



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

Case Reference : CHI/43UF/LUS/2021/0002

Property : 49 Ladbroke Road, Redhill, Surrey, RH1
1JU

Applicant : 49 Ladbroke Road RTM Company Ltd

Representative : Mr A Downes

Respondent : Assethold Ltd

Representative : Mr P Harrison, counsel

Type of Application : Determination of uncommitted service
charge funds

Tribunal Member(s) : Judge D Whitney
Regional Surveyor Gater FRICS

Date of Hearing : 18th March 2022

Date of Determination : 21st June 2022

DETERMINATION

Background

1. The Applicant seeks a determination as to the amount of uncommitted service charge funds held by the Respondent following on from an application to exercise the statutory Right to Manage.
2. Various sets of directions were issued. Whilst initially the matter was to be determined on paper the Tribunal decided that a hearing was required to determine the application.
3. The directions recorded that this application is not the forum for determining the individual liability of leaseholders to pay and the reasonableness of service and administration charges.
4. The Tribunal had before it a bundle and references in [] are to pages within that electronic bundle.

Hearing

5. Mr Downes appeared as director of the Applicant. The Respondent was represented by Mr Harrison of counsel. Both appeared remotely by video and the Tribunal panel were both at Havant Justice Centre.
6. The Tribunal confirmed it had the bundle and Mr Harrison's skeleton argument. It confirmed it had read both.
7. The Tribunal adjourned to allow Mr Downes opportunity to read the submission of Mr Harrison given the Tribunal noted having read the same it appeared to be common ground that the Respondent on its acquisition of the freehold had received the sum of £4,610.11 from the previous freeholder, Mrs Palmer and sums totalling £5,224.67 from the leaseholders.
8. Upon resumption Mr Downes agreed the monies received by the freeholder totalled £9,834.78 being the amounts referred to within his statement of case [9]. At [94-96] were the handover accounts which indicated each flat owed monies to the Respondent.
9. Mr Downes suggested that Mrs Palmer had paid certain expenses out of monies paid to her and so there was an element of double charging. He suggested that as a result there was a positive balance due and owing to the RTM company on the handover. He relied upon his written submissions within the bundle.
10. Mr Harrison referred to the completion statement [17] and the Respondent's reply [256] which showed that the Respondent had

received from Mrs Palmer, the previous freeholder, a sum of £4,610.11. In fact the Respondent had credited a round sum of £4,800 to the account.

11. He suggested the dispute was actually over the reasonableness of the service charges not the amounts which his client held to pay over. He suggests even if you take out payments allegedly made by Mrs Palmer then there is still nothing to pay. He submitted it was quite correct for his client to prepare accounts for the whole of the service charge year recording amounts charged by Mrs Palmer and recording payments made.
12. Mr Downes in reply said payments were made to the Respondent's agents in protest. They felt other works were undertaken by Mrs Palmer and not just those referred to as being paid by her (see for example demand [90-91]). He suggested he had approached matters in a simplistic way pointing out those matters he felt the charges were unreasonable and not payable and for that reason a balance was due and owing. He accepts any work undertaken by Mrs Palmer was paid for separately and those items (and others which he says were undertaken by her) should be removed.

Determination

13. Post the hearing various emails have been received from both parties. Essentially Mr Downes looked to make additional submissions and Mr Harrison objected to the same. We have not considered these in reaching our determination which we did immediately after the hearing.
14. We are satisfied that the Applicant had ample opportunity to put forward its case. We are satisfied that it would not be in the interests of justice to allow ongoing further submissions to be made. We have taken account of the matters raised within the hearing bundle and orally at the hearing. Both parties were afforded opportunity within the directions to make any and all representations they wished to make.
15. It seems to this panel that the Applicant and Mr Downes were unclear as to what this application was to determine. The purpose of this application was simply to ascertain what funds were held by the Respondent freeholder on the date the Applicant RTM Company acquired its statutory right to manage. That date was 2nd June 2021.
16. The parties at the hearing agreed that the Respondent had received a sum of £9,834.78 during its period of ownership of the freehold. This included funds received by the Respondent from Mrs Palmer the previous freeholder.

17. The Respondent had produced accounts and copies of the relevant demands were in the bundle for each flat (see for example [90-91]). Mr Downes did not seek to raise any issue as to the amounts paid etc prior to the Respondent acquiring its interest from Mrs Palmer on 15th October 2021. The acquisition was in the middle of a service charge year.
18. The Respondents agents produced accounts for the whole year and recorded items undertaken by the previous freeholder. We are satisfied that this was quite correct and proper given accounts should cover the whole of the service charge period. Those accounts recorded 3 items as having been carried out by the previous freeholder totalling £1,129.64.
19. Mr Downes looks to challenge the reasonableness of various other items. His statement of case does not in our determination dispute that the payments were made. What he disputes is the reasonableness. We are satisfied it is not for this Tribunal to determine the reasonableness of such charges as the earlier directions highlighted. Any challenge of such a nature should be made by the individual leaseholders.
20. It is our responsibility to determine what if any sums the Respondent held at the date of handover as uncommitted funds. The hand over accounts [96] suggest that the Respondent was owed a sum of £3,995.61 and so no funds remained to be handed over.
21. We are satisfied that there are no uncommitted funds. The only items for which there can be said to be any dispute are those amounts said to be undertaken by the previous freeholder. Mr Downes suggests all such items were paid in full by the 4 leaseholders to Mrs Palmer. Even if we accept that argument this would still leave a balance due and owing to the Respondent. We make no finding as to the same.
22. The application is dismissed with no order being made on our being satisfied that as at the date of handover there were no uncommitted service charge funds.

RIGHTS OF APPEAL

- 1.A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
- 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.