

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

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

BETWEEN

VARIOUS LEASEHOLDERS

Applicants

-and-

OCTAGON OVERSEAS LIMITED (1)

CANARY RIVERSIDE ESTATE MANAGEMENT LIMITED (2)

PALACE CHURCH 3 LIMITED (3)

YFSCR LIMITED (4)

YIANNIS HOTELS LIMITED (5)

Respondents

MANAGEMENT ORDER

Interpretation

In this order:

- (a) “the Act” means The Landlord and Tenant Act 1987
- (b) The Draft Management Order, means the Management Order of this tribunal that came into effect on 1 October 2016.
- (c) “Car Park” means the car park located at levels -1 and -2 of the Premises
- (d) “Commercial Leases” means the leases pursuant to which the Commercial Tenants hold their units, as listed in Annex 1 to this order

- (e) "Commercial Tenants" means the tenants of the commercial units at Canary Riverside listed in Annex I to this order.
- (f) "Common parts" means any garden area, postal boxes, refuse store, loading bay, 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
- (g) "Functions" means any functions in connection with the discharge of management responsibilities conferred by this order, including any obligations and powers of the Landlord under the Leases.
- (h) "Leases" means the long leases vested in the Lessees and the long lease currently vested in Circus Apartments under title number EGL445878, being the Circus Apartments at Eaton House, including any car parking spaces demised in those leases.
- (i) "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");
- (j) "Occupational Agreement" means any agreement for the occupation of any part of the Premises which is not a Lease or a Commercial Lease
- (k) "the Manager" means Mr Alan Coates MIBFM MIRPM of HML Andertons Ltd, 94 Park Lane, Croydon, Surrey CR0 1JB
- (l) "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 all as shown on the attached plan.
- (m) "the Shared Services" mean any services or shared service provided to the Premises including any pipes, wires, conduits, service media or similar which benefits (1) two or more residential units which are being managed by the Manager in accordance with this Order, or, (ii) one or more Commercial Tenant, licensee or other occupier and one or more such residential unit.
- (n) "the Service Charges" means the service charges paid by the residential occupiers; the shared service charges payable in relation to the Shared Services, including the reserve fund collections in relation to both the residential units and the Shared Services, and for the avoidance of doubt includes any services shared with Circus Apartments.

- (o) "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 leasehold title.

Preamble

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

AND UPON the First-tier Tribunal being satisfied that the Applicants are 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

IT IS ORDERED THAT

The manager

1. Alan Coates MIBFM MIRPM of HML Andertons Ltd 94 Park Lane, Croydon, Surrey CR0 1JB is appointed as Manager (including such functions of a Receiver as are specified herein) of (a) the residential leasehold properties at Berkeley Tower, Hanover House, Belgrave Court, Eaton House (b) the residential common parts comprised in those buildings (c) the Common Parts of the Premises; (d) any Car Park spaces, demised to a residential leaseholder (whether as part of a residential lease or by way of separate agreement); and (e) any Shared Services including those provided or capable of benefitting any Residential Leaseholder, Commercial leaseholders, Licensee, or Other occupier including the Leaseholder under the Circus Apartment lease.
2. Moreover for the duration of his appointment, the Manager has the right to enter any part of the Premises held by either Octagon Overseas Limited, Canary Riverside Estate Management Limited or YFSCR Limited (which for the avoidance of doubt shall include their successors in title), together with any company associated with Octagon Overseas Limited, Canary Riverside Estate Management Limited or YFSCR Limited, for any purpose incidental to his management or discharge of his functions under this order, subject to any third party rights. In relation to the YFSCR demise (the hotel), the manager shall provide 48 hours written notice of any access requirements, to include details of the reasons why and personnel who require access, save in an emergency, when such details may be supplied after the event.

