

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

B E T W E E N:

TRIPLEROSE LTD

Applicant

AND

BRIDGE COURT SOUTH RTM CO Ltd

Respondent

STATEMENT OF CASE ON BEHALF
OF THE APPLICANT

Introduction

1. Triplerose Ltd is the freehold owner of a development known as Bridge Court, London, E10 (Title EGL1574). That development comprises, *inter alia*, two residential blocks (comprising 47 flats) and one commercial unit.
2. One of those blocks (flats 26-48) has exercised the Right to Manage through the Respondent company. The Applicant remains responsible for the management of the other block.
3. The leases of the residential flats do not distinguish between the two blocks. They refer to one “Building” which is known as Bridge Court and is situated at 340-354, Lea Bridge Road, London.
4. That treatment of the two blocks as one “Building” carries over into the service charge provisions. The leaseholders have to contribute towards the costs of insuring “the Building” and of maintaining “the Building”. In most (but not all) of the leases, the service charge is set at 1/48th of the costs.

5. Over the years, service charge funds have therefore been collected from the leaseholders of each “block” and held in one fund. There is no division of costs or funds by “block”. There is also a significant reserve fund which was planned to be used on scheduled major works.

The RTM

6. The effect of the RTM claim is that the block comprising flats 26-48 is now being managed by the Respondent in a manner which is inconsistent with the lease structure. That is simply an effect of the way in which the RTM legislation has developed and been interpreted (most notably, the decisions in *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372 and *Triplerose Ltd v Ninety Broomfield Road RTM Co Ltd* [2015] EWCA Civ 282).

7. The problem in the present case concerns s.94, Commonhold and Leasehold Reform Act 2002:

“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 the 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.”

8. The Applicant does not know what – if anything – is payable to the Respondent under this provision. There is not (and has never been) a separate fund for this block. There is one fund for the whole development.

9. Moreover, the Applicant is unwilling to make an estimate or apportionment. As a statutory trustee of the service charge funds (s.42, Landlord and Tenant Act 1987) that would be inappropriate.

10. Accordingly, the FTT needs to decide what – if anything – should be paid over to the Respondent.

Case for the Applicant: nothing is payable

11. The Applicant considers that, as a matter of law, nothing is payable. The reasons are as follows:

- (a) the amount to be paid requires the identification of the amount of uncommitted service charges paid “in respect of the premises”;
- (b) “premises” has one meaning throughout all of the 2002 Act (*90 Broomfield*, at [62]);
- (c) it means the self-contained building or part of a building over which the RTM has been acquired (*ibid*);
- (d) no monies have been paid in respect of the block comprising flats 26-48;
- (e) the money has all been paid in respect of the entire development (known as “the Building” in the residential leases).

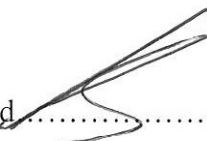
12. It follows that nothing is payable to the respondent.

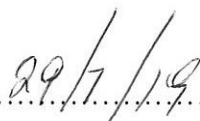
Justin Bates

21.7.19

Statement of Truth

I believe that the facts stated herein are true. I am duly authorised to sign this statement on behalf of the Applicant

Signed 

Dated 

Name 

Position 