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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AY/LRM/2012/0005

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

Applicant: 75 Heyford Avenue RTM Company Ltd

Respondent: Seamoat Ltd

Property: 75 Heyford Avenue, London, SW8 1EB

Date of determination: 17 April 2012

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)
Mr P Casey FRICS

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 75 Heyford Avenue, London, SW8 1EB ("the property").

2. The property appears to be comprised of 3 flats, all of which are held by qualifying tenants as defined by section 75(2) of the Act. All of the tenants participate in the Right to Manage application.

3. By a claim notice dated 17 November 2011, the Applicant exercised the entitlement to acquire the right to manage the property.

4. By a counter notice dated 19 December 2011, the Respondent served a counter notice denying that the Applicant was entitled to acquire the right to manage the property for variously not complying with requirements of sections 73(2), 80(8) and 80(9) of the Act.

5. By an application dated 13 February 2012, 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. On 16 February 2012, the Tribunal issued Directions when this matter was allocated to a paper determination. Neither party requested a hearing. The basis upon which the Respondent denies that the Applicant is not entitled to acquire the right to manage is set out in its statement of case dated 28 February 2012. The arguments advanced by the Respondent are particularised and dealt with below in turn.

Decision

6. The determination in this matter took place on 17 April 2012 and was based solely on the respective statements of case and documentary evidence filed by the parties.

Section 73(2)

7. The first challenge made by the Respondent was that the Applicant is not an RTM company in relation to the property and, therefore, does not comply with section 73(2) of the Act.

8. The Respondent contended that the object of the Applicant's Articles of Association fail to properly state the premises in respect of which it proposes to acquire the right to manage. The freehold title describes the property as 75 Heyford Road whereas the Articles describe the property as Flats 1-3, Heyford Avenue. It submitted that the Applicant, therefore, cannot be an RTM company for the premises for which the claim notice was served.

9. The Tribunal did not accept the submission made by the Respondent as being correct. The distinction is sought to make was a purely semantic one. How the freehold interest of the property is described is irrelevant. The Applicant does not seek to acquire the freehold interest.

10. The requirement of section 73(2)(b) is for *"...the articles of association (to) state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises"*. Unfortunately, the Act does not provide a definition of what amounts to "premises" within the meaning of the section. Nevertheless, as a matter of construction, it must have been the intention behind the legislation that any Articles of Association must sufficiently identify the property in respect of which the right to manage was being exercised. In the present case, the Tribunal found that the Articles of the Applicant company, by describing the property as Flats 1-3. Heyford Avenue, did sufficiently identify the premises and satisfied the requirement of section 73(2)(b) in this regard. The property is only comprised of the 3 flats, all of whom participate in the right to manage. There can be no ambiguity on the part of the Respondent as to the premises in respect of which the right was being exercised. Accordingly, this challenge brought by the Respondent did not succeed.

Sections 80(8) and 80(9)

11. The claim notice was signed by a Mr S Charles on behalf of Urban Owners Ltd, which is the Company Secretary of the Applicant. Essentially, the Respondent contended that, in so doing, the claim notice does not comply with either sections 80(8) and/or 80(9) of the Act by failing to comply with the requirement in Schedule 2 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the Regulations"). Specifically, by signing the claim notice in this way, the Respondent argued that it did not comply with the requirement in the Regulations that it had to be signed by an authorised member or officer of the company. Strictly, it should have been executed by Urban Owners Ltd in accordance with the requirements of section 44 of the Companies Act 2006. The sole signature by Mr Charles did not comply with the requirement for two authorised signatories. Furthermore, it did not appear that Mr Charles was an authorised signatory of Urban Owners Ltd as he was listed neither a director or company secretary. The Respondent relied on the case of ***Hilmi & Associates Ltd v 20 Pembridge Villas Freehold Ltd*** [2010] EWCA Civ 314 as authority for this proposition.

12. The Tribunal did not accept the Respondent's arguments for the following reasons. It had run the same argument in relation to the case concerning 50 Mysore Road, Battersea, London, SW11 5SB (LON/00BJ/LRM/2011/0039) where a notice of claim had also been signed by Urban Homes Ltd on behalf of the Applicant RTM company. In rejected the Respondent's argument, the Tribunal stated:

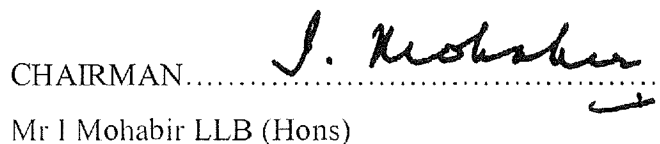
> *"The finding of the Tribunal is that the provisions of the 2002 Act are different to those of the 1993 Act. The 1993 Act makes it clear at section 99(5) that the notice must be signed by the participating tenants personally. The 2002 Act specifically departs from this requirement. The prescribed form states that it is signed "By authority of the Company" and in the margin states "Signature of the authorised member or officer". No mention is made of the requirement of the Companies Act 2006 and the signature requirement is in the singular....The Tribunal therefore finds that the signature of Mr Hooper on behalf of Urban Owners Limited, the Company Secretary of the Applicant, which is not challenged, is valid execution on behalf of the Applicant."*

13. In the present case, the Tribunal wholly adopts the same reasoning above and finds that the signature of Mr Charles on the claim notice does comply with the requirements of sections 80(8) and 80(9) of the Act and the Regulations.

14. As to whether Mr Charles is an authorised signatory for Urban Homes Ltd, the Tribunal was satisfied that he was so authorised by a resolution made by the same company giving him delegated authority to sign claim notices on its behalf.

15. Accordingly, this challenge brought by the Respondent also fails and the Tribunal concluded that the Applicant was on the relevant date entitled to acquire the right to manage the property.

Dated the 18 day of March 2012



CHAIRMAN...

Mr I Mohabir LLB (Hons)