



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

**Case Reference** : **MAN/00BU/LAM/2020/0002**

**Property** : **4, Clarendon Avenue, Altrincham  
WA15 8HD**

**Applicants** : **Mr Yousef Ayub and Ms  
Shaheen Ashraf**

**Respondents** : **Lambscare Limited  
Ms Agnes Jane O’Rawe  
Mr Michael William Armiger &  
Mrs Audrey Doreen Armiger  
Mr Nicholas Elton Richardson  
& Mrs Christine Susan  
Richardson  
Mr Richard Thomas**

**Type of Application** : **Landlord and Tenant Act 1987 –  
section 24**

**Tribunal Members** : **Tribunal Judge C Wood  
Tribunal Member S Latham**

**Date of Decision** : **19 January 2021**

**Date of Determination** : **22 January 2021**

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**DECISION**

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## **ORDER**

1. The Tribunal orders that, in accordance with section 24(1) Landlord and Tenant Act 1987, Mr. Howard David Jones and Ms Jennifer Dickie are appointed to act as joint managers of the Property on the terms set out in the Annex to this Order.

## **BACKGROUND**

2. By an application dated 3 April 2020, (“the Application”), the Applicants sought an order for the appointment of a manager of the Property pursuant to section 24 of the Landlord and Tenant Act 1987, (“the 1987 Act”), following the service of a notice dated 16 March 2020 in accordance with section 22 of the 1987 Act.
3. Directions were issued dated 2 July 2020 and a telephone case management conference was held on 27 July 2020, pursuant to which the parties submitted statements of case.
4. All parties consented to the Application being determined on the papers by the Tribunal.

## **EVIDENCE**

5. The Applicants’ statement of case comprehensively set out the background to the Application, detailing many issues relating to the management of the Property, and including a proposal from Mr H.D. Jones and Ms J. Dickie of Oakland Residential Management Limited, (“Oakland”), relating to their appointment as joint managers of the Property.
6. The Applicants’ response to the Respondents’ statement of case contains the following:
  - 6.1 in paragraphs 1.1-1.13, a series of points supporting the suitability of their nominees’ appointment as manager, including information relating to their professional qualifications and experience, Oakland’s adoption of the RICS Service Charge Residential Management Code of Practice, (“the RICS Code”), the level of PI liability insurance cover, the number of

developments currently under management and the proposed level of remuneration;

- 6.2 in paragraphs 2.1-2.15, a series of points setting out their reasons for opposing the appointment of the Respondents' nominee, including the failure to identify a named individual as manager; that Roger Dean & Co. do not adopt/follow the RICS Code and are not RICS accredited or members; that there is no information regarding the level of PI liability insurance; that the fixed remuneration proposal based on 2.5 hours' management per month is inadequate, whilst the additional hours fee proposal provides no certainty for leaseholders; that a 12-month term is insufficient in the circumstances and again means uncertainty for leaseholders; and various concerns based on problems experienced during Roger Dean & Co's previous appointment as manager.
7. In their "Combined Tribunal Return", the Respondents confirm that their "preferred outcome" of the Tribunal's determination of the Application is the appointment of a manager of the Property. Their nominee as manager is Roger W Dean & Company Limited, ("Roger Dean").
8. The proposal from the Applicants' nominees includes the following:
  - 8.1 that Messrs Jones and Dickie are appointed as joint managers;
  - 8.2 short cvs of both Mr. Jones and Ms Dickie setting out their professional qualifications and experience in residential property management, including, in the case of Mr. Jones, as a manager and receiver appointed by the Tribunal under the 1987 Act ;
  - 8.3 that the appointment should be for "approx five years due to the poor condition of the building and the time required to secure adequate funding from the leaseholders, provide appropriate consultation, complete further investigations, complete the tender for works process and arrange for commencement and completion of the works";
  - 8.4 that management charges would be £2000 plus VAT per annum "plus nominal expenses". In addition, the right is reserved to charge additional fees "...in the event of further and significant capital works...", at a rate of 2.5% of capital cost (to include the costs of "section 20 notices to leaseholders");

- 8.5 a draft service charge budget for the Property;
- 8.6 a statement that Oakland has PI liability insurance cover of £2m.
- 9. The proposal from the Respondents' nominee, Roger Dean comprises a copy of a residential property management agreement and includes the following:
  - 9.1 details of the management activities included within the headings:  
Accounting; Insurance; Health & Safety; Major Works; Maintenance Supervision; Communication between Agent and Residents;  
Documentation and Data Control; Sub-contractors; Quality System;  
Notice Period and Payment of Fees;
  - 9.2 the appointment would be for an initial 12 month term, renewable annually on each subsequent anniversary, with a 3-month notice period by either party;
  - 9.3 the management fee would be £1500 plus VAT per annum based on 2.5 hours per month. Additional hours would be charged at £50 plus Vat per hour.

