



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

- Case Reference** : (1) MAN/00FF/LRM/2013/0015
 (2) MAN/00FF/LCP/2013/0007
 (3) MAN/00FF/LRM/2013/0013
 (4) MAN/00FF/LRM/2013/0014
- Property** : (1) Venice House
 (2) Florence House
 (3) Milan House
 (4) Rome House
 Eboracum Way, York YO31 7SR
- Applicants** : (1) The Forum 1 (York) RTM Company Limited
 (2) The Forum (York) RTM Company Limited
 (3) The Forum 3 (York) RTM Company Limited
 (4) The Forum 2 (York) RTM Company Limited
- Respondents** : (1) Abacus Land (OXIP) Limited
 (2) Trinity (Estates) Property Management Limited
- Type of Application** : Application for a determination as to right to manage, section 84(3) of the Commonhold and Leasehold Reform Act 2002
- Tribunal Members** : A M Davies, LLB
 A Ramshaw, MRICS
 J Hall
- Date and venue of Hearing** : 14 October 2013 at York County Court
- Date of Decision** : 14 October 2013

DECISION

1. The Applicants may not acquire the right to manage the properties to which their respective applications relate.

REASONS

ROME HOUSE

1. The Fourth Applicant is an RTM Company incorporated in England and Wales on 3rd December 2012 with company registration number 8542593. Its members are residents of Rome House, which is a modern block of 31 flats, forming part of the Forum Estate on the east bank of the River Foss near the centre of York. The First Respondent is the landlord to whom ground rents are paid by leaseholders in Rome House. The Second Respondent is the managing agent and a party to the lease of each flat.
2. On 10 June 2013 the Fourth Applicant served on the First and Second Respondents (managing agents) a claim notice under section 79 of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The schedule to the claim notice indicated that 16 qualifying tenants in Rome House had become members of the Applicant.
3. The First Respondent did not object to the acquisition of management functions by the Fourth Applicant, but on or about 11 July the Second Respondent wrote to the Fourth Applicant with a counter-notice under section 84 of the Act, claiming that the claim notice was invalid “by reason of non-compliance with Sections 72 and 80” of the Act. Consequently, the Fourth Applicant applied for a determination under section 84(3) of the Act, and the Tribunal met to make the determination on 14 October 2013.
4. Following an inspection of the Forum Estate, a hearing in respect of Rome House and other RTM applications took place at York County Court. The Fourth Applicant was represented by Mr Holtby of Smiths Property Management Limited, who informed the Tribunal that at the date of the Claim Notice less than 50% of the qualifying tenants in Rome House had in fact been members of the Fourth Applicant.
5. As it did not comply with section 79(5) of the Act, the Fourth Applicant was not qualified to serve a claim notice on 10 June 2013, and the Tribunal determined that no right to manage the Property would be acquired. The Tribunal was not required to determine and did not determine whether the application complied with sections 72 and 80 of the Act, nor whether the Second Respondent’s counter-notice was effective.

VENICE HOUSE, FLORENCE HOUSE AND MILAN HOUSE

6. The First, Second and Third Applicants (hereafter, “the Applicants”) are RTM Companies incorporated in England and Wales in 2013 for the purpose of obtaining the right to manage Venice House, Florence House, and Milan House respectively, each building being a modern block of flats forming part of the Forum Estate on the east bank of the River Foss near the centre of York. The First Respondent is the landlord to whom ground rents are paid by leaseholders in each block. The Second Respondent is the managing agent and a party to the lease of each flat.

