



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/43UK/LVM/2017/0001

Property : Castle Place, Castle Square,
Bletchingley, Redhill, Surrey
RH1 4LB

Applicant : Gary Pickard

Representative : Claire Whiteman, Solicitor of
Dean Wilson LLP Solicitors

Respondents : Mr F Schriver, Mr and Mrs P Cove,
Mrs AW Bradley-Smith, Mr and
Mrs B Sheldon, Mr R McHugh, Mr
S Parmenter, Castle Place
Bletchingley Freehold Limited,
Castle Place Bletchingley
Management Company Limited

Representative : None

Type of Application : For the variation of an order
appointing a manager

Tribunal Members : H D Lederman, Tribunal Judge

Date and venue of
Hearing : 24 May 2017 Tribunal member's
office

Date of Decision : 25 May 2017

DECISION

Decisions of the tribunal

(1) The Tribunal varies the Management Order dated 26th October 2016 (“the Order”) to enable the Manager Gary Pickard:

- a. to make ad hoc demands for interim service charges at any time during the first two years of his appointment commencing on 26th October 2016
- b. Thereafter during the third year of his appointment (26th October 2018 to 26th October 2019) to make quarterly demands for interim service charges

in accordance with and upon the terms of the variation to the Order set out below.

(2) The Order is varied in the following respects. As from the date of this decision, the Order shall be read so that paragraphs 1.1 and 1.2 of the “Schedule of Functions and Services A. Service Charge” at [80-81] are deleted and replaced in their entirety by the following paragraphs:

“SCHEDULE OF FUNCTIONS AND SERVICES A. SERVICE CHARGE

“1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees or under-lessees by reference to the percentage share allocated under the terms of their respective under-lease or Lease. Demand payments from the Lessees/under-lessees pursuant to clause 4(17)(a) of the Underlease or Lease on account of contributions anticipated as falling due under clause 4(17)(b) of each Underlease or Lease, save and except that such on account demands -

- a. may be issued on such dates and with such frequency as the Manager considers it necessary or desirable during the first two years of his appointment commencing on 26th October 2016; and
- b. may be issued quarterly or with less frequency on such dates as the manager considers it necessary or desirable during the third year of the manager’s appointment (26th October 2018 to 26th October 2019)
- c. may be issued in such written format or in such terms as the Manager considers it necessary or desirable and do not need to strictly comply with the terms of the Lease or Underlease or the provisions of sections 47-48 of the Landlord and Tenant Act 1987;

and the Manager shall not be limited to raising such on account demands once annually as clause 4(17)(a) of each Underlease or Lease requires. Such sums demanded by the Manager shall be payable within 21 days of the date of the demand. The Manager will comply with the statutory duties of the landlord in respect of all qualifying works and long term qualifying agreements.

1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the under-lessees or lessees (as the case may be). Instruct solicitors to recover unpaid rents and service charges payable to him and any other monies due to the Landlord provided that he need only instruct solicitors to collect monies due to the Landlord if he considers it necessary or desirable in the interests of good estate management.

(3) The terms of the Order (as varied) shall be the subject of registration by notice or other appropriate form of notice against the relevant titles to the various properties which are the subject of this Order at the Land Registry”

REASONS

The application

1. The Applicant Gary Pickard the Manager appointed pursuant to the Order, seeks an order permitting him to raise “on account” service charge demands on an ad hoc basis rather than being limited to issuing service charge demands once annually as clause 4(17)(a) of the Underlease or Lease permits.
2. Directions leading up to a final hearing were issued on 17th March 2017.
3. One of the Directions was that the application was to be determined on the papers without a hearing, in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 28 days of receipt of Directions. The Tribunal is not aware that any objection was made. This hearing took place in accordance with rule 31 without attendance of any of the parties.
4. The Tribunal does not consider that an inspection of the property in issue is necessary; nor would it be proportionate or directly relevant to the issue which the Tribunal is asked to decide.
5. References to pages numbers in [] are to the bundle of documents prepared for use at this hearing.