## **LAW**

- 10. The relevant law is set out in section 24 of the 1987 Act which provides as follows:
  - Appointment of manager by a tribunal
  - (1) The appropriate tribunal may, on an application for an order under this section, by order...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).....

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

(ab) where the tribunal is satisfied—

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

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

(aba)where the tribunal is satisfied—

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

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

(ac) where the tribunal is satisfied—

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

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

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

(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 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.

### **REASONS**

11. The Tribunal accepted the Respondents' "Combined Tribunal Return" as evidence of their agreement to the appointment of a manager of the Property. As a consequence, the Tribunal did not consider it was necessary or constructive to further consider the Applicants' claims justifying an appointment under sections 24(2)(a),(ab),(abb) and/or (ac). The Tribunal therefore considered that it was "just and convenient" to make its order under section 27(2)(b) of the 1987 Act where the "other circumstances" is the parties' consensus on the need for a manager to be appointed.
12. The Tribunal was then required to determine the identity of the manager and the terms of the appointment.
13. The Tribunal had concerns about the extent of information contained in both parties' proposals for their nominees for manager. By way of example:
- 13.1 the Applicants' proposal: there was no indication as to how a joint appointment would work i.e. would it be joint or joint and several? The nominees' cvs were limited and provided no named examples/the number of residential properties currently in management by either/both of them. No evidence was provided of Oakland's adoption of



- the RICS Code or of its PI liability insurance cover. No explanation was given of what was meant by “nominal expenses” in its fee proposal;
- 13.2 the Respondents’ proposal: there was no named individual as manager. No evidence was provided of other residential properties currently in management. There was no reference to adoption of the RICS Code nor of PI insurance cover.
14. The Tribunal considered whether it should request both nominees to submit revised proposals addressing all of the issues that it would normally expect to see addressed including, without limitation, those matters which the Tribunal noted were absent from the proposals as submitted. However, in view of the parties’ acceptance of the need for a professional manager to assume responsibility for the management of the Property and further the concerns about the lack of insurance of the Property and its current condition, the Tribunal concluded that any further delay in this matter would be of no benefit to the parties.
15. Accordingly, having considered the parties’ submissions, including their nominees’ proposals, the Tribunal considered that, on balance, Mr. Jones and Ms Dickie should be appointed as the joint managers of the Property on the terms set out in the management order attached to this decision.

Tribunal Judge C Wood

19 January 2021

Annex to Decision dated 19 January 2021

### **Appointment of Manager Order**

1. In accordance with section 24(1) Landlord and Tenant Act 1987, Mr. Howard Jones and Ms Jennifer Dickie, (“the Managers”), of Oakland Residential Management Limited of 20a, Victoria Road, Hale, Cheshire WA15 9AD, are appointed jointly to act as joint managers of the building known as 4, Clarendon Avenue, Altrincham, WA15 8HD, (“the Property”).
2. The Order shall continue for a period of 3 years from 1 February 2021. Any application for an extension of the Order must be made before the Order expires. If such an application is made, then the appointment will continue until that application has been finally determined.
3. The Managers shall manage the Property in accordance with:
  - (1) the directions and schedule of functions and services attached to this Order;
  - (2) the respective obligations of the Lessor and the Lessees under the terms of the Leases including, without limitation, with regard to repair, decoration, provision of services and insurance of the Property;
  - (3) the duties of a manager set out in the Service Charge Residential Management 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, (“the Code”).
4. The Managers 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 its term, the Managers shall ensure that appropriate professional indemnity liability insurance cover in the sum of at least £2 million is maintained and shall provide copies of the current cover note upon request being made by any Lessee of the whole or any part of the Property, the Lessor or the Tribunal.
2. No later than 28 days after the date of this Order, each of the parties to this application shall provide all necessary information to the Managers and shall co-operate with the Managers to ensure an orderly and effective transfer of responsibilities. Without prejudice to the generality of the foregoing, each party shall transfer to the Managers all accounts, books, records and funds in his/her possession and/or control relating to the service charge and insurance of the Property. For the avoidance of doubt, any costs incurred by the Managers directly as a result of any party’s failure to comply with this direction shall be recoverable as service charge in addition to the Managers’ remuneration set out in paragraph 15(i) of the Schedule of Functions and Services.
3. The Managers shall confirm in writing to each of the Lessees, the Lessor and to the Tribunal that, with effect from the date of the Order, insurance in accordance with the

