



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

Case Reference : MAN/00FF/LRM/2014/0005/6/7

Property : FLORENCE HOUSE
MILAN HOUSE and
VENICE HOUSE
at EBORACUM WAY, YORK YO31 7SQ

Applicant : THE FORUM (YORK) RTM COMPANY LIMITED

Respondents : 1. ABACUS LAND (OXIP) LTD
2. TRINITY(ESTATES) PROPERTY MANAGEMENT
LIMITED

Type of Application : Determination as to the right to manage pursuant to
section 84(3) Commonhold and Leasehold Reform Act
2002

Tribunal Members : A M Davies LLB
A Ramshaw MRICS

Date of Hearing : 14 August 2014

ORDER

The Applicant is not entitled to acquire the right to manage the property to which this application relates.

REASONS

1. On 14 October 2013 this Tribunal determined that 4 Right to Manage Companies could not acquire the right to manage the blocks of residential flats at The Forum estate in York for which they had respectively applied under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The reasons for refusal were as set out in the decision listed under case numbers MAN/00FF/LRM/2013/0013/14/and 15, and MAN/00FF/LCP/2013/0007.
2. The Applicant was the Second Applicant at the hearing on 14 October 2013 and was then seeking the right to manage Florence House at The Forum. In November 2013 the Applicant’s articles of association were amended with a view to expanding its object so to apply for and (if successful) to manage not only Florence House, but also Venice House, Milan House and Rome House. Such an alteration to the articles must have been effected by resolution of the members of the Applicant, and not by the members of the RTM companies which had applied in 2013 for the right to manage Venice House, Milan House, or Rome House.
3. On 6 December 2013 the Applicant served on the Respondents a Claim Notice pursuant to section 79 of the Act. The First Respondent did not object. The Second Respondent objected on the grounds that the Claim Notice did not comply with the requirements of the Act.
4. On 25 February 2014 the Applicant applied to the Tribunal for a determination that it was entitled to the right to manage three of the properties at The Forum, namely Florence House, Venice House and Milan House (“the Properties”), containing 121 flats in total. Rome House was not included in the application.
5. Directions were given on 13 May 2014, requiring the Applicant to serve on the Respondent, on or before 30 May 2014, a Statement of Case setting out the basis on which it claimed to have complied with sections 72(1)(a), 73(4), 79(5), 80(3)(b) and 81(3) of the Act, together with copies of any supporting documents. The Applicant did not comply with that order.
6. The Tribunal attended at the Properties on 14 August 2014 with a view to inspecting any part of the estate which the Applicant wished to point out

in support of the current application, but the Applicant's representative Mr Holtby did not require any inspection which had not already taken place on 14 October 2013.

7. At a hearing later in the day, Mr Holtby was unable to explain why directions had not been complied with. He had with him a single large file of documents said to contain the signatures of some 99 people, giving their consent to becoming members of the Applicant. These signatories were also listed in a document produced by Mr Holtby and headed "*The Forum (York) RTM Company Limited Company Members List as at 14 August 2014*". Mr Holtby said that of those signing, 79 had been members of the Applicant on 6 December 2013, representing 55% of the total number of qualifying tenants. Section 81(2) requires that not less than 50% of qualifying tenants in the premises, the right to manage which is being applied for, must be members of the applicant RTM company at the date of the Claim Notice.
8. The Second Respondent's solicitor Mrs Taylor agreed to examine the Applicant's documents during a short adjournment. The result of this examination, and of a cursory examination of the papers by the Tribunal, was a finding that
 - 8.1 a number of the documents containing signatures consenting to membership of the Applicant were undated, with no evidence – other than as indicated on the Applicant's list of members at 14 August 2014 – as to whether their consent was given before or after the date of the Claim Notice;
 - 8.2 the file included signatures of 19 residents of Rome House, which is not one of the premises to which the application relates;
 - 8.3 according to the Applicant's list of members, 23 residents of Venice House and 17 residents of Milan House had signed prior to the purported inclusion (by change of the Applicant's articles of association in November 2013) of those Houses in the description of property which the Applicant was entitled to acquire the right to manage.

Mr Holtby did not provide evidence satisfactory to the Tribunal that a sufficient number of qualifying tenants in the Properties were members of the Applicant on 6 December 2013.
9. Mr Holtby confirmed that the 3 RTM companies formed in 2012 or 2013 to make the (unsuccessful) applications to manage Venice House, Milan House and Rome House respectively had been dissolved and removed from the Register of Companies on 18 March 2014. Section 73(4) of the Act precludes the existence of an RTM company whose object is the acquisition of the right to manage premises in respect of which there is already an RTM company. Mr Holtby argued that, as a result of the decision of the Tribunal on 14 October 2013, these 3 companies were from that date no longer RTM companies entitled to acquire the right to manage, but "ordinary limited companies", the continued existence of which did not preclude the Applicant applying for the right to manage the Properties.

10. Mrs Taylor for the Second Respondent referred to the decision of the Upper Tribunal in *Fencott Ltd v The Lyttleton Court RTM Companies* [2014] UKUT 27 (LC), which Mr Holtby sought to distinguish on the basis that, rather than the replacement applicants being RTM companies formed for the purpose of each one acquiring the right to manage one property in the estate instead of a single RTM company managing the estate, the present case involves a single RTM company seeking to manage, as one unit, 3 of the 5 residential blocks of flats comprising the estate instead of the individual applications which were unsuccessful in 2013.
11. Mr Holtby and Mrs Taylor agreed that the issues, whether the Applicant had complied with section 74(3) and section 81(2) of the Act, should be dealt with at the hearing as preliminary issues.
12. The Tribunal considered the representations of the parties and the documents before them, and has decided the preliminary issues as follows:

Section 74(3)

The decision of the Tribunal dated 14 October 2013 did not transform the unsuccessful applicants into companies which were not RTM companies. Neither were these companies dissolved with effect from the application for dissolution sent to Companies House on 20 November 2013. The 3 companies continued in existence until their dissolution on 18 March 2014. The Applicant was therefore unable to acquire, by changing its articles in November 2013, the object of applying for the right to manage Venice House and Milan House, and was not a valid RTM company in respect of those premises at the date of the Claim Notice.

Regardless of the Lyttleton Estates case, section 73(4) is clear on this point. Furthermore, the Applicant and its representative Mr Holtby had complete control over the dates of formation and dissolution of RTM companies and service of Claim Notices in relation to The Forum properties.

Section 81(2)

The Applicant did not provide a copy of its Register of Members as requested in writing by the Second Respondent on 17 December 2013, and has not produced evidence satisfactory to the Tribunal that 50% or more of the qualifying tenants in the Premises had been members of the Applicant at 6 December 2013.