

This matter is being dealt with by
James Fownes

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FAO The Court Manager
The High Court of Justice
Liverpool District Registry
35 Vernon Street
Liverpool
Merseyside
L2 2BX

Our ref: .1.174602.4.JEF.KN
Your ref: E3OLV132

3 April 2018

BY POST, EMAIL AND FAX:
e-filing@liverpool.countycourt.gsi.gov.uk / 01264 785 132

Dear Sir

Our clients: Urban Student Life Limited, David Choules, Declan Lowy and Andrew Buchanan
Claim Number: E3OLV132

We act for the above named Defendants in this matter.

Please find enclosed for lodging with the Court the Defendants' Acknowledgment of Service and the Witness Statement of James Fownes.

We confirm that a copy of these documents has been sent to the Claimant.

Should you have any queries, please contact James Fownes on the contact details set out below.

Yours faithfully



Shakespeare Martineau

Direct Line: 0121 214 0647
Direct Fax: 0121 237 3011
E: james.fownes@shma.co.uk

Acknowledgment of Service

(Part 8 claim)

You should read the 'notes for defendant' attached to the claim form which will tell you how to complete this form, and when and where to send it.

In the High Court Of Justice	
Chancery Division Liverpool District Registry	
Claim No.	E30LV132
Claimant <small>(including ref)</small>	Marc Anton Paul Horn
Defendant	Urban Student Life Limited David Choules Declan Lowy Andrew Buchanan 174602.4

Tick and complete sections A - E as appropriate.
In all cases you must complete sections F and G

Section A

I do not intend to contest this claim

Give details of any order, directions, etc. you are seeking from the court.

Section B

I intend to contest this claim

Give brief details of any different remedy you are seeking.

Section C

I intend to dispute the court's jurisdiction

(Please note, any application must be filed within 14 days of the date on which you file this acknowledgment of service)

The court office at 35 Vernon Street, Liverpool, Merseyside, L2 2BX

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

Section D

I object to the claimant issuing under this procedure

My reasons for objecting are:

This claim should have been properly brought under Part 7 given that it is significantly factually contentious.

Section E

I intend to rely on written evidence

My written evidence:

is filed with this form

will be filed within 14 days as agreed with the other party(ies). A copy of the written agreement is attached to this form

Section F


Full name of defendant filing this acknowledgment

Urban Student Life Limited, David Choules, Declan Lowy and Andrew Buchanan

Section G

Signed
(To be signed by you or by your solicitor or litigation friend)

~~XXXXXX~~ (The defendant believes) that the facts stated in this form are true. *I am duly authorised by the defendant to sign this statement



JAMES FOWLES

**delete as appropriate*

Position or office held
(if signing on behalf of firm or company)

Associate Partner for and on behalf of Shakespeare Martineau LLP

Date

3 April 2018

Give an address to which notices about this case can be sent to you

Shakespeare Martineau LLP
No 1 Colmore Square
Birmingham

Postcode B4 6AA

if applicable	
Ref.no.	174602.4/JEF/KN
fax no.	0121 237 3011
DX no.	DX 721090 Birmingham 43
e-mail	james.fowles@shma.co.uk

Tel. no. 0121 214 0000

(1): Defendants
(2): James Fownes
(3): First
(4): 3 April 2018

CLAIM NO. E3OLV132

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN LIVERPOOL

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

BETWEEN

MARC ANTON PAUL HORN

Claimant

and

MR CARL MILLS AND OTHERS

Defendants

WITNESS STATEMENT
OF JAMES EDWARD ROGER FOWNES

I, **JAMES EDWARD ROGER FOWNES**, of Shakespeare Martineau LLP, No.1 Colmore Square, Birmingham, B4 6AA WILL SAY AS FOLLOWS:

1. I am an Associate Partner and Solicitor at Shakespeare Martineau LLP, solicitors for the following Defendants: Urban Student Life Limited, David Choules, Declan Lowy and Andrew Buchanan. I have the conduct of this matter. I am duly authorised by the aforementioned Defendants to make this statement. All matters to which I refer are believed by me to be true.
2. This witness statement is made in response to the Claimant's Part 8 claim relating to Unit 609, Austin Hall, Servia Road, Leeds ("the Property") and related matters.

3. Save for where I indicate to the contrary, the facts and matters which I confirm in this Statement are within my own knowledge. If the facts and matters which I confirm in this Statement are not within my own knowledge, I have confirmed the source of my information or beliefs and I confirm that the facts and matters are true to the best of my knowledge and belief.

