



HM Courts
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Service

**Property Chamber
London Residential Property
First-tier Tribunal**

10 Alfred Place, London, WC1E 7LR
Telephone: 020 7446 7700
Facsimile: 01264785060
E-mail: rplondon@hmcts.gsi.gov.uk
DX: 134205 Tottenham Court Road 2

Direct Line: 0207 446 7810

Residents' Association of Canary Riverside
29th Floor
One Canada Square
Canary Wharf
London
E14 5DY

Your ref:

Our ref: LON/00BG/LVM/2016/0023

Date: 23 May 2017

By email to
lifatcanaryriverside@gmail.com and
post

Dear Sirs

RE: Landlord & Tenant Act 1987 - Section 24(9)

PREMISES: Canary Riverside Estate, Westferry Circus, London, E14

Please find enclosed a copy of the Order dated 4 May 2017.

Yours faithfully

**Ms Jacqueline Benjamin
Case Officer**



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

Case Reference	:	LON/00BG/LVM/2016/0020 & LON/00BG/LVM/2016/0023
Property	:	Canary Riverside Estate, Westferry Circus, London E14.
Applicant	:	Mr. A. Coates, (tribunal-appointed manager)
Representative	:	Downs, Solicitors.
Respondent	:	Marathon Estates Limited (“MEL”)
Representative	:	Eversheds LLP
Interested parties	:	(1) Octagon Overseas Limited (2) Canary Riverside Estate Management (“CREM”) (3) Palace Church 3 Limited (4) YFSCR Limited (5) Yiannis Hotels And Various leaseholders as attached to the application.
Type of Order	:	Order under Rule 20 of the Tribunal Procedure Rules 2013.
Tribunal Members	:	Aileen Hamilton-Farey Mr. L. Jarero BSc, FRICS
Date of Order.	:	4 May 2017

**Order under Rule 20 of the tribunal procedure (First-tier Tribunal)
(Property Chamber) Rules 2013.**

IMPORTANT NOTE:

- **This is a formal Order and must be complied with.**

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- **Failure to comply will result in the matter being referred to the Upper Tribunal under Rule 8(5) of the Tribunal's Procedure Rules.**
 - **Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email.**

BACKGROUND

- (1) By an original decision of the tribunal dated, 5 August 2016, Mr. A. Coates of HML Andertons Plc was appointed Manager of the estate known as Canary Riverside. At paragraph 5(b) of that Order, the Landlord (CREM) was required either itself or through its agents, by 19 September 2016 to *deliver to the manager all books, papers, accounts, memoranda, records, computer records, minutes, correspondence, e-mails, fax correspondence and other documents as are necessary to the management of the Premises.*
- (2) Further clarification in relation to accounting information was detailed at 5(b)(i) – (vii) of the Order.
- (3) It is not necessary for the purposes of this Order to rehearse the deal of litigation that has followed that appointment, save to say that application for variation of the Order have been received from both the Landlord and Manager.
- (4) At a hearing on 4th and 5th April 2017 of the Landlord's application for variation, the tribunal was informed that Marathon Estates Limited were holding certain documents pending the payment of their management fees and other charges... The tribunal issued further directions on 5 April 2017 that directed CREM to require MEL within 14 days to release all those documents requested by the Manager in e-mail correspondence dated 28 March 2017.
- (5) At the re-convened hearing of this application on 2 May, the tribunal was informed that MEL had refused to release those documents, again on the basis that they had not been paid. MEL also stated that there were invoices outstanding for payment totalling in excess of £200,000, of which the Manager was not aware. In addition during the hearing the landlord also informed the tribunal that MEL had retained some of the service charge funds in relation to the estate.
- (6) The management agreement between CREM and MEL has been produced in evidence. By Clause 6.5 of that agreement (termination), *'the parties will co-operate with each other to effect an efficient and smooth transition of responsibility with respect to the Property and all third party contracts an, in particular, the Manager (MEL) will:*
 - *Promptly transfer to the Client or its nominee all information, including administrative, operations, financials, management,*

reports, accounts, documents and other information held in relation to the Property or the Client pursuant to this Agreement;

