12 January 2022

PRESS SUMMARY

FirstPort Property Services Ltd (Appellant) v Settlers Court RTM Company and others (Respondents)
[2022] UKSC 1
On appeal from [2019] UKUT 243 (LC)

JUSTICES: Lord Briggs, Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose

BACKGROUND TO THE APPEAL

Settlers Court is a block of flats on the Virginia Quay Estate in East London (the "**Estate**"). The flats in Settlers Court are held under long leaseholds. The lessees under such long leaseholds are granted the "right to manage" (the "**RTM**") by Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**"). The RTM permits them to take over management of the block of which their flats form part from the existing manager, whether the landlord or a third party, via a single purpose company (the "**RTM Company**"). The RTM Company formed by the lessees of the flats in Settlers Court obtained the RTM in respect of Settlers Court on 8 November 2014. That RTM Company is the First Respondent to the appeal. The other Respondents are lessees of flats in Settlers Court.

The Estate contains other blocks of flats beyond Settlers Court. These other blocks share facilities and amenities with Settlers Court (the "**Estate Facilities**"). Prior to the lessees of Settlers Court exercising the RTM, the service of managing the Estate Facilities (the "**Estate Services**") was provided by a third party manager, the Appellant, for the benefit of the entire Estate. Under the terms of the relevant leases, the Appellant was entitled to levy charges from the lessees on the Estate in respect of providing the Estate Services (the "**Estate Charges**").

A dispute arose between the parties over the extent of the RTM exercised by the lessees of Settlers Court. The Respondents claimed that the statutory RTM extends beyond Settlers Court so as to include the Estate Facilities. These were said to form part of the "premises" over which the RTM is exercisable. Consequently, the RTM Company, not the Appellant, was now responsible for providing the Estate Services to the lessees of Settlers Court and the Appellant was no longer entitled to levy the Estate Charges from them. Instead, once the RTM had been exercised, the Estate Charges in respect of Settlers Court, some 15.2% of the total for the Estate, became payable to the RTM Company not the Appellant.

The Appellant disputed this, maintaining that it remained exclusively responsible for providing the Estate Services to the entire Estate because the RTM does not extend beyond the block over which it is exercised (and facilities and amenities solely relating to it). As such, it claimed to be entitled to continue to levy the Estate Charges from the lessees of Settlers Court, noting that it alone continued to provide the Estate Services to the entire Estate pursuant to its obligations under the

long leases of flats in blocks other than Settlers Court, which remained in force on any view, and incurred the full costs of doing so.

The parties were unable to reach agreement as to how the Estate Facilities should be managed and the Estate Charges levied. On 8 December 2017, the Appellant therefore applied to the First-tier Tribunal (the "**F-tT**") to determine whether it was entitled to levy Estate Charges from the lessees of the flats in Settlers Court. The F-tT found against the Appellant, considering itself bound by the decision of the Court of Appeal in *Gala Unity Ltd v Ariadne Road RTM Co Ltd* [2012] EWCA Civ 1372. In that case, the Court of Appeal had decided that the RTM did extend to facilities on an estate which were shared between the block of flats over which the RTM had been exercised and other dwellings, even though this would potentially leave both the RTM Company and the pre-existing manager responsible to different groups of lessees for providing the same services simultaneously. The Upper Tribunal (the "**UT**") dismissed the Appellant's appeal on the basis that, amongst other things, it too was bound by *Gala Unity*. The UT did however issue a leapfrog certificate for an appeal directly to the Supreme Court. This was the first time that the UT has issued such a certificate.

JUDGMENT

The Supreme Court unanimously allows the appeal and, in doing so, holds that *Gala Unity* was wrongly decided. Lord Briggs gives the sole judgment with which all other members of the Court agree.

REASONS FOR THE JUDGMENT

The RTM grants the RTM Company the right to perform the relevant management functions over "the premises" to the exclusion of any other person such as the existing manager. Treating it as applying to shared common facilities raised insuperable problems [**36**]. The lessees of flats in blocks other than that over which the RTM has been exercised would be effectively disenfranchised by having shared Estate Services provided by an RTM Company with which they had no formal legal relationship. This would also be contrary to the terms of their leases and was the opposite of what the RTM under the 2002 Act was supposed to achieve [**37**]-[**38**].

The statutory language in the 2002 Act, which had to be construed in light of the context and purpose of the Act, included numerous signposts pointing against the Estate Facilities forming part of the "premises" over which the RTM was exercisable. As such, the RTM could not grant the RTM Company the right or obligation to provide the Estate Services [**39**]-[**49**]. That construction of the 2002 Act was confirmed, but no more than that, by the Consultation Paper which accompanied the draft bill which later became the 2002 Act. This was admissible [**51**]-[**53**]. The particular facts of *Gala Unity* had served to obscure the real difficulties created by the Court of Appeal's decision in that case and the existence of overlapping rights to provide the Estate Services between a manager and an RTM Company [**50**].

The scope of the RTM contended for by the Respondents would lead to outcomes, such as on the facts of the present case, which were both absurd and unworkable. The court would therefore lean against such a construction of the 2002 Act [**54**]. If the RTM Company was responsible for the Estate Services, it would be entitled to recover Estate Charges only from the lessees of the building in respect of which it had been set up. In this case that would mean only some 15% of the costs of providing the Estate Services could be recovered by the RTM Company. This would likely pose insurmountable solvency issues for it. Conversely, if the existing manager retained responsibility for providing the Estate Services, as it was bound to do under the terms of the leases held by the

lessees of buildings other than that over which the RTM had been exercised, it could not recover the costs of doing so from the lessees who had exercised the RTM. In this case, that meant that, absent some agreement with the RTM Company, the Appellant, as manager, could recover only 85% of the costs of providing the Estate Services to the Estate as a whole [**56**]-[**57**]. Whilst in some cases the RTM Company and the manager might reach agreement, there was no obligation on an RTM company to do so. It was obviously preferable to interpret the 2002 Act in a way which did not lead to an unworkable situation absent such agreement [**58**].

The RTM under the 2002 Act does not therefore extend to the RTM Company managing the shared Estate Facilities, which do not form part of the "premises" over which the RTM is exercisable. The Appellant remains the sole party responsible for providing the Estate Services to all lessees on the Estate and entitled to levy Estate Charges accordingly, including from the lessees of flats in Settlers Court [**62**]. *Gala Unity* was wrongly decided and should be overruled [**63**]. The appeal is therefore allowed.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.html