



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

Case reference : **LON/00AF/LSH/2024/0005**

Property : **76 Reddown Road, Coulsdon, CR151AL**

Applicants : **Adam Butler and Aimee Butler
Max Harris and Stephanie McDonnell
Prasan Prabhakaran and Shanmugha
Priya Prasan
Ravi Somasundram
Samuel and Victoria Martin
Adam Munday and Elizabeth Ratsma
Lauren Haynes
Mishaal Patel and Carol Shah**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **For the determination of the liability to
pay and reasonableness of service
charges under section 27A of the
Landlord and Tenant Act 1985**

Tribunal members : **Judge H. Lumby
Mr S Mason BSc FRICS**

Venue : **Paper determination**

Date of decision : **29 April 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that 76 Reddown Road RTM Company Limited acquired the right to manage the Property on 10 January 2024.
- (2) The tribunal determines that the estimated service charge payable by the Applicants for the period December 2023 to June 2024 should be apportioned so that only the pro rata share up to and including 9 January 2024 is payable.
- (3) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicants seek determinations pursuant to s.90 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to when their RTM Company acquired the right to manage the Property and pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether any service charges are payable by them for the current service charge year and if so what amount.

The background

2. The Property comprises nine purpose built flats completed in 2021 with private parking and communal gardens.
3. The Applicants are all leaseholders in the Property and the freehold is vested in the Respondent.
4. The Applicants have separately brought a claim pursuant to s.27A of the 1985 Act in respect to service charges prior to the current one. This application relates solely to the 2024 service charge year.
5. The Applicants have previously applied pursuant to the 2002 Act for an RTM Company formed by them (76 Reddown Road RTM Company Limited and referred to as “the RTM Company”) to acquire the right to manage the Property. The Tribunal by a decision dated 6 June 2023 determined that the RTM Company’s claim for the right to manage the Property was valid and would take effect from 6 September 2023.
6. The Respondent requested permission from the Tribunal to appeal the Tribunal’s decision and this was refused on 29 August 2023. The Respondent then applied direct to the Upper Tribunal for permission to appeal and this was in turn refused on 9 October 2023.

7. The Applicants contend the RTM Company acquired the right to manage the Property on 6 September 2023. The Respondent on the other hand contends that the right to manage was acquired on 10 January 2024. It has issued service charge demands covering the period December 2023 to June 2024, based on an estimated cost for that period.

The issues

8. The issues to be determined by the tribunal is the date on which the RTM Company acquired the right to manage and whether any service charge is payable to the Respondent from December 2023 and if so how much.

Tribunal analysis

9. This has been a determination on the papers. The tribunal has considered a bundle running to 63 pages received from the Applicants. The tribunal has also seen a specimen lease provided with the Applicants' application. No submissions were received from the Respondent. Having considered all of the documents provided, the tribunal has made determinations on the remaining issues as follows.

Law

10. The 2002 Act deals with application for right to manage properties. Section 84(5)(a) of the 2002 Act provides that in situations where a landlord objects to the acquisition, the right to manage is not acquired until it is finally determined that the RTM company was on the relevant date entitled to acquire the right to manage the relevant property.
11. Section 90(4) of the 2002 Act provides that "*where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final*".
12. It is clear from a reading of the relevant sections of the 1985 Act that the service charge provisions contained in a residential lease must be read subject to the effect of those sections. Section 18 of the 1985 Act defines "*relevant costs*" as including payments for services and management, and under section 19 of the 1985 Act "*Relevant costs shall be taken into account in determining the amount of a service charge payable for a period - (a) only to the extent that they are reasonably incurred, and (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard*".
13. Section 19(2) of the 1985 Act goes on to provide in relation to service charge that is payable before the relevant sums are incurred "*no greater amount than is reasonable is so payable*".

14. Any demands for payment of estimated service charge are therefore subject to section 19(2) of the 1985 Act and are only payable to the extent that the amount requested is reasonable.

Right to Manage

15. The tribunal considered when the right to manage was acquired by the RTM Company, applying section 90(4) of the 2002 Act. That section provides that this occurs three months after the date when the determination of its right to manage becomes final.
16. The Applicants argue that this should be calculated from the date of the Tribunal' determination in June 2023. The Respondent argues that it is three months from the Upper Tribunal's refusal of the Respondent's request to appeal.
17. The tribunal determines that the date on which a determination becomes final is the first date when no appeal or challenge can be made to the determination. In this case that is the date when the Respondent can bring no further appeal in relation to the right to manage. That date occurred in this case when the Upper Tribunal refused the Respondent's application for leave to appeal on 9 October 2023.
18. Accordingly, the RTM Company acquired the right to manage the Property on the date three months from 9 October 2023. That is 10 January 2024.
19. The tribunal therefore determines that the RTM Company acquired the right to manage the Property on 10 January 2024.

Payability of service charge

20. The Respondent demanded payment in November 2023 of estimated service charge for the full period December 2023 to June 2024. It requires full payment even though the bulk of that period will be the responsibility of the RTM Company, arguing that any reconciliation will take place after the RTM Company takes over (which of course it now has).
21. The specimen lease provided does provide for the annual service charge to be payable in two equal payments twice a year. However, it is not clear what the service charge year is now, as that suggests a service charge ending in March. It is not clear what period is covered by the demand in November, as it refers to December 2023 to June 2024, which would appear to be seven months so more than half the year.

22. In any event, those provisions will be subject to section 19(2) of the 1985 Act, requiring that on account payments should be no more than is reasonable.
23. The tribunal determines that the Applicants are liable to pay service charge to the Respondent until 9 January 2024, which can include estimated sums with adjustments made when sums are finalised. The Applicants have not challenged any specific sums in the estimate.
24. Applying section 19(2) of the 1985 Act, the tribunal considers that the demand in November 2023 made by the Respondent should be for no more than is reasonable. As it knew full well (based on emails in the bundle) that the RTM Company was acquiring the right to manage on 10 January 2024, it was unreasonable for it to demand payments covering the period after that date. The reasonable amount to demand would be a pro rated apportionment of the estimate.
25. The tribunal therefore determines that the reasonable estimated service charge payable by the Applicants up to and including 9 January 2024 is a pro rata amount of the total demanded, apportioned on time basis for the period covered. As these periods have not been identified clearly, the parties will need to calculate this themselves.
26. This is of course slightly academic now as the management has passed to the RTM Company and the Respondent should be accounting to the RTM Company for excess service charge monies held by it. It would therefore appear unreasonable to the tribunal for the full period to be paid, only for the bulk to be paid straight back.

Applications under s.20C and paragraph 5A

27. The Applicants have applied for cost orders under section 20C of the Landlord and Tenant Act 1985 (“**Section 20C**”) and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**Paragraph 5A**”).
28. The relevant part of Section 20C reads as follows:-

(1) “A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant...”
29. The relevant part of Paragraph 5A reads as follows:-

“A tenant of a dwelling in England may apply to the relevant ... tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs”.

30. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicant or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under their leases.
31. In this case, the Respondent has been successful on the substantive point, which was when the RTM Company acquired the right to manage. The tribunal therefore considers it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The tribunal therefore make no order.
32. For the same reasons as stated above in relation to the Section 20C cost application, the tribunal makes no order in relation to the Paragraph 5A application.

Name: Judge H Lumby

Date: 29 April 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).