FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/00AX/OCE/2014/0063**
Property	:	**18 and 18A Ravenscar Road, Tolworth, Surrey KT6 7PL**
Applicant	:	**18 and 18A Ravenscar Road (Freehold) Company Limited (1) Ravenscar Road RTM Company Limited (2)**
Representative	:	**Mr T Davis of Counsel instructed by Pro-Leagle Solicitors**
Respondent	:	**Assethold Limited**
Representative	:	**Mr E Gurvits, Director**
Type of Application	:	**Applications under section 24(1) and section 91 of the Leasehold Reform Housing and Urban Development Act 1993 and section 24 of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Siobhan McGrath (Chamber President)** **Mrs S Redmond BSc(Econ) MRICS**
Date and venue of Hearing	:	**9th September 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**29th September 2014**

DECISION

Decision

1. The second applicant is entitled to the transfer of the sum of £623.26 in accrued uncommitted service charges;

2. The respondent is entitled to provide a Limited Title Guarantee

3. Statutory costs are payable by the first applicant in the sums of:
   (a) £600.00 plus VAT in respect of legal costs, but the VAT will only become payable on production by the respondent of a VAT invoice from Messrs Greenwood & Co;
   (b) £550.00 plus VAT for valuation costs.

4. No penal costs are ordered..

Reasons for Decision

1. In this matter the Tribunal was considering three applications:
(a) An application under section 24(1) of the Leasehold Reform Housing and Urban Development Act 1992 ("the 1993 Act") for the determination of terms of acquisition;
(b) An application under section 91 of the 1993 Act for a determination of the costs payable under section 33(1) of the 1993 Act; and
(c) An application under section 94 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for the determination of accrued uncommitted service charges.

2. The applications were considered together at a hearing convened for the purpose on 9th September 2014. The applicant in the first two matters is 18 and 18A Ravenscar Road (Freehold) Company Limited who is the nominee purchaser in a claim to collectively enfranchise the subject premises. The applicant in the third matter is the Ravenscar Road RTM Company Limited which exercised the right to manage the premises in October 2013. The directors for both companies are the long leaseholders of the flats at the subject property. The respondent in all three applicants is the freeholder Assethold Limited. At the hearing both applicants were represented by Mr T Davis of counsel and the respondent by Mr E Gurvits, who is a director of both the respondent and the respondent's managing agent, Eagerstates Ltd.

3. The subject property is at 18 and 18A Ravenscar Road, Tolworth, Surrey KT6 7PL. It is a semi-detached Victorian house which has been converted into two flats.

Background

4. In April 2013 the first applicant had claimed the right to manage the subject property. That claim was eventually conceded by the respondent in July 2013

and the right to manage was acquired on 26th October 2013. In addition to seeking the right to manage, the applicant also sought a determination from the Tribunal as to the amount of certain accrued uncommitted service charges. The application in this respect was made under section 94(3) of the 2002 Act.

5. The application was heard by the Tribunal on 11th September 2013 and a decision issued on 21st October 2013.

6. So far as the enfranchisement issues are concerned, the applicant started proceedings on 5th March 2014 seeking a determination of the terms of acquisition of the freehold pursuant to section 24 of the 1993 Act and of the costs pursuant to section 33 of the 1993 Act. The respondent objected to the proceedings on the basis that it did not accept that terms were in dispute or that it should be required to provide a breakdown of section 33 costs during the course of the proceedings. The applicant also made an application to revisit the issue of accrued uncommitted service charges since it contended that certain matters arising from the decision in October 2013 remained in dispute. The respondent objected that these proceedings also.

7. Therefore on 24th April 2014, the Tribunal arranged a preliminary hearing to consider its jurisdiction. It determined that the Tribunal did have jurisdiction to decide all three matters. The respondent sought permission to appeal the jurisdiction decision. That request was refused both by the First-tier Tribunal and by the Upper Tribunal.

