HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00MC/LRM/2012/0002

Properties	:	**1-84 New Bright Street, Reading RG1 6QQ 1-30 Waterside Gardens, Reading RG1 6BY 1-18 Simmonds Street, Reading RG1 6QF 1-34 Swan Place, Reading RG1 6QF 1-57 Maltings Place, Reading RG1 6QG 6-11 Mallards Row, Reading RG1 6QA 4-16 Rose Walk, Reading RG1 6QB 1-6 Fobney Street, Reading RG1 6BY**
Applicant	:	**Holybrook RTM Company Limited**
Respondent	:	**Proxima GR Properties Ltd.**
Date of Application	:	**1st May 2012**
Type of Application	:	**For an Order that the Applicant was, on the relevant date, entitled to acquire the right to manage the properties (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	:	**17th July 2012**

DECISION

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1. This application fails as it is invalid. The Applicant is an individual and not a RTM company. Additionally, the RTM company does not specify which premises are to be managed and the properties are not qualifying premises because they are not "a self contained building or part of a building".

Reasons

Introduction

2. The Applicant is Mr. Philip Perry who claims to be applying as a Right to Manage ("RTM") Company whereas he clearly cannot be. This issue was raised in the Tribunal's procedural directions but the Applicant's representations to this Tribunal simply say that the Applicant is a

representative of Holybrook RTM Company Ltd. There has been no application to substitute the name of the Applicant.

3. If that had been the only issue, the Tribunal may well have invited the Applicant to substitute but there are other problems with this application namely a question mark over the validity of the counter-notice, whether Holybrook RTM Company Ltd. is actually a valid RTM company and the fact that this application by a single company relates to several buildings.

Procedure

4. 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 previously referred to issued on the 10th May 2012. 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 8th July 2012 and (b) that a hearing would be held if either party requested one before that date. No such request was received.

5. The Applicant provided the Tribunal with a bundle. However, this did not comply with the Tribunal's directions as it did not contain the statement or representations of the Respondent. Naturally, the Tribunal did seek out and find the Respondents' statement and representations but this did cause considerable additional time and inconvenience. As must have been perfectly obvious to the Applicant the Tribunal is sent only the bundle for a determination. The delay has been caused because the Tribunal members took the view that the Respondent must have made some representations and a search was put in hand.

6. The representations and statement from the Respondent have assisted the Tribunal although only the points in the decision have been considered as they effectively override any considerations about membership of the RTM company.

The Law

7. Section 73(2) of the 2002 Act defines an RTM company and in particular:-

> *"(b) its [articles of association state] that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises"*

8. Section 72 of the 2002 Act defines premises in the following way:-

> *"(1)(a) they consist of a self contained building or part of a building, with or without appurtenant land"*

9. Section 84(1) of the 2002 Act states that after a claim notice is given, the recipient *"may give a notice (referred to in this Chapter as a 'counter-notice') to the company no later than the date specified in the claim notice*

under section 80(6)". In this case, the date by which the counter-notice should have been 'given' is the 9th March 2012, which was a Friday. It appears to have been posted on the 8th March by Recorded Delivery. The form completed by Royal Mail shows that the counter-notice was not delivered until 1.20 pm 12th March.

10. On this particular issue, a case which could have assisted if the point was relevant is **R (on the application of Lester) v London Rent Assessment Committee** [2003] EWCA Civ 319, [2003] 1 WLR 1449, which held that in Section 13 of the **Housing Act 1988** where a tenant has to 'refer' a notice of rent increase to a Rent Assessment Committee before such notice takes effect, it must be actually received by the Committee before that date.

Conclusion

11. The Tribunal concludes that this application must fail because the Applicant is not a RTM Company. It is an individual.

12. The Tribunal also concludes that the word 'give' in Section 84(1) means just that. Using the ordinary meaning of the word 'give' as opposed to 'serve' leads this Tribunal to conclude that the intention of the legislature was to make it clear that the counter-notice has to be received by the date specified in the claim notice. If it had said that the counter-notice had to be 'served' by that date, then one would be able to fall back on the usual presumptions about service by post. Having said that, the **Civil Procedure Rules 1998** under Part 6.7 state that something posted by first class post is deemed to be served on the second day after posting.

13. The case of **R v London RAC** referred to above does tend to support the view that words used which do not suggest 'service' by a certain date should be looked at literally.

14. However, the two points which lead this Tribunal to determine that this application could not have succeeded in any event relate to the constitution of the RTM Company and the clear admission, as is obvious from the number of properties set out in the application, that the application relates to a number of 'buildings' and 'blocks' (page 71 of the bundle).

15. It is usual for a RTM Company to define what premises it is intended to relate to in order to comply with Section 73 (2). In the case of Holybrook RTM Company Ltd. the Memorandum and Articles of Association contain an error in that the definitions contain a blank after the words "the Premises means;" In other words, the premises are not defined which means that paragraph 5 which says that the company is to acquire the right to manage 'the premises' means nothing.

16. Further, the definition of 'premises' in Section 72(1)(a) clearly states the intention of the legislature namely that an RTM Company will only manage premises which consist of 'a self contained building or part of a building' (our underlining). The reason is perhaps obvious i.e. it is

intended that the parties to the relevant long leases i.e. the lessees and the landlord will be the members of the RTM Company in their building.

17. In this case, for example, if there are 8 separate blocks, it may be that the long lessees of, say, 6 out of those 8 blocks will out vote the long lessees of the other 2 blocks in order to ensure that money is spent on the 6 rather than the 2. This would remove the whole point of the right to manage provisions because the long lessees of those 2 blocks will not be managing their self contained building at all.

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Bruce Edgington
Chair
17th July 2012