



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

**Case Reference** : **CHI/43UM/LSC/2023/0095, 0132  
CHI/43UM/LAC/2023/0010**

**Property** : **River Court, Woking, Sheerwater,  
GU21 5FT**

**Applicant** : **Long Leaseholders of  
Flats 1-4,7,10,13,16,17,21,24,  
26,32,36-39, 42-44, 51,  
53,54,58,62,63**

**Representative** : **Mr Ji Hoon Yoon**

**Respondent** : **Assethold Limited**

**Representative** : **Ms Kavanagh (Counsel, instructed  
by Assethold Limited)**

**Type of Application** : **s.27A LTA**

**Tribunal Members** : **Judge D Dovar  
Mr Davies FRICS  
Ms Dalal**

**Date and venue of  
Hearing** : **29<sup>th</sup> August 2024, Havant**

**Date of Decision** : **2<sup>nd</sup> October 2024**

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**DECISION**

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1. Who is the landlord? That is the issue at the heart of this application. Is the Respondent the freehold owner of the Property and therefore entitled to demand service charges from the Applicant leaseholders. Usually this is an easy question to answer, but the Respondent seems to have gone out of its way to cloud the issue.

### **Previous Decision**

2. This issue was relatively recently considered on 25<sup>th</sup> August 2023 by the Tribunal in respect of the subject property and this landlord but on an application brought by the owner of Flat 8, Mr Yoon. Whilst he is not an applicant in these proceedings, he is representing all the Applicants. That decision was made under reference CHI/43UM/LSC/2023/0027; another s.27A determination made by Judge Lumby, Mr Smith and Ms Dalal ('the Lumby Decision').
3. Whilst one Tribunal is not bound by another, considerations of both judicial comity and findings of fact between the same or related parties do have a high degree of persuasion and should be departed from with caution. It is therefore worth setting out what that Tribunal considered and determined.
4. In that case Mr Yoon also contended that the Respondent was not the freeholder, was therefore not his landlord, and was therefore not entitled to levy a service charge demand. The original developer of the Property, UK Luxury Heights Limited ('UK Luxury'), remained the registered proprietor of the freehold estate out of which the long residential leases

had been granted. However, the service charge demands had started to come from the Respondent.

5. At paragraph 17 the Tribunal noted that their hearing bundle contained *'a copy of the transfer of the reversion from UK Luxury Heights Limited to Assethold Limited dated 21 April 2023.'* As a result of that they went onto to find that *'this is the date when the Respondent became the freeholder.'* They were also told that there was a pending application for registration by the Respondent. They therefore determined that sums demanded for service charges by the Respondent prior to that date were not due for payment as they were not the landlord of the subject property at that time.
6. Left there, that would be the end of this determination. However, Mr Yoon's concerns over the identity of his landlord were not assuaged by the decision, or at least if they were, they resurfaced with some justification. Firstly, notwithstanding a copy of the transfer document dated 21<sup>st</sup> April 2023, the Respondent is still not the registered proprietor of the building. Secondly, on 1<sup>st</sup> July 2024, HM Land Registry wrote to Mr Yoon in the following terms

*"I can confirm that UK Luxury Heights Limited remains the current registered proprietor of this property and we currently have no pending applications awaiting to be processed against this title. I can confirm that an application was lodged by Eagerstates Limited on 13 July 2023 but was subsequently cancelled."*

## Background

7. To put the issues in chronological context:
  - a. It appears that at the time of the Lumby Decision, not only was the Transfer produced, but the process was underway to register the Respondent as the freehold proprietor;
  - b. This application was made on 20<sup>th</sup> September 2023;
  - c. On 28<sup>th</sup> September 2023, the Applicants served notice under s.11A of the Landlord and Tenant Act 1987 in relation to any alleged disposal of an interest; i.e. the freehold. Their reasoning presumably being that if the freehold had been sold, they were entitled to exercise their right of first refusal under the 1987 Act. The response from Eagerstates was *‘We note the notice served but please note it is invalid and has no standing. The disposal was not a relevant disposal under the terms of the Act and therefore your notice is not relevant.’* They did not descend to any further details as to why the disposal was said not to be a relevant disposal.
  - d. On 28<sup>th</sup> March 2024 directions were given in this application, including:
    - i. Disclosure by the Respondent by 11<sup>th</sup> April 2024;
    - ii. Applicant’s Statement of Case by 2<sup>nd</sup> May 2024;
    - iii. Respondent’s Statement of Case by 23<sup>rd</sup> May 2024;

