



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

Case reference : **LON/00BK/LUS/2022/0003**

Property : **Marble Arch Apartments , 11 Harrowby Street, London W1H 5PQ.**

Applicant : **Marble Arch Apartments RTM Company Limited.**

Representative : **Canonbury Management.
At the hearing – Mr. J. Upton of Counsel.**

Respondent : **IPE Marble Arch Limited.**

Representative : **Northover Limited.
At the hearing – Mr. J. Bates of Counsel.**

Type of application : **For the determination of the amount of accrued and uncommitted service charges under S.94(3) Commonhold and Leasehold Reform Act 2002.**

Tribunal members : **Tribunal Judge Aileen Hamilton-Farey
Mr. Kevin Ridgeway**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **24 October 2022.**

DECISION

Decisions of the tribunal

- (1) The tribunal determines in accordance with S.94(3) of the Commonhold and Leasehold Reform Act 2002, the amount of accrued and uncommitted service charge at the date of acquisition under the Right to Manage was £388,821.94.

The application

1. The Applicant seeks a determination pursuant to s.94(3) of the Commonhold and Leasehold Reform Act 2002 of the amount of accrued and uncommitted service charge in relation to the Right to Manage of the subject premises.

The hearing

2. The Applicant was represented by Mr. Upton of Counsel at the hearing and the Respondent was represented by Mr. Bates of Counsel. Instructing solicitors for Mr. Bates were in attendance as were some of the caretakers of the property and leaseholders.
3. Immediately prior to the hearing the parties handed in further documents, namely skeleton arguments and authorities. The tribunal considered these documents prior to and during the hearing.
4. For the purposes of the hearing and this decision, the tribunal relies on the document entitled 'Hearing Bundle Prepared by the Respondents'. Numbered pages referred to in this decision correspond with the numbers in that bundle.
5. At the start of the hearing Mr. Bates asked that if the tribunal was not minded to adjourn proceedings whilst the criminal proceedings/investigation took place, that we should determine the effective date for the RTM.

The background

6. The property which is the subject of this application is io
7. The Applicant served a Notice of Claim under Chapter 1 of the Commonhold and Leasehold Reform Act 2002 on the freeholder and their agent on 13 December 2021. No counter-notice was served, and therefore in accordance with the legislation, the applicant acquired the right to manage the premises on **28 April 2022**.

8. Although it appears the respondents considered making an appeal against the acquisition, none has been made and the tribunal is satisfied that the date of acquisition was 28 April 2022.
9. The single issue before the tribunal is the amount of accrued or uncommitted service charges. In the application the applicants say that c £400,000 is accrued and uncommitted. This figure was amended before the hearing to £388,821.94.

The issues

10. Mr. Bates presented the case on behalf of the respondents. This included an application for postponement or strike-out of the application on the basis that there were extant criminal proceedings against one of the directors of the RTM company and allegations of fraud against another. Mr. Bate said that the respondents did not want 'any come back' from the applicants, if it was found that criminal activity had taken place and the service charge funds had been transferred. He suggested that the proceedings should be adjourned until the proceedings/investigations had been completed.
11. He said that his clients were also concerned as to whether the TUPE Regulations in relation to the members of staff (caretakers and cleaner) had been properly undertaken and completed, and again suggested that his client did not want to find itself liable in any dispute in this matter. Despite the applicants having produced signed witness statements from the caretakers his client remained unsure whether the regulations had been properly complied with, and he said that the witness statements were confusing, and it appeared that at least one of the caretakers was not aware of what their witness statement contained and had signed it without understanding it.
12. He said that if the tribunal was to make a finding of fact as to the date when the RTM took place and did that at the hearing, then his clients would have time to reconcile figures and prepare for the handover, and that any delay would not prejudice the parties, especially the caretakers and cleaner.
13. Mr. Upton opposed the application for an adjournment. He contended that the respondents were attempting to frustrate the applicants' statutory rights. He relied he said, on the wording of the Act, and the fact that, if the respondents were concerned that the directors of the company had acted improperly, then that was a matter for the RTM Company and not the respondent, any 'come-back' as suggested by the respondent would have to be defended by the applicants and was not a matter for the respondent. He said that, given the company had acquired the RTM on 28 April 2022, that any actions taken by the company since that date, including the transfer of the staff members, was a risk to the company and not the respondent.

14. He relied on *Housing Maintenance Solutions Ltd v McAteer [2015] I.C.R.87* and the Transfer of Undertakings (Protection of Employment) Regulations 2006/24 regs 2,3 and 4.
15. The tribunal retired to consider the preliminary issue.

The Law:

16. S.94(3) of the Act enables a RTM company to make an application to the tribunal to determine the amount of any payment which falls to be made under this section.
17. S.94(4) states *'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 Tribunal's Reasons:

18. The tribunal was not persuaded by Mr. Bates's submissions. We considered those of Mr. Upton to be more persuasive and agree that the effective date for the RTM was 28 April 2022. Having considered that to be the appropriate date, we are satisfied that the TUPE Regulations were effective in relation to the staff members on the same day. If the RTM Company has breached those Regulations in any way, then the fault will lie with them and not the freeholder. Similarly, if the RTM Company in any way breaches the legislation in relation to the service charges, or the keeping of the funds then that is again a matter for the leaseholders and the Company. Finally, the tribunal takes some comfort from the fact that the RTM Company has appointed managing agents, who have appeared before the tribunal, and it is likely that any fund will be held by them in accordance with the legislation.
19. The tribunal was told by the applicants that on the effective date the service charge accounts showed a credit balance of £388,821.94. This is therefore the amount we find under S.94(3).
20. We were informed that there had been some further expenditure from that account since 28 April 2022 and the tribunal urged the parties to agree what deductions should be made so that any transfer of the funds could take place as soon as possible.

Name: Aileen Hamilton-Farey

Date: 24 October 2022.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).