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

**Case Reference** : **BIR/00FY/LRM/2013/0002**

**Property** : **Park View Court  
Bath Street  
Nottingham  
NG1 1DD**

**Applicant** : **Park View Court Residents  
Community RTM Company Ltd**

**Representative** :

**Respondent** : **Waterglen Ltd**

**Representative** :

**Type of Application** : **Section 84(3) of the Commonhold and  
Leasehold Reform Act 2002**

**Tribunal Member** : **Professor N P Gravells  
Mr J E Ravenhill FRICS**

**Date and venue of  
Hearing** : **N/A**

**Date of Decision** : **10 July 2013**

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**DECISION**

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## **Introduction**

- 1 This is a decision on an application made to the Leasehold Valuation Tribunal (now the First-tier Tribunal (Property Chamber)) by Park View Court Residents Community RTM Company Ltd ('the applicant company'). The application, dated 2 April 2013 and received by the Tribunal on 5 April 2013, is under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') for a determination that the applicant company was on the relevant date entitled to acquire the right to manage the premises at Park View Court, Bath Street, Nottingham NG1 1DD ('the subject property'). The respondent is Waterglen Limited, the freeholder of the subject property.

## **Background to the application**

- 2 The applicant company was incorporated on 5 December 2012. Pursuant to section 78 of the 2002 Act, notices of invitation to participate were served on the qualifying tenants of the 80 flats in the subject property. More than half the qualifying tenants indicated their wish to become members of the applicant company.
- 3 The applicant company subsequently gave notice of the claim to acquire the right to manage the subject property to the respondent in accordance with section 79(6) of the 2002 Act. The claim notice is dated 25 January 2013, which is the 'relevant date'.
- 4 The respondent gave a counter-notice to the applicant company in accordance with section 84(1) of the 2002 Act, alleging that neither the company named in the claim notice (nor the applicant company) was entitled to acquire the right to manage the premises specified in the claim notice. The counter-notice, dated 28 February 2013, alleged –
  - (i) that the claim notice named the claimant as 'Park View Court RTM Company Ltd', which does not appear on the register at Companies House;
  - (ii) that the subject property comprises four separate and distinct blocks and not one self-contained building and that a single claim notice cannot cover the building comprising the subject property;
  - (iii) that the applicant company had only one director, although the model articles of association adopted by the applicant company envisage a minimum of two directors.
- 5 The third allegation received no elaboration in the counter-notice or in any further documentation submitted by the respondent. The Tribunal has therefore not considered it further.
- 6 As noted above, the applicant company made the present application to the Tribunal.

- 7 Directions were issued by the Tribunal on 22 April 2013.
- 8 In accordance with regulation 13 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 (now rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) the Tribunal gave notice that, with the agreement of the parties, it intended to proceed to determine the application without an oral hearing and to do so as soon as possible after 31 May 2013.
- 9 However, following receipt of the parties' written representations, the Tribunal decided that it should inspect the subject property and invited the parties to attend to answer questions from the Tribunal.
- 10 The Tribunal inspected the subject property on 8 July 2013. Present at the inspection were Mr Roger White, representing the applicant company, and Mr John Ryan (of HLM, the current management company), representing the respondent. Following the inspection the Tribunal made its determination on the basis of the written representations received from the parties and in the light of the inspection.

## **Determination of the Tribunal**

### Right to manage

- 11 In determining the issues in dispute between the parties the Tribunal took account of all relevant evidence and submissions received from the parties.
- 12 It is appropriate to deal first with the respondent's second (and substantive) ground of challenge, which centres on the question whether the applicant company is entitled to claim the right to manage the subject property as a single entity. The argument is based on section 72 of the 2002 Act, which provides (so far as material):
- (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,
    - ...
    - (2) A building is a self-contained building if it is structurally detached.
    - (3) A part of a building is a self-contained part of the building if—
      - (a) it constitutes a vertical division of the building,
      - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
      - (c) subsection (4) applies in relation to it.
    - (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
      - (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

(5) Relevant services are services provided by means of pipes, cables or other fixed installations.

