



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

Case reference : **LON/00AN/LAM/2020/0013**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **112 Askew Road, London W12 9BL**

Applicants : **(1) Mr. Alex Gordon and Ms Lolita
Laguna Crespo
(2) Mr. Vas Hava**

Representative : **N/A**

Respondent : **Mr. Sunil Patani**

Representative : **N/A**

Type of application : **Appointment of Manager**

**Tribunal
member(s)** : **Judge H Carr
Ms A Flynn**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **18th May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented by the parties. The form of remote hearing was V: SKYPEREMOTE . A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of of 147 pages, together

with a supplementary bundle comprising 63 pages provided for the reconvened hearing, the contents of which I have noted. The order made is described at the end of this determination.

The Application

1. The applicant seeks an order appointing Ms Joanna Roznowska as manager under section 24 of the Landlord and Tenant Act 1987 (the “Act”).
2. A preliminary notice under section 22 of the Act dated 14 July 2020 was served on the respondent. This notice stated that the grounds for the appointment of a manager were:
 - (i) The landlord is in breach of multiple obligations owed to the tenants under the lease
 - (ii) The landlord is in breach of the Code of Practice approved by the Secretary of State under the Leasehold Reform, Housing and Urban Development Act 1993

The hearing

3. The applicants, Mr. Alex Gordon and Ms Lolita Laguna Crespo and Mr. Vas Hava attended the hearing on 26th February 2021. The proposed manager Ms Roznowska was in attendance. The respondent, Mr Patani and his son Mr Ashish Patani attended the hearing. The representative of Ms Rodayna Raydan, Ms Beirut Meza also attended. Ms Raydan is the commercial lessee of the building. The tribunal asked Ms Meza if she had authority from Ms Raydan to represent her. She told the tribunal that it was a last-minute decision that she attend and she had no written authority. She took no substantive part in the proceedings.
4. Mr Patani asked for an adjournment to enable the owner of the restaurant to participate in discussions about the inclusion of the commercial premises in the proposed management order.
5. The tribunal determined to proceed with its consideration of the first three issues set out below and adjourn the remaining issues until 28th April 2021. It issued directions to that effect which set out the tribunal’s reasons for granting the partial adjournment. The directions stated that the tribunal had made preliminary findings that the grounds for the order were made out and that Ms Roznowska was a suitable appointee. These decisions are amplified in this decision.

6. At the hearing on 28th April 2021 which the applicants, the respondent and his son attended, the respondent asked for a further adjournment as he said that the property was on the market. He produced a letter from his solicitor Chris Raja dated 27th April 2021 explaining the position re the sale.
7. The applicants objected to the request for an adjournment. They argued that the application was typical of the tactics of the respondent and which resulted in a constant deferral of taking action in connection with the premises when it was imperative that the building was properly managed.
8. The tribunal declined to adjourn. The evidence presented to it indicated that the property had been put up for auction but had been withdrawn because there was a dispute about whether the applicants were entitled to a right of first refusal. It was clear to the tribunal that the dispute about the right to first refusal may take some time to resolve and that there was no guarantee that the sale of the property would go ahead, and even if it did, the time scale for any transfer of the property was unclear.
9. The tribunal agreed with the applicants that it was necessary, and in the interests of justice, to provide a resolution to the dispute between the parties and to determine the application before it. It was particularly important for the works relating to the fire risk assessment to be carried out urgently.

The property

10. 112 Askew Road is in a mixed commercial / residential area. Askew Road is a B road and bus route connecting two A roads, the Uxbridge Road and Goldhawk Road.
11. The property itself is a Victorian mid- terrace building on lower ground , ground floor, two upper floors and attic level. Entrance to the commercial element (the restaurant which is leased) is in the centre of the front facade. Entrance to flats A and B and communal hallway is to the right of the property but signage indicates “ A , B and C “
12. The two upper flats (flat A on the first floor on the second and attic floor) are let on long leases. The property is of rendered brickwork on the first and second floors which have curved bay sash windows. The roof has not been sighted.
13. Entrance to flat C is more usually from the rear of the building but there is also a rear door providing access and egress to the communal hallway and building in general. Apparently, there is key access to this door.

