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

**Case Reference** : CAM/00MC/LAM/2018/0002

**Property** : Aveley House, Iliffe Close, Reading  
RG1 2QF

**Applicant** : David Lawton

**Respondent** : (1) Countrywide Residential Lettings Ltd  
(2) E & J Ground Rents No 15 Limited  
(3) Simon David Gwynn

**Date of Application** : 23<sup>rd</sup> May 2018

**Type of Application** : For variation of an Order appointing a  
Manager – section 42(9) of the Landlord  
and Tenant Act 1987 (“the Act”)

**Tribunal** : David S Brown FRICS (Chair)  
Bruce M Edgington (Judge)

**Date of Decision** : 3<sup>rd</sup> July 2018

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**DECISION**

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**PROVIDED THAT** Simon Gwynn has, by 12 noon on 13<sup>th</sup> July 2018, confirmed to the Tribunal in writing that he is willing to continue as the manager under the Order

The Management Order of 9<sup>th</sup> May 2012, as varied on 16<sup>th</sup> May 2016 (“the Order”), is extended to 31<sup>st</sup> May 2022, subject to the following variations –

- A. The words “or insurance” are deleted from paragraph 6 of the Directions attached to the Order
- B. The following paragraph is added to the Schedule of Rights, Functions and Services attached to the Order –  
“1.10 The Manager shall pay to the landlord the insurance contributions received from the tenants within 10 days of receipt of such contributions.”

**Background and Application**

1. The Application was submitted by David Lawton, purportedly on behalf of 5 other leaseholders in addition to himself. A Directions Order made

by the Chair directed him to provide signed authority by each of the other leaseholders listed in the application. Mr Lawton has failed to do so and as a result the Tribunal does not accept that he has such authority and directs that he is the sole applicant.

2. As the original Order was to expire on 31<sup>st</sup> May 2018, the Directions Order informed the parties that the Tribunal would expedite these proceedings and gave reduced notice to the parties of a paper determination on or after 3<sup>rd</sup> July unless either party requested a hearing. No such request has been received.
3. The original management order, appointing John Mortimer as the Manager, was made on 9<sup>th</sup> May 2012 and expired on 31<sup>st</sup> May 2016. On 16<sup>th</sup> May 2016 that order was extended to 31<sup>st</sup> May 2018 and Simon David Gwynn MRICS was appointed as manager to replace John Mortimer, who had retired.
4. The current application is to extend the management order for 4 years. The grounds are that the current manager is discharging his obligations and the order has prevented recurrence of the problems which led to the original order being made. In addition, the manager proposes to commence major works which the Applicant wishes to proceed.
5. The Applicant also wishes to exclude the provision in the original order regarding insuring the building as the new freeholder will organise this.

### **The Law**

6. Section 24(9) of the Act provides that the Tribunal may vary a management order on the application of any person interested if it is just and convenient in all the circumstances to do so, subject to the proviso that it must not be varied unless the Tribunal is satisfied that the variation will not result in a recurrence of the circumstances which led to the order being made.

### **The Applicant's Case**

7. The grounds for the application are that the current Manager is discharging his obligations under the existing order which has prevented a recurrence of the problems which led to the Order being made.
8. In addition, having successfully overseen the replacement of the entire roof during 2016-17, the Manager is also to further commence major work including internal redecoration, carpet replacement, replacement of communal fire doors and upgrading the estate lighting. It is said that the leaseholders wish the work to proceed and it has been subject to section 20 consultation.
9. Following the recent sale of the freehold interest, the Tribunal is asked to vary the Order in relation to insurance and to extend the Order for four years and to exclude the provision to insure the building as the new freeholder will organise this.

