



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

Case Reference : **LON/00BK/LAM/2021/0026**

Property : **175-177 Sussex Gardens
London W2 2RH**

Applicant : **Lee Foster Bowman**

Representative : **Mishcon de Reya**

Respondents : **(1) Church Commissioners for England
(2) Sussex Gardens (175-177) Ltd**

Representative : **(1) Charles Russell Speechlys LLP
(2) Lock & Marlborough**

Interested Parties : **Dr Thomas Hawkins and Abby Hignell
Ruiyu Chen and Yirong Elizabeth Shen**

Type of Application : **Appointment of Manager**

Tribunal : **Judge Nicol
Mr R Waterhouse BSc (Hons) LLM MA
Mr C S Piarroux JP CQSW**

**Date of Hearing
and Venue** : **26th May 2022;
Remote video**

Date of Decision : **27th May 2022**

DECISION

(1) The Tribunal appoints Mr Ben Preko BSc MSc ARICS MIRPM of Salter Rex as the manager of the subject property from the date of this decision until 24th March 2027 on the terms of the order attached to this decision.

(2) The Tribunal rejects the applications under section 20C of the Landlord and Tenant Act 1985 and rule 13(1)(b)(iii) of the Tribunal

Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and makes no order as to costs.

Reasons

1. The Applicant is the lessee of one of the 7 flats at the subject property at 175-177 Sussex Gardens, London W2 2RH. The Interested Parties are lessees of other flats at the property. The First Respondent is the freeholder and the Second Respondent is the lessee-owned management company.
2. On 7th October 2021 the Applicant served a notice under section 22 of the Landlord and Tenant Act 1987 alleging, amongst other things, that the Second Respondent had failed to:
 - (a) Prepare and serve service charge accounts for the years since 2018;
 - (b) Demand balancing payments or allow credits;
 - (c) Prepare and serve service charge budgets or annual statements of account;
 - (d) Plan cyclical works programmes; or
 - (e) Comply with statutory consultation requirements.
3. For the Second Respondent's part, they accused the Applicant of incurring substantial arrears of service charges.
4. On 22nd November 2021 the Applicant applied for the Tribunal to appoint a manager under section 24 of the Landlord and Tenant Act 1987.
5. The Tribunal issued directions on 17th December 2021, with the hearing listed for 30th March 2022. On that day, the Tribunal felt that the case was not ready for hearing and adjourned it for reasons set out in its written decision. The decision included directions for the Second Respondent to provide more information relevant to the current state of management of the property and for the Applicant to notify the other lessees of the current state of the proceedings.
6. The Second Respondent duly provided the further information, as a result of which the original proposed manager, Mr Unsdorfer decided to withdraw. The Applicant sought a new proposed manager and alighted on Mr Ben Preko of Salter Rex. Both Respondents, having sought additional time to consider this change, accepted Mr Preko as a suitable appointee as manager, as they had with Mr Unsdorfer.
7. Following the Applicant's notification to the other lessees, the lessees of the Basement Flat, Ms Abby Hignell and Dr Thomas Hawkins, and the lessees of Flat 4, Mr Ruiyu Chen and Mrs Yirong Elixabeth Shen, indicated that they wished to participate in the proceedings.
8. The Applicant prepared and filed a further bundle of documents with Mr Preko's management plan, background details and professional indemnity insurance, a revised draft management order (which closely

follows the Tribunal's template) and the aforementioned correspondence between the parties and the lessees.

