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**SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: CHI/00HN/LRM/2011/0018**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 84(3) OF THE COMMONHOLD &  
LEASEHOLD REFORM ACT 2002**

**Applicant: Valcourt Flat Management (RTM) Ltd**

**Respondent: A Lambert Flat Management Ltd**

**Property: Valcourt, 18 Branksome Wood Road, Bournemouth, BH4 9JY**

**Date of Determination: 6 February 2012**

Leasehold Valuation Tribunal  
Mr I Mohabir LLB (Hons)

### ***Introduction***

1. This is an application made by the Applicant pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination that it was on the relevant date entitled to acquire the right to manage the property known as Valcourt, 18 Branksome Wood Road, Bournemouth, BH4 9JY ("the property").
2. The property is described as a self-contained building containing 12 flats, all of which are held by qualifying tenants as defined by section 75(2) of the Act.
3. By a claim notice dated 8 September 2011, the Applicant exercised the entitlement to acquire the right to manage the property. Of the 12 qualifying lessees, 10 participated. The claim notice was served on the Respondent under section 79(6)(b) of the Act, as it is not a party to the leases. However, it covenants in the leases to maintain and insure the property. The freehold is owned by Garnet William Lambert and Jennifer Thornton who have no liability to maintain and insure the building.
4. By a counter notice dated 13 October 2011, the Respondent served a counter notice denying that the Applicant was entitled to acquire the right to manage the property for two reasons: Firstly, that the Applicant's Articles of Association does not state that one of its objects is the acquisition of the right to manage the property. Secondly, that the Articles do not comply with the form and content required by the RTM Companies (Model Articles) (England) Regulations 2009. Consequently, the claim notice served by the Applicant was invalid and it was not entitled to acquire the right to manage the property.
5. By a letter dated 4 November 2011, the Applicant applied to the Tribunal for a determination of the issue as to whether it was entitled to acquire the right to manage the property.

**Decision**

6. The Tribunal's determination in this matter took place on 6 February 2012. At the request of the parties, there was no oral hearing and this matter was decided solely on the basis of the documentary evidence and written submissions made by the parties.
  
7. The Respondent's submission that the Applicant's claim notice was invalid was put in the following way.
  
8. The Act came into force on 30 September 2003. Section 73(2)(b) of the Act provides that "*a company is an RTM company if its Memorandum of Association states that its objects, or one of its objects, is the acquisition and exercise of the right to manage the premises*". At the same time, the RTM Companies (Memorandum & Articles of Association) (England) Regulations 2003 ("the 2003 Regulations") also came into force which prescribed the form and content of the Memorandum and Articles of Association for RTM companies.
  
9. The Companies Act 2006 reformed company law by replacing the Memorandum and Articles of Association of new companies with a single document, being the Articles. This Act came into force on 1 October 2009. On the same date, the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 ("the Order") also came into force. Section 194(15) of the Order provides that the words "*Memorandum of Association states*" in section 73(2)(b) of the Act were replaced by the words "*Articles of Association state*". As a consequence of these changes the RTM Companies (Model Articles) (England) Regulations 2009 ("the 2009 Regulations") came into force on 9 November 2009 and revoked the 2003 Regulations. The Applicant company was incorporated on 5 May 2010 and its Memorandum and Articles of Association were exhibited to the Respondent's statement of case.
  
10. The Respondent contended, firstly, that the Applicant's Articles of Association do not state that its object or one of its objects is the acquisition of

the right to manage as required by the amendment to section 73(2) of the Act. This object is only set out in the Memorandum of Association. Secondly, the Respondent's Articles of Association do not comply with the form and content as prescribed by the 2009 Regulations. The Applicant's Articles only comply with the earlier 2003 Regulations.

11. For the above reasons, the Respondent submitted that the Applicant is not entitled to acquire the right to manage.
12. In reply, the Applicant contended that clause 4 of its Memorandum of Association complies with section 73(2)(b) of the Act as originally enacted.
13. In addition, the Applicant contended that the 2009 Regulations were passed pursuant to section 74 of the Act, which provides as follows:

*"(1) ...*

*(2) The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.*

*(3) A RTM company may adopt provisions of the regulations for its articles.*

*(4) The regulations may include provision which is to have effect for a RTRM company whether or not it is adopted by the company.*

*(5) A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.*

*(6) ...*

*(7) ..."*

14. Furthermore, Regulation 2 of the 2009 Regulations provides that:

*"(1) The articles of association of a RTM company shall take the form, and include the provisions, set out in the Schedule to the Regulations.*

*(2) Subject to regulation 3(2), the provisions referred to in paragraph (1) shall have effect for a RTM company whether or not they are adopted by the company."*

15. It was argued by the Applicant that section 74(3) of the Act afforded a discretion as to whether or not the Applicant had to expressly comply with Regulation 2(1) regarding the form and content of its Articles of Association. It was submitted that the effect of Regulation 2(2) is that the Articles of Association are to be read in any event as though they comply with regulation 2(1). This was consistent with section 74(5) of the Act.
16. The Tribunal considered each of the arguments in turn. It concluded that the Applicant's contention that clause 4 of its Memorandum complied with section 73(2)(b) of the Act as originally enacted was irrelevant. The Companies Act 2006 and the Order amended section 73(2)(b) so that any RTM company incorporated after the commencement of this legislation and the 2009 Regulations only required Articles of Association and that this documents has to expressly state that its object or one of its objects is the acquisition and exercise of the right to manage. The Memorandum of Association was rendered obsolete.
17. It was common ground that the Applicant company was incorporated on 5 May 2010 with a Memorandum and Articles of Association. It was also common ground that the objects for which the company was established was to acquire and exercise the right to manage, is found in clause 3 of the Memorandum and not in the Articles, as expressly required by section 73(2)(b) of the Act. The Tribunal, therefore, found that the Applicant's Articles of Association did not comply with the requirement of section 73(2)(b) in this regard.
18. The Tribunal then turned to consider the form and content of the Applicant's Articles of Association. The Tribunal did not accept the construction advanced by the Applicant that section 74(3) of the Act when read together with section 74(5) and Regulation 2(2) of the 2009 Regulations affords a discretion as to the form and content of the Articles of Association and that Regulation 2(1) is a deeming provision.

19. As the Respondent correctly stated in its Reply, the use of the word “may” in section 74(3) of the Act means that a RTM company has the power to adopt provisions of the Regulations in its Articles. It does not mean that it is not required to adopt the Articles prescribed in the Regulations.
20. The language of the Regulation 2(1) of the 2009 Regulations is clear, manifest and mandatory. The Articles of a RTM company *shall* (my emphasis) take the form, and include the provisions set out in the Schedule to these Regulations. It does not afford any discretion as to the form and content of the Articles.
21. The only effect of the reference in Regulation 2(2) to Regulation 3(2) of the 2009 Regulations is that the latter will automatically apply at the end of the transitional period to RTM companies incorporated before 9 November 2009 with Articles prescribed by the 2003 Regulations. As the Applicant company was incorporated after this date, it has no application here.
22. As to section 74(5) of the Act, again, the meaning of the section is clear. It simply provides that a RTM cannot opt out of the requirements set out in the 2009 Regulations as to the form and content of its Articles. This is consistent with the mandatory language used in Regulation 2(1).
23. Accordingly, the Tribunal found that the Applicant’s Articles of Association does not comply with Regulation 2(1) of the 2009 Regulations. On the basis of the findings made by the Tribunal, it concluded that the Applicant company is not entitled to acquire the right to manage the property.

Dated the 22 day of February 2012

Signed

Mr I Mohabir LLB (Hons)

Chairman