



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

Case reference : **LON/00AZ/LUS/2022/0009**

Property : **Flats 1-7, 108 Perry Vale, Forest Hill,
London SE23 2LQ**

Applicant : **Scott Daniel Vigar (Flat 1)
Laurence Gaborit (Flat 2)
Sophie Stella Brown (Flat 3)
Annette Morrissey (Flat 4)
Alice Katharine Thompson (Flat 5)
Sarah-Nell Moullier and Jordan
Whitmore (Flat 6)
Jeremy Metcalfe and Roselyn
Morrice (Flat 7)**

Respondent : **Assehold Limited**

Type of application : **Uncommitted Service Charges –
section 94(3) Commonhold and
Leasehold Reform Act 2002 (“CLRA
2002”)**

Tribunal : **Judge Rosanna Foskett**

Date of Decision : **27 June 2024 (on the papers)**

DECISION

Background

1. On 13 November 2023, the Tribunal heard section 27A service charge proceedings issued in September 2022 by the Applicants under case number LON/00AZ/LSC/2022/0276 in respect of Flats 1-7, 108 Perry Vale, Forest Hill, London SE23 2LQ (“the Property”).
2. On 20 December 2022, the Applicants issued an application under section 94(3) CLRA 2002 in relation to uncommitted service charges on

20 December 2022 which was stayed on 13 November 2023 until the expiry of the appeal period against the Tribunal's Decision in the section 27A service charge proceedings.

3. The Tribunal gave its Decision in the section 27A service charge proceedings on 30 November 2023 and the Respondent applied for permission to appeal against it. The Tribunal refused that application. As far as it is aware, no further application for permission to appeal has been made to the Upper Tribunal.
4. The Applicants wrote to the Tribunal on 4 February 2024 (in accordance with the Directions given in the section 94(3) application in November 2023) requesting directions to take the section 94(3) application down to a final determination. The Tribunal asked the Respondent's representative for any comments on the proposed directions attached to the Applicants' letter of 4 February 2024 but none were received. The Tribunal gave directions on 23 February 2024.
5. The directions provided for the Applicants to rely on the Amended Statement of Case sent to the Tribunal on 8 February 2024 and for service of the same on the Respondent by 1 March 2024. The Respondent was given until 28 March 2024 to respond with any Statement of Case, counter schedule and documents/evidence on which it wished to rely. It applied for an extension of time very late in the day, which was refused on 29 April 2024. No such documents have ever been received.
6. On 8 May 2024, the Tribunal made a decision on the papers that £30,037.93 was owed by the Respondent to the Applicant RTM company but asked for brief written submissions from the parties as to the relevant of OM Ltd v New River Head RTM Co Ltd [2011] 1 EGLR 97. The Applicant provided brief comments on 24 May 2024. The Respondent indicated that it would provide comments by 29 May 2024 but never has.
7. The Tribunal has determined the application on the basis of the 60 page PDF e-bundle provided to it.

The relevant law

8. Section 94 relates to the duty to pay accrued uncommitted service charges where premises are to be acquired by a right to manage company.
9. It provides:

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 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 the appropriate 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.

10. The “acquisition date” in this case is 19 May 2022.

Reasons for the Tribunal’s Decision

11. The Property is a building made up of 7 self-contained flats which are all let on long leases. The Applicant is a right to manage company, established by the leaseholders and incorporated on 1 December 2021 for the purpose of acquiring the right to manage the Property. The right to manage was acquired on 19 May 2022. The Respondent’s sister company, Eagerstates Ltd, was the managing agent until 19 May 2022 at which point the management was transferred by legislation to the Applicant.

12. In the absence of any information from the Respondent, the Applicant has in its Amended Statement of Case served on the Respondent on 8 February 2024 adopted the handover account balance demanded by the Respondent as its starting point, which showed a balance owing by the Applicant to the Respondent of £4,339.28 (page 50 of the e-bundle).

13. Following the Tribunal's Decision of 30 November 2023 in the section 27A proceedings, reductions to the payable service charge were made for the service charge years 2017-8 to the acquisition date on the basis that the Tribunal found that a number of items (detailed in the schedule attached to the Decision) were unreasonably incurred or unreasonable in amount given the level of service provided.
14. Leaseholders had paid some service charges in relation to the period up to the acquisition date (paid to Eagerstates Ltd prior to the acquisition date), as set out in the schedule at page 50 of the e-bundle, but had reserved their rights to bring a section 27A application in relation to payability and reasonableness of service charges for the period going back to the 2017/8 service charge year, with that section 27A application being issued in September 2022.
15. Therefore, following the reductions made by the Tribunal's Decision of 30 November 2023, the Applicant now claims the value of the reductions (£34,377.22 including any applicable VAT, as shown in the Applicant's schedule at pages 51-53 of the e-bundle) less the amount which the Respondent stated was owed as at the acquisition date (£4,339.29), thus leaving a total of £30,037.93 owing to the Applicant as overpaid service charges.
16. The Applicant's solicitors have written to the Tribunal noting that Mr Gurvits of the Respondent has confirmed in writing to the Applicant that the Respondent will pay overpaid services to the leaseholders once this application has been concluded. The Tribunal considers this application now ended.

Name: Judge Rosanna Foskett

Date: 27 June 2024

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).