- Leases has been effected in respect of the Property. To the extent (if at all) that service charge funds are not available to the Managers to meet the cost of the insurance premium, and in respect of this insurance year only, the Managers shall be entitled to seek immediate reimbursement from the Lessees by way of an interim service charge.
4. On the date of the Managers' appointment, the rights and liabilities of Lambscare Limited arising under any contracts for the provision of any services to the Property shall become rights and liabilities of the Managers.
  5. Within 3 months from the date of this Order, the Managers shall prepare undertake a condition survey of the Property and prepare a detailed report for each of the Lessees setting out the schedule of condition and identifying the repair and management plans for the Property, which report shall distinguish between capital repair projects and routine periodic maintenance, and including proposed timescales and budgets. The costs of the preparation of this report, ("the Works and Maintenance Report"), shall be included within the Managers' annual remuneration as prescribed by this Order.
  6. The Managers shall account forthwith to the Lessor for the payment of ground rent received by them and shall apply the remaining amounts received by them (other than in respect of the Managers' remuneration) in the performance of the Lessor's covenants in the Leases.
  7. The Managers shall be entitled to remuneration, which, for the avoidance of doubt, shall be recoverable as part of the service charge under the Leases and in accordance with the Schedule of Functions and Services attached.
  8. The Managers shall prepare a brief written report for the Tribunal on the progress of the management of the Property during the first 12 months of their appointment, and shall submit it to the Tribunal by no later than 15 February 2022, with a copy at the same time to the Lessor and the Lessees.
  9. Within 28 days of the expiry of this Order, the Managers shall prepare and submit for the Tribunal a brief written report on the progress and outcome of the management of the Property up to its conclusion, which report shall include final closing accounts. Copies of the report shall also be sent to the Lessor and the Lessees, who may raise queries on them within 14 days. The Managers shall answer all (if any) queries within 14 days. Thereafter the Managers shall reimburse any unexpended monies to the Lessees, to any manager appointed by or with the consent of all of the Lessees, or, in the case of dispute, as determined by the Tribunal upon the application of any interested party.
  10. The Managers shall be entitled to apply to the Tribunal for further directions.

## **Schedule of Functions and Services**

### **Insurance**

- (1) Take out and maintain at all times during the term of the appointment appropriate building insurance for the Property.
- (2) Ensure that the Managers' interest is noted on the policy.

### **Service Charge**

- (3) Prepare an annual service charge budget, including determining the service charge year, providing for interim payment in advance and the establishment of a reserve fund.
- (4) Administer the service charge including the preparation and distribution to the Lessees of service charge demands and of the annual report required under paragraph (8).
- (5) Demand and collect ground rent, service charges, and any other payment due from a Lessee under the Leases, including, without limitation, the collection of unpaid service charges as at the date of the Managers' appointment.
- (6) Collect (including, without limitation, by instructing solicitors) unpaid service charges and any other amounts due but unpaid by a Lessee under the Leases, including, for the avoidance of doubt, arrears of service charge owed by any Lessee as at the date of the Managers' appointment.
- (7) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property within the service charge budget.

### **Accounts**

- (8) Prepare and submit to the Lessor and the Lessees an annual statement of account detailing all monies received and expended and providing for the making of a balancing payment by the Lessees or a credit to each Lessee's service charge account. The statement shall be certified if required in accordance with the Leases.
- (9) Maintain up-to-date, complete and accurate records and books of account relating to the management of the Property, and make the same open to inspection to the Lessor and the Lessees, and, on prior written request from any of them, produce receipts or other evidence of expenditure.
- (10) Open and maintain an interest-bearing trust account at such bank or building society as the Managers shall determine and pay into such account all monies received from the Lessees in respect of ground rent, service charges, [insurance], or any other payment made by a Lessee under the terms of the Leases.
- (11) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution of Chartered Surveyors.

### **Maintenance and Repair**

- (12) Deal with routine repair, health and safety (including, without limitation, fire risk assessments) and maintenance issues, including, without limitation, instructing and supervising contractors to attend to undertake all necessary works, and including, without limitation, the periodic maintenance identified in the Works and Maintenance Report.
- (13) Establish a 24 hour contact arrangement for emergency repairs and notify the Lessees of the relevant contact details.

- (14) Engage with the Lessees to initiate the schedule of repair projects identified in the Works and Maintenance Report within the timescales set out, including, without limitation, undertaking all s20 consultations as required.

**Fees**

- (15) The Managers' remuneration for their services as manager of the Property during the term of their appointment are as follows:
- (i) Annual management fees of £2000 plus VAT;
  - (ii) Fees equal to 2.5% of the capital cost of any major repair works, as identified in the Works and Maintenance Report. Such works are those where the Managers are required to prepare a specification of works, obtain competitive tenders, undertake a s20 consultation, appoint builders, surveyors, architects or other professionals and generally undertake additional management/administration/supervision duties.

**Complaints Procedure**

- (16) The Managers shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Code.