



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

Case references	:	LON/00BG/LVM/2018/0005 LON/00BG/LVM/2018/0006 & LON/00BG/LVM/2018/0014
Property	:	Canary Riverside Estate, Westferry Circus, London E14
Applicant in LON/00BG/LVM/2018/0005 represented by Downs LLP	:	Alan Coates (tribunal- appointed manager) (“the Applicant”)
Respondents in LON/00BG/LVM/2018/0005 represented by Trowers & Hamlins LLP		(1) Octagon Overseas Limited (“Octagon”) (2) Canary Riverside Estate Management Limited (“CREM”) (3) YFSCR Limited (4) Yianis Hotels Limited (5) Palace Church 3 Limited
(Octagon and CREM being applicants in LON/00BG/LVM/2018/0006 and LON/00BG/LVM/2018/0014)		(“CREM/Octagon”)
Interested persons in LON/00BG/LVM/2018/0005 and respondents in LON/00BG/LVM/2018/0006 and LON/00BG/LVM/2018/0014))	:	Section 24 applicant leaseholders
Type of application	:	Variation of order for appointment of a manager
Tribunal	:	(1) Judge Amran Vance (2) Mr L Jarero, BSc FRICS
Venue	:	10 Alfred Place, London WC1E 7LR
Dates of Hearing	:	3 and 4 December 2018

SUPPLEMENTAL DECISION

Background

1. This decision is supplemental to the tribunal's decision dated 4 December 2018, and should be read in conjunction with that decision. Its purpose is to determine what changes, in light of the tribunal's decision, need to be made to the Management Order appointing Mr Alan Coates as manager of the residential properties, common parts, car parking spaces, and shared services at Canary Riverside ("the Estate") under the provisions of s.24 Landlord and Tenant Act 1987 ("the 1987 Act").
2. Following issue of the tribunal's decision of 4 December 2018, the tribunal received a travelling draft of the amended Management Order from the applicant and the respondents. Following consideration of the proposed amendments, comments made in the travelling draft, and representations received in email communications, the tribunal wrote to the parties, and to the Residents Association of Canary Riverside on 20 February 2019. In that letter, the tribunal commented on the proposed changes and directed the provision of further written submissions from the parties. It subsequently received written submissions from both the applicant and the respondents on 1 March 2019, and a response to the respondents' submissions from the Manager dated 14 March 2019.
3. Our determinations regarding the changes to the MO are as set out below. An amended MO is annexed to this decision at Appendix 1 and a version showing tracked changes to the previous MO is at Appendix 2. For all of the variations made to the MO we are satisfied that the variation will not result in a recurrence of the circumstances which led to the order being made, and that it is just and convenient in all the circumstances of the case to make the variation.

Interpretation, para (n) – definition of "Service Charges"

4. This amendment is agreed between the Manager and the respondents. It is intended to make clear that utility costs are recoverable costs within the definition of service charges. We consider the amendment to be appropriate.

Paragraph 4(f) – pre-appointment debts

5. This variation was sought to make provision for the Manager to pay sums demanded from several organisations concerning costs incurred by CREM prior to the Manager's appointment, subject to the Manager's right to challenge the validity or quantum of a demand. The relevant background is set out in paragraphs 45-49 of the decision of 4 December 2018. We confirm our preliminary views stated at paragraph 51 of that decision.

6. We have had regard to the written submissions of 1 March 2019 made by the Manager and the respondent who are in broad agreement as to the variation to be made. We prefer the wording proposed by the respondents, but consider that when giving notice of any legal proceedings to the Manager, as well as providing copies of relevant pleadings, statements of case and witness statements, he should also be provided with court orders, costs schedules and any other relevant documentation as well as being notified of steps taken within those proceedings.
7. Further, the Manager's indemnity to pay the respondents costs should be in respect of costs that have both been reasonably incurred and are reasonable in amount. We do not consider it is appropriate to include the amendment sought by Mr Bates which is to enable the parties to apply to this tribunal for a determination as to whether costs payable under the indemnity are reasonable or reasonably incurred. These would not be service charge costs. They would be costs under an indemnity that related to service charge costs and the appropriate venue for dispute resolution would appear to be the county court.

Paragraph 4(i) – Manager's powers concerning legal proceedings

8. These amendments are intended to: (a) remove reference to the Manager being entitled to issue proceedings in respect of 'other monies' other than service charge arrears; and (b) to clarify that his power to compromise such proceedings is to be exercised with the consent of the landlord, such consent, not to be unreasonably withheld.
9. We agree with Mr Bates' submission that as the Manager does not act on behalf of the landlord or 'step into its shoes', its consent is appropriate. We recognise that the amendment to Interpretation, para (n) referred to above means that utility costs are to be included in the definition of Service Charges. However, given the point made by Ms Cattermole regarding utilities relating to residential leases being treated separately from service charges in the lease, we agree that reference to utility costs should be included at paragraph 4(i) and in the Schedule of Functions and Services, paragraph 5, to make clear that he is entitled to seek recovery of both service charges and utility costs.

