal invited submissions from all parties as to:
 - a. whether principles of statutory interpretation require the general words in section 24(2)(b) of the 1987 Act, which follow a list of specific fault-based grounds, to be construed with reference to the fault-based grounds which precede them;
 - b. whether, in any event, HHJ Gerald’s statement of principle in *Kol v Bowring* makes it clear that section 24 of the 1987 Act is a fault-based jurisdiction; and
 - c. concerning the cost of the proposed manager in comparison with the cost of the current managing agents, Ringleys.

16. Mr Carr and Mr Upton maintained that, on its true construction, section 24(2)(b) of the 1987 Act confers upon the Tribunal a wholly unfettered discretion. They submitted that HHJ Gerald's comments were not a necessary part of the Upper Tribunal's decision in *Kol v Bowring* and so are not binding on this Tribunal. Further, they submitted that the statement at [22] of HHJ Gerald's judgment should be viewed as "a throw away comment" or, in any event, as being wrong. Mr Carr contended that section 24 of the 1987 Act was otherwise interpreted at [36] and [37] of *Oung Lin Chaun-Hui v K Group Holdings Inc [2019] UKUT 371 (LC)*. The Third Respondents disagreed with all of these submissions. The issue of the cost of the proposed manager will be considered below.
17. Putting the Applicant's case at its highest, if the Tribunal has a broad and unfettered discretion under section 24(2)(b) of the 1987 Act, for the reasons set out, below the Tribunal is not satisfied that it is just and convenient on the facts of this case to exercise any such discretion. Accordingly, it is not necessary for the Tribunal to determine the issues set out at subparagraphs 15(a) and 15(b) of this decision.
18. The Third Respondents submitted that the purpose of the jurisdiction under section 24 of the 1987 Act is to enable a lessee to make an application for the appointment of a manager in their capacity as a "tenant" (see section 21 of the 1987 Act). They argued that the Applicant, who is both a lessee and a director of the First and Second Respondents, is in reality making this application, supported by the First and Second Respondents, concerning her role as a director of these two companies.
19. On 30 July 2019, an extremely unpleasant and threatening anonymous letter dated 23 July 2019, which runs to five pages, was received by two current directors, by a former director of the First Respondent, and by a lessee ("the Letter"). The writer of the Letter threatens to throw acid in their faces and those of their families and friends. The Letter also contains appalling homophobic abuse. The Letter has resulted in a Metropolitan Police investigation, which remains ongoing. The writer of the Letter appears to be seeking to coerce the current directors to resign.
20. The Letter was condemned by lessees at the hearing. The Third Respondents state that, on being made aware of the Letter, by return emails the majority of the lessees "deplored the contents of this letter". They described the letter as "appalling" and as "written by a total nutter".
21. One of the lessees stated at the hearing that she personally found it difficult to talk about the Letter because something similar had happened to her and that she understood how scary such a situation can be. She stated that she had heard that prostitutes had had to be moved on from the building and that it is not known whether the writer of the Letter is a person who currently resides at Arthur Court. In her experience, lessees at Arthur Court "are nice, normal people". Lessees who spoke at the hearing submitted that it would be unfair if the writer of the Letter which they absolutely condemn were to be considered characteristic of the lessees at Arthur Court.

