HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 84(3)

Case Reference:	LON/00AX/LRM/2013/0002
Premises:	FLATS 1 – 14 KINGSTON COURT 82 MAPLE ROAD SURBITON KT6 4AL
Applicant(s):	KINGSTON COURT RTM COMPANY LIMITED
Representative:	URBAN OWNERS LIMITED
Respondent:	SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LIMITED
Representative:	P CHEVALIER & CO, SOLICITORS
Date of Application	16th January 2013
Date of Directions	24th January 2013
Date of Paper Determination	5th March 2013
Appearance for Applicant:	No Appearance
Appearance for Respondent:	No Appearance
Leasehold Valuation Tribunal:	Mr S. Shaw LLB (Hons) MCI Arb Mr D Jagger MRICS

DECISION

Introduction

1. This case involves an application made by Kingston Court RTM Company Limited ("the Applicant") in respect of the property situate and known as Flats 1 -14, Kingston Court, 82 Maple Road, Surbiton, Surrey, KT6 4AL ("the Property"). The application is made pursuant to the provisions of the Commonhold and Leasehold Reform Act 2002 and in particular Section 84(3) of that Act ("the Act") which provides that where the RTM Company has been given one or more counter notices to the effect that the RTM Company is not entitled or was not entitled on the relevant date to acquire the rights to manage the premises specified in the claim notice, the RTM Company can apply to a Leasehold Valuation Tribunal for a determination to the effect that it was so entitled. In this case the freehold owning company of the property, namely Sinclair Garden Investments (Kensington) Limited ("the Respondent") has indeed served such a notice and accordingly the application was made to the Tribunal.

2. Directions were given in the case on 24th January 2013 and the matter has been referred for determination by the Tribunal on the basis of written representations from both sides, and without the need for an oral hearing.

3. The Applicant served a notice upon the Respondent pursuant to the provisions of Section 79 of the Act, and the Respondent in turn served a counter notice pursuant to the provisions of Section 84 of the Act. The Respondent in effect

challenges the Applicant's eligibility to manage the building in question and says that the notice which was served notifying the claim to acquire the right was defective. It is proposed to deal with the parties' respective assertions below.

4. Before turning to the parties' respective contentions, it is appropriate to set out some relevant provisions in the Act. Section 72 appearing in Part 2 of the Act defines the premises to which the Chapter applies as follows:

> *"(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.*
>
> *(3) A part of a building is a self contained part of the building if –*
> *(a) it constitutes a vertical division of the building,*
> *(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and*
> *(c) subsection (4) applies in relation to it.*
>
> *(4) This subsection applies in relation to part of the building if the relevant services provided for occupiers of it –*
> *(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or*
> *(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the building."*

5. Section 80 of the Act deals with the required contents of the claim notice and provides that it must comply with the following requirements:

> *"(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this chapter applies."*

6. In addition by way of supplementary provisions to Section 80, Section 81 provides that:

> *"(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of Section 80."*

7. In the Respondent's counter notice four points were taken on behalf of the Respondent, in support of the assertion that the Applicant was not entitled to acquire the right to manage the premises specified in the claim notice. Two of those points have subsequently been abandoned and the two remaining points really, for the purposes of this Decision, merge into one. In the Schedule to the counter notice the two relevant points taken are:

> *"Section 80 requires the claim notice to contain a statement of the grounds on which it is claimed they are premises to which the chapter applies. The grounds specified in this claim notice do not refer to appurtenant property."*

Further,

> *"(3) The premises in the Memorandum and Articles of Association exclude appurtenant property."*

Applicant's Case

8. In its submissions dated 31st January 2013 made pursuant to the Tribunal's Directions, the Applicant deals with the objections to its notice by saying that there is no requirement for the claim notice to specify appurtenant property. It relies upon the decision of the Court of Appeal in *Gala Unity Limited v.*

Ariadne Road RTM Company Limited Neutral Citation No [2012] EWCA Civ 1372. That decision of the Court of Appeal upheld an earlier decision by the President of the Upper Tribunal (Lands Chamber) the Neutral Citation Number of which was [2011] UKUT 425(LC). At paragraph 14 of the decision of the President of the Upper Tribunal it is stated that:

> *"Section 72(1)(a) was drafted with such an economy of wording as to make its interpretation not entirely clear. The problem lies with the words after the comma, "with or without appurtenant property". Do these words mean that if the self contained building has appurtenant property "the premises" for the purposes of the Act consist of the building plus such appurtenant property as the building may have? Or does it mean that if the building has appurtenant property "the premises" can either consist of the building plus the appurtenant property or the building alone, leaving it to the claim notice to specify under Section 80(2) which of these, for the purposes of the claim, it is? I think it must be the first of these, so that the effect of a valid notice is to extend the right to manage to any property appurtenant to the building or part of a building. It would be unsatisfactory if a claim notice had to specify whether or not it was made in respect of appurtenant property. The right to manage (Prescribed Particulars and Forms) (England) Regulations 2010 do not require this, nor does the form in Schedule 2 of the Regulations provide for any more than a statement of the name of the premises to which the notice relates."*

As indicated, the President's decision was wholly upheld in the Court of Appeal.

9. The point being taken by the Respondent is that in the claim notice in this case there is no mention of appurtenant property. The notice at paragraph 1 identifies the premises to which the notice relates as *"Flats 1 to 14, Kingston Court, 82 Maple Road, Surbiton, Surrey KY6 4AL."* At paragraph 2 it states that the company claims that the premises are premises to which Chapter 1 of the 2002 Act applies on the grounds that:

> *"The premises are self contained. The number of flats held by qualifying tenants is more than two and represents not less than two thirds of the flats. The participating tenants represent more than 50% of the total flats at the date of application. Less than 25% of the premises are non residential."*

10. The objection of the Respondent, as understood by the Tribunal, but which will be expanded upon below, is that this fails to comply with the provisions of Section 80(2) of the Act as read together with Section 72 of the Act. The Applicant's position as indicated above is that there is no requirement in the Act for a specific reference to appurtenant property, one way or the other, and that there is Court of Appeal authority supportive of this proposition. It maintains that its notice is perfectly valid and it is entitled to exercise the right to manage the property.

Respondent's Case

11. The Respondent's case has been set out in very full written submissions running to some 13 paragraphs and referring to a variety of earlier decided cases. No disrespect is intended to the scholarship contained within those submissions if they are not repeated in full herein. Suffice it to say for present purposes that the submissions place emphasis on the importance of a proper compliance with Section 80(2) of the Act (see above). The *"premises"* must be specified in the RTM notice and explain how those premises constitute a proper ground for claiming the right to manage as defined in Section 80(2). Some play is made in the Respondent's submissions to the effect of uncertainty caused in this regard, leading to pragmatic difficulties in deciding, particularly where one has multiple blocks on an estate, who in any given case has the appropriate entitlement to manage. It refers to a "*footrace*" potentially between individual

blocks to claim a right to manage first, in order to have the right to manage appurtenant property to multiple blocks. It further seeks to distinguish the above mentioned decision of the Upper Tribunal and Court of Appeal in *Gala Unity Limited* on the basis that that case was not dealing with precisely the point arising in the instant case.

12. When coming to the practical effects of a failure properly to define if appurtenant property is included (see Section 9 of the Respondent's submissions) it is said that:

> *"The importance of defining appurtenant property in the claim notice has become more pronounced since the decision of the Court of Appeal in Gala Unity Limited v. Ariadne Road RTM Company Limited [2012] EWCA civ. 1372. In the very common case (though not of course the instant case) of an estate with multiple self contained blocks, each block will enjoy a separate right to manage entitlement. Some parts of the estate may be appurtenant to one or other block or flats within such block, but not to more than one block. However it may well be that some appurtenant property (common access roads, grounds and car parks etc) is in fact shared by all the blocks, each of which has an individual right to manage under Part 2 CLRA."*

13. At Section 10 of the submissions the point being taken is refined. It is stated that the claim notice merely states that the subject property is "*self contained.*" It complains that no other factual information is given in respect of the premises and it omits (i) to specify the premises to which the right to manage provisions are said to apply and (ii) to specify the grounds on which it is claimed that they are premises to which the right to manage provisions applied. It is asserted that on this ground alone the claim is invalid. Specifically, complaint is made that the claim notice does not specify if the premises are a building or a part of a building. The submissions conclude with an argument to the effect that the

regime of the Act is a "no fault" regime which carries with it a concomitant requirement strictly to comply with the provisions of the Act. Since there has been a failure to give mandatory information in this case, the claim form is defective, cannot be cured and the claim must fail.