14. From the communal hallway on the ground floor, there is a door at the rear to the restaurant's kitchen. There is a door to the storage at lower ground floor level and a staircase to the upper flats.
15. At the rear exterior of the property are shared " yard " facilities. There is a single storey structure attached to and adjoining the main building. This had previously served as a stock / storeroom before its use as residential accommodation.
16. It is understood and accepted that Flat C has its own metered service supplies but with the main outlets being situated in the main building.
17. No inspection has been undertaken by the tribunal so the condition is not the subject of comment.

The issues

18. The issues requiring determination by the tribunal are as follows:
- (i) Has the applicant satisfied the tribunal of any ground(s) for making an order, as specified in section 24(2) of the Act?
 - (ii) Is it just and convenient to make a management order?
 - (iii) Would the proposed manager be a suitable appointee and, if so, on the terms and for how long should the appointment be made?
 - (iv) Should any order extend to commercial as well as residential premises?
 - (v) If application is made, 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 applicant?

The evidence and arguments

Has the applicant satisfied the tribunal of any ground(s) for making an order, as specified in section 24(2) of the Act?

2. The applicants say that the respondent has failed to maintain either the internal communal areas of the building or the external facade of the building to the standard required by the lease. They say that he has carried out, during his period of ownership, no significant refurbishment either internally or externally, with the hallway and stairs now in a particularly poor state of repair. They have been concerned about the standard of the building since 2017.
3. They submitted a Section 24 application for the Appointment of a Manager to the Tribunal in June 2019 and attended a hearing in September 2019 (case ref: LON/00AN/LAM/2019/0016). That hearing was unable to come to a decision on appointing a manager because the judge highlighted at the start that an individual needed to be the new proposed manager, instead of the company the applicants had nominated in the application.
4. The judge suggested that the parties take the opportunity of the hearing to see if they could reach an agreement on the management of the property. In that meeting it was agreed that the respondent would issue a Section 20 notice for internal refurbishment works and would commission a Fire Risk Assessment without delay.
5. When there was no progress on the Section 20 notice the applicants issued a Section 22 notice on 14th July 2020. The respondent replied to the Section 22 notice on 20th July informing the applicants that work would not proceed until the applicants made payment for various outstanding charges he claimed were outstanding together with the legal costs for the previous tribunal and the estimated costs for the proposed works. The applicants dispute that they owe the respondent any monies and proceeded with the Appointment of Manager application.
6. The applicants are also concerned that the works required by the Fire Risk Assessment have not yet been carried out.
7. The applicants also say that the respondent has failed to carry out the s.20 consultation exercise properly. Nor does the respondent respond promptly to management issues regarding the property.
8. They therefore argue that he is in breach of the applicants' leases and in breach of the Code of Practice.
9. Mr Patani accepted that he has not maintained the building as required by the obligations detailed in the leases, and that this has led to it falling into a bad state of repair.
10. He told the tribunal that this was because the applicants had failed to make service charge payments.
11. The applicants have now submitted a s.27A application in relation to the disputed service charges and the application will be determined by the tribunal in due course.

The decision of the tribunal

12. The tribunal determines that the grounds for the appointment of a manager have been made out.

The reasons for the decision of the tribunal

13. The parties agree that the property is in need of better management, that there have been breaches of the respondent's obligations under the lease and breaches of the RICS management code.

Is it just and convenient to make a management order?

14. The tribunal reviewed the application and the documents attached and the evidence provided by the parties at the hearings.

The decision of the tribunal

15. The tribunal determines that it is just and convenient to make a management order.

The reasons for the decision of the tribunal

16. All the parties agree that problems exist with the management of the building.

17. The tribunal has particular concerns that the recommendations of the Fire Risk Assessment have not been carried out.

18. The tribunal was also concerned that there was a lack of clarity about a number of issues such as planning permission for Flat C and the dates of the various transactions that the respondent has carried out in relation to the property. It is therefore important to restore the applicants' trust in the management of the property.

Would the proposed manager be a suitable appointee and, if so, on the terms and for how long should the appointment be made?