Background

6. The decision to appoint Gary Pickard as a manager pursuant to section 24 of the Landlord and Tenant Act 1987 and the circumstances leading up to the appointment are set out in the Tribunal's reasons and decision at [62-84].
7. This application was issued on 30 January 2017.
8. The grounds for the variation are summarised on pages [9-10] of the application supported by a statement in support of the application prepared by the Manager dated 21st December 2016 at [13-14]. That statement records the outcome of site visits by the Manager with a surveyor. The Manager reports that works are necessary to the premises in a number of respects which "are likely to be fairly technical and will require [him] to liaise with engineers and specialists before determining the extent of the works to be [carried out] on behalf of the lessees".
9. In his supporting statement, the Manager refers to the potential need to carry out works and to investigate the need for works to a hot air heating system, the timber gate, a water treatment plant, hot and cold water supplies, boiler, damp remediation and drinking water.
10. The application was served upon the lessees following Directions issued by the Tribunal. Paul Cove, one of the lessees of Apartment 2 responded by e-mail dated 13 April 2017 at [89] that did not object to the application. Mr Frank Shriver the lessee of Apartment 1 responded by e-mail dated 3rd April 2017 at [92]. His response did not raise an objection to the proposed variation in principle. Mr Stephen Parmenter, the lessee of apartment 6 responded by e-mail dated 28 March 2017 at [95]. His response was in favour of the variation. No other responses were made available to the Tribunal. The Respondent Castle Place Bletchingley Management Company Limited was dissolved. A response would not be expected from dissolved company. There is no recorded response from the Landlord.

The Lease

11. A Lease of 1 Castle Place dated 27th June 2013 ("the Lease") was included in the Bundle at [15 -46]. It is not expressed to be an Underlease. Although this was not made explicit, it has been assumed the Lease is in all material respects identical for all of the relevant parts of the premises which are the subject of the Order. The Order and the proposed draft variation to the Order proceeded upon the basis that there are underleases. The Lease in the bundle was not expressed to be an underlease and there was no evidence of title such as Land Register

entries. The variation of the Order allows for the possibility that there are one or more underleases.

12. The Respondent lessees each hold a long lease (or underlease) of one of 6 flats which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge in clause 4(17) of the Lease.
13. The relevant legal provisions are set out in the Appendix to this decision.

The key issue

14. Clause 4(17)(a) is the only relevant provision for interim service charge demands in the Lease. It only permits an on account demand to be made on “the anniversary of each year of the term”. This would be an unduly restrictive provision from the perspective of a Manager or managing agent in any Lease.

Relevant Legal principles

15. As the manager and his legal advisers recognised in the application at [9], the appointment of Manager under part II of the Landlord and Tenant Act 1987 does not operate as an assignment of the rights of the landlord under the Lease (or Underlease) to the manager. Nor does such an Order bind the Manager to the terms of the Lease unless the order so requires: see *Maunder Taylor v Blaquiére* [2003] 1 W.L.R. 379.
16. The power to vary the Order is contained in section 24(9) of the 1987 Act. This does not require the Tribunal to consider whether the original grounds for the appointment of a manager still exist: see *Orchard Court Residents Association v St Anthony's Homes Ltd* [2003] EWCA Civ 1049.
17. In this case the relevant Directions issued as part of the Order at [80] in relation to service charge were as follows:

“SCHEDULE OF FUNCTIONS AND SERVICES

A. SERVICE CHARGE

1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of (*sic*) under the terms of their under-lease.

1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the under-lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the landlord upon the landlord's instructions”

18. These Directions do not explicitly refer to or incorporate the provisions of clause 4(17) (a) of each Underlease or Lease. Taken with paragraph 3 of the Order at [75] the wording of paragraph 1.1 at [80] must be taken to refer implicitly to that clause. The first sentence of Direction 1.2 must also be taken to refer to sums “due” under clause 4(17)(a) of the Lease or Underlease among other provisions in view of the opening paragraph 3 of the Order at [75].

