



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

**Case reference** : **LON/00AZ/LUS/2021/0004**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPERREMOTE**

**Property** : **86 Blackheath Hill, London, SE10 8AD**

**Applicant** : **86 Blackheath Hill RTM Co Ltd**

**Representative** : **Joy Akah-Douglas, Hillary Cooper Law**

**Respondent** : **Rosslyn Investments Limited**

**Representative** : **Kirkwoods Solicitors**

**Type of application** : **Application in relation to the payment  
of accrued uncommitted service charges**

**Tribunal  
member(s)** : **Judge Professor Robert Abbey  
Sarah Redmond MRICS**

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

**Date of decision** : **6 April 2022**

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**DECISION**

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1. This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined in on paper. The documents that the

Tribunal were referred to are in a bundle of many pages, the contents of which have been noted and utilised during the determination.

## **DECISIONS OF THE TRIBUNAL**

2. The tribunal determines that the full sum claimed by the applicant in the sum of £21,563.57 is due and payable by the respondent to the applicant being accrued uncommitted service charges refundable by reason of section 94 of the Commonhold and Leasehold Reform Act 2002.

## **BACKGROUND**

3. The Applicant applies for determination of the amount of service charges to be paid by the freeholder to the applicant RTM company under s94(3) Commonhold and Leasehold Reform Act 2002 (CALRA 2002). The Applicant estimates that the amount of service charges to be paid under this section is £21,563.57 exclusive of any interest that has accrued, which is recoverable under ss94(1) and (2)(b) CALRA 2002.
4. The Applicant is the RTM company with the right to manage the property at Ferndale House, 86 Blackheath Hill, London SE10 8AD (“the property”). The Respondent is the freehold owner of the property.
5. The Applicant acquired the right to manage the property on 23 July 2018, after the lessees of the property exercised their statutory right to manage under CALRA 2002.
6. The Applicant’s case is that under s94 CALRA, the Respondent was and is under an obligation to pay all accrued uncommitted service charges held by it (or its agents) to the Applicant as soon after 23 July 2018 as was reasonably practicable. This includes both the £49,549.48 of service charges paid by the lessees in relation to the planned major works, under s94(2)(a), and any interest that has accrued thereon, under s94(2)(b).
7. It is alleged that the Respondent only paid the sum of £27,985.91 to the Applicant after the right to manage was acquired in 2018. Due to the Respondent’s failure to provide accounts and financial information in

breach of s93 CALRA 2002, the Applicant does not know whether this sum represented solely service charges collected for the planned major works or whether it included other monies owed to the Applicant. Even if all of this sum represented the accrued uncommitted service charges collected for the planned major works, the Respondent is still liable to pay a further £21,563.57 to the Applicant, in addition to any interest that had accrued.

8. The Applicant contends that the failure to pay these monies is a breach of the Respondent's statutory obligations under s94 CALRA 2002 and s42 LTA 1987, and a breach of trust and breach of fiduciary duty.
9. Therefore, the issues to be determined in the application are whether the sum of £21,563.57 (or some other amount) represents accrued uncommitted service charges held by the Respondent and whether this should be paid to the Applicant.

## **DECISION**

10. Section 94 of the Commonhold and Leasehold Reform Act 2002 provides that -

### *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 [F1the 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.*

11. Accordingly, section 94 is the law that governs the case before this Tribunal. Additionally, there is an obligation on the landlord to provide information and this is required by section 93 as set out below –

*93 Duty to provide information*

*(1) Where the right to manage premises is to be acquired by a RTM company, the company may give notice to 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, requiring him to provide the company with any information which is in his possession or control and which the company reasonably requires in connection with the exercise of the right to manage.*

*(2) Where the information is recorded in a document in his possession or control the notice may require him—*

*(a) to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and*

*(b) to supply the company with a copy of the document containing the information in a readily intelligible form.*

*(3) A notice may not require a person to do anything under this section before the acquisition date.*

*(4) But, subject to that, a person who is required by a notice to do anything under this section must do it within the period of 28 days beginning with the day on which the notice is given.*

12. The law is therefore entirely clear, the landlord must provide information about service charges being information an RTM might reasonably require in connection with the exercise of the right to manage. Subsequent to that the landlord is obliged by s.94 to hand over to the RTM any accrued uncommitted service charges as defined by the section. The applicant says that neither of these obligations have been performed by the respondent. It is for this Tribunal to ascertain if this is so and if it is what amount is due to the applicant from the respondent

13. The applicant says in its statement of case “The Applicant estimates that the amount of service charges to be paid under this section is £21,563.57 exclusive of any interest that has accrued, which is recoverable under ss94(1) and (2)(b) CALRA 2002.” How that amount is calculated was set out by the applicant as follows –

*“Prior to exercising their right to manage, the lessees of flats A, B, C, D, G, J and K (“the Contributing Lessees”) paid service charges to the Respondent via its then managing agent, including an amount for planned major works. To the best of the Applicant’s knowledge, the total amount paid in respect of the planned major works was £49,549.48 paid as follows:*

