



Properties : 13-115 (odd) Hunting Gate,
Colchester,
Essex CO1 2XE

Applicant : Hunting Gate RTM Company Limited

Respondent : Proxima GR Properties Ltd.

Date of Application : 24th 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 : 27th July 2012

DECISION

1. This application fails and the Applicant is not entitled to manage the property.

Reasons

Introduction

2. The history of this matter is rather complex but the relevant events are as follows.
3. The Applicant RTM company served a Claim Notice on the 24th November 2011 setting out details of 25 qualifying lessees as members. Unfortunately, the premises which the Memorandum and Articles of Association stated were to be managed were 76 Herman Hill, Wanstead which was, of course, fatal to any right to manage proceeding under that Claim Notice in respect of the subject premises. A Counter-Notice was served and that Initial Notice was not pursued.
4. A 2nd Claim Notice dated 22nd March 2012 was served. This again listed 25 qualifying lessee members. A Counter-Notice dated 19th April 2012 was served but is not included in the bundle of documents supplied for the determination. Fortunately, a copy had been supplied with the

original application and has been referred to by the Tribunal. That Counter-Notice raises several issues which can be summarised as:-

- Notices of Invitation to Participate were not sent to qualifying tenants who were not members of the Applicant RTM company
- Copies of the Claim Notice were not sent to qualifying tenants
- The 'block' consists of 53 flats and yet there are only 25 qualifying tenants mentioned in the Claim Notice. A valid RTM company must have at least one half of the flats represented

Procedure

5. 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 1st June 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 24th July 2012 and (b) that a hearing would be held if either party requested one. No such request was received.
6. 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. As has been said, it also failed to include the relevant Counter-Notice. 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. An initial delay was caused because the Tribunal members took the view that the Respondent must have made some representations and a search was put in hand.
7. Having received the bundle and the Respondent's documents, the members of the Tribunal considered these and felt that they lacked essential information before a determination could be concluded. A letter was therefore written to the Applicant's solicitors as follows:-

"The Tribunal has had a preliminary look at the papers in this case and the members are concerned to note that only one of the lease plans has been provided and this is not coloured. Furthermore, none of the Land Registry plans has been provided. The point is that the Tribunal needs to be satisfied that 13-115 (odd) Hunting Gate, Colchester is a 'self contained building or part of a building' to comply with Section 72 of the 2002 Act. A look at Google Earth would suggest that it is not.

Furthermore the copy of the memorandum and articles of the applicant in the papers suggests that the object of the company is to manage 76 Herman Hill, Wanstead. If that has been corrected, please provide a copy and clear evidence of when any amendment was made.

Finally, the Tribunal notes that the second claim notice only refers to 25 qualifying lessees as being members of the Applicant. Is it being suggested that this was an error in the particulars of the notice which should be ignored by the Tribunal. If so, please explain why".

8. A copy was sent to the Respondent's representatives, Estates & Management Ltd. with a request for their comments. In fact they replied first saying that

- (i) 13-115 (odd) Hunting Gate is 8 separate buildings;
- (ii) they understood that the Memorandum & Articles of Association had been changed and
- (iii) as "there are 53 units at the site....the claim must fail as the claim notice shows less than 50% of the number of qualifying tenants."

9. The Applicants solicitors then responded to that with a rather odd letter. In respect of the 3 numbered paragraphs above, they say:-

- (i) "Please see e-mail of 19th July 2012"
- (ii) (they enclosed a copy of the amended Memorandum & Articles of Association) and
- (iii) "Please find enclosed special resolutions"

10. They finish by just adding "We trust that this deals with your queries accordingly."

The Law

11. 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"

12. Section 78 of the 2002 Act says that each qualifying tenant in the premises who is not or has not agreed to become a member of the RTM company must be served with a Notice of Invitation to Participate.

13. Section 79 of the 2002 Act says that on the date the Claim Notice is given, membership of the RTM company "*must...include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained*". The section also says that a copy of the claim notice must be sent to each qualifying tenant.

Conclusion

14. The Tribunal concludes that this application must fail because the premises are clearly not a self contained building or part of a building. The e-mail referred to by the Applicant's solicitors is from the witness Roisin Mahoney. It is a little difficult to interpret the e-mail but the relevant introductory comment is "*With regards to the block existing on its own then as a freehold title it does it exists as two blocks however is part of mixed use development please see below the act. I have been on site and are spate and only access is right of road to get to Huntinggate (sic)*". This is a complete and accurate quotation as it appears.

15. The solicitors do not send any further plans or make any other comment. Estates & Management have sent a Land Registry plan which clearly shows separate buildings and, as was stated in the letter to the solicitors, Google Earth shows a number of separate buildings. Google Earth is not, strictly, evidence upon which a determination can be based, but the Tribunal is satisfied from the evidence of the Respondent and the plan it provides that, on the balance of probabilities, 13-115 (odd) Hunting Gate is a small estate consisting of at least 8 separate buildings.
16. 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. There would also be no point in having a minimum percentage of lessees in 'the premises' i.e. the self contained building, if a RTM company could assume management of any number of buildings.
18. On the face of the Claim Notice, the number of qualifying lessees who are members of the Applicant is clearly less than 50% of the number of flats. However, part of the Applicant's evidence is a copy of the members' register of the Applicant which clearly shows 29 members when the relevant Claim Notice was served. The Tribunal has not considered whether this is simply an "inaccuracy" in particulars which it could overlook under the provisions of Section 81(1) of the 2002 Act. However, it is difficult to see how a complete absence of details of 4 members could be described as an "inaccuracy" in particulars.
19. As to the Respondent's other points in their Counter-Notice, the Applicant's evidence does, to a greater or lesser degree, deal with the service of notices inviting participation and the service of copies of the Claim Notice. On the issue of the Memorandum & Articles of Association of the Applicant, a corrected version has been submitted with an unsigned copy of a resolution effecting the change. As the point is not repeated in the second Counter-Notice, the Tribunal assumes that this error was corrected in time.

Bruce Edgington
Chair
31st July 2012