Accrued Uncommitted Service Charges

8. The Tribunal started by hearing submissions in respect of the accrued uncommitted service charges. In its decision of October 2013 the Tribunal made the following findings:
"29. In respect of the uncommitted service charges, there were 4 principle headings, namely provision for emergency repairs, insurance, routine management and administration costs for an emergency line. Mr Gurvitz said that there was no reserve fund.

9.. The Tribunal rejects the Respondent's contention that "*it is impossible to determine an application under section 94 prior to the handover to the Right to manage Company*" particularly in this case where the handover is to take place within a very short period of time.

10. If no emergency repair work has been carried out in the intervening period between the hearing and Acquisition Date and, on the basis that the Tribunal was informed at the hearing that no draw had been made on that budgeted sum, the sum of £400 in total (ie £200 per flat) should be handed over to the Applicant. If however, emergency repair work has been carried out in the intervening period, then the appropriate sum should be deducted.

11. In respect of uncommitted service charges for insurance, the sum shown in the estimated service charge account for 2013 was £935.39, part of which sum was an accrual from the previous year. Mr Gurvitz would have to apportion the insurance if the Applicant does not wish to carry on with the insurance

until the renewal date (1 April 2014). If the Applicant wishes the insurance to be cancelled, there may be a cancellation fee by the insurers and, if this is the case, the cancellation fee must be borne by the Application. Mr Gurvitz had said that no commission had been paid or was payable.

12. Routine management will cease on the Acquisition Date. Management fees appear in the estimated service charge account in the sum of £492 and are invoiced and paid in advance. The Tribunal determines £90.31 is to be returned.

13. Administration costs for the emergency line of £24 including VAT is in the estimated service charge account for the year ending 31 December 2013.....The Tribunal determines that no sum is to be returned."
14. At the hearing in September 2014, this Tribunal considered each outstanding item in turn:

Repair work

15. The applicant's case is that £400 is due to be credited to the applicant as no intervening works were carried out by the respondent between October and the date of the exercise of the Right to Manage. At the hearing, the respondent accepted that no works had been carried out.

Insurance premium

16. In its determination the October Tribunal had been dealing with an estimated insurance charge of £935.39. The actual cost for the insurance year (1st April 2013 to 31st March 2014) was in fact £907.88. It was agreed between the parties that the revised sum should be apportioned for the period 1st April 2013 to 26th October 2013 at the lower rate. The result, on the basis of an apportionment calculation carried out by Mr Gurvitz at the hearing and seen by Mr Davis, is that the costs up to the date of acquisition are £510.45 and the costs remaining are £907.88 minus £510.45 being £397.43.

Insurance Cancellation fee

17. The issue of a cancellation fee was left over from the October 2013 decision. Accordingly, it was necessary for the Tribunal to determine whether this had been paid. Mr Gurvitz said that a cancellation fee of £120 had been incurred. In support, he drew the Tribunal's attention to a debit note dated 24th October 2013 from Kruskal Insurance Brokers which shows a cancellation fee of £120 on the basis of "full details and conditions as per schedule and policy". The Tribunal was not shown the policy or the schedule.

18. In a letter dated 16th January 2014, Mr Gurvitz had justified the same cancellation fee by reference to an email dated 10th December 2013 from Sam Kruskal of Kruskal Insurance Brokers which stated "I confirm that in some instances where there is additional work involved Kruskal Insurance Brokers do charge an admin fee". Since no reference is made to the debit note in this letter, although the bill was purportedly drawn in the previous October, the probative value of the invoice was severely undermined and in the

circumstances the Tribunal was not satisfied that the respondent had demonstrated that the sum of £120.00 was payable

Management fee

19. At the hearing Mr Gurvitz asked the Tribunal to recalculate the apportionment of the management fee on the basis of actual instead of estimated costs. In contrast to the insurance issue, Mr Davis did not agree this approach. Whereas for insurance, the sum to be charged for the policy could not be ascertained at the time the estimated service charges were demanded (since the policy commenced in April), the same could not be said for the management fee. Therefore the Tribunal saw no reason to go behind the October Tribunal determination that £90.31 falls to be credited.