- iv. Applicant's Reply by 6<sup>th</sup> June 2024;
- v. A hearing was set down for 3<sup>rd</sup> July 2024, but that was later vacated due to the Respondent's failure to adhere to the direction timetable.
- e. A case management hearing was convened for 5<sup>th</sup> June 2024. Mr Yoon represented the Applicants, Mr Gurvitz, the Respondent. The hearing was set down for 29<sup>th</sup> August 2024 and the timetable reset, so that the Respondent was to provide their Statement of Case by 17<sup>th</sup> July 2024 and the Applicant a Reply by 31<sup>st</sup> July 2024, with an agreed bundle by 9<sup>th</sup> August 2024.
- f. On 25<sup>th</sup> June 2024, Mr Yoon made an application to the Tribunal for an extension of time for the Statement of Case as having spoken to HM Land Registry, it had become apparent that the Respondent was not registered as proprietor of the freehold.
- g. On 1<sup>st</sup> July 2024, Mr Yoon received confirmation from HM Land Registry that the Respondent was not the registered proprietor and that an application had been cancelled.
- h. On 3<sup>rd</sup> July 2024, the Applicants served their Statement of Case. That included the assertion that the Respondent was not the registered proprietor as confirmed by HM Land Registry in their letter of 1<sup>st</sup> July and that there was no pending application. They

also referred to the notice under s.11A served on 28<sup>th</sup> September 2023.

8. The notable absence from the chronology is the service of Statement of Case or any witness statements or indeed any attempt to address the issues raised regarding who the landlord was. Whilst the Respondent did provide disclosure, there was nothing relating to the issue of ownership of the subject property.
9. On the morning of the hearing, Ms Kavanagh made an oral application to adduce further evidence, being:
  - a. An authority from the Respondent to Eagerstates representing them;
  - b. Confirmation from the Land Registry that an application was in progress as of 8<sup>th</sup> August 2024 to update the register;
  - c. A TR1 dated 21<sup>st</sup> April 2023 transferring the Property from UK Luxury to the Respondent; and
  - d. A deed of assignment dated 21<sup>st</sup> April 2023.
10. They were not accompanied by a witness statement or statement of case and no explanation was given as to why they were only being produced now. The Tribunal gave permission for the first, but refused the others.
11. The TR1 and the deed went no further than the evidence already provided to the Tribunal and recorded in the Lumby decision. The

second, the confirmation, was merely confirmation that *an* application had been made to HM Land Registry. It did not say what the application was. It was therefore, on its own, of no relevance, or certainly of no assistance to the Tribunal.

### **Consideration**

12. The starting point is the current registered title of the freehold, out of which the long leaseholds are granted. That shows UK Luxury as the registered proprietor.
13. The Respondent did not contest that position in a Statement of Case or in any witness statement. The Respondent did not address the reasons for the rejection of the TR1. The Respondent did not engage in this issue until the morning of the hearing.
14. The Respondent sought to rely on the Lumby Decision as binding on this issue; a decision which had been included in the bundle by the Applicants. However, matters have moved on since that determination. That was based on an assumption that given the TR1, the Respondent were entitled to be registered as proprietor and therefore were in effect the landlord notwithstanding their lack of registration.
15. Ms Kavanagh sought to draw out an inference from the fact that UK Luxury appeared to have stepped back and let the Respondent serve notices, seek payment of service charges and had not sought to intervene.

