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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL
(Southern Rent Assessment Panel)

Case No: CHI/24UP/LUS/2013/0001

Re: 1-6 Lansdowne Court, Lansdowne Avenue, Winchester Hampshire SO23 9TJ

Between:

Lansdowne Court (Winchester) RTM Company Limited
("the Applicant")

and

Helen Horton and Stephen Cavalier
("the Respondents")

RIGHT TO MANAGE
IN THE MATTER OF AN APPLICATION UNDER SECTION 94 OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002
(Determination as to amount of uncommitted service charges payable to the Applicant.)

Tribunal: John B. Tarling, Solicitor, MCMI (Lawyer/Chairman)

Date of Decision: 16th May 2013

DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL

The Application

1. On 30th January 2013 the Applicant made an application to the Tribunal for a Determination of the accrued uncommitted service charges for the above property following the Right to Manage which took place on 1st March 2013.

The Tribunal's Directions

2. On 14th February 2013 the Tribunal issued Directions which required the Respondents to set out the amount of uncommitted service charges together with any necessary computation to show how that figure had been arrived at by 28th February 2013
3. Following further written representations from the parties, on 14th March 2013 the Tribunal issued Further Directions that there be a Pre Trial Review Hearing to take place on 12th April 2013. All parties were invited to attend the Pre Trial Review Hearing when the outstanding matters would be discussed

and Further Directions made. All parties were invited to submit any proposed Direction they wished the Tribunal to make in advance of the Pre Trial Review Hearing.

4. Following the Pre Trial Review Hearing held on 12th April 2013 the Tribunal made Further Directions of the same date. Those Further Directions provided as follows:
 - (a) The Tribunal recorded the fact that the Applicant and the Respondent Helen Horton had agreed the amounts of uncommitted Service Charges which are payable by the Respondent to the Applicants. The only obstacle to the transfer of the funds to the Applicant is the consent to the Respondent Stephen Cavalier.
 - (b) The Tribunal directed that a copy of the Further Directions were to be served by the Tribunal on the Respondent Stephen Cavalier forthwith. Mr Cavalier was ordered by the Tribunal to respond to those Further Directions within 14 days and either (i) agree that the agreed funds are to be transferred to the Applicant forthwith, or (ii) send to the Tribunal a written Statement signed by him and dated saying exactly why he opposes the proposed transfer of funds.
 - (c) Notice was given to the parties under the provisions of Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004, and that it intends to proceed to determine the matter without an oral Hearing and on the basis only of written representations. Notice was also given that if the matter is dealt with in this fashion it may be considered by a Chairman sitting alone. If any party objected to these procedures they were required to give written objection to the Tribunal within 28 days.

The Relevant Law

5. Section 94 of the Commonhold and Leasehold Reform Act 2002 provides as follows:

“94 (1) Where the right to manage premises is to be acquired by a RTM Company, a person who is (a) 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 persons 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 a leasehold valuation 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.

The evidence before the Tribunal

6. The Tribunal had before it copies of all the correspondence between the parties. Material to the determination which the Tribunal is being asked to make, are the following:

(a) a Letter dated 28th February 2013 from the Respondent Helen Horton to the Applicant in which she says “I would be content for the sum of £14,000, made up of the total in the Barclays Business Saver Account ... of £7,864, plus £6,136 from the Barclays Community Account..., which together hold the service charges for 1-6 Landsdowne Court), to be transferred to the Applicant, with immediate effect, with the balance from the Community Account being transferred once all outstanding invoices have been settled...”

(b) a letter dated 2nd March 2013 from the Applicant to the Respondent Helen Horton which acknowledges receipt of her letter dated 28th February 2013 and confirms the proposals “are acceptable to them” subject to a couple of matters relating to the agreement of the other Respondent Stephen Cavalier and matters relating to the signatories on the bank accounts.

The Tribunal's Determination

7. The Tribunal HEREBY DETERMINES that the amount of £14,000, or such other balance as set out in Paragraph 6(a) above, is now payable by the Respondents to the Applicant Company. If such payment has not already been made at the date of this Decision, the Tribunal HEREBY ORDERS that it is paid within the next 21 days. The parties are reminded that all Orders of the Tribunal are enforceable in the County Court in accordance with Regulation 19 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003.

Reasons for the Tribunal's Determination

8. (a) The Respondent Helen Horton has agreed the amount that is payable with the Applicant Company.

(b) The Respondent Stephen Cavalier has been given ample opportunity to object to the proceedings or give reasons why the amount agreed should not be paid, and has failed to do so, or to comply with the Tribunal's Directions.

(c) In all the circumstances it is fair and reasonable for the Tribunal to make the Order that it has made.

Dated 16th May 2013



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John B. Tarling, MCMI, Solicitor,
A member of the Panel appointed
by the Lord Chancellor