- 13 The respondent submits that, although the subject property is a single building, it in fact comprises four blocks, each of which is a self-contained part of a building within the meaning of section 72(3).
- 14 The respondent argues –
- (i) that each block constitutes a vertical division of the building: section 72(3)(a);
  - (ii) that the structure of the building is such that each block could be redeveloped independently of the rest of the building: section 72(3)(b);
  - (iii) that each block is provided with relevant services independently of the services provided for the other blocks: section 72(3)(c), (4)(a); or, alternatively, that separate services could be provided without significant disruption: section 72(3)(c), (4)(b).
- 15 On the basis that the subject property comprises four self-contained parts, the respondent argues that a single claim cannot be made in respect of the whole building (and by implication that separate claims must be made in respect of each self-contained part).
- 16 The applicant company seeks to refute the arguments in paragraph 14(iii) above; and in so doing it corrects some purported statements of fact in the respondent's submissions.
- 17 However, in the view of the Tribunal, the respondent's argument is misconceived. The intention behind the right to manage provisions of the 2002 Act is to grant a no-fault right to manage to qualifying tenants, subject only to a counter-notice procedure to protect landlords in certain circumstances. In accordance with section 72(1) the right to manage can be acquired in respect of 'a self-contained building or [a self-contained] part of a building'. The second alternative is clearly intended to permit the qualifying tenants of part only of a building to acquire the right to manage that part only. In order to do so, for reasons of practicability, they must establish that the part in question is self-contained; and that requires the conditions in section 72(3)-(5) to be satisfied. However, in the present case, the applicant company is seeking to acquire the right to manage the whole building; and, in accordance with section 72(2), provided that the building is 'structurally detached', it is 'self-contained'. There are no other conditions to be satisfied in relation to the premises. It follows that, where a RTM company is seeking to acquire the right to manage a single structurally detached building, it is irrelevant whether or not the building comprises two or more self-contained parts.

- 18 The subject property is clearly a structurally detached building. It follows that the respondent's argument that is based on the building comprising four self-contained parts must fail.
- 19 The respondent's remaining (first) challenge centres on the alleged discrepancy between the name of the applicant company and the name of the company apparently giving the notice of claim.
- 20 Section 80 of the 2002 Act specifies the required contents of a claim notice; and subsection (5) provides that the claim notice 'must state the name and registered office of the RTM company'.
- 21 The applicant company is Park View Court Residents Community RTM Company Ltd. That company is registered at Companies House as the RTM company for Park View Court. The articles of association of that company specify 11 Park View Court, Bath Street, Nottingham NG1 1DD as its registered office. The notices of invitation to participate served under section 78 of the 2002 Act refer to 'Park View Court Residents Community RTM Company'. The copy of the claim notice provided by the applicant company refers to 'Park View Court Residents Community RTM Company Ltd of 11 Park View Court, Bath Street, Nottingham NG1 1DD'. However, in its counter-notice the respondent alleges that the claim notice that it received referred to 'Park View Court RTM Company Ltd of 11 Park View Court, Bath Street, Nottingham NG1 1DD'; and the respondent argues that the claim notice did not therefore comply with the requirements of section 80(5).
- 22 On the basis of the evidence provided by the parties by 31 May 2013 (the implicit deadline for the receipt of representations: see paragraph 8 above), the respondent's argument could not succeed: its allegation as to the name of the company appearing on the claim notice was inconsistent with the only copy of that notice provided to the Tribunal.
- 23 However, on 4 June 2013 the respondent submitted to the Tribunal a 'witness statement', together with a copy of the claim notice which it had received and which, as previously alleged, referred to 'Park View Court RTM Company Ltd'.
- 24 It would be open to the Tribunal to disregard that late evidence but the Tribunal is of the view that it would be inappropriate not to comment on the discrepancy between the two versions of the claim notice (which are otherwise identical, even including a 'rogue' indentation in one paragraph). One possible explanation is that at some point the applicant company was alerted to the discrepancy and corrected the electronic version; but the Tribunal refrains from reaching any conclusion on the good faith of the applicant company.
- 25 However, on the basis that the version of the claim notice received by the respondent did not state the full correct name of the applicant company, the Tribunal must consider whether the notice is invalid by reason of non-compliance with section 80(5) of the 2002 Act.

