



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

**Case reference** : **LON/00BK/LAM/2021/0012**

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

**Property** : **58 Queensway and 7 Inverness Place,  
London W2 3JF**

**Applicants** : **(1) Ms Toni Miran Borders (Flat 5, 7  
Inverness Place)  
(2) 7 Inverness Residents Association**

**Representative** : **Ms T M Borders**

**Respondent** : **Garvery Limited**

**Representative** : **Ms Whiting, counsel instructed by  
Sperrin Law**

**Type of application** : **Appointment of Manager**

**Tribunal  
member(s)** : **Judge Tagliavini  
Mr Stephen Mason BSc FRICS**

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

**Date of decision** : **2 December 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing [**

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. 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 an electronic bundle of 321 pages, the contents of which have been considered. The order made is described at the end of these reasons.

## **The application**

1. This is an application under section 24 of the Landlord and Tenant Act 1987 ('the 1987 Act') seeking the appointment of Mr J D Thornton BSc (Hons) CEng MICE MCIOB MIRPM of Hurford Salvi Carr Property Management Limited as a manager of the subject premises situate at 58 Queensway and 7 Inverness Place, London W2 3JF ('the premises').

## **The background**

2. The premises comprise four flats numbered 1, 3, 4 and 5 (there being no flat 2) on the first, second, third and fourth floors with commercial premises on the ground and basement floors. The second Applicant ?? was recognised by the tribunal for the purposes of this application as representing the interests of the residential lessees.
3. A Notice under section 22 of the 1987 Act dated 18 May 2021 was served on the respondent landlord. This Notice asserted that the landlord had failed to maintain the building; failed to provide accounts; failed to provide details of buildings insurance and has failed to respond to the tenants' reasonable requests; and had failed to respond to the second applicant's request on 11 March 2021 for recognition by the landlord.
4. Currently, the premises are managed by Robert Irving Burns Ltd on behalf of the landlord.

## **The hearing**

5. At the hearing of the application, the respondent did not object, in principle to the appointment of Mr D R Thornton as a manager. However, the respondent disputed that the Management Order should permit the tribunal manager to:
  - (i) Collect the ground rents of all the properties at the subject premises and the rental income from the commercial units.
  - (ii) Draw a line under all previous service charge arrears, effectively 'writing off' these debts.

## **The applicants' case**

6. The applicants relied upon its bundle of documents which included a report of Ms Sue Davis BSc (Hons) MRICS of Ashley Building Surveyors dated 29 January 2021 to demonstrate the alleged respondent's failure to carry out repairs and maintain the subject premises.

7. The applicants also relied upon the Proposed Manager's Statement from Mr Jim Thornton dated 27 August 2021, which set out his qualifications, experience and his five previous tribunal appointments as a Manager and Receiver, together with the Proposed Management Order.
8. The tribunal heard oral evidence from the proposed manager Mr Thornton, who confirmed that he would be willing to be appointed by the tribunal, even if not permitted to collect the commercial rents, and expressed his unwillingness to collect arrears of service charges, in any event, which at the current time were said to be in the region of £60K. Mr Thornton also informed the tribunal that currently his Professional Indemnity Insurance cover was limited to £1,000,000 but he would wish to reduce this to £500,000 due to the increasing cost of the premiums, although he did confirm in answer to a question from the Tribunal that he would still be prepared to accept the appointment of Manager if required to maintain his Professional Indemnity Insurance with a £1,000,000 of cover

