FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/12UC/LSC/2023/0031**
Property	:	**17 Tower Court, Tower Road, Ely, Cambridge**
Applicant	:	**Nicholas Sweeney**
Respondents	:	**Notting Hill Genesis (1)** **Futures Homescapes Limited (2)** **Grays Inn Capital Limited (3)**
Type of Application	:	**Application for determination under s 27A LTA 1985**
Tribunal Member	:	**Judge Shepherd** **Gerard Smith FRICS**
Date of decision	:	**4th December 2024**

DETERMINATION

1. In this case the Applicant is seeking a determination as to the reasonableness and payability of service charges. Aside from the usual arguments in relation to the service charges sought there is a less usual argument concerning the payability of service charges to another party. The Applicant alleges that service charges are not payable to Futures Homescapes Limited (The Second

Respondents) but should only be payable to Notting Hill Genesis (The First Respondents). Notting Hill Genesis say that Futures Homescapes are their agents who as such are entitled to recover the service charges.

2. The service charges are challenged relate to the years 2019-2020, 2020-21, 2021-22, 2022-23 and the estimated charges for 2023-2024 with a total value of £5,967.93.

Background

3. On 20th December 1999 Pinecraven Ely Limited granted a lease of 17 Tower Court, Tower Road, Ely, Cambridge (The premises) to Mr and Mrs Brooks. This was a third party lease with Springboard Housing Association Limited as the manager and Pinecraven Ely Ltd as the Lessor. On 1st July 2006 Springboard appointed Hundred Houses as its agent save that insurance responsibilities remained with Sprinboard. In 2011 Springboard amalgamated with other associations to form Genesis Housing Association Limited who later amalgamated with Notting Hill Housing Trust to become the The First Respondent).Genesis and latterly NHG became the company under the lease. In addition NHG maintained the agreement with Hundred Houses

4. On 27th November 2012 Mr Sweeney (The Applicant) became the leaseholder of the premises.

5. On 30th November 2015 Grays Inn Capital Limited became the freeholder of the premises.

6. On 13th September 2018 NHG entered into a contract with Futures Homeway Limited for the sale of various premises that it owned. An attempt was made to novate Futures into the 2006 agreement with Hundreds by a deed of novation dated 3rd October 2018.

7. On 11th September 2020 the First Tier Tribunal in CAM/12UC/LSC/2020/0008 found that the deed of novation did not vary the 1999 lease so that NHG were still the company responsible for the provision of services. In effect NHG still retained the benefits and burdens of the company despite its attempt to extradite itself by the deed of novation.

8. Thereafter NHG tried an alternative route to include Futures. They named Futures as their agents on demands for service charges. This was made clear in a statement on the demand from Futures saying that they were acting as managing agents for NHG.

General law on service charges

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

10. 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.

11. 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.*

12. 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

The competing arguments on the agency issue

13. Mr Bates KC who appeared on behalf of NHG said the position was simple. NHG were still responsible for the provision of services under the lease and Futures were their agents. Futures were not a party to the lease although NHG elected to use them as their agents and collect their service charges. NHG have a general power to appoint agents and this is accommodated in the lease itself. The absence of a formal agency agreement did not prevent a position of agency arising. The acts of Futures are the acts of NHG. Services performed by Futures are on behalf of NHG and pursuant to NHGs obligations under the lease. Payments to Futures are, in law, the same as payments to NHG.

14. As well as the demands already described Mr Bates relied on the fact that Futures held themselves out as managing agents in the relevant accounts; their solicitors had confirmed they were agents; the Applicant had been told about the agency arrangement and Futures could look to NHG for instructions.

15. The Applicant represented himself with skill demonstrating a knowledge of the law which is not always evident in a litigant in person. He said the previous FTT had not recognized an agency relationship. Mr Bates accepted this and said that this was not the argument relied upon at that time. Subsequently when the novation failed to achieve the object the agency arrangement was put in place. Futures argued that the agency was in place before the previous FTT hearing but Mr Bates' client accepted that if that were the case the argument should have been raised at the previous hearing but was not and it was not appropriate to raise it now as it was *res judicata*. This did not however prevent an agency agreement argument being raised now.

