



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

Case references : LON/00BG/LSC/2019/0277

Property : Canary Riverside Estate,
Westferry Circus, London E14

Applicants : Various leaseholders represented
by the Residents Association of
Canary Riverside

Respondents : (1) Canary Riverside Estate
Management Limited (“CREM”)
(2) Octagon Overseas Limited

Interested Persons (1) Mr Sol Unsdorfer
(2) Mr Alan Coates

Type of application : Liability to pay service charges

Tribunal : Judge Amran Vance

Venue : 10 Alfred Place, London WC1E 7LR

Date of Directions : 29 September 2021

Amended by Judge Vance : 8 October 2021

ORDER UNDER RULE 20(1)(B) TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) (PROPERTY CHAMBER) RULES 2013 AND FURTHER DIRECTIONS

Background

1. This Order and the directions set out below are made following a case management hearing (“CMH”) that took place on 27 September 2021. Present at the CMH were Ms Jezard the lay representative for the Applicants, and Mr Bates, counsel for the Respondents. Also present were Mr Dovar, (counsel for Mr Unsdorfer, the current Manager of the Estate), and Ms Cattermole, (counsel for Mr Coates, the former Manager).
2. In a decision dated 30 June 2021, I determined an application made by the Applicant leaseholders under rule 20(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”) seeking an order that Reich Insurance Brokers Limited produce documents and provide them with information concerning remuneration received by Reich, and any commissions, commission-sharing arrangements, or other remuneration accruing to the First and Second Respondents and/or its agents, in respect of insurance cover placed by Reich in regard to the Canary Riverside Estate for the service charge years 2010/11 to 2020/21 inclusive.
3. I refused that application, primarily on the basis that it was premature, as I considered the Applicants had been provided with sufficient information and documentation to provide their initial statement of case. Until they had done so I considered it premature, to pursue a rule 20(1)(b) application for either third party disclosure or an application for specific disclosure under rule 18. That was because they first needed to demonstrate how any disclosure sought would support their case, and that this could not be demonstrated until after their case has been first presented.
4. After that decision was issued I was informed that the Applicants had, unknown to me, already served their initial statement of case on 18 December 2020. I therefore directed, on 17 August 2021, that as that the document was not before me when I made my decision, that it was open to any party to pursue a late application to set aside the decision under Rule 51 of the tribunal’s 2013 Rules. I would then consider if it was in the interests of justice to set aside and re-make the decision, or any part of it. No such application has been made.
5. In directions issued on 1 October 2019 (amended on 16 October 2019) [31] I had directed that the Respondents, by 8 November 2019, were, amongst other matters, to send to the Applicants and the Interested Persons, for the years 2016/17 to 2019/20 inclusive, details of:

“any and all commissions or other benefits in kind whatsoever paid by or on behalf of the insurer or any broker to either of them or to the Landlord or any agent, company, or person connected with the Landlord or its

officers or directors in anyway whatsoever, showing both the amount paid and the recipient(s)”.

6. Compliance with the October 2019 directions was delayed, partly as a result of the Covid-19 pandemic. In a written statement dated 28 August 2020 **[283]** the Respondents confirmed that they, through their managing agent, engage Reich Insurance Brokers Limited (“Reich”) to assist with placing the insurance for the Estate and that Reich receives a broker’s fee for doing so. The Respondents also stated that they did not have access to, and were not aware of, any other insurance related income received by either Reich or their managing agents.
7. The Applicants were dissatisfied with the First and Second Respondents response and sought further extensive disclosure of documents. In further directions dated 5 October 2020, I directed that by 13 November 2020, the Respondents were to provide to the Applicants a schedule in respect of each period of insurance cover, certain information including:
 - (a) *“any remuneration, commission, or other sources of income or benefits, relating to the placing or managing of insurance, received by either of the respondents, or any agent, broker, company, or person connected with the Landlord or its officers or directors; and*
 - (b) *any other sources of income and related income or other benefits including commissions arising from the provision of insurance; and what services, if any, provided for the income received.*
8. On 13 November 2020, the Respondents disclosed documents relating to the placing of insurance on the Estate **[284-289]** and provided a statement as to how the insurance premiums were broken down for the years in dispute. A footnote to that breakdown **[284]** reads as follows:

“Reich insurance brokers have since confirmed that although they do not receive commissions on a property by property basis, they do receive commissions on the global insurance policies that they place on behalf of the Yianis Group of companies. They do however estimate that from 2013 - 2019 (7 years) they have earned total revenues across all of the CREM policies (inclusive of broker fees) of £201,077, which equates to an average of £28,725.38 per year. All such commissions are incorporated within the premiums.”
9. Also disclosed by the Respondents to the Applicants was an email from Nick Symes, a Property Director at the Reich Group of Companies, to Mr Paul Curtis at the Yiannis Group (of which the Respondents are subsidiary companies), sent on 13 November 2020. That email reads as follows:

“As discussed, our earnings are calculated at policy level which includes all your assets and not for each individual building.