9. The adjourned hearing took place on 26th May 2022. The following attended:
 - The Applicant;
 - Mr Jonathan Upton, counsel for the Applicant;
 - Mr Edward Lock, solicitor for the Second Respondent;
 - Mr Ben Preko, the proposed Manager;
 - Dr Hawkins; and
 - Mrs Shen.
10. All the attendees were content that the Tribunal should appoint Mr Preko to manage the property from now until 24th March 2027 (aligning with the service charge year) and that the proposed terms of appointment were satisfactory. In an email dated 24th May 2022, the First Respondent indicated that they were of the same mind, subject to two points:
 - (a) Paragraph 23 (24 in a previous draft) of the draft management order permits the Manager to levy a service charge on the landlord if they retain property which remains unlet. The First Respondent does not currently retain any such property and objects to the term. The Tribunal does not understand the objection. The term covers an eventuality which, though unlikely, could happen and it is preferable that it is provided for.
 - (b) It is intended that the Manager should plan and implement a programme of maintenance works. The First Respondent wishes it to be prioritised. The draft management order provides at paragraph 45(a) for the Manager to draw up a planned maintenance programme for the period of his appointment by a set date. Mr Preko suggested two months from his date of appointment and the attendees accepted this. This provision appears to meet the First Respondent's concern.
11. If appointed, Mr Preko would be the appointee of the Tribunal, not of any of the parties, and so the Tribunal had to be satisfied that he is fit for the position. The members of the Tribunal questioned him on his plans and approach, as a result of which the Tribunal is so satisfied.
12. Given the agreement between those involved, it has not been necessary for the Tribunal to determine whether any of the allegations made by the Applicant and the Second Respondent against each other are true or not. Mr Upton described the Tribunal's power of appointment under section 24 of the Landlord and Tenant Act 1987 as an "at fault" jurisdiction but section 24(2)(b) permits the Tribunal to make an order appointing a manager if it is satisfied that circumstances exist which make it just and convenient for the order to be made. Given the aforementioned agreement, the lack of recent management and the state of conflict between various parties, the Tribunal is satisfied that it is just and equitable to make the order proposed.

Costs

13. Both the Applicant and Mrs Shen made applications for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondents' costs of these proceedings should not be added to the service charge. Although he had not made any formal application, Dr Hawkins also wanted such an order. Mr Lock protested that he did not have sufficient notice of any section 20C application but the Applicant's was contained in the bundle before the Tribunal on 30th March 2022. All the parties had an adequate opportunity to comment on whether such an order should be made and so the Tribunal considered and determined the issue.
14. The Tribunal is not satisfied that it would be just or equitable to make a section 20C order. The outcome was agreed between the parties and it would undermine the agreement and any future co-operation to go behind that. The Tribunal has no findings of fault on which to apportion blame for the proceedings. The Applicant, Mrs Shen and Dr Hawkins all argued that it would be "unfair" for them to bear a share of the costs but the fact is that their situation has been improved by these proceedings with a collectively agreed solution to otherwise intractable problems at the property. Further, if they did not pay the costs of the Second Respondent as service charge payers, they would likely have to do so as members of the company. The only alternative would almost certainly be to allow the Second Respondent to become insolvent, depriving themselves of a vehicle with which to resume management when the Manager's appointment ceases.
15. Mr Lock asserted that the Applicant should not have made his application while proposing a manager, Mr Unsdorfer, who was not willing to take the appointment. He further asserted that at least one of the two hearings would not have been required if the Applicant had relied on Mr Preko in the first place. On that basis, he sought an order for costs under rule 13(1)(b)(iii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
16. The Tribunal may only make an order for costs under rule 13(1)(b) if a party has acted unreasonably. As defined in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC), this is a very high hurdle. While it is arguable that the Applicant could have been better prepared with his proposed manager, his conduct is not even close to the required standard. Mr Unsdorfer did originally suggest he was prepared to take up the position, albeit on certain conditions, and was acceptable to all parties. His later decision to withdraw was outside the Applicant's control.

Name: Judge Nicol

Date: 27th May 2022

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).



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Interested Parties : Dr Thomas Hawkins and Abby Hignell
Ruiyu Chen and Yirong Elizabeth Shen

The Manager : Ben Preko BSc MSc ARICS MIRPM

Tribunal : Judge Nicol
Mr R Waterhouse BSc (Hons) LL.M MA
Mr C S Piarroux JP CQSW

Date of Order : 27th May 2022

MANAGEMENT ORDER

UPON an application for an order under section 24(1) of the Landlord and Tenant Act 1987 (“the 1987 Act”) for the appointment of a manager in relation to the Property as defined hereinbelow,

AND UPON the Tribunal being satisfied that it is just and equitable to make an order for the reasons set out in its decision of the same date as this order,

AND UPON the proposed manager, Mr Ben Preko, agreeing to the appointment,

Interpretation

1. In this Order:

“**The Property**” means the flats and other premises known as known as 175-177 Sussex Gardens, London W2 2RH and registered at HM Land Registry under title number LN115268 and shall include the building, outhouses, gardens, amenity space, drives, pathways landscaped areas, flower beds, passages, bin-stores, common parts,

storage rooms basements, electricity and power rooms; and all other parts of the property.

“The Landlord” shall mean the Church Commissioners for England or their successors in title to the reversion immediately expectant upon the Leases.