*£12,896.44 paid by the lessee of Flat A (Mr C Smith) on 3 April 2018;*

*£6,108.84 paid by the lessee of Flat B (Mr A Denny) on 6 November 2017;*

*£6,108.84 paid by the lessee of Flat C (Miss N Block) on 24 November 2017;*

*£6,108.84 paid by the lessee of Flat D (Mr Shutes) on 21 November 2017;*

*£6,108.84 paid by the lessee of Flat G (Ms D M Bewers) on 15 January 2018, 2 February 2018 and 9 April 2018;*

*£6,108.84 paid by the lessee of Flat J (Mr N Bewsher) on 7 December 2017;*

*£6,108.84 paid by the lessee of Flat K (Ms M Hepworth) on 20 November 2017....*

*The Respondent only paid the sum of £27,985.91 to the Applicant after the right to manage was acquired in 2018. Due to the Respondent's failure to provide accounts and financial information in breach of s93 CALRA 2002, the Applicant does not know whether this sum represented solely service charges collected for the planned major works or whether it included other monies owed to the Applicant. Even if all of this sum represented the accrued uncommitted service charges collected for the planned major works, the Respondent is still liable to pay a further £21,563.57 to the Applicant, in addition to any interest that had accrued."*

14. Accordingly, the applicant asserts that the sum due as uncommitted service charges amounts to £21,563.57. The service charge payments set out above were in respect of major works that were never carried out and that consequently the monies are repayable. It is therefore the applicant's case that the major works did not take place and so the monies remained subject to the statutory trust and the Respondent's fiduciary duty and statutory obligations continued. The £49,549.48 was therefore accrued uncommitted service charges – they had been paid to the Respondent, either directly or through its agents, and no expenditure was incurred in relation to the major works.
15. The respondent has not really properly responded to the applicants claim. Indeed, an unless order was issued by the Tribunal on 28 January 2022 when Judge Vance wrote "The Applicant asserts that the Respondent has failed to provide to the Applicant a statement in reply to the application, any legal submissions, and copies of all documents relied upon by the specified deadline of 21 December 2021. I order as follows: Unless, by 11 February 2022, the Respondent complies with paragraph 3 of the tribunal's directions of 23 November 2021, it will be debarred from taking any further part in these proceedings (except for attendance at the hearing) without specific permission from the tribunal. If the Respondent is debarred, the Tribunal need not consider

any response or other submission made by that it, and may summarily determine any or all issues against the Respondent.”

16. This prompted a statement from Maritza Stitcher, the sole director of the freeholder. The statement was unsatisfactory in that it did not respond to the applicant’s statement of case but merely asked for proof of payments, copies of correspondence, and then asserted that it made no admissions about works carried out or not. The statement ended up by saying that the director will only be in a better position to investigate the claims once she has had sight of all the documents and replies requested. This is very unsatisfactory bearing in mind the amount of time that has passed since the dispute arose. The applicants confirmed that they had made numerous requests for the money since 17 July 2020 including a letter before action on 6 January 2021 and 17 February 2021.
17. Indeed, before that and in pursuance of its rights to information under s93 the Applicant has sought confirmation from the Respondent of the service charge amounts, including copies of bank account details and the annual accounts. The Applicant has made numerous requests for this information, including by letters and emails on 2 July 2018, 7 August 2018, 2 October 2018, 9 November 2018, 21 December 2018, 17 July 2020, 6 January 2021, 17 February 2021 but without any proper response being forthcoming. Moreover, there was also some confusion over who actually represented the respondent and this too contributed to the delay and doubt surrounding this case.
18. It is unfortunate that the respondent has responded in this way as it is apparent to the Tribunal that this is plainly a breach of section 93. It is not for the respondent to ask for this information it is a statutory duty on the respondent to provide this information and yet it has not done so. The explanations/excuses provided by the respondent are simply not good enough. In the absence of any proper response or evidence from the respondent the Tribunal came to the inescapable conclusion that the respondent was prevaricating and was either unwilling or unable to provide the required information.

19. It was clear to this Tribunal that the applicant had presented a strong case for a refund. It had provided details of what had been paid and when. It showed that major works had not been carried out and it also conceded that a refund had been made by the respondent that reduced the sum outstanding to the sum of £21,563.57. On the other hand there was nothing from the respondent that could persuade the Tribunal that any of the evidence was wrong or doubtful. In these circumstances the Tribunal had no alternative but to determine that the full sum claimed by the applicant in the sum of £21,563.57 is due and payable by the respondent to the applicant being accrued uncommitted service charges refundable by reason of section 94 of the Commonhold and Leasehold Reform Act 2002.

### **APPLICATION FOR COSTS**

20. The applicant confirmed that an application for costs will be considered by the company once this decision was issued and therefore there was nothing for the Tribunal to consider in regard to costs at the time of the hearing and certainly it had no detailed submissions on costs before it. The Tribunal therefore refers the parties to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) that deals with costs as well as the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type.

**Name:** Judge Professor Robert  
Abbey

**Date:** 6 April 2022