First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UG/LRM/2015/0009**
Property	:	**Flats 1-11 (odds) Saw Mill Road, Colchester, Essex CO1 2ZL**
Applicant	:	**Saw Mill Road RTM Co. Ltd.**
Respondent	:	**Assethold Ltd.**
Date of Application	:	**13th October 2015**
Type of Applications	:	**For an Order that the Applicant is entitled to the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair)** **Mr. David Brown FRICS**

DECISION

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1. This Application fails and the Applicant does not acquire the right to manage the property.

2. The costs order requested by the Applicant is refused.

Reasons

Introduction

3. The Respondent accepts that the Applicant is a right to manage company ("RTM"). Such RTM served the Respondent with a claim notice on the 31st July 2015 seeking an automatic right to manage the property. On the 2nd September 2015, the Respondent freehold owner's solicitors served a counter-notice.

4. As freeholders are no longer limited to the issues raised in their counter-notices, it is simpler to just recite the issues now raised i.e.

   (a) It is argued that there were 2 separate Claim Notices dated 31st July 2015 and as there cannot be more than one Claim Notice in

existence and it is impossible to say which was the first, they are both invalid. It is accepted that they are exactly the same except that one has the freeholders address as 5 North End Road, London NW11 7EH and the other has c/o Eagerstates Ltd. PO Box 1369 London NW11 7EH and

(b) The Memorandum and Articles of Association of the RTM define the premises as "Flats 1, 3, 5, 7, 9 and 11 Saw Mill Road, Colchester, Essex CO1 2ZL" which does not include the common parts including the structure and foundations of the freehold title. Thus, the RTM's objectives do not include managing the common parts and must be invalid and

(c) Because of the issue raised in (b), the Claim Notice does not contain the correct particulars of the premises and therefore must be invalid.

Procedure

5. The Tribunal decided that these cases could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 16th December 2016 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

6. Section 80(2) of the 2002 Act says that a Claim Notice "*must specify the premises...*". The Premises are defined in section 72 as being a self contained building or part of a building. Section 72(1)(a) of the 2002 Act says, in effect, and for the purposes of the dispute in this case, that the RTM provisions apply to "*premises if they consist of a self contained building or part of a building, with or without appurtenant property*". If a part of a building, it must constitute a vertical division.

7. Section 112(1) defines 'appurtenant property' as "*any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with the building or part* (of a building)".

8. Section 73(2)(b) says that the Memorandum and Articles of Association of the RTM must state "*that its objective, or one of its objectives, is the acquisition and exercise of the right to manage the premises*".

9. Section 79(6) says that a Claim Notice must be given to the landlord and section 81(1) says that a Claim Notice is not invalidated "*by any inaccuracy in any of the particulars required by or by virtue of section 80*".

Discussion

10. The first objection is not really understood. The 2 'versions' of the Claim Notice are both addressed to the landlord with 1 going to one address and the other to another. If a company has a registered office

and a trading address which are different, it surely cannot be said that serving the Claim Notice on both addresses could possibly be anything other than appropriate caution. In other words, to make sure that the Claim Notice comes to the attention of the landlord. Putting 1 address in 1 copy of the Notice and the other in the 2nd copy does not create 2 separate Notices.

11. Even the Respondent does not suggest that the Notices are in a different form except for the landlord's address or have a different date. To then suggest that they are 2 different Notices and they should both be declared invalid is not something the Tribunal can accept. It is clearly the same Notice.

12. The other 2 objections are linked. The premises are clearly defined in both the Claim Notices and the Memorandum and Articles of Association of the RTM as consisting of the demised flats only. As the Respondent points out, the building in which the flats are contained also includes the common parts, the structure and the roof and foundations. The definition of 'appurtenant property' in the 2002 Act was clearly not intended to include those parts and, thus, the principle set out in the case of **Gala Unity v Ariadne RTM Co. Ltd.** reported as an Upper Tribunal case at LRX/17/201 and as a Court of Appeal case at [2012] EWCA Civ 1372 as to the premises including appurtenant property does not apply.

13. The problem faced by the Applicant is that not only is the description of the 'premises' insufficient but it is also vitally important that the management of the building does include managing the common parts, structure etc. The landlord Respondent must have those parts of the building adequately managed as well as the flats themselves.

14. If the premises had been defined as being 'the self contained building including flats 1-11 (odds) Saw Mill Road' etc., then there would not have been a problem. It doesn't, and this creates both the technical and the practical problems mentioned above. A description which is limited to the flats, can only include those parts of the building which are demised.

15. The Tribunal has carefully considered the representations of both parties. Each refers to previous 1st Tier Tribunal decisions which appear to come to contrary determinations. Previous decisions of the 1st Tier Tribunal are not, of course, binding on this Tribunal. Indeed, it could be said that where contrary decisions are made on the same point, they are not even persuasive.

Conclusions

16. This application must fail for the reason stated i.e. the 'premises' as defined in the Claim Notice and the Memorandum and Articles of Association do not consist of a self contained building or part of a building. However, as to the other point made by the Respondent, the

Tribunal is not inclined to accept it. There is clearly, in the Tribunal's mind, only one Claim Notice.

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Bruce Edgington
Regional Judge
16th December 2015

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.