3. For the avoidance of doubt, the Draft Management Order which came into effect on 1 October 2016 is substituted by this Order.
4. This final Order is for a period of three years commencing on 1 September 2017, the Manager is given 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, and interests payable under the Leases and to receive all service charges and interests payable under the Commercial Leases where the Commercial Leases and/or other occupiers have Shared Services with the residential 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) To receive all service charges and interests payable under the Residential and Commercial Leases, licences and occupational agreements in relation to the freeholders repairing obligations contained in Clause 7.1.2 of the head lease dated 15 May 1997.
 - (c) The right to treat the service charge financial year as commencing on the 1 October 2016, and ending on 31 March 2017 and thereafter as running from 01 April to 31 March in each year this Order is in place;
 - (d) The right to give notice and raise an interim service charge as soon as he deems necessary;
 - (e) 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;
 - (f) The Manager shall have no liability for any pre-existing breaches of covenant, if any such breaches existed at the date of the Draft Order, or this Order, save in respect of any additional damage caused by any failure or negligent attempt by him to remedy the same; The Manager shall have no liability for the collection of any arrears that accrued prior to the making of the

Draft Order, nor for any debts that might have been incurred prior to the making of that Draft Order.

(g) The power to delegate to other employees of HML Andertons a Ltd, to appoint solicitors, accountants, architects, engineers, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions;

(h) 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;

(i) The power in his own name, (or in relation to existing contracts or litigation with the permission of the Landlord), to bring, defend or continue any legal action or other legal proceedings (other than those in connection with any requests for licences or other permissions in connection with the Circus Apartments Lease), 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, or other monies due under the Leases, the Commercial Leases, Licenses and any Occupational Agreements and to make any arrangement or compromise on behalf of the Landlord.

(j) 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;

(k) In the event that the Landlord or 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 Shared Service Charges or services shared with the Lessees and/or their obligations as provided in the Management Order, the Manager shall be entitled to recover from the Landlord or 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 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 Landlord, Lessee, Commercial Tenant or other occupier in breach of the covenants in the Lease, or, in the case of the Commercial Leases and/or any other Occupational Agreement, 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;

(l) The power to open and operate client bank accounts in connection with the discharge of the function under this Order, and to invest monies pursuant 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, 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/her 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 Landlord, Lessees, Commercial Tenants, Licensees and/or other occupiers.

5. 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 to the Premises, and in relation to the Commercial Leases and 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 Lessees, 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.

6. 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.
7. From 01 October 2016, the Landlord shall not, whether by itself or any agent, servant or employee, and with the exception of the insurance charges, demand any further payments of service charges, administration charges due from the Lessees, Commercial Tenants or other occupiers of the Premises to the extent that those monies are demanded for payment of Shared Services shared with the Lessees. Those monies are now payable to the Manager under Clause 1(a) of this Order.
8. Without prejudice to the generality of the foregoing, and unless already complied with in full, the Landlord whether by itself, its agents, servants or employees shall by 1 September 2017;
9. Transfer to a bank account nominated by the Manager all remaining monies collected from the Lessees, Commercial Lessees or other occupiers in relation to the shared service charges, the residential service charges and reserve funds in relation to the Leases and Shared Services which should have been held in trust by it pursuant to section 42 of the Landlord and Tenant Act 1987;
10. Deliver, to the Manager all such accounts, books, papers, memoranda, records, computers, data, 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 particular the documents referred to in (10) above include but are not limited to;

- (i) All service charge statements of account, for the years 2013/2014, 2014/2015 and 2015/2016 both up to and including the financial years 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.
 - (ii) In respect of the years identified in (i) above, 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, in relation to the Residential Service Charges and the Shared Service Charges.
 - (iii) In respect of the years identified in (i) above a full cash book report detailing the full transactional history of monies received and paid in relation to those service charge fund collections, electrical and utilities and reserve fund collections.
 - (iv) Full bank reconciliations in relation to the residential service charge and shared service charges, 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.
11. Deliver to the Manager all outstanding copies of keys, fobs and other access/entry cards to the Premises, including replacements necessary for the performance of the Managers functions under this Order. Including copies of all keys to electricity, gas, water and any other utility meters located in the Premises. To this end, the Landlord shall give the Manager full access to the electricity, gas and water meters fuse board and any other utility meters

located in the Premises, and where the subject of an occupational agreement to a company associated with the landlord, shall indemnify the Manager against all claims where access has not been made available following a reasonable request, or without request, in an emergency.

