

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
(RESIDENTIAL PROPERTY)

Case reference: LON/00BG/LAM/2015/0012

BETWEEN

VARIOUS LEASEHOLDERS

Applicants

-and-

OCTAGON OVERSEAS LIMITED
CANARY RIVERSIDE ESTATE MANAGEMENT LIMITED

Respondents

DRAFT MANAGEMENT ORDER

Interpretation

In this order:

- (a) "Car Park" means the car park located at levels -1 and -2 of the Premises
- (b) "Commercial Leases" means the leases pursuant to which the Commercial Tenants hold their units, as listed in Schedule A to this order
- (c) "Commercial Tenants" means the tenants of the commercial units at Canary Riverside listed in Schedule A to this order.
- (d) "Common parts" means any garden area, outhouses, postal boxes, refuse store, under street vaults, security gates, lifts, paths, halls, staircases and other accessways and areas (if any) within the Premises that are provided for common use by the Lessees or persons expressly or by implication authorised by them
- (e) "Functions" means any functions in connection with the management of the Premises including any obligations and powers of the Landlord under the Leases

- (f) "Leases" means the long leases vested in the Lessees and the long lease currently vested in Circus Apartments Guernsey Ltd under title number EGL411770, being the Circus Apartments at Eaton House, including any car parking spaces demised in those leases.
- (g) "Lessee" or "Lessees" means a tenant of a dwelling holding under a long lease as defined by section 59(3) of the Landlord and Tenant Act 1987 ("the Act");
- (h) "Occupational Agreement" means any agreement for the occupation of any part of the Premises which is not a Lease or a Commercial Lease
- (i) "the Manager" means Mr Alan Coates MIBFM MIRPM of HML Andertons Ltd, 94 Park Lane, Croydon, Surrey CR0 1JB
- (j) "the Premises" means all that property known as Phase 1, Riverside, Westferry Circus, London, of which the freehold is registered at HM Land Registry under title number EGL359129 and is currently vested in Octagon Overseas Limited
- (k) "the Landlord" means Canary Riverside Estate Management Limited, the Second Respondent to this application, and includes any successors in title of the leasehold estate registered under title number EGL365354 or any interest created out of the said freehold title.

Preamble

UPON the Applicants having applied for the appointment of a manger under Part II of the Act

AND UPON the First-tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a manager has arisen in the present case

AND UPON the First-tier Tribunal being satisfied that the conditions specified in section 24 of the Act are met, and that it is just and convenient to appoint a manager

AND UPON there being excluded from the ambit of the Manager's appointment the provisions of services, management, repair and maintenance of the Commercial Units, save where those Units share services with the Lessees

IT IS ORDERED THAT

The manager

1. Alan Coates MIBFM MIRPM of HML Andertons Ltd Property 94 Park Lane, Croydon, Surrey CR0 1JB is appointed as Manager (including such functions of a Receiver as are specified herein) of the Premises pursuant to section 24 of the Act for a period of 3 (three) years commencing on 01 October 2016 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Landlord under the Leases and in particular:
 - (a) To receive all service charges, interests and any other monies payable under the Leases, the Commercial Leases and any Occupational Agreements where the Commercial Tenants and/or other occupiers share services with the Lessees and are required, under the terms of their leases and/or Occupational Agreements to contribute towards the cost of those shared services, and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager;
 - (b) The right to treat the service charge financial year as commencing on the date of this Order and ending on 31 March 2017 and thereafter as running from 01 April to 31 March in each year this Order is in place;
 - (c) The right to give notice and raise an interim service charge as soon as he deems necessary;
 - (d) The power and duty to carry out the obligations of the Landlord contained in the Leases, the Commercial Leases and any Occupational Agreements in relation to any services shared by any of the foregoing with the Lessees and in particular and without prejudice to the foregoing:
 - (i) The Landlord's obligation to provide services;
 - (ii) The Landlord's repair and maintenance obligations, and
 - (iii) The Landlord's obligation to arrange insurance of the Premises.
 - (e) The Manager shall have no liability for any pre-existing breaches of covenant, if any such breaches exist at the date of this Order, save in

respect of any additional damage caused by any failure or negligent attempt by him to remedy the same;

