

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

Case Reference : CHI/OOHP/LRM/2013/0005

Property : The Courtyard, 1 Prosperous Street, Poole Dorset
BH15 1AX.

Applicant : The Courtyard RTM Company Limited.

Representative : Dickinson Manser LLP

Respondent : Sinclair Garden Investments (Kensington) Limited

Representative : P. Chevalier & Co Solicitors.

Type of Application : Section 84 of the Commonhold and Leasehold
Reform Act 2002.

Tribunal Members : Judge S Lal (Legal Chairman).

**Date and venue of
Hearing** : 7th August 2013, Chairman's home.

Date of Decision : 7th August 2013.

DECISION

Application

1. On 7th May 2013, the Applicant applied to the Tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the "Act") for a determination that on the relevant date, it was entitled to acquire the Right to Manage the Property.

2. The Tribunal issued Directions on 9th May 2013. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal Hearing. Neither party has objected to this procedure. In accordance with the Directions, the Applicant has served its Supplementary Statement of Case on 31st May 2013 together with supporting documents and the Respondent has served its Case on 18th June 2013 together with supporting documents.

Facts of the Case

3. The Property comprises 14 flats held on long leases and leased by a common landlord. The Property consists of two self-contained buildings and the tenants share common areas inside and outside the Property.
4. On 13th February 2013, the Applicant served a Claim Notice on the Respondent under section 79 of the Act claiming the right to manage the Property. The Claim Notice made it clear that it related to the two self-contained buildings and appurtenant property. All of the qualifying tenants are members of the Applicant.
5. On 11th March 2013, the Respondent served a Counter- Notice on the Applicant claiming that the Applicant was not entitled to acquire the right to manage the Property for the reasons specified in the schedule to the Counter-Notice.

The Respondent's Case

6. The Respondent claims that section 72 (1) of the Act provides that the right to manage applies to premises if they consist of "*a single self-contained building or part of a building with or without appurtenant property*". The Respondent claims that since the Claim Notice relates to two self-contained buildings, it is not valid. The Respondent also claims that the objects clause in the Articles of Association of the Applicant is not valid as the object to acquire and exercise the right to manage the premises relates to the two self-contained buildings and that definition is not valid under section 72(1) of the Act. Alternatively, the Respondent argues that the Articles of Association should contain two separate objects relating to the right to manage the two separate buildings. The Respondent argues that the purpose behind the Act was to ensure that the legislation resulted in "one building, one RTM company" and points out the pitfalls in allowing an "umbrella RTM company" running more than one building.

7. The Respondent believes that two separate Claim Notices by two properly constituted RTM companies should be served in order to acquire the right to manage the two buildings. Alternatively, the Respondent argues that if the Tribunal decides one RTM company can acquire the right to manage the two buildings, two separate Claim Notices must be served in order for this to be effective.
8. The Respondent argues that in the case of *Gala Unity Ltd v Ariadne Road RTM Company Ltd*, it was not in issue whether one RTM company can acquire the right to manage more than one self-contained building. The Respondent states that the parties did not argue this issue in the Gala case. The case was based on what constituted the “appurtenant property”. In any case, the Respondent notes that two separate Claim Notices were served by the RTM company in the Gala case.
9. The Respondent further argues that the Applicant is not protected by the saving provision in section 81 of the Act. The Respondent states that a defect in the Claim Notice, rather than an inaccuracy makes the Claim Notice invalid.
10. The Respondent concludes that the Act lays down a very specific procedure where a landlord is served with a Claim Notice to take over the management of a premises and the Applicant has not adhered to this procedure.

The Applicant’s Case

11. The Applicant claims that, at all times since its development in 2006, the Property has been treated by all concerned as a single development. A common landlord issued the leases and the existing managing agents treat all the current tenants in the same way. The Applicant states that it is clear from the Claim Notice that the Applicant is seeking to acquire the right to manage the whole of the Property consisting of the two self-contained buildings with appurtenant property. The Applicant states that the tenants in all 14 flats support the right to manage claim by the Applicant and are members of the Applicant.
12. The Applicant states that a single RTM company is entitled to acquire the right to manage two self-contained blocks as established in the Gala case. The Applicant claims that the only case where this would not be permitted is where one of the blocks is already managed by a different RTM Company.
13. The Applicant states that the Respondent’s argument on the interpretation of section 72(1) is very unclear and the requirement for two Claim Notices should have been raised earlier in response to the Applicant’s Claim Notice of 20th April (previously withdrawn for technical reasons).

14. The Applicant argues that as the two self-contained buildings are part of a single letting scheme, it is right to regard each self-contained building as ‘belonging and appertaining “ to the other within the meaning of section 72(1). This means that the whole of Property can be considered a single premise as defined by the Act.
15. Alternatively, the Applicant says the Tribunal may consider the Property as consisting of two buildings with appurtenant property. The Applicant argues that it does not matter which interpretation the Tribunal accepts as, in either case, the Applicant is entitled to acquire the right to manage the Property on 14th February 2013.

The Law

16. Section 72(1)(a) of the Act defines premises to which chapter 1 of the Act applies as being:
“ a self-contained building or part of a building, with or without appurtenant property.”
17. Section 73(2)(b) of the Act states that a company is an RTM company in relation to premises if:
“Its memorandum of association states that its object, or one of its objects is the acquisition and exercise of the right to manage the premises.”
18. Section 81 (1) of the Act provides that:
“ A claim notice is not invalidated by any inaccuracy in any of the particulars required by virtue of section 80.”

The Tribunal’s decision

19. The Tribunal has considered all of the evidence before it, including the terms of the Claim Notice and Counter Notice, the written statements of both parties and the authorities cited by both parties. The Tribunal accepts that the Property has since 2006 been treated as a single development. The Tribunal notes that all of the leaseholders in the two buildings are in favour of the right to manage application and have become members of the Applicant. Following the Gala case and considering the facts of this case, the Tribunal sees no reason why the Applicant cannot apply for the right to manage the two buildings comprised in the Property.
20. However, the Tribunal accepts the Respondent’s argument that in this instance, the Claim Notice is not valid as it does not comply upon a true construction of section 72(1) (a) of the Act and the Tribunal does not consider that the section 81 saving provisions apply in this case. The right to manage relates to a building, which means that if there are separate blocks, each block must qualify under the Act and serve an individual Claim Notice.

21. The Tribunal does not accept the Applicant's arguments relating to "appurtenant property". However, as stated above, the Tribunal sees no reason why the Applicant cannot recommence its application to manage the two buildings by serving two Claim Notices, one in respect of each self-contained building without amending its Memorandum of Association.

21. The Tribunal, therefore, reluctantly finds in favour of the Respondent in this case and decides that the current application cannot succeed.

22. The Tribunal makes no further order.

23. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

24. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

25. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

A handwritten signature in cursive script, followed by the date "7/8/13". The signature and date are written over a horizontal dotted line.

Judge S Lal (Legal Chairman)