## **The Respondent's Case**

10. E & J Ground Rents No 15 Limited ("E & J") have acquired the landlord's interest in the Property. They have no objection to the re-appointment on the Manager for a further 4 years provided that two alterations are made to the Order.
11. Paragraph 6 of the Directions attached to the Order states that "the rights and liabilities of the landlord and/or the former managing agent arising under any contracts or insurance....become the rights and liabilities of the Manager". In Schedule 9 paragraph 1 of the leases the landlord insures the Block but in Schedule 8 Part 1 paragraph 2 the tenants pay an insurance contribution to the management company. There is no corresponding covenant from the management company to pay over the insurance premium. No representations were made by the previous landlord on this point and the appointed managers have interpreted the direction to permit them to insure without challenge to date.
12. E & J avers that the appointment of a manager should be in respect of the management company functions and not those of the landlord. Accordingly, no provision should be made that the manager insures and direction 6 should be removed on the basis that the landlord will insure effective from the lapse of the current order on 31<sup>st</sup> May 2018.
13. E & J requests that an additional direction is made that the management company pay the insurance premium to the landlord within 10 days of demand, the leases providing that the tenants pay the insurance contribution to the management company on demand. The Respondent renews all insurance on the same renewal date and so the management company will have notice of the demand date in any event.

## **Discussion and Decision**

14. The essence of Part II of the Act is to provide a remedy for tenants where a landlord or manager is failing in its obligations under the lease. This is demonstrated in three sections, namely -

Section 22(1) under which an applicant for an order must serve notice on the landlord and any manager specifying the grounds of the application and the matters that will be relied upon to establish those grounds and, where those matters are capable of being remedied required the recipient to take specified steps to remedy them. It is reinforced by -

Section 24(2) which lists matters about which the Tribunal must be satisfied before making an order, and

Section 24(9A) which prohibits the Tribunal from making a variation if it will result in a recurrence of the circumstances which led to the order being made.

15. In addition, section 24(9) refers to variation or discharge of a management order, indicating that Parliament envisaged that such orders may be of an enduring nature.
16. The Order in this case was made because of a number of failings by the then manager, including failure to arrange repairs and redecorations, failure to comply with clause 7.11 of the lease, failure to comply with the RICS Management Code of Practice. Those failures have been rectified by the current Manager under the Order.
17. The lease is tripartite, between the landlord, the tenant and Countrywide Residential Lettings Limited ("CRL") as "The Manager", who used Countrywide Estate Management as their managing agent. If the Order is not extended, management obligations will presumably revert to CRL. Although there is no evidence to suggest that management by CRL would be as unsatisfactory now as it was when the Order was made, that company has not responded to the Directions which gave them an opportunity to make representations and so presumably has no interest in regaining the management of the Property.
18. The Applicant and E & J are content for the Order to continue. Given that the failings which resulted in the Order being made were the result of poor management that had been ongoing for some time and taking into account that those failings have been remedied and are not being repeated by the current manager, we consider that it is just and convenient to extend the Order, and the appointment of Simon David Gwynn, for a further period of 4 years.
19. The request by E & J to delete paragraph 6 of the Directions attached to the Order and insert a new direction relating to the insurance cannot be fully complied with.
20. The scope of Paragraph 6 goes beyond the insurance of the block. The lease makes reference to a Management Lease between the landlord and the manager relating to that part of the Maintained Property as is within the control of the landlord. Paragraph 6 is integral to the Order and we do not consider that it should be deleted.
21. We do, however understand the problem with the recovery by the landlord of the insurance contributions paid by the tenants, due to an omission in the drafting of the lease, and accept that it is desirable for there to be a requirement for the Manager under the Order to pass to the landlord promptly all insurance contributions received from the tenants. It would be inequitable to require him to pay to the landlord 'out of his own pocket' any amounts in lieu of insurance contributions that he had not received. He is under a duty by virtue of paragraph 2 of the Directions to exercise all reasonable skill, care and diligence which includes taking steps to recover the insurance contributions when they are due.

22. We will therefore add a direction that he is to pay to the landlord insurance contributions paid by tenants within 10 days of their receipt by him.
23. We are slightly concerned that the application is effectively by one tenant (possibly intended to be 6 tenants) out of 70. However, it appears that the management by Simon Gwynn is proceeding satisfactorily.

**D S Brown FRICS (Chair)**

### **ANNEX - RIGHTS OF APPEAL**

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.