- (f) The power to delegate to other employees of HML Andertons Ltd, to appoint solicitors, accountants, architects, engineers, surveyors and other professionally qualified persons as s/he may reasonably require to assist him/her in the performance of his functions;
- (g) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant;
- (h) The power in his own name or on behalf of the Landlord to bring, defend or continue any legal action or other legal proceedings in connection with:
 - (i) This Management Order;
 - (ii) The Leases;
 - (iii) The Commercial Leases and/or
 - (iv) Any Occupational Agreement,

in relation to any services shared by the foregoing with the Lessees.

That power includes, but is not limited to, proceedings against any Lessee, Commercial Tenant or other occupier in respect of any arrears of service charges, properly due to the Manager under this Order.

The Manager shall be entitled to an indemnity for his own costs reasonably incurred and for any adverse costs order out of the service charge account;

- (i) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Landlord pursuant to paragraph 1(e);
- (j) In the event that the Lessees shall be in breach of their covenants in the Leases, or, in the case of the Commercial Leases or Occupational Agreements, in breach of their covenants in relation to any services shared with the Lessees and/or their obligations as provided in this Management Order, the Manager shall be entitled to recover from any such Lessee, Commercial Tenant or other occupier on a full indemnity basis any costs, fees, charges, expenses and/or disbursements reasonably incurred or

occasioned by him/her in the appointment of any solicitors, counsel, surveyors or any other professional reasonably retained by the Manager for the purposes of enforcing such covenants or obligations whether or not the Manager brings any proceedings in court or before any tribunal.

PROVIDED THAT in default of recovery of the same from the particular Lessee, Commercial Tenant or other lessee or occupier in breach of the covenants in the Lease, or, in the case of the Commercial Leases and/or any other lease, in relation to services shared with the Lessees and/or obligations as provided in this Management Order, the Manager shall be entitled to recover the same through the service charges;

- (k) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions;
- (l) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to their appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to section 42 of the Act.

The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (if any) (whether under the provisions of the Leases, the Commercial Leases and/or any other Occupational Agreement or power given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund;

- (m) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Landlord or any Lessee, Commercial Tenant or other occupier owing sums of money to the Manager under his Lease, Commercial Lease or Occupational Agreement;
- (n) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees, Commercial Tenants and/or other occupiers or any sums due from the Landlord, such borrowing to be secured (if necessary) on the interests of the Landlord in the Premises or any part thereof against the registered estate of the Landlord registered under title number EGL365354

2. The Manager shall manage the Premises in accordance with:
 - (a) The Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
 - (b) The respective obligations of all parties – landlord and tenant – under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises, and in relation to the Commercial Leases and/or any other Occupational Agreements, the respective obligations of the parties – landlord and tenant – under the Commercial Leases and Occupational Agreements where services are shared between the Leases and the Commercial Tenants and/or other occupiers of the Premises
 - (c) The duties of managers set out in the Service Charge Residential Management Code 3rd. ed. (the “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 of the Leasehold Reform, Housing and Urban Development Act 1993.
3. From 01 October 2016, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
4. From 01 October 2016, the Landlord shall not, whether by itself or any agent, servant or employee, demand any further payments of service charges, administration charges, or any other monies from the Lessees, Commercial Tenants or other occupiers at the Premises to the extent that those charges, or other monies are demanded for payment of services shared with the Lessees. Such functions shall be transferred to the Manager on 01 October 2016. The Landlord, the Commercial Tenants, other occupiers of the Premises, the Lessees and any agents or servants thereof shall not interfere or attempt to interfere with the exercise of any of the Manager’s duties and powers.
5. Without prejudice to the generality of the foregoing:
 - (a) The Landlord, whether by itself, its agents, servants or employees, shall by 1st October 2016 transfer to a bank account nominated by the Manager all monies collected from the Lessees in relation to the service charge and reserve fund collections which should have been held in trust by it pursuant to section 42 of the Landlord and Tenant Act 1987;

