



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

Case reference : **LON/00AJ/LRM/2015/0013**

Property : **Flats 1-12, 12a, 14-39, 41-48
Greystoke Court, Hanger Lane,
London W5 1EN**

Applicant : **Greystoke Court RTM Company Ltd**

Representative : **Moreland Estate Management Ltd**

Respondent : **Raymond Anderson Green**

Representative : **Mills Chody LLP**

Type of application : **Application in relation to the denial
of the Right to Manage**

Tribunal member(s) : **Mr Amran Vance, Tribunal Judge
Mr P Casey, MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of directions : **3 June 2015**

DECISION

Decisions of the tribunal

1. The tribunal determines that the Applicant is not entitled to acquire the right to manage Flats 1-12, 12a, 14-39, 41-48 Greystoke Court, Hanger Lane, London W5 1EN.

Background

2. This is an application by the Applicant RTM company ("the Company") under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that it was on the relevant date (the date when notice of claim was given to the Respondent) entitled to acquire the right to manage premises known as Flats 1-12, 12a, 14-39, 41-48 Greystoke Court, Hanger Lane, London W5 1EN ("the Premises").
3. The freehold interest in the Premises lies with the Respondent whose interest was registered at HM Land Registry on 5 June 1989. The freehold title MX354661 describes the land and estate so registered as being Greystoke Court, Hanger Lane.
4. Numbers in brackets and in bold below refer to pages in the bundle supplied by the Respondent for the purposes of the tribunal's determination.
5. By a claim notice dated 23 September 2014 [**43-47**], the Applicant gave notice that it intended to acquire the Right to Manage the Premises on 2 February 2015.
6. By counter-notice dated 15 October 2014 [**48-49**], the Respondent disputed the claim, alleging that the applicant had failed to establish compliance with sections 72(1), 78, 79(2), 79(5), 79(6)(b), 80 and 80(9) of the Act.
7. A letter dated 23 October 2014 [**50-52**] was sent by Moreland Estate Management on behalf of the Applicant to the Respondent's solicitors disputing the points raised in the counter-notice. In that letter the author sets out the following provisions of s.72(1) of the Act:

(1) This Chapter applies to premises if—

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,

(b) they contain two or more flats held by qualifying tenants, and

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

8. The author of the letter of 23 October 2014 then goes on to say:

*“We are of the opinion that the Property complies with all 3 conditions above and further it is our belief that **both parts** of the building have enough qualifying leaseholders in order to effect a successful Right to Manage Claim” [our emphasis].*

9. Later in that letter it is stated that:

*“The claim Notice is sufficiently clear to establish the eligibility in relation to the **several self-contained buildings**” [our emphasis].*

10. The Applicant’s application was received at this Tribunal on 3 November 2014 but was not logged onto the Tribunal’s case management system and was not progressed by the Tribunal.

11. At the end of March 2015, the Applicant’s representative made enquiries about the Application and, following an unsuccessful search for the original documents, supplied further copies.

12. Directions were issued by the tribunal on 8 April 2015 which provided for the Application to be determined without a hearing, on the papers, and for the Respondent to provide its response to the Application by 1 May 2015. The directions state that the Application together with its enclosures were to be regarded as the Applicant’s case together with any brief supplementary statement that the Applicant was entitled to send to the Respondent and the Tribunal on or before 22 May 2015 (to include any legal submissions and any relevant supporting documentation). The directions also provide for either party to request an oral hearing within 35 days of the date of these directions and that if a hearing is requested it would take place on Wednesday, 3 June 2015 at 10 Alfred Place, London WC1E 7LR starting at 10:00 am, with a time estimate of one to two hours.

13. The Tribunal’s records indicate that these directions were sent to the Applicant on 8 April 2015 to the address of its representative as stated on its Application form, namely, Moreland Estate Management, 5 Sentinel Square, Hendon, London, NW4 2EL.