7. On 20 May 2013 the Second Applicant, and on 10 June 2013 each of the First and Third Applicants, acting by their agent Mr Holtby of Smith Property Management Limited, served on the First and Second Respondents a claim notice under section 79 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The schedule to each of the claim notices listed the leaseholders who had become members of the RTM company on whose behalf the claim notice was served, and in each case the number of members was more than half the total number of qualifying tenants in the relevant building.
8. The First Respondent did not object to the acquisition of management functions by any of the Applicants, but the Second Respondent sent to each of the Applicants a letter enclosing a document purporting to be a counter-notice under section 84 of the Act. The Second Respondent claimed that each of the three claim notices was invalid "by reason of non-compliance with Sections 72 and 80" of the Act. Consequently, the Applicants applied for determinations under section 84(3) of the Act as to whether or not they were respectively entitled to acquire a right to manage, and the Tribunal met to make the determinations on 14 October 2013.
9. Following an inspection of the Forum Estate, a hearing in respect of the three applications and other RTM applications took place at York County Court. Each of the Applicants was represented by Mr Holtby, and Mrs Taylor appeared as solicitor for the Second Respondent. Both representatives were present during the Tribunal's inspection of the Forum Estate, as were three others of the Second Respondent's property managers.
10. The Forum Estate consists of one commercial building and five "Houses", namely Naples House which is occupied by a Housing Association and its tenants, Rome House, Florence House, Milan House and Venice House. All six buildings on the estate are detached from each other, are serviced by a private access road, and are located above an extensive basement used mainly as an underground car-park, which lies underneath all of the buildings and most of the surrounding landscaped or surfaced parts of the estate. At ground level Rome House, Florence House, Milan House and Venice House share gardens, a river frontage, and a courtyard. There is a single means of vehicular access to and egress from the car-park, but the basement also contains three emergency escape staircases with disabled refuge areas, and four locked doors giving on to lift lobbies which provide internal access by lift to Rome House, Florence House, Milan House and Venice House respectively. There is no lift access to Naples House. One or more parking spaces are allocated to each private leaseholder, and each leaseholder has secure access to the lift lobby serving the block in which he lives. In addition, there are 17 car-parking spaces allocated to residents of Naples House.
11. The basement also contains groups of refuse bins situated in the car-park near the lift lobby doors, for ease of access by residents. There is a secure area containing a "tug" – a small vehicle used once or twice a week by contractors to tow the refuse bins up the car-park access ramp to a point where they can be emptied by the local authority refuse collectors. There is a ventilation system, and the basement is protected by dummy security cameras as a deterrent.
12. Further, the basement contains an electricity supply room, containing the junction boxes for supply of electricity throughout the common parts and the residential buildings, plus a back-up generator to provide a temporary electricity supply throughout the same areas in the event of power failure. Finally, there is located in

the basement a pump room containing one water booster per above-ground block, for the supply of fresh water.

13. Car-parking in the basement has been allocated to leaseholders as they requested on purchasing their flats, subject to availability. Each space is numbered, other than a small area near the vehicular entrance which is reserved for the use of visitors. Cars entering beyond the visitor parking use a code to open electronically operated gates into one of three areas: that part of the basement generally serving the commercial building, or the area to the left which lies under Rome House and Milan House, or the area to the right which is situated under Florence House, Venice House and Naples House. It is not the case that the parking space(s) allotted to each leaseholder are necessarily directly under the building in which that leaseholder has a flat, although many of them are. Some leaseholder parking spaces are located in other areas, including that part of the basement generally reserved for use by the commercial occupiers.
14. Due to its low-lying position on the banks of the River Foss, the estate includes two underground tanks serving all the residential buildings – one tank for surface water and the other for sewage. Both have run-off systems in the event of overflow.
15. The Tribunal were told that the Second Respondent contracts with a number of service providers to support the infrastructure of the five residential buildings, including two cleaning firms, a landscaper who also deals with waste management, a pump engineer, electricians, a lightning protection contractor, the lift engineers, the security gate contractors, and the firm responsible for health, safety and fire protection. The Forum Estate is insured as a single property.
16. At the hearing following inspection, Mr Holtby for the Applicants claimed that the counter-notices served by the Second Respondent were defective for the following reasons: he said that the counter-notices addressed to the First and Third Applicants were not dated; the date given in the first paragraph of each notice, which should have been the date of the claim notice, was in fact the date (specified in the claim notice) by which the counter-notice had to be served; inclusion of that date indicated that the counter-notices were not given to the Applicants until a later date, ie out of time; the counter-notices sent to the First and Third Applicants did not actually reach them in the post until 15 July – ie 2 days late; and the counter-notices were not signed in accordance with the requirements of paragraph 5 and Schedule 3 to the Right to manage (Prescribed Particulars and Forms)(England) Regulations 2003 made pursuant to section 84(2) of the Act.
17. In response, Mrs Taylor said that a counter-notice had been sent to the Second Applicant with a letter dated 27 June 2013, a copy of which was in the Tribunal's papers, and was therefore given to the Second Applicant no later than 28th June 2013, the date specified in the claim notice. Counter-notices, she said, were sent to the First and Third Applicants with a letter dated 11 July, also copied in the Tribunal's papers, and were therefore "given" by being put in the post no later than 13 July, as required by the claim notices.
18. After hearing the arguments and considering the documentary evidence provided, the Tribunal finds that each counter-notice was given in time.
19. The counter-notices do not comply with the signature requirements of Schedule 3 to the 2003 Regulations and two of them are undated. The Tribunal finds that the

