



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

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| Case Reference | : (1) CHI/21UF/LUS/2020/0001 (2) CHI/21UF/LSC/2020/0029 |
| Property | : Villandry, West Quay, Fort Road, Newhaven, BN9 9GD |
| Applicants | : (1) Villandry RTM Company Limited (2) Richbusy Limited, M Allen, J Small, M and M Winning, S de Beaulieu, R Wallis, G Hamon, K Joyce |
| Representative | : Mrs Susan Massingham. |
| Respondent | : Villandry Property Limited |
| Representative | : Christopher Hudson and Mark Carter |
| Type of Application | : (1) Liability to pay and reasonableness of service charges, section 27A Landlord & Tenant Act 1985 (2) Determination of Landlord's costs and accrued uncommitted service charges, sections 88(4) and 94(3) Commonhold and Leasehold Reform Act 2002 |
| Tribunal Members | : Judge N P Jutton and Mr Roger Wilkey FRICS |
| Date of Hearing | : 10.00 am Thursday 23 July 2020 by video enabled hearing |
| Date of Decision | : 23 July 2020 and 24 August 2020 |

DECISION

- 1 In its Decision dated 23 July 2020, the Tribunal determined that it did not have sufficient evidence before it to make a determination in respect of the application made by the First Applicant pursuant to section 94 of the Commonhold and Leasehold Reform Act 2002 as to the amount of uncommitted service charges which fell to be paid by the Respondent to the First Applicant as at the acquisition date of 31 December 2019.
- 2 The Tribunal therefore made Directions which required the Respondent to file and serve a copy of any bank statement or bank statements showing the amount of monies held in the Respondent's service charge bank account as at 31 December 2019, together with a statement setting out details of all unpaid committed accrued service charges as at that date and copies of all relevant invoices. The Tribunal further directed that the First Applicant could, if it wished, file and serve a written Statement in response.
- 3 The Tribunal then further directed that it would, with the consent of the parties, determine the said application on paper without a hearing pursuant to rule 31 of the Tribunal Procedure Rules 2013.
- 4 The Tribunal has received from the parties, the following documents:
 - i. Witness Statement of Mark Carter dated 6 August 2020 with various exhibits.
 - ii. Witness Statement of Christopher Hudson dated 6 August 2020 with various exhibits.
 - iii. Copy correspondence from the Respondent, together with statements relating to an adjustment of service charges for the year ending 31 December 2016 following the Tribunal's decision in relation to accountancy fees for that year.
 - iv Witness statement of Susan Massingham dated 7 August 2020.

5 **The Tribunal's Decision**

- 6 The issue before the Tribunal is to determine the amount of uncommitted service charges that should be paid by the Respondent to the First Applicant as held by the Respondent as at 31 December (the Acquisition Date).
- 7 In accordance with the Direction made by the Tribunal requiring the Respondent to produce a bank statement(s) showing the amount of monies held in the Respondent's service charge bank account as at the Acquisition Date, Mr Carter, the Chartered Accountant who acted for the Respondent,

has exhibited to his Witness Statement a form of bank statement with Barclays Bank Plc, account no. 33179818. It is for the account name of 'GR JE RE VILL MC'. Mr Hudson describes this as the 'Service Charge account'. The statement shows a balance held as at 31 December 2019 in the account of £47,735.68. Mr Carter explains that the bank account was controlled by the Respondent's Managing Agents up until the Acquisition Date (which agents continued as Managing Agents on behalf of the First Applicant after that date).

- 8 Mr Carter sets out details of unpaid committed accrued service charges known to the Respondent as at the Acquisition Date. He exhibits to his Witness Statement the relevant invoices. The first is accountancy fees of Friend James Chartered Accountants being professional charges for the preparation of service charge accounts for the year ending 31 December 2019, which total including VAT, £1,200. The invoice is dated 22 April 2020.
- 9 The second are two invoices for cleaning services from Barlow Cleaning Services Limited for cleaning carried out at the property in November and December 2019. The two invoices together total £240. In accordance with Mr Carter's Statement, there were therefore as at the Acquisition Date unpaid committed accrued service charges of £1,440. With reference to paragraph 83 of the Tribunal's Decision of 23 July 2020, those are sums which the Respondent was entitled to withhold from the service charge monies to be transferred to the First Applicant to meet bills which it was obliged to pay.
- 10 When the sum of £1,440 is deducted from the sum held in the service charge account of £47,735.68 as at the Acquisition Date, that leaves a balance of £46,295.68.
- 11 Mr Hudson explains in his Witness Statement dated 6 August 2020 that the monies held in the said service charge account were a mixture of residential and commercial historic service charges. There was, he says, delay in transferring funds to the First Applicant whilst legal advice was sought as to how to best address the service charges relating to the commercial units. He says that once an agreement in principle had been reached to the effect that the First Applicant would take over the management responsibilities for the commercial units, the funds held in the service charge account were transferred over to the First Applicant on 12 February 2020.
- 12 The Tribunal understands that the right of the First Applicant to acquire the right to manage the Property was not disputed. As such, it was not disputed that the Property constituted qualifying premises for the purposes of section 72 of the 2002 Act. That as such, in acquiring the right to manage the Property, the First Applicant took over the management of both the residential and commercial parts of the Property.

- 13 Mrs Susan Massingham has produced a Witness Statement on behalf of the First Applicant dated 7 August 2020. She is critical, in the view of the Tribunal with some justification, at the delay in the transfer of the uncommitted service charges following the acquisition date. She asks if there can be a form of reconciliation for the period 1 January to 10 February 2020. That is not something that the Tribunal can address. Nor does it have sufficient information even if it were able to do so. As stated above and in the Decision dated 23 July 2020, the issue for the Tribunal to determine pursuant to section 94(3) of the 2002 Act is the amount of any payment which should be made by the Respondent to the First Applicant pursuant to section 94. That is the amount of any accrued uncommitted service charges held by the Respondent as at the Acquisition Date, less such sums as are required to meet unpaid expenses/costs incurred before the Acquisition Date.
- 14 For the reasons stated above and upon the basis of the evidence before it, the Tribunal is satisfied that the amount of service charges held by the Respondent as at the Acquisition Date totalled £47,735.68. Of that sum, a total of £1,440 constituted unpaid committed accrued service charges.
- 15 Accordingly, the Tribunal determines that the amount of accrued uncommitted service charges that fell to be paid by the Respondent to the First Applicant as at the Acquisition Date were £46,295.68.

Dated this 24th day of August 2020

Judge N P Jutton

Appeals

1. 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.
2. 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.

3. 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 time or not to allow the application for permission to appeal to proceed.
4. 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.