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

**Case reference** : **LON/00BG/LSC/2017/0471**

**Property** : **Settlers Court, 17 Newport Avenue,  
London E14 2DG**

**Applicant** : **Settlers Court RTM Company  
Limited and the lessees listed in  
Directions dated 24 April 2018**

**Representative** : **Mr G Lazarev, Solicitor,  
represented Settlers Court RTM  
Company and Mr D Taylor**

**Respondent** : **Firstport Property Services Limited**

**Representative** : **Mr S Allison of Counsel**

**Type of application** : **For the determination of the  
liability to pay a service charge**

**Tribunal members** : **Judge N Hawkes  
Mr P Roberts DipArch RIBA**

**Date and venue of  
hearing** : **3 and 4 May 2018 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **31 May 2018**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal determines that no service charge is payable by the applicants to the respondent.

## **The application**

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge, if any, which is payable by the applicant lessees to the respondent in respect of the service charge years 2014-2017.

## **The hearing**

2. Mr Lazarev, Solicitor, represented Settlers Court RTM Company Limited ("the RTM Company") and Mr Taylor at the hearing. The other applicants did not play an active part in these proceedings.
3. The respondent was represented at the hearing by Mr Allison of Counsel.

## **The inspection**

4. The Tribunal inspected Settlers Court and the Virginia Quay estate in which Settlers Court is situated ("the Estate") on the morning of 3 May 2018. The Estate is the area which the respondent was responsible for managing prior to the acquisition of the right to manage.
5. The inspection was carried out in the presence of Mr Taylor and Mr Lazarev on behalf of the applicants and Mr Allison, Ross Hulmston, Lead Legal consultant, Ryan Collier, Director of the respondent's "Large and Complex" portfolio, Ashley Dabysing, Development Manager of Virginia Quay, Agnieszka Zolnowski, Assistant Development Manager of Virginia Quay, and Phil Heywood, Regional Manager, on behalf of the respondents.
6. The Estate is situated on a riverside site on the north bank of the Thames, opposite the O2 dome in Greenwich. In the current year, there are 654 contributors to the Estate charges.
7. The Estate was developed by Barratt Homes around 1999 – 2001. It is a substantial development which includes flats in ten blocks ranging from around five to eleven storeys in height, and rows of three storey, freehold terraced houses. There are around 778 units in total.

8. Most of the blocks are brick faced under pitched roofs. There are designated parking areas adjacent to some of the blocks which have security entry gates. Other blocks have ground and lower ground floor parking areas directly beneath them.
9. There is a pleasant and expansive waterside paved area and two separate, small, single-storey buildings for the on-site concierge and the respondent's management team. The landscaped areas adjacent to and between the blocks are well maintained. The Estate communal areas include access ways, gardens and grounds, and the riverside paved area.
10. The services provided include the maintenance of the communal areas (including the river wall), secure parking control systems, CCTV camera installations, the concierge and management facilities.

### **The issues**

11. This application concerns sums which the respondent has sought to charge the applicant lessees in respect of its management of the Estate.
12. The RTM Company acquired the right to manage on 8 November 2014. Mr Taylor is the lessee of Flat 62 Settlers Court and the sole director of the RTM Company. Urang Property Management Company Limited ("Urang") is the company secretary and the RTM Company's managing agent.
13. The respondent accepts that, in light of the decision in Gala Unity Ltd v Ariadne Road RTM Co Ltd [2012] EWCA Civ 1372; [2013] 1 W.L.R. 988, the RTM Company acquired "management functions" under the residential leases at Settlers Court i.e. it acquired those "functions with respect to services, repairs, maintenance, improvements, insurance and management", and that this extends to both "block" and "estate" services (section 96 of the Commonhold and Leasehold Reform Act 2002).
14. The Tribunal is satisfied that it is bound by the decision in Gala Unity. The respondent is of the view that Gala Unity was wrongly decided but it accepts that the Tribunal is bound by this decision (i.e. that the general rule is that the respondent is not entitled to manage or to charge for managing the Estate).
15. This matter having progressed to a two day final hearing, the respondent did not seek to pursue an application, which is set out in the respondent's Statement of Case, for the proceedings to be transferred to the Upper Tribunal pursuant to rule 25 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, in order for the Upper Tribunal to consider granting permission to appeal.

16. Further, the respondent did not seek to pursue:
  - (i) a pleaded case based on estoppel (the respondent being obliged to supply services to other lessees on the Estate in any event); or
  - (ii) a pleaded case that the applicant lessees are liable to make payments on a quantum meruit basis (the Tribunal having no jurisdiction to determine such a claim).
17. The sole substantive issues before the Tribunal are whether or not the respondent is entitled to continue to provide Estates services and to charge the applicant lessees for the same:
  - (i) pursuant to an agreement based on proposals which the respondent made in 2014; or
  - (ii) pursuant to an alternative agreement, based primarily upon on email correspondence passing between the parties.
18. Further, the applicants have made applications under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for orders limiting payment of the respondent's legal costs.
19. The parties who were represented at the hearing ("the parties") are in agreement that the respondent and Mr Taylor have, at all material times, had a poor and "contentious" relationship.
20. The parties consider that, whilst a number of factual disputes have arisen, seeking to resolve these disputes would not assist the Tribunal in determining whether or not the applicant lessees are liable to pay the disputed service charges pursuant to an agreement with the respondent.
21. Further, the parties agreed not to call evidence or to make submissions, at this stage, in relation to a potential dispute concerning the management fee. Accordingly, no witnesses of fact were called to give oral evidence at the hearing.
22. It was also agreed that, in the event that the respondent fails to make out its case that the applicant lessees are liable to pay the disputed service charges pursuant to an agreement:

- (i) the applicants will be permitted to file and serve a response to any application for permission to appeal within 21 days after service of the application upon the applicants; and
  - (ii) the respondent will be permitted to file and serve a brief reply (if so advised) within 7 days thereafter.
23. Having heard submissions from the parties and having considered all of the documents to which it was referred, the Tribunal has made the following determinations.

