RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**1-15 Farthing Court, Ninety Broomfield Road, Chelmsford, Essex CM1 1SS**
Applicant	:	**Ninety Broomfield Road RTM Company Limited**
Respondent	:	**Triplerose Ltd.**
Case number	:	**CAM/22UF/LRM/2010/0005**
Date of Application	:	**21st September 2010**
Type of Application	:	**For an Order that the Applicant was, on the relevant date, entitled to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS MCI Arb**
Date of Determination	:	**5th November 2010**

DECISION

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1. This application fails. The Applicant does not acquire the right to manage the property.

Reasons

Introduction

2. It is not disputed that the Applicant is a Right to Manage ("RTM") Company incorporated as a private company whose specific object is to acquire and exercise the right to manage Flats 1-15 Farthing Court, Ninety Broomfield Road, Chelmsford CM1 1SS.

3. It also appears to be undisputed that the property is in fact two separate buildings. Document 2B in the bundle of documents provided for the Tribunal is described as the freehold Land Registry site plan. Whether it is or it isn't, it is clearly labelled 'site and location

plan' and shows 2 separate buildings with plots 1-6 in one building and plots 7-15 in the other.

4. In a short response to the Respondent's case on this issue dated 19th October 2010, the Applicant simply says that the property has always been managed as one development. It does use the words "*...both blocks...*".

5. On the 8th June 2010, the Applicant served a Claim Notice pursuant to Section 79 of the 2002 Act giving notice of its intention to take over the management of the property as from 12th October 2010. The last date for service of a Counter Notice was said to be 12th July 2010.

6. A Counter Notice was served by the Respondents' solicitors on the 8th July 2010 denying the right of the Applicant to acquire the right to manage the property. A large number of technical matters are raised in the Counter Notice.

7. In its statement of case, the Applicant concedes that one of the objections is valid. It seems that a change in the name of the RTM company and in the Memorandum and Articles of Association did not become effective until after the Notices inviting participation were sent to the lessees who were not members. The Applicant says that this is a valid ground for objection.

8. The Applicant therefore started the whole process again and served another Claim Notice on the 2nd August 2010 without withdrawing the earlier Notice. This new Notice gave notice of intention to take over management on the 3rd December 2010 and the last date for service of the Counter Notice was said to be 3rd September 2010. Such a Counter Notice was served on the 1st September 2010.

Procedure

9. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. This information was conveyed to the parties in the Directions Order issued on the 24th September 2010. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notice was given to the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 5th November 2010 and (b) that a hearing would be held if either party requested one before that date. No such request was received.

Analysis

10. The Tribunal has not gone into the question of whether the Applicant has properly conceded that the first Claim Notice was invalid. On the face of the documents supplied to the Tribunal, this concession would appear to be in doubt because the only change which is recorded on the face of the Memorandum and Articles of Association is the name change from Ninety Broomfield Road Limited to Ninety Broomfield Road RTM Company Limited.

11. The situation is confusing because Ninety Broomfield Road Limited was a management company which was a party to the leases of this development in 2007. However it seems that this company (no.05882464) was dissolved on the 5th May 2009. The Applicant company (no. 7011641) was incorporated on the 7th September 2009 and changed its name on the 27th May 2010.

12. The question which is not clear is whether the Applicant was an RTM company from the date of its incorporation. If it was, then it is at least arguable that the Notices inviting participation were correctly served in the absence of any other technical defect. In other words, the Notices inviting participation related to exactly the same RTM company albeit with a different name.

13. The relevance of this is, of course, that Section 81(3) of the 2002 Act prohibits the service of a second Claim Notice so long as the first Claim Notice continues in force. In this case, if the first Claim Notice was valid, then the second Notice was served whilst the first Notice was in force.

14. However, this is not the reason for the dismissal of this application. The real problem is the fact that the property consists of 2 separate buildings. Section 72 of the 2002 Act is quite clear. It says:-

> *"(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,*
> *(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*

15. The Claim Notice must specify the premises and contain a statement of the grounds on which it is claimed they are premises to which the 2002 Act applies (Section 80(2)). In this case, both Claim Notices simply say that the premises are "a self contained building or part of a building with or without appurtenant property". In other words they do not say specifically why the 2002 Act applies to the property.

16. Perhaps the reason is clear. As the property consists of 2 structurally detached buildings, it cannot bring itself within Section 72. They may well have been managed as one 'estate' but they are detached buildings, each containing separate dwellings. The Concise Oxford Dictionary definition of an appurtenance is that it is a 'belonging' or an 'appendage'. In other words, the ordinary meaning of appurtenant property is that it exists for the benefit of the residents of the self contained building. A separate self contained building with different

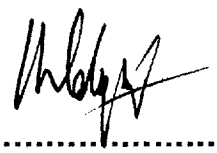
residents cannot bring itself within the description of appurtenant property.

Conclusions

17. The Tribunal concludes that the Claim Notices were defective in that they did not specify how the property came within the provisions of Section 72 of the 2002 Act.

18. More significantly, of course, it is self evident that the property consists of two structurally detached buildings and cannot therefore be the subject of one application to exercise the RTM provisions. The application must therefore fail.

19. As this situation must have been self evident to both parties from the outset, it is difficult to see how this matter has reached this stage. It is particularly difficult to see why the Respondent decided to raise many other detailed and technical matters which have involved its solicitors in nearly 10 hours work according to their fee note at 4F in the bundle.



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Bruce Edgington
Chair
5th November 2010