16. Ms Kavanagh also drew our attention to the recent decision of *RM Residential Ltd v Westacre Estates Ltd* [2024] UKUT 56 (LC) where Judge Cook highlighted the utility of s.24 of the Land Registration Act 2002 in bridging the registration gap, where a person was ‘*entitled to be registered*’ as the proprietor but had not yet been registered. In such a case, that person was, as the section provides ‘entitled to exercise owner’s powers in relation to a registered estate.’ In *Westacre* the landlord had undertaken works at a time after purchase of the property, but before their interest had been registered. The Tribunal considered that they were not entitled to recover costs for works carried out prior to them being the registered proprietor as prior to that date, the Tribunal considered they were not the owner. They relied on s.27(1) of the Land Registration Act 2002 as providing that a person is not a legal owner of an estate in land until they are registered as proprietor. As a result they concluded that if they were not the owner, they could not charge for the cost of works carried out. In doing so they had overlooked s.24.
17. The situation in this case is different. The Lumby Decision was based on the fact that they had been provided with a TR1 and a pending application for registration based on that. All the evidence pointed to the Respondent being entitled to be registered and so s.24 was engaged. The uncontested evidence before us was that that application had been cancelled and the assumption behind the decision, that the registration would complete, was wrong. A possible and likely conclusion being that the application was cancelled because



notwithstanding the TR1, the Respondent was not entitled to be the registered proprietor. The result of that is that they cannot rely on s.24 of the 2002 Act to assert a right to act as the owner and serve demands.

18. Whilst Ms Kavanagh pressed the Tribunal to conclude that the Lumby Decision was sufficient evidence for this Tribunal, this Tribunal also considered that the Respondent's failure to respond to the Statement of Case or provide any evidence to seek to rebut the claim made by the Applicants was a remarkable omission in the circumstances. If it was entitled to be registered as proprietor, faced with the evidence presented by the Applicants, why did it not produce evidence to the contrary. The Tribunal considered that this may have been because it could not and so had taken the deliberate decision to disengage from the proceedings save to send counsel along to the hearing, at the last minute, with limited instructions, to fight its corner without any evidence to explain its conduct; armed only with a TR1, a deed and a confirmation of application – none of which properly answered the question posed by the Applicants' Statement of Case.
19. Ms Kavanagh sought to dissuade the Tribunal from drawing any adverse inference from this conduct, instead she urged us to consider that the absence of response was more redolent of the Respondent's general disregard for the Tribunal and its directions. It is a sorry state of affairs when such a submission is made.

20. Ultimately the Tribunal did not need to decide whether to accede to such a disheartening submission. The fact is that the Respondent tried to register itself as proprietor relying on the TR1, but failed. It could have been that the Respondent was equally disdainful of the Land Registry process and so had failed to fill out the forms correctly or had failed to respond to requisitions, but this Tribunal is entitled to conclude that it had diligently applied to be registered and had failed because it was not entitled to be. The Lumby Decision was made before the pending application had been rejected. This Tribunal now knows that at the time of that decision despite the appearance of being entitled to be registered as proprietor, that was not in fact the case.
21. Ms Kavanagh sought to argue that in the alternative the Respondent was entitled to rely on an estoppel argument to prevent the Applicants from asserting that it was not the landlord. This was a significant claim to raise for the first time on the morning of the hearing. It was difficult to see how an estoppel would arise, but it was said that by paying some of the demands that the Respondent had served that it would be inequitable to resile from that situation. It is difficult to see how this argument can succeed. It was the Respondent who has made the representation in both cases, not the Applicants. The Tribunal cannot therefore see how any form of estoppel, whether by representation or convention can be made out.

## **Conclusion**

22. The Respondent is not the owner of the freehold or Property, nor entitled to be registered as proprietor of the freehold. It is therefore not entitled to levy service charge demands. The application succeeds and the Tribunal determines that none of the sums are payable.
  
23. The Applicants asked us to make orders under s.20C and paragraph 5, but in light of our decision there was no need to as the Respondent is not the landlord. We do order the Respondent to reimburse the Applicants the application and hearing fee of £300.

## **Appeals**

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](mailto:rpsouthern@justice.gov.uk) .

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.

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.

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.