



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

Case Reference : **CHI/00HN/LRM/2016/0002**

Property : **Winston Court, 14 Melville Road, Winton,
Bournemouth, Dorset, BH9 2PL**

Applicants : **Winston Court 14 Melville Road Winton
RTM Company Limited**

Representative : **Nantes Solicitors**

Respondent : **Avon Ground Rents Limited**

Representative : **Scott Cohen Solicitors**

Type of Application : **Determination of (No Fault) Right to Manage**

Tribunal Members : **Judge Paul Letman**

Date and venue : **Paper determination**

Date of Decision : **24 May 2016**

**DECISION ON RTM CLAIM
WITH REASONS**

The Application

1. By a notice of claim dated 12 November 2015 the Applicant gave notice to the Respondent of its claim to acquire the right to manage Winston Court, 14 Melville Road, Winton BH9 2PL ('the premises') on 22 March 2016 under the terms of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ('the Act'). The notice required a counter-notice not later than 21 December 2015.
2. On 18 December 2015 the Respondent duly gave a counter-notice to the Applicant alleging in accordance with section 84(2)(b) of the Act that by reason of a number of provisions of Chapter 1 as specified therein the Applicant was not on the relevant date (the date on which the notice of claim was given) entitled to acquire the right to manage the premises.
3. Thus, by application dated 10 February 2016 made pursuant to section 84(3) (and within the period of 2 months stipulated by section 84(4)) the Applicant applied for a determination that on the relevant date it was entitled to acquire the Right to Manage the premises.
4. On 16 February 2016 the tribunal gave directions for the determination of this application on paper, making provision amongst other things for the Respondent to send a detailed statement of case no later than 09 March 2016, and the Applicant to reply by 30 March 2016. The parties duly complied with those directions by serving their respective statements of case.
5. In addition the Respondent sent a letter dated 18 April 2016 responding briefly to the Applicant's case in reply. The letter does not raise any new points, but merely comments on matters already raised. Further, no objection was taken to the letter. In the circumstances the Tribunal regards it as only fair and just to take into account this further submission and has done so.

The Law

6. In summary, Chapter 1 of Part 2 of the 2002 Act makes provision for RTM companies, the members of which are qualifying tenants of the premises to which the provisions apply, to acquire the right to manage the premises. A landlord who is given a notice claiming the right manage by an RTM company may give the company a counter-notice alleging that the company is not entitled to acquire the right to manage the premises (section 84(2)), and the RTM company may as here then apply to the FTT for a determination that it was on the relevant date entitled to acquire such right (section 84(3)).
7. Sections 71 to 94 of the 2002 Act contain detailed provisions as to the entitlement to apply and multiple conditions and requirements to be met in order to acquire the

Right to Manage. The relevant sections for the purposes of this determination are sections 73(2)(b), 79(3) and (5), 80(8) and 80(9); the objections under sections 80(5) and 81(3) having latterly been withdrawn (at paragraphs d. and e. respectively of the 18 April 2016 letter).

8. Section 73(2)(b) provides that a company is a RTM company in relation to premises if 'its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.'
9. Section 79(3) provides that a claim notice must be given by a RTM company which complies with subsection (4) or (5), where (5) provides the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
10. Section 80(8) provides that a claim notice must contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority, and (9) says it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.
11. The relevant regulations are the RTM Companies (Model Articles) (England) Regulations 2009 and the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (hereafter 'the Prescribed Form Regulations').

The Objections

12. The Respondent takes a number of points under the terms of Chapter 1 in opposition to the claim. The points are dealt with separately and in turn below; setting out the Respondent's objection, the Applicant's reply and the Tribunal's reasons and conclusion on each.