However, I can confirm the total commission and fees retained by Reich on CREM for the period 2013 to 2019 amounted to £201,077.65 which equates to an average of £28,725.38 per annum.”

10. During the course of the CMH on 27 September 2021, Ms Jezard made clear to me that this email was not disclosed to the Applicants until after they had made their Rule 20 application against Reich dated 25 November 2020. She also informed me that Reich have previously refused to provide information to the Applicants because they are not the policy holder.
11. In summary, in this case the Applicants were initially informed, in August 2020, that the Respondents were not aware of any other insurance related income, other than brokers fees, received either Reich. That statement was then qualified, on 13 November 2020, to say that Reich received commissions on the global insurance policies placed on behalf of the Yianis Group of companies, estimated to be an average of £28,725.38 per year for years 2013 - 2019 across all of the CREM policies (inclusive of broker fees) of £201,077.
12. Rule 20(1)(b) gives the tribunal the power, on its own initiative, to order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
13. I consider it appropriate in this case to make a Rule 20(1)(b) order, requiring Reich to answer questions and to produce documents in respect of the contents of the email of 13 November 2020. As this order is being made on the tribunal’s own initiative, and without representations from Reich, I do not consider it appropriate to make the extensive order initially sought by the Applicants. I do, however make the more limited order below for the following reasons:
 - (a) I have now, for the first time, had sight of the Applicants’ statement of case dated 18 December 2020 [71]. In that statement of case, they specifically assert that the insurance costs in issue include unreasonable undisclosed commissions. They refer to a hearing before the Tribunal on 2 March 2017, when, they say, oral evidence given on behalf of Reich, that it received commissions of approximately £50,000 per year in respect of the Estate. Given the asserted disparity between that oral evidence and the contents of the 13 November 2020 email, I consider clarification from Reich as to the commissions received, and disclosure of the class of documents referred to, is desirable to assist in the fair disposal of this dispute; and

(b) The Applicant's Rule 20(1)(b) application was determined after they had served their statement of case on 18 December 2020. I consider that in order to properly advance their case they are entitled to receive an explanation as to how Reich arrive at the estimate of £28,725.38 and what proportion of that sum concerns the Estate.

14. The Applicants also sought disclosure of correspondence concerning Reich's receipt of commissions from Mr Coates. Ms Jezard referred to an email exchange in March 2017 between Ms Danielle Williams, of Alexander Bonhill Limited, the insurance and risk management arm of the HML Group, and Mr Coates [182] in which Ms Williams refers to the main buildings policy being "at 50% commission" and estimates that "Reich could have been earning up to £231,414". Ms Cattermole confirmed that Mr Coates was willing to provide disclosure of the documents referred to in the directions below.

Order under rule 20(1)(b)

1. By ~~22 October~~ **1 November 2021** Reich Insurance Brokers Limited must provide to the tribunal, the Applicants, and to the Respondents and Interested Persons, a statement detailing and breaking down the commission or remuneration it received in relation the Canary Riverside Estate, either from the Respondents or from any party acting on their behalf of the Respondents, for the years 2013 to 2019 inclusive, together with copies of any relevant letter, emails or other documents concerning receipt of such commission or remuneration for the years in question.
2. As the Order in the paragraph above was made without notice to Reich, it may apply to set aside or vary the Order within seven days of receipt.

Further Directions

3. By **22 October 2021** Mr Coates is to provide to the Applicants, Respondents, and Mr Unsorfer, copies of all emails or other correspondence between him and Ms Williams concerning the question of insurance commissions that may have been received by Reich for the years 2013 to 2019 inclusive.
4. By **22 October 2021** the parties must return the accompanying Listing Questionnaires to the tribunal showing any dates to avoid for a hearing in February or March 2022. The time estimate for the hearing is **two days**. If any party considers that to be inappropriate they must notify the tribunal. The hearing will be by way of video conferencing unless notified otherwise.

5. By **19 29 November 2021** the Applicants must send to the tribunal, and to the Respondents and Interested Persons their amended Statement of Case.
6. Any application to rely upon expert evidence must be made by **19 29 November 2021**, identifying the area of expertise, the name of the proposed expert, and why such evidence is required.
7. By **13 December 2021** the Respondents must send their Reply to the tribunal, the Applicants and to the Interested Persons.
8. The parties must exchange **witness statements** of fact on or before **231 January 2021**.
9. The **Applicants** are responsible for preparing the bundle for the hearing which must be in Adobe PDF format, It must be agreed with the Respondents and sent to the tribunal, the Respondents and Interested Persons no later than 14 days before the hearing.
10. The Applicants' application to amend their Application to include the 2020/21 and 2021/22 service charge years within their challenge is refused.
11. The Applicant's application for an order under Rule 20 that the general counsel acting for: (a) Tokio Marine Kiln Group Ltd; and (b) Allianz Insurance Plc attend the final hearing to give evidence and provide documents is stayed.