



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

Case Reference : BIR/41UG/LRM/2016/0003
BIR/41UG/LRM/2016/0004

Property : 1-15 Williams Court, Bertelin Road,
Stafford ST16 3SN (1)
2-14 Williams Court, Bertelin Road,
Stafford ST16 3SN (2)

Applicant : Williams Court (1-15) RTM Co. Ltd (1)
Williams Court (2-14) RTM Co. Ltd (2)

Representative : RTMF Services Limited

Respondent : Fairhold Limited

Representative : Estates & Management Limited

Type of Application : (No Fault) Right to Manage

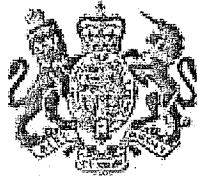
Members of Tribunal : Judge D Jackson
Mr V Chadha

Hearing : 8th February 2017
Birmingham Centre City Tower

Date of Decision : 23rd February 2017

DECISION

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DECISION

Introduction

1. The Property is an estate with two residential blocks and communal facilities completed in 1993. Block A comprises 1-15 (odd) and Block B 2-14 (even).
2. In 2013 the leaseholders of both blocks formed Williams Court (ST16) RTM Co Ltd ("ST16") to acquire right to manage the entire estate.
3. The Respondent disputed the claim made by ST16 and an application was made to a Tribunal under section 84(3) of Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). On 11th September 2014 a hearing took place. The Tribunal issued its decision on 21st January 2015 (BIR/41UG/LRM/2014/0003) determining that ST16 was entitled to acquire the right to manage.
4. On 27th March 2015 the Court of Appeal handed down judgement in **Triplerose Ltd v Ninety Broomfield Road RTM Co Ltd** [2015] EWCA Civ 282. On the advice of the Right to Manage Federation (RTMF) the Directors of ST16 decided to form two new RTM companies to address the judgement in **Triplerose** which held per Gloster LJ at paragraph 62:

"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."

5. The First and Second Applicant both incorporated on 27th February 2016. Their respective Articles of Association provide that "The objects for which the company is established are to acquire and exercise in accordance with the 2002 Act the right to manage the Premises". "The Premises" are defined as 1-15 Williams Court (odd) in relation to the First Applicant and 2-14 Williams Court (even) in relation to the Second Applicant.
6. Separate Claim Notices under the 2002 Act were given by both Applicants on 7th September 2016. The First Applicant claimed to acquire the right to manage 1-15 Williams Court (odd) and the Second Applicant claimed to acquire the right to manage 2-14 Williams Court (even).
7. On 12th October 2016 separate Counter Notices were given by the Respondent to both Applicants. In each case the sole reason given in the Counter Notices was:

"Contrary to Section 73(4), the Company is not a RTM company in relation to the premises if another company is already a RTM Company in relation to the premises containing or contained in the premises".

8. On 20th October 2016 each Applicant made a separate application to the Tribunal relating to (No Fault) Right to Manage.
9. On 10th November 2016 the Tribunal gave Directions that, inter alia, both applications should be joined and heard together.
10. The Tribunal has considered Respondent's Statement of Case dated 5th December 2016 and Applicant's Statement of Case dated 9th January 2017. The Tribunal has also considered Applicant's skeleton Argument dated 7th February 2017.
11. This application was heard at Birmingham on 8th February 2017. The Applicant was represented by Mr Joiner of RTMF and the Respondent by Ms McQueen-Prince, solicitor of Estates & Management Limited. In light of the single issue for determination it was not necessary for the Tribunal to inspect the Property.

Case for the Applicants

12. It is common ground that Block A and Block B are separate self-contained buildings. Accordingly if **Triplerose** had applied at the time that ST 16 made application to the Tribunal ST16 could not have acquired the right to manage both Blocks.
13. Mr Joiner explained that the two new RTM companies had been formed because of the concerns of RTMF based on their experience at other properties. Some freeholders have sought to argue that **Triplerose** has retrospective effect. If that argument is correct all RTM companies of more than one self-contained building are no longer RTM companies as defined in the 2002 Act. This has a number of serious consequences. The directors of RTM companies may be acting ultra vires. Leaseholders may refuse to pay service charge to an RTM company. Mr Joiner told us that the Land Registry are returning Certificates of Compliance from RTM companies of more than one self-contained building with the result that sales and assignments are being held up.
14. Although Mr Joiner explained that RTMF's concerns are widely held as yet there has been no decision of the Upper Tribunal or High Court on this particular point. There have been other FTT applications but all have settled by consent. Mr Joiner is aware of a freeholder application for injunctive relief in the Chancery Division which is to be heard shortly.
15. In relation to the Property, however, no difficulties have arisen. The Applicants acquired the right to manage on 18th May 2015 and have been managing both Blocks A and B through the services of their duly appointed agents Castle Estates without objection from the Respondent or any of the leaseholders ever since. It would therefore appear that both applications may be viewed as a solution in search of a problem.
16. The submission advanced in Applicant's skeleton Argument is an unattractive one. The leaseholders of both blocks are in effect seeking to argue that their own existing RTM company ST16 is in fact not an RTM company. Mr Joiner argues at paragraph 18 of his Skeleton argument that the effect of **Triplerose** "is retrospective as well as prospective". Under those circumstances ST16 which has acquired the right to manage both Blocks A and B has ceased to be an RTM company as it manages more than one self-contained building.
17. In support of his argument that **Triplerose** has retrospective effect Mr Joiner relies on **In re Spectrum Plus Ltd** [2005] UKHL 41. In particular Mr Joiner relies on the dicta of Lord Nicholls of Birkenhead:

"A court ruling which changes the law from what it was previously thought to be operates retrospectively as well as prospectively. The ruling will have a retrospective effect so far as the parties to the dispute are concerned.....Further, because of the doctrine of precedent the same would be true of everyone else whose case thereafter came before a court. Their rights and obligations would be decided according to the law as enunciated...even though the relevant events occurred before that decision was given".

18. Warming to his theme Mr Joiner concludes at paragraph 22 of his Skeleton Argument:

"Does the tribunal have jurisdiction, in the interests of justice, to remove the retrospective effect of *Triplerose*? The answer must be in the negative."

paragraph 5(1)(a) of Schedule 6 to the 2002 Act the premises are excluded from right to manage because that right is already exercisable by ST16.

Decision

33. The First Applicant is not entitled to acquire the right to manage Block A (1-15 Williams Court (odd)).
34. The Second Applicant is not entitled to acquire the right to manage Block B (2-14 Williams Court (even)).
35. Neither the First nor the second Applicant is entitled to acquire the right to manage the Property because Williams Court (ST16) RTM Company Limited is already a RTM company in relation to the Property.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission to appeal. Any application for permission must be in writing, stating grounds and must be received by the Tribunal within 28 days of the date on which the Tribunal sends this written Decision to the party seeking permission.