- 26 First, section 81(1) of the 2002 Act provides that 'a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80'. The Tribunal is not persuaded by the argument of the respondent that that comprehensive and unqualified saving provision does not cover the facts of the present case.
- 27 Second, although the right to manage provisions of the 2002 Act provide express savings for non-compliance with the statutory requirements, the Tribunal determines that such non-compliance may also be disregarded pursuant to the decision of the Court of Appeal in *R v Immigration Appeal Tribunal, ex parte Jeyeanthan* [2000] 1 WLR 354. Lord Woolf MR stated (at 359):
- Because of what can be the very undesirable consequences of a procedural requirement which is made so fundamental that any departure from the requirement makes everything that happens thereafter irreversibly a nullity it is to be hoped that provisions intended to have this effect will be few and far between. In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a situation that tribunal's task will be to seek to do what is just in all the circumstances: see *Brayhead (Ascot) Ltd v Berkshire County Council* [1964] 2 QB 303, applied by the House of Lords in *London & Clydeside Estates Ltd v Aberdeen District Council* [1980] 1 WLR 182.
- 28 Although the *Jeyeanthan* case concerned non-compliance with the requirements of a prescribed form in the context of an asylum appeal, the principles expounded by Lord Woolf MR were expressly applied by the then President of the Lands Tribunal in the context of right to manage notices in *Sinclair Gardens Investments (Kensington) Ltd v Oak Investments RTM Company Ltd* (LRX/52/2004).
- 29 The Tribunal therefore proceeded to apply those principles to the claim notice in the present case. First, the Tribunal finds that a reasonable person in the position of the respondent could not have been in any reasonable doubt that the applicant company was giving the claim notice: see *Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd* [1997] AC 749. Indeed, in its letter accompanying the counter-notice the respondent acknowledged that it had matched the stated company registration number with the applicant company. Second, in the absence of any substantive obstacle to the entitlement of the applicant company to acquire the right to manage, a determination that the claim notice was invalid would simply delay the inevitable acquisition of that right. Third, and more important, the consequence of such delay would not be in the interests of any party. It was apparent from the visual inspection of the subject property and from the information provided by Mr White and Mr Ryan that major works to the subject property are

currently in abeyance pending the resolution of the current dispute and the confirmation of the persons responsible for the management of the subject property.

- 30 Since there is no other compelling reason to hold otherwise, the Tribunal therefore determines that in the circumstances of the present case it is just to disregard any non-compliance with section 80(5) of the 2002 Act.
- 31 In consequence, the Tribunal further determines that on the relevant date the applicant company was entitled to acquire the right to manage the subject property.
- 32 In accordance with section 90(4) of the 2002 Act the applicant company acquires the right to manage the subject property three months after the determination on the present application becomes final (and, according to section 84(7), the determination becomes final (a) if not appealed against, at the end of the period for bringing an appeal, or (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of).

#### Costs

- 33 The respondent requests that the Tribunal make an order for costs against the applicant company. The Tribunal's jurisdiction to make an order in respect of costs is now conferred by rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In the circumstances of the present application, the Tribunal may make such an order only 'if a person has acted unreasonably in bringing, defending or conducting proceedings'. In the view of the Tribunal, the conduct of the applicant company cannot be so characterised; and, accordingly, the respondent's request is refused.

Professor Nigel P Gravells  
Deputy Regional Judge

10 JUL 2013