- *Collect all rent and service charge into the designated bank accounts and provide a detailed schedule of all arrears, together with a narrative of steps already taken to recover the same; and*
 - *Discharge all outstanding obligations and liabilities of the Manager to contractors, Managers and employees for whom it is contractually liable or liable pursuant to the provisions of this Agreement.*
- (7) Under Clause 6.7 of the Agreement *'The Client will be entitled to withhold payment of the annual Management Fee attributable to the last one month preceding termination of this Agreement until the transition of responsibility described has taken place'*.
- (8) It is clear from the evidence provided to the tribunal that the 'transition of responsibility' has not yet taken place, and that the parties have failed to co-operate as envisaged. It is clear from the Agreement that MEL is therefore not in a position to withhold release of the documents pending payment of its fees and charges. It also appears from the evidence provided to the tribunal that the landlord has no leverage over its' agents.
- (9) At the hearing, Mr. Coates confirmed that he required the information in relation to the accounts/receipts etc in relation to 2013 and 2014 so that he could reconcile the accounts for the later years, once all documentation had been received.

Order:

- (10) The tribunal therefore makes an Order under Rule 20(1)(b) of the Tribunal Rules, that within 14 days of 4 May 2017, that is **by the 18 May 2017**, MEL, must release to the Manager, all of those documents requested in the e-mail dated 28 March 2017, a copy of which is appended to this Order, together with, all documents detailed in Clause 6.5 of the Management Agreement. In addition MEL are Ordered to release all documents in relation to the financial years 2013 and 2014 in addition to those contained within the 28 March 2017 e-mail.
- (11) If MEL fails to provide the documents as ordered, then this matter will be referred to the Upper Tribunal under Rule 8(5) of the Tribunal Procedure Rules. In making such a referral this tribunal will ask the Upper Tribunal to exercise its powers under S.25 of the Tribunals, Courts and Enforcement Act 2007.
- (12) In accordance with Rule 20(4)a) of the Rules MEL may apply to this tribunal **on or before 11 May 2017** to vary or set aside this Order, as they have not had an opportunity to object to it.

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- (13) The tribunal has considered that a very short time frame for resolution of this matter is essential, due to the fact that the lack of documentation is preventing the Manager from carrying out his functions under the tribunal's Order.

Name: A. Hamilton-Farey
Mr. L. Jarero BSc FRICS

Date: 4 May 2017

Please see responses below:

In addition to the below, additional queries/information that were included in Mr Coates Annex:

- 1) Clarification of reconciling item between debtor control and supporting schedules (-£37,641.31). – HML advised (summary sheet 22/12/16), related to s/c payment received for unit 34a not allocated on schedule.
- 2) Explanation of balance due from previous managing agents (£101,820.02) – This amount is in dispute as advised to HML.
- 3) On A/C Inenco payment (£25,100.18) – This was an on account payment made to Inenco in error and is to be adjusted against future communal electricity payments to Inenco.

From: Angus Storar [<mailto:a.storar@downslaw.co.uk>]

Sent: 28 March 2017 08:58

To: 'London RAP'; 'Benjamin, Jacqueline (RPT)'

Cc: David Marsden; 'lifeatcanaryriverside@gmail.com'

Subject: Canary Riverside (COAT008.4) Canary Riverside Claim No. LON/00BG/LVM/2016/0020 and 2016/0023

Dear Sirs,

Octagon Overseas Limited (1) Canary Riverside Estate Management Limited (2) -v- Alan Coates Claim No. LON/00BG/LVM/2016/0020 and 2016/0023

We refer to the above matter, in particular the attached copy letter from Messrs. Trowers & Hamlins to ourselves dated 20th March 2017.