Reasons for decision

19. Against the background of the historic disagreement and the need for works the cost of which cannot readily be estimated at this stage, the restriction in clause 4(17)(a) upon the time when a on account demand can be made for service charges, is unhelpful and often inconsistent with good management practice: see the Guidance in paragraph 7.3 of the 3rd edition of the Service charge Residential Management Code and additional advice to landlords, leaseholders and agents approved by the RICS and the Secretary of State.
20. In principle, the ground for variation sought by the manager Gary Pickard has been made out. One of the main aims of the appointment of a manager was to manage the works and maintenance that were required, even though the terms of the Leases may not have assisted that process. The terms of the Lease should not be taken to inhibit or restrict the execution of works that are necessary or desirable in accordance with the manager’s views. His views will be the subject of report to the Tribunal in November 2017 or subsequently.
21. The Tribunal turns to the terms of the variation. Although it has not been articulated by the lessees, the terms of the variation sought might in some circumstances leave lessees with unbudgeted and unexpected demands for payment from the manager. This outcome should only be for as short a period as possible as it has the potential to cause lessees financial embarrassment or difficulty, notwithstanding the application of section 20 of the Landlord and Tenant Act 1985 requiring statutory consultation for qualifying works. Accordingly the Tribunal has limited the period for which the manager has such the power to make ad hoc interim on account demands for 2 years from the date of the Order. This period has been selected by reference to the penultimate paragraph of the statement made in support of an application to vary the Order by Gary Pickard at [14]. In that paragraph he indicated that it

may not be possible to make quarterly demands based upon an annual budget for at least the first year or two of managing this "block" (by which the tribunal took to mean this development)

22. By the final year of the Order if all goes to plan according to his evidence the Manager should be in a position to prepare an annual budget and make quarterly demands. The Direction made by this Tribunal reflects that aspiration. If the unexpected occurs, a further application for a variation of this Direction could be made to the Tribunal.
23. The Tribunal has taken the opportunity to clarify that the on account service charge demands which the manager is empowered to issue should not be subject to the rigours of form or procedure which have sometimes bedevilled the issue of service charge demands in the past. The need will be for such on account contributions to be paid by the lessees in whatever form or terms issued without technical or formal challenges or strict compliance with the terms of the Lease or Underlease relating to the form of the demand or the provisions of sections 47-48 of the Landlord and Tenant Act 1987. It will be sufficient for the demand to refer to the terms of the Order as varied by this Decision.
24. Direction 1.2 of the Order relating to service charges could be read as requiring the Manager to bring proceedings upon the Instruction of the landlord for monies due upon the landlord's instructions even if the Manager believes that such a step is not necessary or desirable in the interests of good estate management. As a variation to this clause was being sought, the Tribunal has taken the opportunity to clarify that the Manager's role is to act in the interests of good estate management of the premises as a whole, rather than to act upon the landlord's instructions which is what the proposed variation to paragraph 1.2 could be read as requiring him to do.

Miscellaneous

25. Nothing in these Reasons or the Tribunal should be taken as a criticism of the Manager or of his request for a variation of the Order. The request for a variation in the circumstances he described following inspection of the site was eminently sensible and an entirely responsible course to take. Nothing in this decision upon variation should be taken to pre-judge the reasonableness or appropriateness of works which are proposed by the Manager or the costs of those works. Those works and any interim demand he makes can be the subject of separate review by the Tribunal. If any of the lessees have any concerns about these issues they should take independent legal or other appropriate professional advice.

26. The Manager should ensure that the terms of the Order (as varied) and these Directions are duly protected against all relevant titles which are the subject of the Order at the Land Registry.
27. The bundle used for this variation application should be retained by the Manager and his solicitors in its existing form and this Decision and Reasons retained for possible use in any further application for Directions.

Name: H Lederman **Date:** 25 May 2017
Tribunal Judge

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987 section 24

24.— Appointment of manager by [a [...] tribunal] .

(1) [The appropriate tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or
(b) such functions of a receiver,
or both, as [the tribunal] thinks fit.

(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

[...]

(ii) 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

] 6

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

(2ZA) In this section “relevant person” means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if [the tribunal] 1 thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as [the tribunal] thinks fit; and, on any subsequent application made for the purpose by the manager, [the tribunal] may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by [any relevant person] , or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as [the tribunal] thinks fit, and in particular its operation may be suspended on terms fixed by [the tribunal].

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22 , [the tribunal] may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the [Land Registration Act 2002] shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) [The appropriate tribunal] may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the [Land Registration Act 2002], [the tribunal] may by order direct that the entry shall be cancelled.

[

(9A) The [tribunal] shall not vary or discharge an order under subsection (9) on [the application of any relevant person] unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by [the appropriate tribunal] by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this [Part] to the management of any premises include references to the repair, maintenance [, improvement] or insurance of those premises.