Amount of accrued uncommitted service charges

20. Having made these determinations it was necessary for the Tribunal to determine how much of the service charges held by the respondent must be paid to the applicant. The Tribunal was satisfied that this is not simply a matter of adding the amounts to be credited for the works, the insurance and the management fee and making an order that these be paid back. The exercise that must be carried out is as follows: firstly, the Tribunal must identify the service charge fund held by the respondent; secondly it must identify the proper service charges committed to that fund by the date of the acquisition of the right to manage and finally it must deduct one from the other. The product is the amount to be repaid.

21. In its determination in October 2013, the Tribunal observed that a partial section 20 consultation process had been commenced in January 2013 but that it had not been completed and no works started. This Tribunal considers that the additional section 20 costs remain at large for this determination. It was satisfied that some work had been carried out and in particular that the matter had reached the stage where the lessees had nominated a contractor to carry out works. In a letter dated 16th January 2014, Mr Gurvitz had indicated that the costs he had incurred in this respect were for £300.00. The Tribunal considered that such an amount was not reasonable. There are only two flats at the premises and the consultation was halted at an early stage. Doing the best it could with the evidence it concluded that costs of £100.00 for section 20 consultation should be regarded as a debit to the account.

22. The service charge fund held by the respondent for the year January 2013 to December 2013 was £1,659.40. Against that fund the respondent's expenditure was:

Insurance	£510.45
Management fee	£401.69
Emergency line	£ 24.00
Section 20 consultation	£100.00
Sub-total	£1,036.14

18, Therefore the amount to be credited to applicant is £1,659.40 minus £1,036.14 which is £623.26.

Terms of Acquisition

23. The premium for the acquisition of the premises was agreed in the sum of £14,600.00. Two issues remained outstanding for the Tribunal's determination. The first was whether the respondent was entitled to provide a Limited Title Guarantee. At the hearing Mr Davis conceded that although it had previously been contended that Full Title Guarantee should be provided, limited title was in fact appropriate. The Tribunal therefore determined the issue to that effect.

24. The second issue relates to the accrued uncommitted service charge. It was the applicant's case that the Transfer should include the following clause:
"The transferor covenant to pay to the Transferee on completion the sum of (TO BE INSERTED FOLLOWING TRIBUNAL'S DETERMINATION), as determined by the Tribunal on (TO BE INSERTED), in respect of uncommitted service charges"

25. Part of the reasoning for this relates to a submission dealt with below that the Tribunal is able to require the respondent to move straight to completion without the need for a prior contract and that the insertion of such a clause into the Transfer obviates the need for a contract.

26. It is the first applicant's case that the use of contract in an enfranchisement of two flats is not necessary or required, particularly where it is a straightforward transaction. A request was made that the Tribunal direct that a contract was not necessary in this case. In support of this request, reliance was placed on the Tribunal decision in *9 Corrine Road (Freehold) Company Ltd.* (Case No LON/00AU/LCP/0007). However, at the hearing Mr Davis conceded that this was not authority for the contention that the Tribunal had power so to direct.

27. Although it is open to the parties to agree to proceed without a contract stage (regulation 2 of the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993), this is not a course of action that the Tribunal can order the parties to take.

28. For these reasons, the Tribunal does not accept that it is entitled to direct the respondent to proceed in this way. However, in any event it did not consider this to be an appropriate clause in the transfer. Although there is a credit due to the applicant for uncommitted service charges, there will also be a debit not only for the enfranchisement costs but also for the right to manage costs which had been determined by the October Tribunal at £274.80.

Statutory Costs

29. By section 33 of the 1993 Act, the landlord is entitled to certain statutory costs. It provides:

"33(1) Where a notice is given under section 13...the nominee purchaser shall be liable to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of an incidental to any of the following matters, namely
(a) any investigation reasonably undertaken –
(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the intial notice, or
(ii) of any other question arising out of that notice;
(b) deducting , evidencing and verifying the title to any such interest;
(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;
(d) any valuation of any interest in the specified premises or other property;
(e) any conveyance of any such interest;
.....
(2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs."