Whereas we respect the landlord's decision not to present witness evidence, for the avoidance of doubt we should be grateful if the Tribunal would confirm that no witness evidence will now be accepted from the landlords in light of their letter, whether in response to witness statements served on the 20th March 2017, or in response to Mr Coates report.

In the meantime we would be grateful if the Tribunal would direct, pursuant to Rule 6 (3)(d), that the landlords provide the documents referred to in the Annex to Mr Coates' response to the Scott Schedule, which have been the subject of previous requests, and which will be necessary for the hearing on 4th and 5th April to be meaningful, in particular:

1. Information in support of the accounts ending 31st March 2015 and 31st March 2016 as detailed below:
 - A full detailed general ledger showing all accounting transactions, through all nominal codes complete with a full closing trial balance reconciling back to cash held, debtors and creditors.
- A detailed general ledger can only be provided by Marathon Estates, as advised to HML 11/11/16. The information has been requested by the landlord. HML have subsequently been made aware that Marathon Estates are refusing to release such information whilst its outstanding fees remain unpaid. We are advised that HML have made no payments to Marathon Estates since taking control of the service charge funds.

A closing TB at 30/9/16, reconciling to all cash, debtors and creditors reconciliations was however provided to Alan Coates 28/10/16 (confirmed again 11/11/16) which would enable the completion of the accounts, and provide all necessary opening balances to take the accounts forward.

- All purchase/contractor invoices to support the expenditure shown in the accounts, whether spent, committed or accrued.
These were delivered to HML 10/10/16.

- All service charge, reserve fund, utility and any other relevant demands to support the income figures detailed in the accounts complete with a full budget matrix.
Copy S/C and Reserve Fund Demands can only be supplied by Marathon Estates. Detailed lessee statements have however been provided to HML which would contain all necessary information.
Electricity demands can only be supplied by Inenco. It is understood that HML have cancelled the Inenco contract despite recommendations to continue the agreement due to the complexity of the electricity on the Estate. HML will need to contact Inenco directly to obtain copy demands.
No separate demands are raised for gas / water. Included within S/C with exception of recharges to commercial tenants.

- Cash books and bank statements relating to all operating accounts for which transactions were processed in relation to the period, complete with reconciliations.
Cash books and historical statements can only be provided by Marathon Estates.
Reconciliations of all closing balances at 30/9/16 have previously been supplied to HML 28/10/16.
Bank statements for period 1/7/15 – 30/9/16 provided to HML (10/10/16)

2. All bank statements detailing the full transactional history of monies received and paid in relation to the service charge fund collections, reserve fund collections electrical and utilities and ground rent collections for a period from 31 March 2010. To include:
All s/c bank accounts can only be supplied by Marathon Estates. Being withheld for reasons disclosed above.
All electricity bank accounts can only be supplied by Inenco.
No ground rents as such – peppercorn.

- Account number 71465627 for which Louise Berwin confirmed was an operating account in relation to the service charge.
This is a landlord and not a S/C operating account. This account is connected to the reserve bank accounts which were held by the landlord. Due to the nature of reserve / client accounts from which payment to 3rd parties are restricted, monies were transferred from the reserve accounts to account 71465627 and then transferred directly to Marathon Estates S/C accounts to be used for the payment of 'reserve' expenditure. This is simply a pass through account as explained in the Reserve Bank Account reconciliations provided to HML 11/11/16.

Bank statements in relation to the utility recharging at the development. It may be that some of this was transacted through the service charge bank accounts but in absence of a general ledger or extended trial balance this is unclear.

As

As previously advised:

No separate bank accounts.

All electricity dealt with by Inenco

Gas / Water is included within the service charge as per any other supplier.

- Bank statements in relation to all operating accounts prior to 31/3/2016
Can only be provided by Marathon Estates.

