FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2024/0106**
Property	:	**CANARY GATEWAY**
Applicants	:	**VARIOUS LEASEHOLDERS OF BLOCK A (1)** **VARIOUS LEASEHOLDERS OF BLOCK B (2)** **CANARY GATEWAY (BLOCK A) RTM COMPANY LTD (named as "Interested Party")** **CANARY GATEWAY (BLOCK B) RTM COMPANY LTD (named as "Interested Party")**
Respondents	:	**AVON GROUND RENTS LIMITED**
Type of Application	:	**Application for determination under s 27A LTA 1985**
Tribunal Member	:	**Judge Shepherd** **Sarah Phillips MRICS**
Date of decision	:	**10th November 2024**

DETERMINATION

1. This is a challenge to the reasonableness of service charges. The challenge is brought pursuant to s.27A Landlord and Tenant Act 1985. The challenge is brought by leaseholders at a scheme called Canary Gateway in London E14. The freeholder is Avon Ground Rents Limited. The leaseholders themselves named the two RTM companies (see below) as interested parties. In a skeleton argument prepared by Rebecca Catermole on behalf of RTM Block A any suggestion that they are interested parties is scotched. She states:

   To be clear, none of the applicant leaseholders are directors of the RTMCA. Lucy Lassman, whose name appears in the updated list at [330] was a director of RTMCA but resigned on 24 February 2022, before the making of the applications both of which are dated 1 March 2024 ***[9]; [56]****. Thus, the basis of the Respondent's assumption that the RTMCs were content "with the arrangement" is not correct in relation to RTMCA (even if such an assumption could be made which is not agreed).*

Background

2. The development consists of 7 blocks. Leaseholders sought to acquire RTM of the blocks, and for that purpose formed the RTM companies listed above. RTM in respect of 'Block B' (consisting of four named 'blocks', but being a single self-contained building for the purpose of section 72(2) of the 2002 Act) was acquired on 22 August 2022. RTM in respect of 'Block A' (consisting of the other three 'blocks', and again a single self-contained building for s.72(2) purposes) was acquired on 24 February 2024.

3. From the date of acquisition of RTM in each of blocks A and B, it is common ground that the relevant RTM company took over responsibility for the acquired management functions, pursuant to sections 96 and 97 of the 2002 Act. Also from that date, by virtue of section 97(2) of the 2002 Act, the Respondent was unable to perform those management functions itself without agreement with the RTM. To add further confusion even after the RTM was acquired for block A, the Respondents retained a role in management of aspects of the development.

4. The main issue between the parties is where the dividing line falls between retained management functions and transferred management functions. This is

not for the Tribunal to resolve in this case. In any event it doesn't arise in relation to Block A in this application and there is an agreement in place with Block B.

The Lease terms

5. The leases are in a form which is common nowadays. A service charge is payable, and is split into block, estate, residential only, and car park costs, reflecting the fact that different parties benefit to a different extent from different services. The proportions payable are a 'fair and reasonable proportion' of each group of costs.

6. The Sixth and Seventh Schedules set out the relevant costs that might be incurred by the landlord / RTM Company and recovered by way of service charge.

7. As well as a service charge challenge there is a challenge to administration charges. By paragraph 8 of the Fourth Schedule to the lease leaseholders are obliged to within a month of every assignment, transfer, sub-lease etc. give notice of the same in writing to the Respondent and, in the case of a document, produce a copy of it for registration and pay a fee of £75+VAT (or such higher sum as may from time to time be stipulated). That is a registration fee. There is no requirement for consent to sub-let where the subletting is an AST for no more than a 5 year period and the other requirements in paragraph 7(d) of the Fourth Schedule are met. It is not in dispute that the Respondent has charged a £90 (£75+VAT) fee for registration on a number of occasions.

The Law

8. The law applicable in the present case was limited. It was an assessment of the reasonableness and payability of the costs.

9. The Landlord and Tenant Act 1985,s.19 states the following:

19.— Limitation of service charges: reasonableness.

(1) 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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

1. *An application may be made to [the appropriate tribunal]2 for a determination whether a service charge is payable and, if it is, as to—*

a. *the person by whom it is payable,*

b. *the person to whom it is payable,*

c. *the amount which is payable,*

d. *the date at or by which it is payable, and*

e. *the manner in which it is payable.*

2. *Subsection (1) applies whether or not any payment has been made.*

3. *An application may also be made to [the appropriate tribunal]2 for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*

a. *the person by whom it would be payable,*

b. *the person to whom it would be payable,*

c. *the amount which would be payable,*

d. *the date at or by which it would be payable, and*

e. *the manner in which it would be payable.*

4. *No application under subsection (1) or (3) may be made in respect of a matter which—*

a. *has been agreed or admitted by the tenant,*

b. *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*

c. *has been the subject of determination by a court, or*

d. *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

5. *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

In *Waaler v Hounslow* [2017] EWCA Civ 45 the Court of Appeal held the following:

Whether costs were "reasonably incurred" within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 , as inserted, was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality, and the cost of the relevant works to be borne by the lessees was part of the context for deciding whether they had been so reasonably incurred; that the focus of the inquiry was not simply a question of the landlord's decision-making process but was also one of outcome; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable; that, further, before carrying out works of any size the landlord was obliged to comply with consultation requirements and, inter alia, conscientiously to consider the lessees' observations and to give them due weight, following which it was for the landlord to make the final decision; that the court, in deciding whether that final decision was reasonable, would accord a landlord a margin of appreciation; that, further, while the same legal test applied to all categories of work falling within the scope of the definition of "service charge" in section 18 of the 1985 Act, as inserted, there was a real difference between work which the landlord was obliged to carry out and work which was an optional improvement, and different considerations came into the assessment of reasonableness in different factual situations

10. Mr Gallagher who appeared on behalf of the leaseholders conceded that the Block B agreement limited the challenge as regards leaseholders living within that block. He also conceded that the only service charges demanded prior to the acquisition of Block A were the interim service charges levied for 2024 and payable in January. It was suggested that the sums could be calculated on a pro rata basis.

11. Mr Allison for the Respondent said that the challenges were vague. It was said that amounts were unreasonable but there was no basis for this allegation and the suggested pro rata exercise did not work. It was a budgeted sum. The only question is whether it was a reasonable charge to make.

12. Mr Hazan gave evidence on behalf of the Respondents. He said there were 239 residential units and 5 commercial units. He set the budget for the year ahead. He said the management charges were not excessive and he got the commercial units to contribute. He said that the charge made for registration was only made once per tenant.

13. Mr Allison said the interim charges for 2024 were reasonable and there was no drastic increase. It was said there had been a reduction in the management service as a result of the RTM but there was still a service provided and the sums were reasonable. The suggestion that the budget could be apportioned was wrong even if it was known that the RTM was likely when the budget was set. No comparator evidence was provided in relation to the management fees.

Determination

14. This case has been complicated by the RTM process and by side agreements made. This meant that the issues we were left with were distinct and rather limited. We consider that all of the sums sought by the Respondents are reasonable and payable. The leaseholders provided no useful evidence to raise doubt about the sums budgeted for. The management fees were reasonable notwithstanding the introduction of the RTM. Finally in relation to the registration fee we do not consider this is an administration fee within the definition at paragraph 1(1) of Schedule 11 of the 2002 Act. If we are wrong about that and the fee is a service charge as was suggested by Mr Gallagher the sums are reasonable in our view because we obtained assurance from Mr Hazan that double charging was not taking place.

15. Accordingly we will not exercise our discretion under s.20C Landlord and Tenant Act 1985

Judge Shepherd

10th November 2024

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

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