**Whether the applicant lessees are liable to pay the charges which form the subject matter of this dispute pursuant to an agreement with the respondent**

24. On 31 October 2014, Mr Collier (who has at all material times been employed by the respondent and who is currently Director of the respondent's "Large and Complex" portfolio) sent a Mr Cleaver of Urang, a draft shared services agreement by email.
25. Mr Collier states in his written evidence that the primary purpose of the proposed agreement was to resolve the practical difficulties presented by the Gala Unity case.
26. The respondent was seeking to enter into an agreement which would enable it to:
- (i) continue to manage the Estate after the acquisition of the right to manage by the RTM Company; and
  - (ii) bill the applicant lessees directly in respect of a contribution towards the Estate costs.
27. By the email of 31 October 2014, Mr Collier stated:
- "Attached is the draft shared services agreement we discussed previously. This will allow Consort to bill the lessees directly for their contribution towards the estate charges and other interlinked charges, as per the terms of the respective leases. If you can review this and seek the appropriate signature, or alternatively, let us know of any amendments you may propose?"*
28. After the RTM Company had acquired the right to manage on 8 November 2014, there followed a series of emails which included the following correspondence:

- (i) On 15 November 2014, Mr Dabysing on behalf of the respondent wrote to Mr Taylor and to Mr Cleaver of Urang setting out an understanding as to how things would proceed, including a statement to the effect that the respondent would be responsible for grounds and Estate maintenance.
- (ii) On 27 November 2014, Mr Collier asked whether any progress had been made concerning the proposed agreement.
- (iii) On 2 December 2014, Mr Bampoe-Wilson of Urang stated that it was Urang's "intention" to provide a service which "compliments neighbouring buildings" with the respondent's assistance. He also made reference to "outstanding issues"; quoted a passage from an earlier email concerning a proposal that the respondent would continue to provide "Grounds and estate maintenance"; made reference to a term of the draft agreement; and expressed the opinion that the respondent was responsible for providing fob entrance keys.
- (iv) On 13 March 2015, Mr Collier stated: "There has been no update on the shared service agreement? Are you able to provide a signed copy now as the RTM Company and ourselves both have obligations to our respective lessees to maintain the estate; unless and until the RTM Company enter into an agreement, they will be in breach of their obligations."
- (v) On 31 March 2015, Mr Bampoe-Wilson of Urang stated: "Please accept my apologies for the delay in getting the shared services agreement back to you. My superiors have requested that our legal team go over it and, once I have an update, I will inform you accordingly."
- (vi) On 12 May 2015, Ms Barthropp stated on behalf of the respondent "Please can you urgently confirm what's happening with the Shared Services agreement. This has been ongoing for some time now and we need to conclude this matter ASAP."
- (vii) On 13 April 2015, Mr Collier asked for an update concerning the shared services agreement.

29. The respondent places reliance, in particular, upon the correspondence of 15 November 2014 and 2 December 2014 and upon the fact that, after the draft shared services agreement had been sent to Mr Cleaver, the respondent continued to manage the Estate. Urang was fully aware that the management of the Estate by the respondent was continuing. The respondent submits that the terms of the draft shared services agreement were substantially complied with.
30. However, it is common ground that:
- (i) the proposed shared services agreement was never signed;
  - (ii) the context of the correspondence to which the Tribunal was referred was a poor and “contentious” relationship between Mr Taylor and the respondent;
  - (iii) the terms of the draft shared services agreement were not adhered to by the parties in at least three respects (contrary to the terms of the draft agreement, the respondent has not maintained a CCTV camera on the rear façade of Settlers Court; a bin store which was to be managed by the RTM Company has been managed by the respondent; and the RTM Company has not sought to be reimbursed in respect of certain electricity costs); and
  - (iv) the respondent was obliged to provide services to other lessees on the Estate, in any event.
31. Numerous issues were raised during the course of the hearing, including concerning the extent to which the respondent’s case as currently presented was pleaded.
32. However, putting the respondent’s case at its highest, the Tribunal is not satisfied having regard to the entirety of the correspondence passing between the parties; the matters set out in paragraph 30 above; and all of the circumstances of this case, that it can be inferred that the parties reached any form of binding agreement for the respondent to continue to manage the Estate and for the applicant lessees to contribute towards the Estate costs.
33. Accordingly, the Tribunal finds that no service charge is payable by the applicants to the respondent.

### **Applications under s.20C and paragraph 5A**

34. As regards the application under section 20C of the 1985 Act, the respondent notes that, if the Tribunal finds that no service charge is payable, the respondent cannot pass any of its costs of the Tribunal proceedings to the applicant lessees through any service charge.
35. The Tribunal having found that no service charge is payable, it is unnecessary for the Tribunal to determine the application pursuant to section 20C of the 1985 Act.
36. The respondent accepts that the lease does not allow the costs of the Tribunal proceedings to be recovered as an administration charge.
37. The respondent having formally agreed that it will not seek to recover the costs of these Tribunal proceedings as an administration charge, it is unnecessary for the Tribunal to determine the application pursuant to paragraph 5A of Schedule 11 to the 2002 Act.

**Name:** Judge Hawkes

**Date:** 31 May 2018

### **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).