HM Courts & Tribunals Service

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CHI/23UB/LRM/2014/0015**
Property	:	**Millennium Plaza, Warwick Place, Portland Street, Cheltenham GL52 2NB**
Applicant	:	**Millenium Plaza RTM Company Limited**
Representative	:	**BPE Solicitors LLP**
Respondent	:	**Bradmoss Limited (landlord)**
Representative	:	**Estates and Management Limited**
Type of application	:	**An application for a determination as to whether the applicant is entitled to acquire the right to manage (under Part 2 of the Commonhold and Leasehold Reform Act 2002) and an application for costs made under regulation 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013**
Tribunal	:	**Judge Driscoll**
Date of determination and venue	:	**With the agreement of the parties the tribunal considered its decision on the basis of the papers filed and without an oral hearing.**
Date of decision	:	**5 January 2015**

DECISION

The decision summarised

1. On the relevant date the applicant RTM company was entitled to acquire the right to manage the premises.

2. No order for costs is made under regulation 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Introduction

3. This is an application by the RTM company which seeks on behalf of its members (who are leaseholders of flats in the building) to acquire the right to manage the premises. The relevant statutory provisions are contained in Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') and in various sets of regulations which have been made under these provisions ('the regulations'). Under the Act, a majority of leaseholders is entitled to take over the management of the premises from the landlord. The right to manage is a no-fault based right. Provided the building qualifies under the Act, the leaseholders may take over management of the building whether the landlord agrees to this or not. However, in order to make a valid claim, there are various procedural matters that the participating leaseholders must first attend to.

4. Before exercising the RTM, the participating leaseholders must incorporate an RTM company, a company limited by guarantee with a constitution prescribed by regulations made under the Act. All leaseholders are entitled to be members of the company (as is the landlord). Matters such as which buildings qualify, the proportion of leaseholders who should support the application, and which leaseholders qualify to participate are, broadly speaking, the same as they are for the collective right to enfranchise accorded by Part I of the Leasehold Reform, Housing and Urban Development Act 1993.

5. RTM is initiated by the company giving a claim notice to the landlord. Although the RTM is a no-fault based right landlords have the right in certain circumstances to object to the claim by giving a counter-notice to the company. Landlords may do this, for example, if they consider that the building does not qualify, or that the company has failed to follow the correct procedures. Where such a counter-notice is given, the company must (if it wishes to proceed) apply to this tribunal for a determination as to whether it is entitled to acquire the landlord's management functions under the RTM. This is the course that the applicant company has taken here as the landlords have given a counter-notice denying that the applicant was on the relevant date (that is the date on which the claim notice was given) entitled to exercise the right to manage.

6. In this case the name of the RTM company is Millennium Plaza RTM Company Limited ('the company'). The respondent to the application is a company by the name of Bradmoss Limited which owns the freehold of the premises and which is the landlord under the leases of the flats in the premises ('the landlords'). The subject premises (as the name of the company might suggest) is situated at Millennium Plaza, Warwick Place, Portland Street, Cheltenham GL52 2NB. It appears that the premises consists of some 23 flats each one held on a long lease.

7. A claim notice dated 20 May 2014 was given on behalf of the company to the respondent landlord. It gave the landlord until 5 July 2014 to respond and stated also that the company intended to acquire the right to manage the premises on 5 October 2014. In response a counter-notice was given on behalf of the landlord denying that the company is entitled to acquire the right to manage. The counter-notice was dated 4 July 2014. It stated that the challenge to the claim was based on three matters: (a) that participation notices were not given to the leaseholders, (b) that a copy of the claim notice was not given to the leaseholders and (c) that the premises were not sufficiently specified in the claim notice. Later the landlord withdrew objections (a) and (b) leaving (c) to be decided by this tribunal.

8. An application dated 4 September 2014 was made to this tribunal. Directions were given on 10 September 2014. Later the parties agreed that the application could be dealt with on a consideration of the papers rather than by an oral hearing. Those advising the company have also claimed that the tribunal should make a costs order against the landlord. In a letter to the tribunal those advising the landlord challenged the costs claim.

The challenges to the claim

8. I will deal first with the remaining challenge to the claim notice.

9. A bundle of documents was sent to the tribunal. It consists of various documents relating to the claim. Four of the key documents in the bundle appear to be the claim notice, the counter-notice, a statement of case filed on behalf of the landlord and a reply filed on behalf of the applicant company.

10. In a statement of case prepared on behalf of the landlord dated 30 September 2014 it was stated that the remaining objection is the complaint that the premises were not sufficiently specified in the claim notice and that it is not clear whether it is intended that it included appurtenant property or not. The following comment was also included 'This could lead to future conflict amongst the Tenants as to whether they are responsible for the management of the appurtenant property and responsibility for the costs of same' (page 80 of the bundle). in support of its submissions those advising the landlord cite the decision of the Upper Tribunal in a case called *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011] UKHT 425.