(b) The Landlord, whether by itself, its agents, servants or employees, or accountants shall by October 2016 deliver to the Manager all such accounts, books, papers, memoranda, records, computer records, minutes, correspondence, emails, facsimile correspondence and other documents as are necessary to the management of the Premises, including without limitation all personnel details, (full name, tax details, job descriptions, contracts, and all individual disciplinary and/or other records) as are within its custody, power or control together with any such as are in the custody etc.. of any of its agents, servants or employees in which last case it shall take all reasonable steps to procure delivery from its agents, servants or employees;

In detail the accounting information required will be:

- (i) All service charge statements of account, both up to and including the financial year ended 31st March 2015. These accounts must be fully certified by an independent accountant, be compliant with ICAEW Technical Release 03/11 and must contain a full and detailed income and expenditure report per budget sector, a full reserve analysis per budget sector and a full and complete, reconciling balance sheet detailing cash held, all debtors, all creditors, capital and reserves.
- (ii) All bank statements detailing the full transactional history of monies received and paid in relation to the service charge fund collections, reserve fund collections electrical and utilities and ground rent collections.
- (iii) A full cash book report detailing the full transactional history of monies received and paid in relation to the service charge fund collections, electrical, utilities and reserve fund collections.
- (iv) Full bank reconciliation clearly showing any uncleared receipts.
- (v) A full expenditure report showing all purchase invoices either paid, committed or accrued.
- (vi) Full lessee/tenant history reports showing all demands, credits and receipts on each individual lessee account in relation to service charges and reserves collections.
- (vii) A full detailed general ledger showing all accounting transactions, through all nominal codes complete with a full closing trial balance reconciling back to cash held, debtors and creditors. Within 14 days of compliance with paragraph 6(a) above, the Manager shall decide in his

absolute discretion which, if any, contracts he will assume the rights and liabilities under;

(ba) The Landlord shall by 31st October 2016 deliver to the Manager all service charge statements of account, for the financial year ended 31st March 2016. These accounts must be fully certified by an independent accountant, be compliant with ICAEW Technical Release 03/11 and must contain a full and detailed income and expenditure report per budget sector, a full reserve analysis per budget sector and a full and complete, reconciling balance sheet detailing cash held, all debtors, all creditors, capital and reserves.

(bb) For the avoidance of doubt, in relation to the insurance policy currently in place:

(i) If the premium for the existing building and engineering policy has been paid and settled in full through service charge monies held, the Landlord must not cancel that policy, and must assign all administrative matters to the manager to take effect on 01 October 2016. The Landlord must supply the Manager with sufficient information for that transfer to be successful, and

(ii) If the premium for the existing building and engineering policy has not been paid and settled through service charge monies held, the Landlord must inform the Manager of that fact by 19 September 2016 so that the manager may secure adequate building cover by 01 October 2016, and shall not pay any further monies to effect cover beyond 01 October 2016.

(c) The Landlord shall by 01 October 2016 deliver to the Manager all keys, fobs and other access/entry cards to the Premises. If the Landlord fails to deliver such keys etc, the Manager shall be entitled to remove the existing locks and other security systems currently installed at the Premises and install such locks and other security as, in their absolute discretion, he thinks fit;

(d) The Landlord shall by 01 October 2016 deliver to the Manager all keys to electricity, gas, water and any other utility meters located in the Premises. To this end, the Landlord shall give the Managers full access to the electricity, gas and water meters fuse board and any other utility meters located in the Premises;

(e) The Landlord shall by 01 October 2016 give full details to the Manager of all sums of money it holds in any service charge fund and any reserve fund in relation to the Premises, including copies of any relevant bank statements and

shall forthwith pay such sums to the Manager. If the Landlord shall thereafter receive such sums under the Leases of any Lessee it shall forthwith pay such sums to the Manager without deduction or set off;