16. The Applicant said the consequence of an acceptance of the agency agreement was that there was a Qualified Long Term Agreement in place and there had been no consultation carried out which meant that the recoverable management fee was capped at £100. Mr Bates accepted this argument.

17. The Applicant said there was no evidence of a written agreement between the principal and the agent. Mr Bates said this didn't matter as agency could be demonstrated by other means. He relied on an extract from Bowstead and Reynolds which confirmed that contract is only one way of evidencing a relationship of agency. NHG were not required to comply with the RICS by having a written agency agreement in place.

18. The Applicant accepted that he had been paying service charges to Futures since 2019. He said that NHG had not been incurring any costs. He had written to them asking for a refund but Futures had not responded. The previous Tribunal had found he had no obligation to Futures. He described the situation as chaotic

and said he wanted some clarity. He said that Futures were carrying out the service charge collection but no sums were being paid over to NHG and the agency was costing NHG nothing. Despite the previous Tribunal Futures were still acting like the owners. Mr Bates said that since the previous decision had been made it had been made clear to the Applicant that Futures were the agents. Indeed, within a fortnight of the previous FTT decision the agency had been set up. He accepted that it would have been better in there had been a written agreement.

19. Ms Imam for Futures accepted the arguments of Mr Bates.

Determination on this issue

20. The Tribunal accepts the arguments of Mr Bates. It is clear that NHG has been attempting to extract itself from the direct management responsibility under this lease. The novation agreement was not the answer. Agency is the answer. The previous decision did not preclude this. Although the agency argument was not raised in relation to the charges sought at the previous FTT it is open to NHG to raise it now. This is not a knee jerk response to an adverse FTT decision or indeed a "last minute decision to wriggle out of the situation" as described by the Applicant. It's clear that Futures were set up properly as the agents as evident from the demands and communication with the Applicant. It would have been better if there had been a written agreement between NHG and Futures but it was not fatal to existence of an agency.

21. In any event its difficult to see how the Applicant is prejudiced here. Under his lease he must pay a service charge. NHG have appointed Futures to collect the service charge. The Applicant retains the right to sue NHG as the principal. He loses nothing from the existence of an agency agreement.

The remaining specific service charge challenges

22. General challenges were made by the Applicant as to the payability of service charges in general. Mr Sharma gave evidence on behalf of Futures. He said there were 166 residential units at the site. He explained the different functions between Futures and Hundred Houses. Hundred Houses were essentially a contractor service dealing with repairs, litter collecting and cyclical works and fire checks. He said there was no duplication between the two agents. Futures looked after the grounds maintenance, repairs over and above the contractor service, collecting the service charges and providing services. He explained the apportionment of charges between properties. He accepted that there would have been consultation over Futures agency appointment and that the leaseholders would need to be reimbursed for 2020-2022 charges in this respect. He said that insurance was split amongst leaseholders across the portfolios. He said he was happy to share information about the reserve fund for the relevant period and provide full accountability of what was charged.

23. The Tribunal were satisfied with the evidence of Mr Sharma . The services provided by Futures as an agent for NHG and the costs of those services recovered by them on behalf of NHG. The Applicant receives the service his lease requires and he pays the sums his lease requires. How NHG and Futures allocate monies between them is a matter for them.

24. Whilst the service charge is due from the Applicant to NHG the latter have directed it be paid to their agent. Unless and until NHG countermand that instruction, Mr Sweeney meets his legal obligations by paying the demands raised by Futures, as agents for NHG.

25. The remaining reserve fund issue was of no consequence. It was common ground that the company under the lease would need to have the right to hold the reserve fund notwithstanding the fact that the lease appears to confine this right to the freeholder.

Costs

26. Mr Bates did not oppose orders under s.20C, LTA 1985 accordingly we exercise our discretion in this regard.

Judge Shepherd

4th December 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.