22. In response, the Tribunal was referred to two emails as lacking in sympathy. However, it was accepted that a significant number of lessees had responded to the Letter by publicly stating that the Letter is abhorrent and that the writer of this Letter, which is the subject of an ongoing police investigation, cannot be considered to be representative of the lessees at Arthur Court.
23. Mr Carr and Mr Upton stressed that it is the existence of conflict, in general, at Arthur Court which is relied upon by the Applicant as constituting the “other circumstances” which make it just and convenient for an order to be made and that the general state of conflict is the reason why the First and Second Respondents support the application.
24. Mr Upton stated that the Letter seeking to coerce the directors to resign, which is currently the subject of a police investigation, is one manifestation of the conflict in its worst possible form. However, he said that the conflict also manifests itself in many other ways, including through other correspondence to which the Tribunal was referred and through extensive litigation. Mr Upton referred the Tribunal to the number of Court/Tribunal cases which have been issued.
25. The Tribunal is aware that there are ongoing First-tier Tribunal proceedings concerning contested applications pursuant to section 20ZA and section 27A of the Landlord and Tenant Act 1985.
26. The Tribunal has been informed that, on 9 September 2019, a claim issued in the High Court was served on the First and Second Respondents. The relief sought in these proceedings includes an order compelling the First and Second Respondents to call a general meeting and table resolutions for the removal of the current board of directors. These proceedings are also ongoing.
27. On 25 September 2019, a right to manage (“RTM”) company, Arthur Court (Queensway) RTM Company Limited, was incorporated. In November 2019, the RTM company served a notice claiming to acquire the right to manage Arthur Court with effect from 20 March 2020.
28. One of the matters asserted in the counter notice is that Arthur Court does not qualify by reason of the floor area demised under a lease of the car park which has been granted to NCP Car Parks. Shortly before the commencement of this hearing, an application was sent to the Tribunal for issue seeking a determination that, on the relevant date, the RTM Company was entitled to acquire the right to manage Arthur Court. No party wishes this application to be adjourned until after the conclusion of the RTM proceedings.
29. Submissions have been made concerning the motivation for issuing the Court and Tribunal proceedings. As stated at the hearing, this Tribunal is not in a position to make findings concerning the motivation for issuing Court or Tribunal proceedings and it is not in a position to assess the likely outcome of these proceedings.
30. It is common ground that, if the RTM application were to be successful, the RTM company would automatically take over the management functions of any

Tribunal appointed manager by virtue of section 97(2) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). Mr Carr stated that, in these circumstances, there is “every chance” that an application would be made for the Tribunal to appoint a manager in place of the RTM company. He clarified that he was not suggesting that such an application would be made by the Applicant but he reiterated that there was “every chance” that such an application would be made. This assertion was not challenged.

31. Mr Carr submitted that the management of Arthur Court by a Tribunal appointed manager would be likely to reduce conflict because, unlike Ringleys, the Tribunal appointed manager would be answerable to the Tribunal and rather than to the board. However, he accepted that it is unlikely that all conflict would cease.
32. Mr Upton accepted that the existence of conflict alone, where the landlord and the management company are not said to be in breach of any obligation and where Tribunal and Court determinations are being sought in order to resolve various matters in dispute, is a novel ground for seeking the appointment of a manager. He stated that there is no authority on this point but reiterated his submission that the state of conflict is such that it is just and convenient to appoint a manager.
33. The Tribunal accepts the Applicant’s case that conflict exists and that the existence of conflict at Arthur Court affects the Applicant in her capacity as a leaseholder as well as in her capacity as a director of the First and Second Respondent companies. However, in the event that the Applicant’s case concerning the true interpretation of section 24 of the 1987 Act is correct, the Tribunal does not consider that it is just and convenient to exercise its discretion to make an order appointing a manager, at the present time, for the following reasons.
34. A First-tier Tribunal is due to determine whether or not, on the relevant date, Arthur Court (Queensway) RTM Company Limited was entitled to acquire the right to manage Arthur Court.
35. Arthur Court is a block of 93 flats and, if the Tribunal appointed a manager, a considerable amount of work would have to be undertaken by Ringleys and by the Tribunal appointed manager in carrying out the handover. The Tribunal considers that this work is likely to be at a cost to the lessees because, in the Tribunal’s expert knowledge and experience, this would ordinarily be the case. The Tribunal appointed manager would initially be unfamiliar with Arthur Court.
36. If the right to manage application were then to be successful, the RTM company would automatically take over the management functions of the Tribunal appointed manager. Again, it is likely that a considerable amount of work would have to be undertaken in conducting a handover, probably at a cost to the lessees.
37. Mr Carr stated that, if the right to manage application succeeds, there is “every chance” that a further application will be made seeking the appointment of a

manager. This assertion was unchallenged. If such an application were made and were to be successful, again a considerable amount of work would be generated in conducting a handover, probably at a cost to the lessees.