- (f) The Landlord shall allow the Manager all reasonable access to those parts of the Premises retained by it in order that the Manager might conveniently perform his functions and duties and exercise their powers under this Management Order;
 - (g) The Landlord shall permit the Manager and assist him as he reasonably requires to serve upon the Lessees any Notices under section 146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same;
 - (h) The rights and liabilities of the Landlord as Landlord arising under any contracts of insurance to the Premises shall from the date hereof become rights and liabilities of the Manager;
 - (i) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charge) in accordance with the Schedule of Functions and Services attached.
6. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a professional property manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure that he has appropriate professional indemnity cover in the sum of at least £5,000,000 providing copies of the current cover on request by any Lessee, Commercial Tenant, the Landlord or the Tribunal.
 7. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
 8. The Manager is directed to register this Order against the Landlord's leasehold estates registered at HM Land Registry under title numbers EGL365354; EGL385085; EGL385086; EGL402555; EGL385083; EGL473824; EGL477859; EGL474404; EGL474191; EGL473825; EGL471546, and against the leasehold estate of Yianis Hotels Ltd, registered at HM Land Registry under title number EGL416904.
 9. The Manager is directed to register a restriction in HM Land Registry standard Form N against the Landlord's leasehold estate and against that of Yianis Hotels Ltd referred to in paragraph 9 above in the following words:

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Mr Alan Coates MIBFM MIRPM of HML Andertons Property and Estate Management, 94 Park Lane, Croydon, Surrey CR0 1JB”

10. The Manager shall be appointed from 01 October 2016 and the duration of his appointment shall be three year(s).
11. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leasehold interest (whether by assignment or fresh grant) or freehold.

Liberty to apply

12. The Manager may apply to the First-tier Tribunal for further directions, in accordance with section 24(4) of the Act. Such directions may include, but are not limited to:
 - a) Any failure by any party to comply with an obligation imposed by this Order;
 - b) For directions generally;
 - c) For directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay the Manager's remuneration.

SCHEDULE

FUNCTIONS AND SERVICES

1. Prepare an annual service charge budget (consulting with the Lessees, Commercial Tenants, any other occupier and Landlord as appropriate) administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees, Commercial Tenants, any other occupier and the Landlord.
2. Demand and collect service charges, insurance premiums, utility costs and any other payments due from the Lessees; the Commercial Tenants, any other occupier and the Landlord in relation to the shared services.
3. The Managers shall have the right to demand and receive from the Lessees, the Commercial Tenants, any other occupier and the Landlord quarterly payment of service charges in advance on account of actual expenditure to be incurred by the Manager on the first date of this Order in such sums as the Manager shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year. In so far as planned major works are concerned the Manager may collect contributions forthwith after the expiry of a section 20 consultation process; such contributions being payable within one month of demand being made.
4. Instruct solicitors to recover any unpaid service charges, rents and any other monies due to the Landlord.
5. Create a form of reserve fund.
6. Produce for inspection, (but not more than once in each year) within a reasonable time following a written demand by the Lessees, the Commercial Tenants, any other occupier or the Landlord, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
7. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
8. Deal with all enquiries, reports, complaints and other correspondence with Lessees, Commercial Tenants, any other occupier, solicitors, accountants, and other professional persons in connection with matters arising from the day to day management of the Premises.

