



**Property** : 1-11 Bay View Court,  
Stour Road,  
Harwich,  
Essex CO12 3GS

**Applicant** : Bay View Court RTM Co. Ltd.

**Respondent** : Chancery Lane Investments Ltd.

**Date of Application** : 17<sup>th</sup> September 2012

**Type of Application** : For an Order that the Applicant was  
entitled to accrued uncommitted service  
charges as at the acquisition of the right  
to manage i.e. 23<sup>rd</sup> April 2012 (Section  
94(3) Commonhold and Leasehold  
Reform Act 2002 ("the 2002 Act"))

**The Tribunal** : Mr. Bruce Edgington (lawyer chair)  
Mr. David Brown FRICS MCI Arb

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## DECISION

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1. This Application fails as the Applicant has not satisfied the Tribunal that there are any accrued uncommitted service charges as at the acquisition of the right to manage on the 23<sup>rd</sup> April 2012.

### Reasons

#### Introduction

2. The Applicant is a Right to Manage Company ("RTM") and this Tribunal decided on the 23<sup>rd</sup> January 2012 that it had acquired the right to manage the property as at 23<sup>rd</sup> April 2012. It has been in correspondence with the Respondent and its agent over the months seeking to obtain accrued uncommitted service charges.
3. The Respondent has said that there are none. In fact, because some lessees have not paid service charges, the service charge account is in deficit to the extent of £1,158.58 and the Respondent has also had to incur the expense of an accountant to prepare the handover accounts in the sum of £175.00.

### **Procedure**

4. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in a directions order dated 10<sup>th</sup> October 2012 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 29<sup>th</sup> November 2012 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received. The Tribunal also ordered that a bundle of documents be filed to enable the determination to take place and this was sent with a letter dated 17<sup>th</sup> December 2012.
5. In the same directions order, the Respondent was ordered to file a statement of reply to the application. There was no such statement in the bundle submitted by the Applicant. In view of this decision, the Tribunal has not made any further enquiries as the order requested has not been made.

### **The Law**

6. The relevant part of Section 94 of the 2002 Act states as follows:-

*“(1) Where the right to manage premises is to be acquired by a RTM company, a person who is....landlord under a lease of the whole or any part of 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*

Subsection 94(3) gives this Tribunal the jurisdiction to determine the amount of such accrued uncommitted service charges as exist.

### **The Applicant's Submissions**

7. The Applicant says that has received the audited service charge account for the period 1<sup>st</sup> January 2012 to 24<sup>th</sup> April 2012 which, in accordance with normal accounting practice, includes the previous figures for the year up to 31<sup>st</sup> December 2011. However, it cannot understand why there is a deficit.
8. It therefore asks the Tribunal to order that the Respondent answer some questions and produce supporting documents. These are set out in the bundle at pages 36-40 i.e. some 5 pages.

### **The Respondent's Submissions**

9. The Respondent's position from the letters in the bundle is, in effect, that they have supplied audited accounts and that as soon as the deficit and the £175 for the accountant's fees are handed over, they will co-operate with practical matters.

## **Conclusions**

10. Section 93 of the 2002 Act deals with the issue of what documentation has to be handed over on acquisition. Unfortunately for the Applicant, this Tribunal is not given the jurisdiction to make an order that the landlord shall hand over any documents or information. Presumably this is because if there is a failure to do this and the RTM is incurred in cost as a result, it will have a right of action against the landlord for damages for breach of statutory duty.
11. As to the application itself, this is for an order that the landlord hands over accrued uncommitted service charges which this Tribunal finds are due. In order to do that, the Tribunal needs to be satisfied, with evidence, that there are any such monies.
12. The explanation for the deficit given by the Respondent in correspondence is that the majority of the lessees have withheld paying service charges. The amount according to the audited accounts is £12,433.56. Even the Applicant seems to accept that £10,966.14 is unpaid.
13. There is no application for this Tribunal to determine the reasonableness of service charges demanded. There is no indication that the lessees have exercised their rights under Section 22 of the **Landlord and Tenant Act 1985** to inspect documents supporting a service charge demand. Neither the Applicant nor the lessees appear to have instructed an accountant to examine the audited accounts.
14. The problem with this application is that the Applicant is just expecting the Tribunal to sort out what it perceives is a problem. If the Applicant and/or the lessees have a problem with the audited accounts, then there needs to be a forensic examination of the accounts and the supporting documentation. This Tribunal is here to resolve disputes by deciding which evidence presented to it is preferred. It cannot provide expert 'evidence' at the behest of one party to counteract evidence produced by the other.
15. The Tribunal finds, on the balance of probabilities, from the evidence it has seen, that there is a deficit and that until the lessees pay their outstanding service charges so that there are accrued uncommitted service charges to hand over, obtain persuasive evidence that the audited accounts are wrong, or come to some accommodation with the Respondent, then the stalemate will continue.

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**Bruce Edgington**

**Chair**

**9<sup>th</sup> January 2013**