“The Company” shall mean Sussex Gardens (175-177) Limited.

“The Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and “Tenant” shall be construed accordingly.

“The Leases” shall mean all leases and/or underleases of flats in the Property.

“The Manager” means Mr Ben Preko of Salter Rex, Crown House, 265-267 Kentish Town Road, London, NW5 2TP.

“The Tribunal” means the First-tier Tribunal (Property Chamber).

2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) Mr Ben Preko of Salter Rex is appointed as Manager of the Property.
3. The Manager’s appointment shall start on **the date of this order** (“the start date”) and shall end on **24th March 2027** (“the end date”).
4. For the avoidance of doubt this Order supplements but does not displace covenants under the Leases and the Tenants remain bound by them. Where there is a conflict between the provisions of the Order and the Leases, the provisions of the Order take precedence.
5. The purpose of this Management Order is to provide for the management of the Property which includes taking steps to resolve issues in relation to the following:
 - (a) Service charge accounts for the years since 2018;
 - (b) Demands for service charges;
 - (c) Service charge budgets and annual statements of account;
 - (d) Cyclical works programmes; and
 - (e) Any outstanding service charge arrears.
6. The Manager shall manage the Property in accordance with:
 - (a) the terms of this Order and the Directions set out below;
 - (b) the respective obligations of the Landlord, the Company and the Tenants under the Leases whereby the Property is demised by the Landlord (save where modified by this Order);
 - (c) the duties of a Manager set out in the Service Charge Residential Management Code (“the Code”) (3rd Edition) or such other replacement code published by the Royal Institution of Chartered Surveyors (“RICS”) and approved by the Secretary

of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993 (whether the Manager is a Member of the RICS or not); and

- (d) the provisions of sections 18 to 30 of the Landlord and Tenant Act 1985.
7. From the date this Order comes into effect, no other party shall be entitled to exercise a management function in respect of the Property where the same is the responsibility of the Manager under this Order.
 8. The Tribunal requires the Manager to act fairly and impartially in the performance of his functions under this Order and with the skill, care and diligence to be reasonably expected of a Manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions.
 9. The Manager or any other interested person may apply to vary or discharge this Order pursuant to the provisions of section 24(9) of the Act.
 10. Any application to extend or renew this Order must be made before the end date, preferably at least three months before that date, and supported by a brief report of the management of the Property during the period of the appointment. Where an application for an extension or renewal is made prior to the end date, then the Manager's appointment will continue until that application has been finally determined.
 11. The Manager is appointed to take all decisions about the management of the Property necessary to achieve the purposes of this Order. If the Manager is unable to decide what course to take, the Manager may apply to the Tribunal for further directions, in accordance with section 24(4), Landlord and Tenant Act 1987. Circumstances in which a request for such directions may be appropriate include, but are not limited to:
 - (a) a serious or persistent failure by any party to comply with an obligation imposed by this Order;
 - (b) circumstances where there are insufficient sums held by the Manager to discharge their obligations under this Order and/or for the parties to pay the Manager's remuneration; and
 - (c) where the Manager is in doubt as to the proper construction and meaning of this Order.

Contracts

12. Rights and liabilities arising under contracts, including any contract of insurance and/or any contract for the provision of any services to the Property, to which the Manager is not a party, but which are relevant to the management of the Property, shall upon the date of appointment become rights and liabilities of the Manager, save that:

- (a) The Company and the Landlord shall indemnify the Manager for any liabilities arising before commencement of this Order; and
- (b) the Manager has the right to decide, in their absolute discretion, the contracts in respect of which they will assume such rights and liabilities, with such decision to be communicated in writing to the relevant parties within 56 days from the date this order.

13. The Manager may place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property.

Pre-contract enquiries

14. The Manager shall be responsible for responding to pre-contract enquiries regarding the sale of a residential flat at the Property.

Legal Proceedings

15. The Manager may bring or defend any court or tribunal proceedings relating to management of the Property (whether contractual or tortious) and, subject to the approval of the Tribunal, may continue to bring or defend proceedings relating to the appointment, after the end of their appointment.

16. Such entitlement includes bringing proceedings in respect of arrears of service charge attributable to any of the Flats in the Property, including, where appropriate, proceedings before this tribunal under section 27A of the Landlord and Tenant Act 1985 and in respect of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 or under section 168(4) of that Act or before the courts and shall further include any appeal against any decision made in any such proceedings.