19. Mr Patani indicated at the first hearing that he was content with the appointment of Ms Roznowska.

20. The tribunal asked Ms Roznowska about her qualifications, experience and her plans for the property. She confirmed that she had the appropriate professional indemnity insurance in place. Ms Roznowska is the director of Safe Property Management which has a relatively large portfolio and employs three additional staff members. She has been appointed previously by the tribunal. The fees she intended to charge are her firm's standard fee is £250 per annum per unit with no VAT applicable. In respect of 112 Askew Road, this would

mean that the annual management fee would be £750. The fee for dealing with Section 20 notices is 10% of the total value of works.

21. It is appropriate to note that Mr Patani withdrew his support from Mrs R after she provided evidence about the extent of the order. Subsequent to the hearing Mrs Raydan also withdrew her support.

The decision of the tribunal

22. The tribunal determined that Ms Roznowska was a suitable appointee.

The reasons for the decision of the tribunal

23. The tribunal considers that Ms Roznowska is suitably qualified and experienced to take on the role and that her plans for managing the property are appropriate.

What should be the extent of the order?

24. There are two issues that require resolution in connection with the extent of the management order. The first is whether the order should extend to flat C. The second is whether it should extend to the commercial premises.

Should the order extend to Flat C?

25. At the time that the applicants made the application Mr Sunil Patel was the freeholder of Flats A, B and C.

26. At the first hearing the respondent told the tribunal that the freehold had been transferred to his son, Mr Ashsish Patel. The respondent provided redacted documents about the transfer of ownership. The tribunal also noted that there was no Land Registry document showing the transfer of ownership.

27. Unredacted documents were provided at the reconvened hearing. The respondent also provided a copy of the freehold title of Flat C. They indicated that the transfer to Mr Ashish Patani was for no consideration.

28. The respondent is firmly opposed to the extension of the order beyond flats A and B. His argument is based upon the separate freehold title of Flat C.

29. The respondent told the tribunal that it would be unfair to extend the order to the whole of the building. The leaseholders were fully aware of the terms of their agreements and had advice from their lawyers when they purchased their properties. He states that as the

ownership of Flat C is entirely separate that it would be inappropriate for the management order to extend to Flat C. It is a totally separate building with its own entrance.

30. Mr Ashish Patani told the tribunal that in his opinion the management order should only extend to Flat A and Flat B as his property is separate from the main building. He has let out the property on an AST and his tenants do not use any part of the building that comprises Flat A and Flat B. Flat C has its own entrance from a public highway and receives post through its front door. The tenants do not have a key to the main building.
31. The applicants argue that the order should extend to the whole of the building. They highlight that the covenants included within the application for transfer of title submitted to the Land Registry provided by the respondent indicate that there is an ongoing agreement for the services and utilities to be taken from the main building.
32. In addition, they point out that Flat C's roof is a continuous structure with no separation from the roof of the restaurant in the main part of the building. There are also shared waste water pipes used by the main building and Flat C. They argue that it is unclear how these elements can be managed and maintained separately.
33. Furthermore, the front door of the main building is labelled "Flats A, B and C" and has always had Flat C's post coming through it. The residents of the Flat continue to enter the building to collect their post, contrary to Mr Patani's assertion.
34. The applicants carried out a Land Registry search and confirmed that Mr Ashish Patani is now registered as the freehold owner of Flat C.
35. However they argue that Flat C is not completely separate from Flats A and B. The applicants have always communicated with the respondent via Ashish Patel and they argue that in reality there has been no change in how Flat C is managed.
36. The applicants provided photographs to demonstrate the interconnection of services and that post for Flat C was delivered through the door to Flats A and B.
37. Mr Ashish Patani said that he was not aware that the tenants of Flat C accessed the main building and that he would change the locks to ensure that this did not happen. He would also change the labelling of the front door.
38. The tribunal asked for confirmation from Mr S Patani that the transfer of the freehold of Flat C was for no value. He confirmed that it was.

Should the order extend to the commercial premises?