### **The respondent's case**

9. The respondent relied upon the witness statement dated 3 November 2011 of Mr Chris Towner, director of Robert Irving Burns Limited ('RIB') in addition to his oral evidence to the tribunal. In a letter dated 23 September 2021 Mr Towner set out the sums expended since RIB had taken over the management of the premises in 2017 and the arrears of service charges amounted to £29,619.59 together with arrears of reserve funds in the sum of £13,354.45 and were not sums, although owed by the lessees, had not actually been expended. In addition, the respondent was said to have contributed £52,000 towards funding for the premises of which £29,619.59 was still owed by the lessees.
10. Mr Towner also set out in this letter on which he also relied in evidence, that there had been several changes of managing agents and the financial accounting trail had become extremely muddled, with sums remaining unaccounted for. In this letter, Mr Towner indicated it did not oppose a management order being made in respect of the residential parts only, a position which he subsequently resiled from (in part) in his later witness statement.
11. The respondent did not seek to question Mr Thornton's suitability to be a tribunal appointed manager of the subject premises, and confined arguments to the terms of any Management Order the tribunal might decide to make. Ms Whiting referred the tribunal to the decision in *Queensbridge Investments Limited v Lodge* [2015] WL 7259170 in which the failure to manage had led to breaches so serious as to render the building unsafe. Ms Whiting submitted that in this application, the circumstances differed and there were no 'exceptional circumstances'

on which the respondent should be deprived of the opportunity to collect ground rents and rents from the commercial properties.

### **Decision of the tribunal**

12. In the absence of the respondent's opposition to the appointment, the tribunal is satisfied that section 24(2) of the Landlord and Tenant Act 1987 is satisfied and finds it just and convenient to appoint a manager. The tribunal is also satisfied that it is appropriate to appoint Mr J Thornton as the Manager in accordance with the terms of the Management Order attached to this decision.
13. The tribunal finds that the property is in some disrepair and accepts that some maintenance works are required. The tribunal also finds that there has historically been a lack of accounting for past payments made to the respondent and former managing agents. The tribunal accepts the respondent's argument that the collection of the ground rents and the rents from the commercial premises should not form part of the Management Order. The tribunal finds that in all the circumstances the applicants have failed to show that there are exceptional circumstances prevailing, which justifies such an order being included in the Manager's powers.
14. The tribunal is satisfied that Mr J D Thornton BSc (Hons) CEng MICE MCIQB MIRPM is a suitable person to be appointed as a manager of the premises but remains a little concerned that any arrears of service charges will not be pursued. The tribunal does not accept the applicants' submissions that arrears of service charges should be 'written off' and omits reference to 'arrears' in the Management Order, thereby allowing the respondent to pursue any outstanding sums as at the date the Management Order comes into effect if it chooses.

### **Section 20C**

15. The tribunal is not satisfied that in all the circumstances, it is reasonable and appropriate to make an order under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act'). The tribunal finds that on the two substantive points in dispute between the parties, the applicants have been unsuccessful, and the respondent had otherwise not sought to object to Mr Thornton being appointed as at the date of the hearing. Therefore, the tribunal refuses the applicant's application to make an order under section 20c of the 1985 Act.
16. In conclusion, the tribunal makes a Management Order in the terms attached to this decision.

**Name:** Judge Tagliavini

**Date:** 2 December 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).

## **MANAGEMENT ORDER**

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr J D Thornton BSc (Hons) CEng MICE MCIOB MIRPM ('the Manager') of Hurford Salvi Carr Property Management Limited is appointed as manager of the residential and commercial units at **58 Queensway and 7 Inverness Place, London W2 3JF** ('the Property').
2. The order shall continue for a period of 2 years from 1 January 2022. 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.
3. 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 the commercial premises are let, 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.
4. 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.

## **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 £500,000 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 1 January 2021 become rights and liabilities of the Manager.
4. The Manager shall apply the 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 is not authorised to collect the ground rents and the rents from the commercial units at the Property and these shall continue to be collected by Robert Irving Burns Limited on behalf of the respondent, or such other person as may be appointed.
6. 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.
7. By no later than 1 January 2023, 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.
8. 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.
9. 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 service charges (including advance contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Set, demand, and collect the 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, which have accrued after 1 January 2022, the Respondent retaining the power to take steps to recover any arrears which have accrued prior to that date.
- (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 abovementioned management services will be a basic fee of £400 plus VAT per annum per flat and £500 plus VAT per annum in respect of all commercial units. 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 scale of fees published by Hurford Salvi Calvi Property Management Limited for the relevant period. 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.

## **Complaint's 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.