17. The Manager may instruct solicitors, counsel, and other professionals in seeking to bring or defend legal proceedings and is entitled to be reimbursed from the service charge account in respect of costs, disbursements or VAT reasonably incurred in doing so during, or after, this appointment. If costs paid from the service charge are subsequently recovered from another party, those costs must be refunded to the service charge account.

Remuneration

18. The Tenants are responsible for payment of 100% of the Managers' fees, which are to be payable under the provisions of this Order but which may be collected under the service charge mechanisms of their Leases.

19. The sums payable are:

- (a) an annual fee of £485 per flat for performing the duties set out in paragraph 3.4 of the RICS Code (so far as applicable);
- (b) any additional fees contained in a schedule to this Order for the duties set out in paragraph 3.5 of the RICS Code (so far as applicable); and
- (c) VAT on the above fees.

Ground Rent and Service charge

- 20. The Manager shall not collect the ground rents payable under the residential Leases.
- 21. The Manager shall collect all service charges and insurance premium contributions payable under the Leases, in accordance with the terms and mechanisms in the Leases.
- 22. The Manager may set, demand and collect a reasonable service charge to be paid by the Landlord (as if he were a lessee), in respect of any unused premises in part of the Property retained by the Landlord, or let on terms which do not require the payment of a service charge.
- 23. The Manager is entitled to recover through the service charge the reasonable cost and fees of any surveyors, architects, solicitors, counsel, and other professional persons or firms, incurred by them whilst carrying out their functions under the Order.

Administration Charges

- 24. The Manager may recover administration charges from individual Tenants for their costs incurred in collecting service charges and insurance which includes the costs of reminder letters, transfer of files to solicitors and letters before action. Such charges will be subject to legal requirements as set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Details of the fees charged are set out in the Appendix of additional fees.

Disputes

- 25. In the event of a dispute regarding the payability of any sum payable under this Order by the lessees, additional to those under the Leases (including as to the remuneration payable to the Manager and litigation costs incurred by the Manager), a Tenant, or the Manager, may apply to the Tribunal seeking a determination under section 27A of the Landlord and Tenant Act 1985 as to whether the sum in dispute is payable and, if so, in what amount.
- 26. In the event of a dispute regarding the payability of any sum payable under this Order by the landlord, other than a payment under a Lease, the Manager or the Landlord may apply to the tribunal seeking a determination as to whether the sum in dispute is payable and, if so, in what amount.

27. In the event of dispute regarding the conduct of the management of the property by the Manager, any person interested may apply to the Tribunal to vary or discharge the order in accordance with section 24(9) of the Landlord and Tenant Act 1987.
28. In the event of a dispute regarding the reimbursement of unexpended monies at the end of the Manager's appointment, the Manager, a Tenant, the Company or the Landlord may apply to the Tribunal for a determination as to what monies, if any, are payable, to whom, and in what amount.

DIRECTIONS TO LANDLORD AND COMPANY

29. The Landlord and the Company must comply with the terms of this Order.
30. On any disposition other than a charge of the Landlord's estate in the Property, the Landlord will procure from the person to whom the Property is to be conveyed, a direct covenant with the Manager, that the said person will (a) comply with the terms of this Order; and (b) on any future disposition (other than a charge) procure a direct covenant in the same terms from the person to whom the Property is to be conveyed.
31. The Landlord and the Company shall give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order, and shall not interfere or attempt to interfere with the exercise of any of the Manager's said rights, duties or powers except by due process of law.
32. The Landlord and the Company shall allow the Manager and their employees and agents access to all parts of the Property and must provide keys, passwords, and any other documents or information necessary for the practical management of the Property in order that the Manager might conveniently perform their functions and duties, and exercise their powers under this Order.
33. Within 14 days from the date of this Order the Company must provide all necessary information to the Manager to provide for an orderly transfer of responsibilities, to include the transfer of:
 - a. all accounts, books and records relating to the Property, including a complete record of all unpaid service charges; and
 - b. all funds relating to the Property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.

DIRECTION TO CHIEF LAND REGISTRAR

34. To protect the direction in paragraph 32 for procurement by the Landlord, of a direct covenant with the Manager, the Registrar is

ordered to enter the following restriction in the register of the Landlord's estate under Title No. LN115268. The restriction is to have overriding priority against any search with priority or pending application for a disposition of the registered estate (other than a charge) that has been lodged after 22nd November 2021.