11. Those advising the company responded in a reply dated 15 October 2014. It submitted that the *Gala* decision supports the position taken by the company namely that it decided that it is unnecessary to refer to any appurtenant property in a claim notice. Further it submits that the Court of Appeal decision in that case also supports their case. (That is the decision in *Gala Unity Property Limited v Ariadne Road RTM Company Limited* [2012] EWCA Civ 1372). The reply also included a claim for costs and I will return to that issue later in this decision.

12. As to the contention that is the premises were not properly identified in the claim notice, and that it failed to refer to appurtenant property, on my reading of the notice I cannot see any force in this challenge. Section 80 of the Act, which specifies the contents of the notice simply states that the notice 'must specify the premises and contain a statement of the grounds on which they are premises to which this Chapter applies' (Section 80(2). Having read the claim notice, the participation notice and documents relating to the company it seems clear to me that the notice clearly specifies the premises. It uses the description of the premises in the Land Registry register of the freehold.

13. In light of the authorities in the *Gala* litigation referred to above it is clear that the claim notice need not refer to any appurtenant property.

14. For these reasons I conclude that the claim is valid and the applicant company was entitled to acquire the right to manage.

The claim for costs

15. Turning to the costs claimed, the company seeks an order for costs under regulation 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. This allows the tribunal to order one party to pay towards the costs of the other where the paying party has acted unreasonably. Our power to make a costs order is contained in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 where the relevant part states: 13. ' (1) The Tribunal may make an order in respect of costs only—(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs; (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—residential property case, or (iii) a leasehold case'. (A copy of the rules is contained in the Appendix to this decision).

16. We can make an order for costs under rule 13 either under section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (commonly known as a 'wasted costs' orders), or in one or other of the cases set out in rule 13. Wasted costs orders can be made under section 29(4) of the 2007 Act against a legal or other representative and it clearly has no relevance to this application. Instead we are considering an application based on a submission by the landlord that the leaseholder as a party to the proceedings has behaved unreasonably in bringing, defending or conducting proceedings. Such an order can be made where proceedings were started on or after 1 July 2013, the date the new tribunal rules came into effect, so it applies to this case where the proceedings were started after that date

17. I now consider the background to this new costs power. Before this new costs power came into effect the tribunal had power to make costs under paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002 limited to a maximum order of £500 (or other amount to be specified in procedure regulations). Under rule 13 of the new rules there is no upper limit on the amount of the costs that can be ordered.

18. The tribunal system is sometimes referred to as a 'cost-free' jurisdiction for, unlike court proceedings, the losing party cannot be ordered to pay the successful party's legal costs. Common sense and experience has shown that leaseholders may have been deterred from using litigation to assert their rights by the prospect of losing the case and having to pay the other party's costs. This may have been one of the reasons for the transfer of jurisdiction over residential leasehold disputes, such as disputed service charges, from the county court to the tribunal. Another relevant factor is that, an order can be made under section 20C of the 1985 Act to prevents a landlord from seeking to recover any professional costs it incurred in proceedings before the tribunal as a future service charge even where the leaseholder has been successful in full or in part in the tribunal. To complete the picture, the tribunal can order one party to reimburse the other for the fee payable in making an application. These points apart the tribunal has no powers to order one party to pay the legal costs of the other.

19. These brief comments leads me to the conclusion that costs orders under rule 13 should only be made in exceptional cases where a party has clearly behaved unreasonably. This is because the tribunal remains essentially a costs-free jurisdiction where an applicant should not be deterred from using the jurisdiction for fear of having to pay the other party's costs should she or he fail in their application. Rule 13 costs should, in our view, be reserved for cases where on any objective assessment a party has behaved so unreasonably that it is only fair and

reasonable that the other party is compensated by having their legal costs paid.

20. Applied to this case the applicant company complains that the landlord should have acknowledged the validity of the claim notice and they seek an order that the landlord contributes the sum of £500 towards their costs. They contend that if the landlord had acknowledged the validity of the notice the applicant company would have avoided the professional costs incurred in this application.

21. There was no costs statement made in the bundle by the landlord but at the invitation of the tribunal those advising the landlord wrote to the tribunal in November 2014 denying that it had behaved unreasonably and rejecting the claim for costs.

22. In my view the landlord appears to have had no evidence that the participation notices and copy claim notices had not been given to the leaseholders yet they challenged the claim on the basis that this statutory requirement had not been complied with in their counter-notice.

23. On receipt of copies of the documentation relating to these notices, the landlord then withdrew these challenges but they continued to press the challenge to the validity of the claim notice. I can see little merit in the challenge and I am surprised that they continued to press the point about 'appurtenant property' as they were clearly familiar with the *Gala* decisions (considered above) which concluded that there is no requirement for the claim notice to specify appurtenant property in an RTM claim notice.

24. However, as landlords, they are entitled under the Act to challenge claims and even though they (a) challenged the claim without apparently any evidence that the applicant company had not given copies of the relevant notices and (b) persisted in challenging the notice on, in my view,

an unconvincing basis, I do not consider that this can be considered so unreasonable that a costs order under regulation 13 is warranted.

Summary

25. On the relevant date the applicant RTM company was entitled to acquire the right to manage the premises. No order for costs is made under regulation 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.