38. Mr Hymers states, at paragraph 6.13 of his Management Plan, that he envisages an appointment of not less than 5 years. The Tribunal considers that this is understandable having regard to the complexities of managing Arthur Court. At present, there is uncertainty as to whether or not, if appointed, Mr Hymers' appointment would automatically come to an end, possibly in the space of a few months. After the right to manage application has been determined, the position is likely to be clearer.
39. This is not, of course, an application for the appointment of a manager in respect of a property which is being managed by a landlord without the assistance of professional managing agents. It is common ground that there has been no default in respect of the management of Arthur Court on the part of the First and Second Respondents. Further, no criticism of Ringleys, the current managing agents, is made by the Applicant in support of this application.
40. Ringleys take instructions from the board of directors. However, they are also regulated professionals and they have made reference to the need to comply with their professional obligations in correspondence to the lessees. The Applicant does not assert that the current managing agents themselves consider that, by reason of the existence of conflict, they are unable to properly carry out their management functions and no witness statement from an employee of Ringleys was relied upon at the hearing.
41. The parties are in the process of seeking the resolution of various disputes through proceedings in the High Court and in the First-tier Tribunal. A number of significant areas of dispute will be conclusively determined once these Court and Tribunal proceedings, including any appeals, come to an end. The Court and Tribunal proceedings are a means of resolving disputes.
42. The Tribunal accepts that the appointment of an independent manager who is answerable to the Tribunal rather than to the board of directors may serve to decrease the amount of conflict and disagreement in the block to some extent. However, the Tribunal is not satisfied that it would result in a significant reduction in conflict whilst various Court and Tribunal proceedings are ongoing; when there is a possibility that the manager's appointment may automatically be discharged pursuant to section 97(2) of the 2002 Act at the conclusion of the RTM proceedings (the likelihood of which is as yet unknown); when the block is currently being managed by professional managing agents; and when it is not suggested that the First or Second Respondents are failing to comply with any of their obligations.
43. Mr Hymers envisaged that, if appointed, he would be likely to have to seek directions and determinations from the Tribunal when faced with further disagreements and/or with opposition from lessees. Accordingly, further Tribunal applications would be likely to be necessary were the Tribunal to

appoint a manager. The Tribunal agrees with Mr Hymers' assessment of the situation.

44. Having regard to the factors set out above and to all of the circumstances of this case, the Tribunal is not satisfied that it is just and convenient to exercise any broad and unfettered discretion under section 24(2)(b) of the 1987 Act in favour of appointing a manager.
45. The Tribunal has carefully considered Mr Hymers' CV and Management Plan. Mr Hymers was questioned extensively for over two hours at the hearing. On the basis of the information currently available (which makes it difficult to compare Mr Hymers' fees with those of Ringleys), the Tribunal accepts Mr Carr's submission that Mr Hymers' fees appear to be broadly in line with those of Ringleys.
46. Having seen and heard Mr Hymers given evidence and having considered the relevant documents, the Tribunal is satisfied that Mr Hymers would have been a suitable appointee if the Tribunal had determined that a manager should be appointed to manage Arthur Court. Having concluded that an order appointing a manager will not be made, it would not be proportionate for the Tribunal to make determinations concerning the proposed terms of the order.
47. The Directions of 9 October 2019 identified that the issues to be determined include:

"... should the tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the landlord's costs that may be recoverable through the service charge and/or an order for the reimbursement of any fees paid by the applicant?"
48. By 21 February 2020, any parties seeking such orders and/or any order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 should notify the Tribunal and the other parties that a determination is sought, following which the Tribunal will consider the procedure to be adopted. No representations in support should be made at this stage.

Name: Judge Hawkes

Date: 4 February 2020

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).