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without a certificate signed by the applicant for registration or their conveyancer that the provisions of paragraph 32 of an Order of the Tribunal dated 26th May 2022 have been complied with.”

DIRECTIONS TO MANAGER

35. The Manager must adhere to the terms of the Order above.

Registration

36. The Manager must make an application to HM Land Registry for entry of the restriction referred to in paragraph 35, within 14 days of the date of this Order.

Conflicts of Interest

37. The Manager must be astute to avoid any Conflict of Interest between their duties and obligations under this Order, and their contractual dealings. Where in doubt, the Manager should apply to the Tribunal for directions.

Complaints

38. The Manager must operate a complaints procedure in accordance with, or substantially similar to, the requirements of the Royal Institution of Chartered Surveyors.

Insurance

39. The Manager must maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.

40. From the date of appointment, and throughout the appointment, the Manager must ensure that he/she has appropriate professional indemnity insurance cover in the sum of **of** at least £2 million and shall provide copies of the certificate of liability insurance to the Tribunal, and, upon request, to any Tenant or the Landlord. The Certificate should specifically state that it applies to the duties of a Tribunal appointed Manager.

Accounts

41. The Manager must:
- (a) prepare and submit to the Landlord and the Tenants an annual statement of account detailing all monies receivable, received and expended. The accounts are to be certified by the external auditor, if required under the Leases;
 - (b) maintain efficient records and books of account and to produce for these for inspection, to include receipts or other evidence of expenditure, upon request by the Landlord or a Tenant under section 22 Landlord and Tenant Act 1985;
 - (c) maintain on trust in an interest-bearing account at such bank or building society, as the Manager shall from time to time decide, into which ground rent, service charge contributions, Insurance Rent, and all other monies arising under the Leases shall be paid; and
 - (d) hold all monies collected in accordance with the provisions of the Code.

Repairs and maintenance

42. The Manager must:
- (a) within 2 months of the date of this order, draw up a planned maintenance programme for the period of the appointment, allowing for the periodic re-decoration and repair of the exterior and interior common parts of the Property, as well as any roads, accessways, mechanical, electrical and other installations serving the Property, and shall send a copy to every Tenant, to the Company and to the Landlord;
 - (b) subject to receiving sufficient prior funds:
 - (i) carry out all required repair and maintenance required at the Property, in accordance with the Landlord's covenants in the Leases, including instructing contractors to attend and rectify problems, and is entitled to recover the cost of doing so as service charge payable under the Leases or in accordance with the Order.
 - (ii) arrange and supervise any required major works to the Property, including preparing a specification of works and obtaining competitive tenders.
 - (c) liaise with all relevant statutory bodies in the carrying out of their management functions under the Order; and
 - (d) ensure that the Landlord, and the Tenants, are consulted on any planned and major works to the Property and to give proper regard to their views.
43. The Manager has the power to incur expenditure in respect of health and safety equipment reasonably required to comply with regulatory

and statutory requirements.

Reporting

44. By no later than six months from the date of appointment (and then annually) the Manager must prepare and submit a brief written report to the Tenants, the Company, and the Landlord, on the progress of the management of the Property up to that date, providing a copy to the Tribunal at the same time.

End of Appointment

45. No later than 56 days before the end date, the Manager must:
- (a) apply to the Tribunal for directions as to the disposal of any unexpended monies;
 - (b) include with that application a brief written report on the progress and outcome of the management of the Property up to that date (a "Final Report"); and
 - (c) seek a direction from the Tribunal as to the mechanism for determining any unresolved disputes arising from the Manager's term of appointment (whether through court or tribunal proceedings or otherwise).
46. Unless the Tribunal directs otherwise the Manager must within two months of the end date:
- (a) prepare final closing accounts and send copies of the accounts and the Final Report to the Landlord, the Company and the Tenants, who may raise queries on them within 14 days; and
 - (b) answer any such queries within a further 14 days.
47. The Manager must reimburse any unexpended monies to the paying parties, or, if it be the case, to any new Tribunal appointed Manager within three months of the end date or, in the case of a dispute, as decided by the Tribunal upon an application by any interested party.

Schedule of Additional Fees

An additional fee of £1,600 for the preparation and certification of overdue service charge accounts for year 2018, 2019, 2020, 2021. For the avoidance of doubt, this fee does not include the cost of accountants for preparing the said accounts.