Insurance

9. Take out on behalf of the Landlord and in accordance with the terms of the Leases, the Commercial Leases and any Occupational Agreement an insurance policy and arrange for building revaluation as required in relation to the Premises and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note to all Lessees, Commercial Tenants, any other occupiers and the Landlord.
10. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and maintenance

11. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and to those raised by the Commercial Tenants and any other occupier in relation to repair and maintenance liabilities shared with the Lessees and to instruct contractors to attend and rectify problems as necessary.
12. Administer contracts entered into on behalf of the Landlord and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to such contracts, and to administer those contracts entered into on behalf of the Landlord and Commercial Tenants to the extent that the contracts relate to goods, services plant and equipment shared with the Lessees.
13. Manage the Common Parts and service areas of the Premises, including the arrangement and supervision of maintenance.
14. Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Major works

15. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to be carried out to the Premises (such as extensive interior and/or exterior redecoration or repairs

required to be carried out under the terms of the Leases or Commercial Leases, to the extent that those redecorations and/or repairs are shared with the Lessees, or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees, Commercial Tenants, any other occupier and the Landlord and supervise the works in question).

Administration and communication

16. Deal promptly with all reasonable enquiries raised by the Lessees, including routine management enquiries from the Lessees or their solicitors, and with all reasonable enquiries raised by the Commercial Lessees and any other occupier to the extent that the enquiry is made in respect of a matter for which the Manager has been appointed.
17. Provide the Lessees, the Commercial Tenants and any other occupier with telephone, fax, postal and email contact details and complaints procedure.
18. Keep records regarding the details of Lessees, Commercial Tenants, any other occupier at the Premises; any agreements entered into by the Manager in relation to the Premises and any change in Lessee, Commercial Tenant and/or other occupier.

Fees

19. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £134,296.00 plus VAT per annum for the Premises for the first year of this Order, with a *pro rata* fee to be charged in the event that this Order is discharged before the end of the year.
20. An additional charge shall be made in relation to the arrangement and supervision of major works on the basis of a fee of 2.5%% of the cost of the works plus VAT.
21. The preparation and service of any statutory consultation notices of any project at the rate of £750 perproject.
22. An additional charge will be made in relation to the TUPE regulations and process at the rate of £4,620 using a specialist HR consultancy to manage the process.

23. An addition charge will be made for the employ and administration of the staff dedicated on the site dealing with payroll, sickness, holiday and entitlement with all employment matters including workplace auto enrolment pension administration at the rate of 15% of the annual gross salary.
24. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £325.00 plus VAT, payable by the outgoing Lessee.
25. The undertaking of further tasks which fall outside those duties described above are to be charged separately at an hourly rate of £175.00 plus VAT, or such other rate as shall be agreed.
26. The Manager is entitled to be reimbursed in respect of reasonable costs, disbursements and expenses (including, for the avoidance of doubt, the fees of Counsel, solicitors and expert witnesses) of and incidental to any application or proceedings (including these proceedings) whether in the Court or First-tier Tribunal, to enforce the terms of the Leases, the Commercial Leases and/or any Occupational Agreement of the Premises. For the avoidance of doubt, the Manager is directed to use reasonable efforts to recover any such costs etc directly from the party concerned in the first instance and will only be entitled to recover the same as part of the service charges in default of recovery thereof.

Annex 1: commercial tenants

1. EGL461564, currently vested in Gondola Restaurant Limited for a term of 25 years from 25 December 2002;
2. EGL485348, currently vested in Prezzo plc for a term of 25 years from 31 January 2005;
3. EGL428308, currently vested in Café Brera Ltd for a term of 25 years from 01 October 1999;
4. EGL491465, currently vested in A Fresh Start for a term of 10 years from 10 June 2005;
5. EGL455194, currently vested in Virgin Active Health Clubs Ltd for a term of 35 years from 20 February 2002;
6. EGL444371, currently vested in Pearl Investments Ltd for a term of 25 years from 01 October 2000;
7. EGL454635, currently vested in Gloma Ltd for a term of 24 years from 01 April 2000;
8. EGL574809, currently vested in 28 West Ltd, for a term of 25 years from 01 March 2010;

9. EGL455196, currently vested in Virgin Active Health Clubs Ltd, for a term of 35 years from 07 May 1999;
10. EGL416899, currently vested in The Four Seasons Hotel for a term of 50 years from 16 December 1999.