12. 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 those sums payable under the Leases, the Commercial Leases, and any Occupational Agreements, in relation to Shared Services, including copies of any relevant bank statements and shall forthwith pay such sums that might be payable to the Manager. If the Landlord shall thereafter receive such sums under the Leases or Occupational Agreements in relation to any service provided after 1 October 2016, it shall forthwith pay such sums to the Manager without deduction or set off;
13. Permit the Manager, such permission not to be unreasonably withheld, and on prior notice, to serve upon the Lessees, Commercial Tenants, or any other occupiers, 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, but only in so far as the Notice relates to Shared Services and service charges;
14. 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.
15. 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 Tenants, other occupiers, the Landlord or the Tribunal.
16. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
17. 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, except that title registered against Palace Church 3 Limited.

18. The Manager shall be appointed for a period of three years from 01 October 2016.
19. 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 of the premises.

Liberty to apply

20. 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. To receive the demand for insurance from the landlord in relation to the Leases and Shared Services, prepare demands and collect those, insurance premiums from the Lessees, and reimburse the Landlord accordingly in accordance with the respective leases.
3. To demand service charges, and utility costs due from the Lessees, the Commercial Tenants, the Landlord any other occupier and the Landlord in relation to the residential service charges and the Shared Service Charges..
4. 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 the 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.
5. Instruct solicitors to recover any unpaid service charges, rents and any other monies due to the Landlord.
6. Create a form of reserve fund.
7. 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, or any other occupier or the Landlord, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any). It is agreed that the Manager will use his VAT number for these purposes.

8. Manage all outgoings from the funds received in accordance with this Order in respect of day to day repairs and maintenance and pay bills in relation to Leases and shared service charges only..
9. 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 financial management of the Premises in relation to Leases and shared service charges.
10. Provide for the management through either the landlord or the broker of any claims brought under the insurance policy taken out in respect of the Leases or Shared Services with the insurer.

Repairs and maintenance

11. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and in so far as they relate to Shared Services to those raised by the Commercial Tenants, and any other occupier, 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, Service Areas and Shared 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, Licenses 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, Licensees 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, Licensees 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, Licensees any Other Occupier at the Premises; any agreements entered into by the Manager in relation to the Premises and any change in Lessee, Licensee, 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 the Draft 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 starting rate of £750 per three pack notice and reports.
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. 28W Holdings Limited for a term of 25 years from 1 March 2010 in respect of 28 Westferry Circus (Title No. EGL574809)
2. Gioma (UK) Limited for a term of 25 years from 1 April 2000 in respect of 29 Westferry Circus (Title No. EGL454635)
3. Pearl Investments Limited for a term of 25 years from 1 October 2000 in respect of 30 Westferry Circus (Title No. EGL444371)
4. Café Brera Limited for a term of 25 years from 1 October 1999 in respect of 31 Westferry Circus (Title No. EGL428308)
5. Azzurri Restaurants Limited for a term of 25 years from 25 December 2002 in respect of 33 Westferry Circus (Title No. EGL461564)
6. Marathon Estates Limited for a term of 7 years (less one day) from 28 September 2015 in respect of part ground floor, G6A Belgrave Court, 36 Westferry Circus.
7. Prezzo Limited for a term of 25 years from 31 January 2005 in respect of 37 Westferry Circus (Title No. EGL485348)
8. Tower Quay Limited for a term of 7 years (less one day) from 28 September 2015 in respect of part of ground floor, 38 Westferry Circus
9. Circus Apartments Limited for a term of 999 years (less three days) from 28 May 1997 in respect of part of Eaton House, 38 Westferry Circus (Title No. EGL445878)
10. Tower Quay Limited for a term of 5 years from 28 September 2015 in respect of part of ground floor, 40 Westferry Circus
11. A Fresh Start Limited for a term of 15 years from 10 June 2015 in respect of 49 Westferry Circus
12. Westminster Management Services Limited for a term of 5 years from 21 June 2016 in respect of the ground and first floors, 50 Westferry Circus
13. Virgin Active health Clubs Limited for a term of 35 years from 7 May 1999 in respect of the Health Club, Pool and Tennis Court (Title No. EGL455196) and Plant Area Belgrave Court, 36 Westferry Circus (Title No. EGL455194)
14. YFSCR Limited for a term of 50 years from 16 December 1999 in respect of Canary Riverside Plaza Hotel (Title No. EGL416899)