Conclusions of the Tribunal

14. The Tribunal is satisfied that this claim is in fact governed by the Court of Appeal decision in the *Gala Unity Limited* case to which reference has been made. The Tribunal can see no meaningful basis upon which to distinguish that decision from the point being taken in this case. The Court of Appeal wholly upheld the President of the Upper Tribunal who came to the conclusion that there is no need to specify appurtenant property in the claim notice. The Tribunal notes that there is absolutely no assertion on behalf of the Respondent that this is indeed a case in which there is appurtenant property, of a kind leaving the Respondent or anyone else having to deal with the effect of the right to management with any kind of confusion.

15. The thrust of the complaint, or part of it, would appear to be that the Applicant has not stated at paragraph 2 of the notice that the self contained flats to which specific reference has been made constitute "a *building or part of a building*" for the purposes of Section 80(2). Whilst it is true that the claim notice does not in terms state this, the Tribunal sees no specific requirement in the Act to state what many might think would be the overwhelmingly obvious, that is to say that the relevant Flats 1 to 14 are indeed a building or form part of a building. Flats of this kind cannot exist in some kind of notional vacuum, and there is no

positive case put forward on behalf of the Respondent to the effect that this is a case complicated by a particular kind of building or part of a building, taking it outside the usual range of such applications. It seems to the Tribunal that the absence of this kind of specificity is hardly likely to have created uncertainty on the part of the Respondent or anyone else. nor does it involve a failure to comply with the Act's requirements. The idea that the Respondent itself has no knowledge of the building of which it is the owner, so that this lack of precision (if that is what it is) has thrown the Respondent into a state of confusion as to the premises in respect of which the application is made is, seems to the Tribunal untenable.

16. One of the authorities referred to by the Respondent is the decision of the Court of Appeal in *Speedwell Estates v. Dalziel* [2002] 1EGLR 55. In that case Rimer LJ referred to the decision of the House of Lords in *Mannai Investment Company Limited v. Eagle Star Life Assurance Company Limited* [1997] AC 749. In that well known case the House of Lords construed the relevant notice (a rent review notice) objectively against the background of the terms of the lease under which it was given and said that it was obvious to a reasonable landlord familiar with the lease that there had been a mistaken reference to 12th January rather than 13th January. In effect it said that the reasonable recipient of such a notice would be in no doubt as to its meaning and that the meaning had been properly communicated to the landlord. There was some argument in the *Speedwell Estate* case as to whether or not *Mannai* is of application in considering statutory provisions as opposed to contractual provisions. The Court of Appeal held in that case that the best approach is to

look at the particular statutory provisions pursuant to which the notice is given and identify what its requirements are. *"Having done so, it should then be possible to arrive at a conclusion as to whether or not the notice served under it adequately complies with those requirements. If anything in the notice contains what appears to be an error on its face, then it may well be that there will be scope for the application of the Mannai approach, although this may depend on the particular statutory provisions in question. The key question will always be: "Is the notice a valid one for the purposes of satisfying the relevant statutory provisions."*

17. The decision of this Tribunal is, for the reasons already indicated above, that there has been no failure to comply with the statutory provisions in completing Sections 1 and 2 of the claim notice. Neither the Act nor the Regulations require reference to appurtenant property, nor do they require a specific statement to the effect that the premises, apart from being self-contained also are a building or part of a building. If that conclusion is wrong, and on the basis that *Mannai* may apply in some cases involving notices served pursuant to statutory provisions, then it seems to the Tribunal applying the approach of Rimer LJ in the *Speedwell Estate* case, that if there is an error in having failed to refer either to the appurtenant property or to confirm the fact that the flats in question form a building or part of a building, then the notice is nonetheless valid for the purpose of the Act. As indicated above the Respondent's assertions seem to postulate a fantasy world in which, absent the statement of such obvious propositions, confusion or uncertainty will abound. The Tribunal cannot concur with this proposition, nor does it think that any such confusion (in

the absence of any positive case put forward in this regard) might be caused to any third party.

Conclusion

18. For the reasons indicated above the Tribunal is satisfied that the claim notice in this case satisfies the requirements of the Act and that accordingly the Applicant is entitled to acquire the right to manage the premises in question.

Legal Chairman: S. Shaw

Dated: 5th March 2013