Applicants are estopped from relying on any defect in the counter-notice, for the following reasons: (1) the applications to the Tribunal were made in response to receipt of the counter-notice as if they were effective; (2) each of the counter-notice was accompanied by a dated letter signed by an identified representative of the Second Respondent; (3) questions about their validity and effect had not been raised by the Applicants prior to the hearing on 14 October 2013; and (4) the Second Respondent had meanwhile incurred the expense and trouble of responding to the substance of the applications. The Tribunal therefore moved on to consider whether the Second Respondent's objections to the claim notices were well founded.

20. At the hearing, Mrs Taylor did not pursue the argument that the Applicants' respective claim notices did not comply with section 80 of the Act because section 79(5) had not been satisfied.
21. Section 72 of the Act provides that the right to manage provisions in Part 2, Chapter 1, apply 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.*
- (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.*

Section 112 of the Act provides the following definition:

“(1).....“appurtenant property”, in relation to a building or part of a building or a flat means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part of flat.”

22. The Tribunal was therefore required to determine whether the residential block in respect of which each Applicant wished to acquire a right to manage, was either a structurally detached building or a part of a building which satisfied the definition at section 72. Mr Holtby argued that each Applicant had applied for a right to manage in respect of the above-ground block alone, that each block was a self

contained building, and that the estate landscaping, access ways, water and sewage tanks, and the basement car-park, with the water pumps, refuse disposal, security arrangements, electricity supply backup, ventilation system, escape routes and lift facilities contained in it, were "appurtenant property".

23. On careful inspection, the Tribunal determined that
- (a) the entire construction: namely the basement, the concrete raft above it, the supporting pillars throughout the basement, and the six buildings erected on the raft, is a single building. Given this and the extent of the shared facilities, Venice House, Florence House and Milan House cannot be described as structurally detached, self-contained buildings;
 - (b) the services and facilities provided to each of the residential blocks on the estate via the surrounding areas and the basement form an intrinsic and essential element of each block, and thus greatly exceed the statutory definition of "appurtenant property";
 - (c) it would not be possible to provide those services and facilities to any one of Venice House, Florence House and Milan House separately from the remainder of the building without extremely disruptive and major reconstruction, if at all;
 - (d) as the parking bays in the basement do not all sit directly under the blocks of flats in which the leaseholders to whom they are allocated have flats, there are no actual or notional vertical divisions of the building such as to form self-contained parts of the whole;
 - (e) for these reasons, Venice House, Florence House and Milan House are not self-contained parts of the whole building and the applications fail;
 - (f) if it had been necessary for the determination, the same conclusions would have applied to Rome House.