



**First-tier Tribunal
Property chamber
(Residential Property)**

Case references : CAM/26UJ/LUS/2014/0005

Property : 1-12a and 14-25 Penn Place,
Northway,
Rickmansworth,
Herts. WD3 1QA

Applicant : Penn Place (Rickmansworth) RTM
Co. Ltd.

Representative : Mr. Nicholas Rich (agent)

Respondent : Proxima GR Properties Ltd.
Representative : Mr. Azmon Rankohi (agent)

Date of Application : 16th July 2014

Type of Application : For a determination of the amount of
any accrued uncommitted service
charges (section 94(3) Commonhold
and Leasehold Reform Act 2002 (“the
Act”))

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

**Date and place of
Hearing** : 23rd October 2014, Unit C4 Quern
House, Mill Court, Great Shelford,
Cambs CB22 5LD

DECISION

Crown Copyright ©

1. On the balance of probabilities there are now no uncommitted service charges to be handed over to the Applicant by the Respondent.

Reasons

Introduction

2. The Applicant has served a Claim Notice and, it is said, took over management of the property on the 6th March 2014. This application is for the Tribunal to determine the amount of uncommitted service charges to be handed over to the Applicant by the Respondent.
3. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the

basis of a consideration of the papers including the written representations of the parties on or after 10th September 2014 and (b) an oral hearing would be held if either party requested one before that date. On the 9th September the Respondent asked for an oral hearing.

The Law

4. Section 94 of the Act provides that where the right to acquire the right to manage is obtained by an RTM company, any accrued uncommitted service charges held by the landlord on the acquisition date i.e. 6th March 2014 in this case, must be paid by the landlord to the RTM Company.

5. The section goes on to say:-

“(2) The amount of any accrued uncommitted service charges is the aggregate of---

(a) any sums which have been paid to (the landlord) by way of service charges in respect of the premises, and

(b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to (this Tribunal) to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

The Hearing

6. Those who attended the hearing were Azmon Rankohi and Sean Doherty from Peverel Property Management on behalf of the Respondent together with Nicholas Rich from Warwick Estates Property Management Ltd. on behalf of the Applicant.
7. Mr. Rankohi said that he thought that in view of the amounts involved, there should be an oral hearing to reduce the possibility of an appeal. He stood by the detailed accounts which had been produced by Mr. Doherty and which were in the bundle. He said that all the accrued uncommitted service charges in the amount of £24,473.96 had now been handed over.
8. The Tribunal then asked Mr. Rich what he was now saying bearing in mind the words in his written statement which said *“therefore, whilst not entirely convinced with OM Property Management’s figures, the Applicant is willing to work with them to achieve a speedy resolution”*.
9. He did not dispute that £24,473.96 had been handed over. His case was that his client could not ascertain exactly what was in the bank

account as at the 6th March 2014. Mr. Doherty explained that there was one bank account for the whole estate which included other blocks and sight of such bank account would not mean anything.

10. The Tribunal asked Mr. Rich whether the leaseholders had provided information about what they had paid over the recent past so that a forensic accountant could look at the Respondent's accounts produced up to the 6th March 2014 and give a view about whether they gave an accurate overview of the financial position. None of this had been done. He had no evidence to support his assertion.

Discussion

11. The scheme of the right to manage company was controversial when implemented. It is, after all, a draconian step to allow leaseholders to form a company which takes away the right to manage from the owner of the property on a no fault 'compulsory' basis.
12. Management takes planning and the transfer of management will take thought and preparation. This is presumably why the scheme provides for a step by step approach. There has to be a Claim Notice and then a gap of at least 3 months. The purpose of this is to enable the landlord to plan the handover so that the RTM company can start to manage the property as from the date set out in the Act. The extra cost incurred by the landlord in this process can be recovered from the RTM company.
13. Accordingly, whilst it must obviously be more complicated when the management take over is in respect of only part of a development such as in this case, there is still time for the necessary financial matters to be addressed within the 3 month period.
14. In this particular case, the Applicant's statement of case is largely a complaint that the accrued uncommitted service charges have not been correctly identified and took far too long to be handed over. The Tribunal sympathises with the second complaint but, unfortunately, has no power to assist. There is also a complaint that unpaid service charges should also be handed over as they are a debt due from the leaseholder to the Respondent and not the Applicant.
15. The Respondent has filed a statement dated 8th August 2014 from Sean Doherty who describes himself as a 'Client Accountant' employed by the Peverel Property Management Group. He seeks to set out the 'process' which his company goes through on a handover of properties such as this. This included sending an information letter setting out the anticipated times scale for financial handover. This was sent to the Applicant on the 14th May 2014 i.e. over 2 months after the handover date and over 5 months after it knew that there would be a handover.
16. This process is quite unacceptable and could be interpreted as being an attempt to make it so difficult for an RTM company as to discourage others. It seeks to circumvent the whole process.

17. The Applicant has cited the case of **OM Ltd. and New River Head RTM Co. Ltd.** [2010] UKUT 394 (LC) which helpfully sets out some views on what should be handed over. Some of the comments of HHJ Mole QC may well have been *obiter* but they are still of assistance. In essence it confirms what is in the Act i.e. that at the take-over date or as soon as is reasonably practicable thereafter, the landlord must hand over to the RTM company all accrued uncommitted service charges so that the RTM company can take over the management on a day to day basis. It will have the funds to do this, particularly in a case such as this when the take-over was in the middle of a service charge year.
18. There is no provision to allow the landlord to wait until the end of the service charge year, then wait for the accounts to be prepared and then make deductions just in case a commitment for a service charge may arise in the future. This is exactly what happened in this case.
19. As to unpaid service charges, the New River Head case does provide assistance by making it clear, in the words of HHJ Mole QC at paragraph 23, *"The payment of accrued uncommitted service charges is confined to those accrued uncommitted service charges 'held by' the landlord or manager on the acquisition date. The natural meaning of those words is that what was to be paid is what the landlord or manager has actually got; not what he was entitled to have but failed to get or had at one stage but has not now"*.
20. Thus, it seems quite clear to this Tribunal that as soon as was reasonably practicable after 6th March 2014, the Respondent should have handed over all the accrued uncommitted service charges it then held. 3 months before then it should have instructed its accounts department or its outside accountants to work on preparing the necessary figures for the block in question. Any extra costs involved could have been charged to the RTM company. The word 'reasonably' in this context must surely be an objective test bearing in mind the 3 month lead in period.

Conclusions

21. The Applicant has not produced any forensic analysis to challenge the figures produced by the Respondent. As has been said, in paragraphs 34 and 35 of Mr. Rich's written statement, he seems to be accepting the basic figures produced by the Respondents – even though he contests the final amount payable – as follows:-

	£
Reserves at 6 th March	45,085.09
Surplus	<u>5,218.28</u>
	50,303.37
Less tenant debtors	<u>25,829.41</u>
	24,473.96

22. It is agreed that the whole of that amount has now been paid.
23. Mr. Rich said that the landlord cannot deduct unpaid service charges. That is not what HHJ Mole QC said in the New River Head case, upon

which he relies. What he said is quoted above i.e. that monies owed by leaseholders as unpaid service charges are not monies which the landlord has 'in hand' and therefore cannot be handed over.

24. Thus the conclusion of this Tribunal is that the amount of accrued uncommitted service charges on 6th March 2014 was £24,473.96 on the basis of the figures produced by the Respondent. This money has now been paid over. The money due from tenant debtors is not 'held by' the landlord.

Bruce Edgington
Regional Judge
23rd October 2014