Paragraph 7A – Insurance

10. Although raised in the respondents' application and Scott Schedule, the question of ancillary insurance costs was not argued at the hearing and we therefore invited further written submissions from the parties. The ancillary costs in question include the costs of obtaining periodic re-valuation reports. We agree that such costs should be payable by the Manager and agree the form of wording proposed.
11. In the travelling draft the parties proposed the inclusion of further variations at paragraphs 7A(v) and (vi). For the reasons stated in the

tribunal's letter of 20 February 2019, we did not consider their insertion to be appropriate. For the avoidance of doubt, and in response to a comment made by Ms Cattermole, counsel for the respondent, in her submissions dated 1 March 2019, the comment in the tribunal's letter of 20 February 2019, that we were not intending to suggest, in our decision of 4 December 2018, that a service charge demand issued by the Manager had to be paid before it could be challenged, applies equally in respect of insurance demands made of the Manager by CREM. However, as was made clear in our letter of 20 February 2019, whilst this reflects our opinion, it is not a determination of the tribunal.

Paragraphs 11 and 17(i)

12. This amendment was agreed between the Manager and the respondents and corrects typographical errors.

Paragraph 17A

13. This amendment is agreed between the Manager and the respondents and concerns provision of documents required to meet statutory documentation. The amendment is appropriate given the decision reached at paragraphs 53 and 54 of our decision of 4 December 2019.

Schedule – Functions and Services – paras 2 and 3

14. We determined that amendments proposed in these paragraphs were inappropriate for the reasons stated in paragraph 64 of our decision of 4 December 2019. However, we consider that reference to the manager's ability to utilize a float should be inserted.

Schedule – Functions and Services – para 5

15. We consider this amendment appropriate for the reasons stated at paragraph 9 above.

Schedule – Functions and Services – para 28A

16. This amendment is agreed between the Manager and the respondents and makes provision for the inspection of documents supporting the service charge accounts by Canary Riverside Estate Management Ltd and Mr John Christodoulou. In light of the agreement, we include it as a variation to the MO.

Schedule – Functions and Services – para 35

17. This amendment is agreed between the Manager and the respondents and makes provision for the Manager to notify Canary Riverside Estate Management Ltd of issues that may impact on the commercial tenants on

the Estate, for example, if problems arise with shared services. We consider the amendment appropriate.

Other Matters

18. Mr Bates has requested that the tribunal issue a direction for the Manager to balance the 2015/16 account. In a letter to the tribunal dated 29 March 2019, Freeths, the respondents' solicitors state that credits due to leaseholders under the 2015/16 accounts amount to £293,549. The Manager's position is that he cannot close the accounts until he receives outstanding data from Marathon Estates Limited, CREM's former managing agents. The s.24 leaseholders wrote to the tribunal on 4 April 2019 stating that whilst they would ordinarily support ensuring that credits were applied to leaseholders' accounts at the earliest opportunity, their concern was that to direct this might lead to the Manager having insufficient sums to hand to discharge his obligations under the MO. This, they say, has been caused by the significant non-payment of service charge and utility demands, including by CREM.
19. Mr Bates' response to the query raised in the tribunal's letter of 20 February 2019, as to the statutory provision in the 1987 Act under which his direction was sought, is that it the tribunal has power to do so under paragraph 5(a) of the MO, which provides that the Manager shall manage the Estate in accordance with the directions of the tribunal. However, that is circular argument, and does not identify the basis on which the tribunal has jurisdiction to make such a direction.
20. We are concerned that we may lack jurisdiction to make the direction sought by the respondents. Further, this request was not included in the respondents' application for a variation of the MO and we have not heard argument on it. If the respondents wish to pursue their request it should be by way of a formal application. Whilst it is a matter for the respondents, the appropriate proceedings in which to do so may well be in either the application by Palm Tree Paradise Holdings Ltd, seeking the Manager's discharge (LON/00BG/LVM/2018/0018) and/or the application brought by Mr Coates seeking his discharge (LON/00BG/LVM/2019/0010). The parties will be aware that it has been held by the Upper Tribunal that on discharge of a manager the tribunal has jurisdiction to make determinations regarding the the provision of final accounts and payment of surplus monies *Kol v Bowring* [2015] UKUT 530 (LC).

Amran Vance

12 April 2019