30. On behalf of the respondent the legal costs claimed in this matter in the sum of £1,722.00 (including VAT and disbursements) for section 33 work undertaken including the contract, and £1,638.00 (including VAT and disbursements) for work undertaken excluding the contract. The valuation costs are£935.00 plus VAT amounting to £1,122.00.

31. The applicant challenges both aspects of the costs claim. As a preliminary matter, it was contended that section 33 costs are only payable insofar as they have been incurred by the reversioner and that in this case the costs had, in fact, been incurred by the landlord's managing agents, Eagerstates and not by Assethold Ltd. Therefore no costs are payable.

32. At the hearing it was accepted, as it must be accepted, that a landlord may act through an agent. Here, it seemed to the Tribunal that there was nothing to demonstrate that Mr Gurvitz was not acting as agent of the landlord. Whilst no written instructions from Assethold to Mr Gurvitz were provided, no objection to his status had previously been made in proceedings which cumulatively had been in existence for nearly 18 months. Whilst the nature of the relationship between the two companies had been raised at the October Tribunal when it had been submitted by the applicant that "the managing agent is the alter ego of the respondent", this was a different objection. Whilst the Tribunal has sympathy with the respondent's concerns in this respect and in future would expect a clear delineation of the relationship between the companies, it does not consider that there is anything in these proceedings that would justify it deciding that statutory costs were not recoverable at all.

Legal costs

33. In respect of the quantum of the legal costs, the applicant challenged the level of fees incurred and the incidence of VAT. Firstly, it was said the hourly

rates for the respondent's solicitor, Greenwood & Co were too high and should be reduced. The schedules of costs (on the two alternate bases) show that the charges made are all calculated at a partner's rate of £350 per hour. The County Court Summary Assessment of Costs Guideline rates for 2013 show that a law firm operating in Kingston has a guideline hourly rate of £217.00 per hour for Grade A solicitors, £192 per hour for Grade B solicitors, £161.00 for Grade C solicitors and £118.00 per hour for Grade D legal workers including paralegals and trainee solicitors. In support of this contention the applicant referred to two Tribunal cases: *111 and 113 Cheston Avenue, Croydon CR0 8DF* (case no: LON/00AH/OC9/2012/0006) and *50A Eric Road, Chadwell Heath, Romford Essex, RM6 6JH* (case no: LON/00AB/OLR/2013).

34. Secondly it was submitted that this enfranchisement is particularly straightforward and could not justify the use of a partner charging at a partner's rate which, it is said, could have been satisfactorily undertaken by a solicitor or paralegal with less experience.

35.Thirdly, it was contended that certain of the charges itemised did not fall within section 33 since it was not work undertaken in pursuance of the notice and included work carried out after the service of the counter-notice and after the service of Tribunal proceedings.

36. Finally, the applicant requested that the Tribunal order that the payment of any VAT on legal costs be postponed until it is confirmed that the respondent's solicitors are VAT registered. No VAT number is shown on Greenwood & Co's letterhead and no invoice had been produced.

37. In conclusion the applicant submitted that 82 minutes of work should be allowed with an hourly rate divided as to 30 minutes at £217.00 per hour and 52 minutes at £139.50 per hour, giving a total of £229.40.

38. On behalf of the respondent, Mr Gurvitz argued that it was entitled to instruct solicitor's of its choice. He also said that the work carried out did fall within section 33 and related to consideration of the notice and conveyancing issues. When the Tribunal asked for a copy of a client care letter from Greenwood & Co, Mr Gurvitz said that this had not been necessary as he and the solicitor dealing with the matter were friends. When pressed on the issue, he said that he did not have a client care letter with him. The Tribunal asked whether the respondent had considered agreeing a "cost per job" basis for enfranchisement matters but Mr Gurvitz said that this approach was not appropriate where, as here, the matter was contentious.