39. At the first hearing the respondent told the tribunal that there is a 20 year lease of the commercial property to Mrs Radan. Mrs Radan, in an email communication to the tribunal said that the lease was for 25 years.
40. The respondent provided a copy of the lease at the adjourned hearing. It was dated 24th June 2019 and was for a period of 20 years . The tribunal notes that the premium paid by Mrs Radan is nil and the annual rent is £23000 rising by £1000 annually.
41. The tribunal asked why the lease did not appear on the land register of the freehold property. The respondent told the tribunal that the solicitor for the commercial lessee must have overlooked its registration.
42. There was no statement from the commercial leaseholder provided for the reconvened hearing. There was an email communication from the commercial leaseholder prior to the first hearing. This said that she had no problem with the landlord who was excellent and professional, and that she was opposing the appointment. She said that the appointment would be expensive for her business and the building was in good condition.
43. Mr Patani argued that it would be unfair for the commercial leaseholder to have a management order imposed upon them and for it to have to bear a share of the costs of a professional manager.
44. The applicants argue that the commercial premises should not be excluded from the management order because all the occupants of the building are responsible for its maintenance and share all services, utilities and the building fabric itself.
45. If any works or refurbishment needs to take place to the building the applicants were unclear how this could be carried out only on behalf of Flats A and B and not for the commercial premises or indeed how the building could be insured in separate parts. They point out that Mr Patani has not explained how the building can be maintained without the management order extending to the commercial premises.
46. In addition to the urgently needed works to bring the shared areas and exterior of the building up to standard, and the requirement for ongoing maintenance, they point out that there are works still to be carried out as a result of the Fire Risk Assessment from 18 months ago. These works required because of the change of use to the commercial premises from a shop to a restaurant (which happened after the applicants purchased their leaseholds).
47. A further concern of the applicants is that if the management order is not be extended to the whole building is the manager will be

unable to deal with any nuisance caused by any of the leaseholders to the other leaseholders, as directed by the leases. The applicants for instance have previously asked the respondent to address issues with the restaurant's ongoing cockroach problem and with the extractor fan being left on all through the night. The failure to take action on these matters is one of the reasons for the application.

48. The applicants referred the tribunal to *Queensbridge Investments Ltd v Lodge and Ors* [LRX/71/2015] which provides guidance on when commercial premises should be included in a management order.
49. The tribunal asked Ms Roznowska for her opinion on the extent of the order. She told the tribunal that from her observations there was use of the common areas by the occupiers of Flat C and described shared services.

The decision of the tribunal

50. The tribunal determines that the order should extend to Flat C and to the commercial premises.

The reasons for the determination of the tribunal

51. The tribunal has listened carefully to the arguments of the parties. It has also considered the layout of the properties.
52. It accepted Ms Roznowska's helpful evidence about the layout of the property and the arrangement for electricity and other services
53. It considers that the transfer of the freehold of Flat C to Mr Ashish Patani is not a genuine transaction. It was for no value and to a family member who has been closely associated with the management of the property. The flats remain interconnected physically and in terms of their control. Their management should reflect this.
54. With regards to the commercial premises it is not clear whether or what the connection is between the respondent and the commercial lessee but drawing on the behaviour of the commercial lessee during these proceedings it determines, on the balance of probabilities that there is not an arms length relationship.
55. Further it is guided by the Upper Tribunal decision in *Queensbridge Investments Ltd v Lodge and Ors* [LRX/71/2015] where it was determined the management order should extend to the commercial property. In this case the structure of the building requires maintenance, and the commercial unit is liable for a proportion of those costs. Problems such as infestation etc need to be resolved. The manager is in the best position to organise works and bill the relevant parties. Whilst the manager should manage the entire building, she should not collect any commercial rent.

Decision of the tribunal

56. In accordance with section 24(1) Landlord and Tenant Act 1987 Ms Roznowska of Safe Property Management ('the Manager') is appointed as manager of the property at 112 Askew Road ('the Property').
57. The order extends to Flat A, Flat B and Flat C and the commercial premises.
58. The order shall continue for a period of 3 years from 1st June 2021. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
59. 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 landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (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.
60. 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.
61. An order shall be made under section 20C Landlord and Tenant Act 1985 that the applicants' costs before the tribunal shall not be added to the service charges.

Name: Judge H Carr

Date: 18th May 2021

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).
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 1st June 2021 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him 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 said leases.
5. 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.
6. By no later than June 2022 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, providing a copy to the lessees of the Property and the Respondent at the same time.
7. 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 lessor 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.
8. 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.
- (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) [Set] Demand and collect [ground rents,] service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) [Set] Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) 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.

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 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.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £250 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 a charge of 10 % of the cost. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (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

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