BACKGROUND

4. My firm acts for Urban Student Life ("USL") in connection with issues arising concerning their role as letting agent for various blocks of student accommodation across the country. The relevant properties are located in places such as Chester, Canterbury, Liverpool, and Leeds. As regards USL, late last year Valeo Management Limited effectively acquired the assets of USL via a hive up arrangement.
5. However, at least until recently, USL was not the head/main agent for these properties; Hollinberry Estates Limited (formerly Harper Books (UK) Limited) ("HB") was the main/head agent responsible for managing the properties. HB sub-contracted many of its duties to USL pursuant to various contracts called Management Services Agreements or MSAs.
6. Under the MSAs, USL was obliged to carry out various duties such as signing up students to letting agreements (e.g. Assured Shorthold Tenancies), collecting their rent, and providing other limited services. HB's obligations as managing agent derived from contracts it had with the various individual investors in the properties (more than circa 900 across the portfolio – many of whom are from overseas e.g. Hong Kong / Singapore). As regards "investors", this means individuals which have taken / agreed to take long leases of one or more individual units at the properties.
7. In terms of the ownership / landlord and tenant structure at the properties, the investors have taken long leases from HB related companies (e.g. Pinnacle / Bloom Properties) which hold head leasehold interests at the majority of the properties. In terms of the subject Property, it is a company called Pinnacle Student Developments (Leeds) Limited which hold the head leasehold interest.

8. The freeholder of the properties is usually Tuscola (105) Limited, which is a BVI company, under the control of Michael Gubbay (one of the named Defendants). This is the case with the subject Property.
9. The main benefit for the individual investors was that they would receive a guaranteed return "the Assured Rent" for a certain period. As I understand it, this would be paid by HB and topped up by the Pinnacle / Bloom companies as necessary.
10. However, such matters came to my firm's attention early last summer when it transpired that in many cases, individual investors had not been paid their Assured Rents for one or more quarters. This triggered a dispute in which many of the investors requested that USL refrain from paying up any more monies collected to HB on the basis that they had a proprietary interest in the monies or that such monies were effectively held on trust for them. Many investors also terminated their contracts with HB. At the same time HB continued to demand that the monies were paid up to them via the relevant contracts by USL.
11. USL was therefore "caught in the middle" of competing claims to the monies. On the one hand it had a contractual obligation to pay it over to HB. On the other hand, the investors were saying HB had breached its agreement with them or that the agreement had been terminated and so they were entitled to the money. Matters were complicated by the fact that not all investors had made claims or sought to terminate their agreements.
12. To seek to resolve matters, USL agreed with HB in November 2017 that HB would not continue in its position as head agent and that their MSAs were terminated as at that point. This was on the basis that HB would prepare closing accounts for approval by USL, with appropriate sums being released to investors (net of fees etc). As I understand it, this process has not been concluded at the time of writing this statement. Even if that process is completed, it does not follow that USL will have any direct liabilities to any investors (in particular the Claimant).

AUSTIN HALL AND ASQUITH HOUSE

13. The subject Property is within the development at Austin Hall and Asquith House. There are wider issues in relation to this particular development. My understanding is that, at least in many cases, the agreements for sale of the various units from Pinnacle Student Developments (Leeds) Limited and the investors have not legally completed. Such investors are therefore not the registered legal owners of the units. This is despite a Practical Completion Certificate having been issued for the purposes of the various agreements for sale some time ago and the trigger for legal to Completion to take place within a defined period thereafter. Accordingly, as I understand it, and subject to the validity and effectiveness of the Practical Completion Certificate, Pinnacle Student Developments (Leeds) Limited was obliged to legally complete the sales to the investors. There is therefore a dispute over the right to the rental monies which USL has collected in the meantime with some investors asserting that they own the monies in equity and Pinnacle Student Developments (Leeds) limited asserting that it owns the monies at law.
14. It is not clear to me as to whether the Claimant is now the legal owner of the Property or not.

THE CLAIM

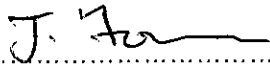
15. It is not clear as to whether or not USL is a defendant. However, to the extent that it is, my firm represents that company and David Choules, Declan Lowy and Andrew Buchanan are the current Directors of USL. However, I do not understand why the claimant considers that it is appropriate to bring claims against them in their personal capacities and at first blush such claims seem unsustainable and liable to be struck out. However, the claim is so confused and unparticularised, it is difficult to tell what the Claimant is in fact claiming.
16. I am told by Andrew Buchanan that the monies which USL collected as letting agent are now held by Valeo USL Holdco Limited (which is effectively carrying on the business of USL under the USL brand).

17. As regards the action which the Claimant has commenced, it is impossible to understand precisely what those claims are against my firm's clients. They are not properly particularised or not particularised at all.

18. Similarly, it is not at all clear what remedies the Claimant is seeking against my firm's clients. As such it is not at all clear on what basis my firm's clients have been joined into this action. Accordingly, it is not possible to formally respond to the claims unless and until such claims are properly particularised.

19. If the Claimant does not properly particularise the claim, then it is likely that my firm will be advising its clients to apply for such claims to be struck out in due course.

I believe that the facts stated in this witness statement are true.


.....

James Edward Roger Fownes

Dated: 3 April 2018

(1): Defendants
(2): James Fownes
(3): First
(4): 3 April 2018

CLAIM NO. E3OLV132

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN LIVERPOOL

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

BETWEEN

MARC ANTON PAUL HORN

Claimant

and

MR CARL MILLS AND OTHERS

Defendants

**WITNESS STATEMENT
OF JAMES EDWARD ROGER FOWNES**

Shakespeare Martineau LLP
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Ref: JEF/KN/174602.4