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

**Case Reference** : **CHI/OOMW/LUS/2014/0002**

**Property** : **27 Ashley Road, Ryde, Isle of Wight,  
PO33 2UW**

**Applicant** : **Glenholme RTM Company  
Limited**

**Representative** :

**Respondents** : **Barnstaple Estates Properties Limited**

**Representative** :

**Type of Application** : **Section 94 (3) Commonhold and  
Leasehold Reform Act 2002  
(Application for accrued  
uncommitted service charges)**

**Tribunal Members** : **Judge J.B. Tarling  
Mr R.A. Wilkey FRICS (Surveyor)**

**Date of Decision** : **19<sup>th</sup> September 2014**

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**DECISION**

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## DECISION

For the Reasons set out below the Tribunal declines to make an Order under Section 94 (3) of the 2002 Act

## REASONS

### **INTRODUCTION**

1. This is an application by the Applicant, which is the Right to Manage (RTM) Company of the property, under the provisions of Section 94 (3) of the Commonhold and Leasehold Reform Act 2002 for a determination of the amount of service charges which have accrued and are uncommitted.

### **THE LAW**

2. Section 94 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") provides as follows:

#### **Section 94 Duty to pay accrued uncommitted service charges**

- (1) Where the right to manage premises is to be acquired by a RTM Company, a person who is-

- (a) landlord under a lease of the whole or any part of the premises;
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the 1987 Act (the Landlord and Tenant Act 1987) to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

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

- (a) any sums which have been paid to the person 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 a leasehold valuation 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 LEASES**

3. The Tribunal was provided with a sample copy of the Lease of Flat 5 dated 30<sup>th</sup> August 1991. The relevant service charge provisions are set out in the Sixth Schedule and (inter alia) provide for the Landlord's Accountant to prepare an annual certificate of service charge expenditure. It was established that no such certificates had ever been supplied, and many other statutory requirements relating to the recovery of service charges over many years had also not been complied with. There was considerable doubt as to whether any service charges had been properly collected in the past.

### **BACKGROUND**

4. The Leasehold Valuation Tribunal was replaced by the First-tier Tribunal, Property Chamber, on 1<sup>st</sup> July 2013

5. The Application was received by the Tribunal on 1<sup>st</sup> April 2014. The Application was accompanied by various documents including an "Estimate of monies outstanding.." showing a balance of £8,963.27 as being due to the Applicant. On 24<sup>th</sup> April 2014 the Tribunal issued Directions for the conduct of the case. A copy of the Application and the accompanying documents were sent to the two addresses for the Respondent which had been supplied to the Tribunal by the Applicant. Notice was given to the parties under

Rule 31 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 that the Tribunal proposed to determine the matter without an oral Hearing unless any party requested an oral Hearing. Neither party requested an oral Hearing.

6. The Respondent was directed by the Tribunal to set out in writing to the Applicant the amount of uncommitted service charges its says should be handed over to the Applicant together with any necessary accounts and computation to show how that figure has been arrived at. The Respondent was required to do this by 8<sup>th</sup> May 2014. The Respondent failed to comply with the Tribunal's Directions.

### **REPRESENTATIONS**

7. In response to a request from the Tribunal the Applicant provided further documents to the Tribunal with a letter dated 12<sup>th</sup> April 2014, a copy of which, with the enclosures, was copied to the Respondent.
8. The Respondent did not comply with the Tribunal's Directions, nor produce any documents, nor respond to the Tribunal at all.

### **CONSIDERATION**

9. The Tribunal Members met on 4<sup>th</sup> June 2014 to consider the matter. They had before them the papers which had been supplied by the Applicant. The copy RTM Claim Notice indicated that if the Respondent intended to contest the right to manage it must serve a counter-notice no later than 16<sup>th</sup> March 2013. No such counter-notice had been served by the Respondent. The RTM Claim Notice also indicated that the RTM Company intended to acquire the right to manage on 17<sup>th</sup> June 2013. Section 90 (2) of the 2002 Act provides that:  
  
“(2) Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under Section 80(7).”

Accordingly the Applicant acquired the right to manage on 17<sup>th</sup> June 2013.

10. The Tribunal reviewed the document which accompanied the Application entitled "Estimate of monies outstanding." It recorded a list of monies alleged to have been paid by the Lessees and an estimated account of the money that the Landlord was alleged to hold, but it failed to identify exactly where it was held and by whom at the acquisition date. No clear documentary evidence establishing the exact amount that the Landlord was alleged to have held at the acquisition date was before the Tribunal. The Landlord had failed to comply with the Tribunal's Directions. No copy bank statements or other reliable information was before the Tribunal. The Tribunal was effectively being asked to "guess" what the amount was. The Tribunal is not prepared to do this. It is for the parties to comply with the Tribunal's Directions and produce the documents that are required.
11. The Tribunal raised with the Applicants the absence of accurate and reliable evidence and invited them to make an Application under Section 27A of the 1985 Act so that the Tribunal could make a determination as to the amounts of service charge that were payable by all 6 Lessees for the previous 6 years. The Applicants declined to do so and asked the Tribunal to make its determination on the evidence that was before it.
12. In view of the lack of co-operation of the Landlord and the unwillingness of the Lessees to assist in allowing the Tribunal to determine the amounts of service charge that are payable, the Tribunal is left with no option but to refuse the Application. The Tribunal reminds the parties of the provisions of Rule 3(4) (a) and (b)

of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 which require the parties to help the Tribunal to further the overriding objective and co-operate with the Tribunal generally. In this case all parties have failed to comply with Rule 3(4).

### **THE DECISION**

13. Taking all the circumstance into account and for the reasons stated above, the Tribunal declines to make an Order under Section 94(3) of the 2002 Act.

### **Appeals**

14. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
15. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
16. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
17. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
18. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further

application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

Dated 19<sup>th</sup> day of September 2014

*J.B.Tarling*

J.B. Tarling (Judge)

application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

Dated 19<sup>th</sup> day of September 2014

A handwritten signature in black ink, appearing to read 'J.B. Tarling', with a long horizontal stroke extending to the right.

*J.B. Tarling*

J.B. Tarling (Judge)