39. The Tribunal considers that the claim for legal costs is much too high. It accepts the proposition that the rate for a central London solicitor should not be applied in this case. Such rates would not be reasonable in the circumstances. It also accepted the proposition that this is a straightforward transaction that would not require the attention of a partner for all aspects of the case. However, it also considered that the applicant had made an under-assessment of costs. The Tribunal was not impressed by the purported bill of costs from Greenwood and considered that a number of items were inflated or

irrecoverable. It was also conscious that the schedule of costs was not evidenced in any material way. However, it does accept that reasonable costs will have been incurred in dealing with a case where there was some contention. Doing the best it could with the evidence it was the Tribunal's view that a "cost for the job" was the best approach in this matter. This it assessed at £600. So far as VAT is concerned, this will not be payable until the respondent provides the applicant with a VAT invoice from Greenwood & Co.

Valuation Costs

40. In respect of the valuation costs, the applicant submitted that these are also too high. The respondent's surveyor Lawrence Nesbitt is a reputed surveyor operating in North London with, it was said, some of the highest fees in London. It was contended that fees of £935.00 plus VAT could not be reasonable. The applicant again referred to the *Cheston Avenue* case in support. It was submitted that the applicant's own surveyor charges £700.00 for two enfranchisement valuations and that this represented a reasonable sum.

41. It was submitted that this is a simple case where marriage value is not applicable and there are no internal common parts to the building. An external inspection would, it was said, have sufficed.

42. At the hearing, Mr Gurvitz produced Mr Nesbitt's valuation report which had been prepared for the respondent. Having seen the report and having taken into account the parties' submissions, the Tribunal considered that the fees of £935.00 should be reduced. Mr Gurvitz told the Tribunal that Mr Nesbitt charges £220 per hour and in this case had invoiced for 4 hours and 25 minutes. He contended that the respondent was entitled to instruct a valuer it trusted and knew.

43. The Tribunal considered this to be a very straightforward case and that the valuation fees should be limited to £550 plus VAT. This figure reflected either a reduction in the level of fees since a more junior valuer could have carried out the work, alternatively it considered that Mr Nesbitt could have completed the work in about two and half hours.

44. Finally on costs, the applicant asked the Tribunal to require the respondent to explain why it is not VAT registered since, it was submitted, if it had been registered then it could have recovered VAT on professional fees as input tax. At the hearing, Mr Gurvitz simply explained that the respondent was not registered for VAT although Eagerstates is so registered. The Tribunal did not consider that in this case it would be proportionate or correct to undertake inquiries in this respect and therefore could not go behind Mr Gurvitz evidence in this respect.

Penal Costs

45. Finally, an application for an award of penal costs under rule 13 was made by the applicant. The basis of the application was that the respondent has failed to comply with the Tribunal Directions. Specifically, Mr Davis drew the

Tribunal's attention to a failure to comply with paragraph 6 of the directions requiring the respondent to provide a detailed statement of account. This, it was said, was never provided. Mr Gurvitz referred to his letter of 8th June 2014 which he described as his statement of case and which specifically refers to direction 6.

46. Although it might be possible to argue that the letter of 8th June, 2014 was inadequate compliance, the Tribunal did not consider that there was a complete failure to comply with directions. Even if there had been such a failure, that would not automatically justify the award of penal costs which is intended to deal with behaviour in the proceedings which is unacceptable and which, as the October tribunal observed, does not permit of a reasonable explanation.

47. Accordingly, the Tribunal declined to make an order for penal costs.

Appeal

48. Any appeal against this decision is to the Upper Tier Tribunal (Lands Chamber), however permission to appeal must first be sought from the First-tier Tribunal. There is a form on the Property Chamber website that is available to be used. Any application for permission to be appeal must be in writing and must be received by the First-tier Tribunal within 28 days of the date that this decision is sent to the parties.

Siobhan McGrath

Chamber President

29th September 2014