3. A full cash book report detailing the full transactional history of monies received and paid in relation to the service charge fund collections, electrical, utilities and reserve fund collections since 31 March 2010.
Detailed S/C and Reserve Cash books can only be supplied by Marathon Estates.
Landlord reserve account details have all been provided.
Electricity cashbooks can only be supplied by Inenco. Landlord reconciliation attached confirming electricity supplier payments made by landlord, and monies still due to the landlord.
4. An extended trial balance or general ledger sufficient to reconcile the opening balance as at 1st April 2016 with the closing balances at 30th September 2016. For the avoidance of doubt this should include details of all journal entries and adjustments which have been made during the period.
Can only be provided by Marathon Estates.
Trial balance with full reconciliations (closing balances) at 30/9/16 was provided to HML 28/10/16.
5. Full debtors and creditors and creditors control accounts showing the full movement from the closing balances shown in the 31/3/2016 accounts to 30/9/2016 summary trial balance provided.
Can only be provided by Marathon Estates.
Full reconciliations of closing balances at 30/9/16 provided to HML 28/10/16
6. Copies of the VAT returns and supporting documentation for the quarters 01/04/2016 – 30/6/2016 & 01/07/2016 – 30/09/2016.
No separate VAT returns for service charge as HML advised (11/11/16 and on summary sheet 22/12/16). Historically (Pre Oct 2016) incorporated into landlord consolidated VAT return providing no information which in isolation is relevant to the service charge. Nil VAT balance transferred to HML hence no reconciliation provided.
7. Copies of all demands and credit notes raised for all units, whether this be in relation to service charges, reserves, utility recharges or in other charge levied on any unit within the development in relation to all periods relevant to the 01/04/16 – 31/03/2017 financial year.
As per 1.3 above,
S/C and Reserve Fund Demands can only be supplied by Marathon Estates.
Electricity demands can only be supplied by Inenco.
No separate demands for gas / water. Included within S/C.
8. Copies of all historical demands for all outstanding arrears items due at 30.9.2016 as these will be required to commence legal action.
Provided to HML (Dropbox and Courier – 10/10/16)
We understand that legal action (undertaken by Downs solicitors) has already commenced against a number of lessees. It is therefore presumed that HML are in receipt of all necessary information.
9. The basis of the calculation for the recharging of the electricity.
Recharge based on metered units. Operated by Inenco.
10. The basis of the calculation for recharging of the gas and water to the commercial units to enable the correct recharge of the gas and water figures totalling £134,469.82 in the schedule provided by MEL to 30.9.2016.
Method unknown, can only be explained by Marathon Estates.
11. A full unit percentage matrix supporting the 2016-2017 budgeted service charges issued which will

What is a 'unit percentage matrix'. Not a recognised term. Once explained, it is presumed this would have to be supplied by Marathon Estates if in existence. All balancing charges to be credited to lessees based upon apportionments as detailed in the leases. 2016/17 budgets provided to HML (Dropbox and Courier – 10/10/16). These budgets also appear to have been replicated by HML for the year 2017/18 and recharged to lessees confirming HML are aware of the unit percentages.

12. A schedule showing the full calculation supporting the summarised schedule provided by MEL in relation to the year end surplus credits and deficit charges due at 31/3/2016. Schedule of balancing charges / credits provided to HML 28/10/16. The calculations are based on the 2016 audited accounts apportioned as per the percentage split as detailed in the leases. It is yet to be explained why HML have failed to apply all such credits to the relevant lessee accounts.

These documents should be produced by no later than 5pm on Thursday 30th March 2017.

We look forward to hearing from you.

Yours faithfully,
Downs Solicitors LLP

ANGUS STORAR
CONSULTANT SOLICITOR AND MEDIATOR

DOWNNS

Downs Solicitors LLP
156 High Street, Dorking, Surrey, RH4 1BG
DX: 57300 DORKING

D: 01306 502291
T: 01306 880110
F: 01306 502283
E: a.storar@downslaw.co.uk

www.downslaw.co.uk

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