

414



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/LRM/2014/002**

Property : **21 Chobham Road, London E15 1LU**

Applicant : **21 Chobham Road RTM Company Limited**

Representative : **Urban Owners Limited**

Respondent : **Theori & Dimitri Limited & Binnings Properties Limited**

Representative : **Whitmore Law LLP**

Type of Application : **Application for a declaration of the Right to Manage**

Tribunal Judge : **S O'Sullivan**

Date of consideration : **19 March 2014**

Date of Decision : **19 March 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant will acquire the right to manage the property known as 21 Chobham Road, London E15 1LU on the relevant date being 1 April 2014.
- (2) The tribunal makes further directions under separate cover in relation to the Applicant's application for its costs pursuant to rule 13(1)(b)(iii) of The Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013.

The application

1. The tribunal has before it an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the "Act").
2. Directions were made dated 30 September 2014 which provided for the application to be considered by way of a paper determination. Those directions specified that the application and enclosures stand as the statement of case and that the Respondent should serve a statement in reply to include legal submissions. The Respondent filed a bundle of documents by letter dated 13 February 2014 and the Applicant filed a supplementary reply on 27 February 2014.

The Applicant's case

3. The property in question is described in the application as 21A and 21B Chobham Road, London E15 1LU.
4. By a claim notice dated 20 November 2013 the Applicant gave notice that it intends to acquire the Right to Manage the property known as 21A and 21B Chobham Road London E15 1LU (the "Property") on 1 April 2014.
5. By a counter notice dated 10 December 2013 the Respondent denied that the Applicant was entitled to acquire the right to manage.
6. The Applicant relied on its claim notice and documents lodged in support of the application.

The Respondent's case

7. The Counter Notice served dated 10 December 2013 disputed the claim on various grounds. These were confirmed in the undated statement of Theori & Demeti Limited contained in the bundle lodged with the

tribunal. The challenges made to the application by the Respondent and the Applicant's response are as follows:

- i. The Respondent says that the claim notice was not served on Binning Properties Limited when the registered proprietors are Theori & Demetri Limited and Binning Properties Limited jointly.

The Applicant confirms that the notice of claim was served on Binning Properties Limited at the two addresses available for them. The Applicant relies on copies of the envelopes with the special delivery sticker attached and the corresponding proof of deliveries as shown on the Royal Mail website. One of these proof of deliveries is acknowledged as being received with the name "*Binning*".

- ii. The Property is accessed by a shared access way which is shared with other units and cannot form part of the assignment of the Property to be managed

The Applicant says that the fact there is a shared access is irrelevant.

- iii. Not all proprietors to the units on the estate of which the Property forms part have been invited to participate or be a member of the RTM company.

The Applicant says that there is no requirement to serve the notice of claim on the proprietors of the other units on the estate as the Applicant is only seeking the right to manage the Property.

The tribunal's decision

8. The tribunal determines that the Applicant acquired the right to manage on the relevant date being 1 April 2014.

Reasons for the tribunal's decision

9. The tribunal was satisfied from the evidence produced and attached to the Applicant's supplementary statement that Binnings Properties Limited had been properly served with the notice of claim.
10. Neither party had made any detailed submissions on the issue of the access way nor had they relied on any legal authorities. However this tribunal considers that it is well established that the fact that appurtenant property such as an access way may be shared with other leaseholders on the estate is no bar to a successful right to manage application. There is no basis to conclude that the appurtenant property, in this case the access way, must be exclusive to the property over which the right to manage is sought. In such cases any

management responsibilities for these appurtenances must now be split with the RTM owing the duties to its tenants and the landlord to other tenants on the estate. Such matters are beyond this tribunal's jurisdiction. However the parties will need to work together to decide on how this is best achieved in practice so as to avoid duplication of service charge costs. An application for variation of leases may be appropriate in some instances and it is suggested that they take legal advice in this regard.

11. The tribunal also agrees that there was no obligation to serve the notice of claim on the proprietors of the other units on the estate. No point is raised on the notice of claim not having been properly served on the leaseholders of the units in respect of which the right to manage is sought.
12. The tribunal therefore concluded that the Applicant will acquire the right to manage the Property on 1 April 2014 being the relevant date.

Application for costs under Rule 13

13. The Applicant made an application for costs in its supplemental statement on the basis that the Respondent's service of the counter notice with no real grounds constituted frivolous and vexatious behaviour.
14. The application is made under rule 13(1)(b)(iii) of The Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013.
15. However the tribunal has no detail of the costs incurred by the Applicant and as such is not in a position to make any determination in relation to that application. In addition the Respondent has not had an opportunity to comment on the application. The tribunal therefore makes directions in relation to the costs application by way of a directions order of the same date.

Name: S O'Sullivan

Date: 19 March 2014