14. The Respondent requested an oral hearing by letter received on 15 April 2015 and on 16 April 2015 the Tribunal wrote to the Applicants representative informing them that a hearing had been requested and that a hearing was to take place on Wednesday 3 June 2015 as sated in

the Tribunal's directions of 8 April 2015. The letter was sent to the address referred to in the previous paragraph of this decision.

15. On 22 April 2015 the Tribunal sent a further letter to Moreland Estate Management at the same address as before stating that a procedural judge had reviewed a letter from the Respondent's solicitors and had directed that the issue of whether Greystoke Court is a building within s.72(2) and (3) was to be determined by the Tribunal at the hearing and that both parties should deal with the point in their statements..
16. The Applicant did not send a brief supplementary statement to either the Respondent or the Tribunal as it was entitled to do under the Tribunal's directions.

The Hearing

17. The Respondent was represented by Mr Justin Bates of counsel at the hearing. Also in attendance was Mr J Butler, a surveyor instructed by the Respondent and Ms D Ahmed, from the Respondent's managing Agents, David Adams Surveyors Limited. A copy of her witness statement was included in the Respondent's bundle **[B1-B5]**.
18. There was no attendance by the Applicant. Shortly after 10.15 the Tribunal clerk telephoned the Applicant's representative, Mr Freilich of Moreland Estate Management Ltd but was told that he was in a meeting. The Tribunal clerk indicated that there was a Tribunal hearing scheduled for that morning and asked that Mr Freilich be informed of this.
19. The Tribunal reviewed the correspondence sent by the Tribunal to the Applicant. It was satisfied that the Applicant had received proper notice of the hearing. Neither the letter enclosing the Tribunal's directions of 8 April 2015 nor the subsequent letters of 16 April 2015 (which specified the hearing date of 3 June 2015) nor the letter of 22 April 2015 (which referred to the forthcoming hearing) had been returned by the Post Office as undelivered. All three letters had been sent to the address for correspondence specified by the Applicant on its Application form as the address of its representative.
20. The Application form clearly states that "*all correspondence and communications with you will be with them [the representative] until the Tribunal is notified that they are no longer acting for you.*" The Tribunal had not received notification that Moreland Estate Management Ltd are no longer acting for the Applicant. In these circumstances and having found that proper notification had been given the Tribunal decided to proceed with the hearing.

21. At 10.30am the Tribunal clerk received a telephone call from a Mr Benson who described himself as being the Applicant's independent solicitor. He stated that he had no knowledge of the hearing and that he had just spoken to Mr Freilich who had advised him that he too had no knowledge of the hearing and that he had not received anything from the Respondent's solicitors. Despite this indication, the Tribunal decided to continue with the hearing. It remained satisfied that the Applicant had been provided with proper notice of the hearing for the reasons stated above.
22. The following documents were handed up by Mr Bates during the course of the hearing and the Tribunal allowed their submission in evidence:
 - (a) Office Copy entries for the Freehold title;
 - (b) A copy of one of the RTM Consent forms in which one of the leaseholders confirmed that he wished to become a member of the Applicant company.
 - (c) A copy of the Notice of Invitation to participate in the Right to Manage dated 21 August 2014.
23. The Tribunal refused an application by Mr Bates to dismiss the Applicant's case for want of prosecution. It considered that there had not been non-compliance by the Applicant with the Tribunal's directions and that it was appropriate to proceed to determine the Application as opposed to dismissing it.
24. Mr Bates had two principle arguments. Firstly, it was the Respondent's position that there are two or three "premises" at this development. Block 1 is a 1930's block comprising 28 flats and Block 2 is a 1950's development that comprises two separate buildings (flats 29-39 and flats 41-48).
25. This he says, was confirmed by the Applicant in its letter of 23 October 2014 referred to above which refers to the Applicant Company being eligible to acquire the Right to Manage of **several self-contained buildings**.
26. As this was the Applicant's case before the Tribunal Mr Bates submitted that its position was fatal to their application in light of the recent Court of Appeal decision in *Triplerose Ltd v 90 Broomfield RTM Co Ltd [2015] EWCA Civ 282*. He referred us to paragraph 62 of that decision in which Lady Justice Gloster states as follows:

"Accordingly in my judgment the relevant provisions of the Act, construed as a whole, in context, necessarily point

to the conclusion that the words "the premises" have the same meaning wherever they are used (save where otherwise expressly provided). That means that the references in section 72 to "premises" are to a single self-contained building or part of the building, and that likewise references to "the premises" or "premises" or "any premises" in sections 73, 74, 78 79 and other provisions of the Act are likewise references to a single self-contained building or part of the building. That interpretation is consistent with the provisions for model articles contained in the Regulations and is the only basis upon which the machinery for acquisition of the right to manage can operate. Accordingly in my view it is not open to an RTM company to acquire the right to manage more than one self-contained building or part of a building and the Upper Tribunal was wrong to reach the decision which it did."

27. Mr Bates' second point was that throughout the RTM process the applicant has defined the "Premises" to be managed as Flats 1-12, 12a, 14-39, 41-48 Greystoke Court, Hanger Lane, London W5 1EN. This was the description in the Notice Inviting Participation, the Claim Notice. The Articles of Association and in the Application to this Tribunal. In his submission, however, the problem for the Applicant is that Flats 1-12, 12a, 14-39, 41-48 etc are not "Premises" to which the Right to Manage extends. The flats are not, he says, a self-contained building or part of a building for the purposes of s.72 of the Act.

The tribunal's decision and reasons

28. The Tribunal agrees with Mr Bates' first submission. The Tribunal's directions specified that the Application and its enclosures together with any supplementary statement (provided for under the fourth direction) were to be regarded as the Applicant's case. No supplementary statement was received and so the entirety of the Applicant's case before the Tribunal is the Application notice and its enclosures.
29. One of the enclosures is the letter of 23 October 2014 from Moreland Estate Management to the Respondent's solicitors. That letter refers to "both parts of the Building" and to the claim relating to "*several self-contained buildings*". In their letter Moreland Estate Management make specific reference to the decision of the Upper Tribunal in *90 Broomfield Road* as well as other cases that it contended supported the Applicant's position. No doubt the Applicant felt confident in that contention at the time the letter was written but the position has now changed following the reversal of the Upper Tribunal decision in *90 Broomfield Road* by the Court of Appeal.

30. The Court of Appeal decision establishes that the definition in s.72 of the Act is singular and that an RTM company can only acquire the Right to Manage in respect of one building or part of a building. On its own case, what the Applicant sought to do through its claim notice and in this Application was to establish the right to manage in respect of *several buildings* which it cannot do following the decision in *90 Broomfield Road*. As such, the claim notice was defective.
31. If it is correct that Flats 1-12, 12a, 14-39, 41-48 are not one building or part of a building, then following Lady Justice Gloster's judgment in *90 Broomfield Road*, Mr Bates' second submission must also be also correct as the Court of Appeal found that the meaning to be accorded in section 72 to "premises" was to a *single self-contained building or part of the building* and that the same meaning applied to likewise references to "the premises" or "premises" or "any premises" in sections 73, 74, 78 79 and other provisions of the Act. The Tribunal therefore accepts both submissions made by Mr Bates.
32. There was a third submission made by Mr Bates at the hearing namely that some of the dates of the documents relating to the setting up of the Company are very odd. The Notice of Intention to Proceed is dated the same day as the formation of the Company, 21 August 2014 and that the list of members is dated 20 August 2014. If the Applicant had attended the hearing Mr Bates would, as stated in the Respondent's Statement of Case, have asked them to prove that the Notice of Intention was prepared after the Company was formed and that it had resolved to serve the notice before it had been prepared.
33. The Tribunal does not need to make any determination in respect of this third submission in light of its decisions above and is not, in any event, prepared to do so on the available evidence which is insufficient to establish any irregularity.

Name: Amran Vance

Date: 3 June 2015