1) Section 73(2)

The Respondent's Submission

13. Firstly, the Respondent contends that the Applicant was not an RTM Company in relation to the premises because it is said its articles of association do not comply with section 73(2)(b). Specifically the Respondent points out that the property referred to in the Articles is Winston Court, 14 Melville Avenue, whilst according to the freehold title the premises are actually 14 Melville Road.
14. In this regard the Respondent relies upon a decision of the FTT Property Chamber (in London) in *59 Huntingdon Street RTM v Assethold Limited* (LON/00AU/LRM/2014/007). In that case the articles of association described the premises as Flat 1-6, 59 Huntingdon Street whereas the premises were defined in

the freehold title as 59 Huntingdon Street. The tribunal reasoned that the definition of premises in the claim 'should leave no scope for interpretation given the rights and obligations that follow the acquisition of the Right to Manage,' and decided accordingly that the misdescription of the premises rendered the notice of claim defective.

The Applicant's Submission

15. In response the Applicant acknowledges that the reference to Avenue rather than Road in the Articles is a mistake, but it says it is a trivial and obvious one that leaves no room for interpretation or misunderstanding as to the premises the subject of the claim. It points out that the premises are identified and clearly identifiable by their general title 'Winston Court' and by the postcode. Further, that no Melville Avenue exists at all in Bournemouth. On these facts the Respondent seeks to distinguish 59 Huntingdon, arguing that in this case the only possible reading of the definition of the premises in the Articles is to the whole of Winston Court at Melville Road.

Reasons

16. The Tribunal is not persuaded that on the facts of this case the Respondent's objection is valid. The mistake in this case is of a different kind from that in *59 Huntingdon*, and the decision properly distinguishable. In that case there was a real difference between a claim to manage 'Flat 1- 6, 59 Huntingdon' and one in relation to '59 Huntingdon.' The former might extend only to the leaseholder interests, whereas the latter covered the entire freehold including appurtenant property.
17. In this case there is no such dichotomy, rather the issue is whether the Articles should be read as referring to all those premises correctly known as and situate at Winston Court, Melville Road, BH9 2PL, so that in accordance with s.73(2)(b) the object of the Articles is to acquire and exercise the right to manage the same premises in respect of which the right to manage is claimed by the notice of claim, which correctly refers to the 'Road.'
18. To resolve this issue the Articles should in the Tribunal's view be construed in accordance with the general approach and rules of construction applicable to any other contract or formal document of this kind. The document should be construed objectively to ascertain the meaning which it would convey to a reasonable person taking into account the relevant objective contextual scene (and if authority were needed for this basic statement of principle, see *Mannai Investment v Eagle Star* [1997] 1 EGLR 57, which plainly remains good law when read in the light of the more recent Supreme Court decision in *Arnold v Britton* [2015] 1 AC 1619).
19. Approached objectively in this way, in the Tribunal's view it would be obvious to any reasonable reader of the Articles with only a modicum of background knowledge of the company and the property that a slip had been made in the definition of the

premises, and that the correct reference was to Road and not to Avenue. The fact of course that the RTM company is actually named in terms of the Road, is the first clear contextual indication to the reader that the premises intended to be referred to are Winston Court, 14 Melville Road and not Avenue.

20. However, the Tribunal accepts the Respondent's submission that the matter is put beyond doubt by the remainder of the definition of the premises in the Articles. There can be only one Winston Court with postcode BH9 2PL, being the freehold property with the same name and postcode referred to in the registered title, namely Winston Court, 14 Melville Road. Indeed that this slip has been made is only confirmed to the reader by the fact the same error has obviously crept into clause 2, where in referring to the eponymously named RTM company the notice again refers to the Avenue and not the Road.
21. In summary, therefore, for the reasons set out above the Tribunal concludes that on a proper interpretation of the Applicant's Articles the definition of the premises therein should be read as referring to the premises at Winston Court, 14 Melville Road, the subject expressly of the notice of claim, so as the Applicant is s.73(2)(b) compliant and the claim in this regard is properly constituted and made.

2) Section 79(3) & (5)

The Respondent's Submission

22. The second objection maintained by the Respondent relates to the requirements of section 79(3) and (5). The former sub-section requires, in so far as is material, that the claim notice must be given by a RTM company which complies with subsection (5), which in turn provides '...the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained.'
23. The Respondent's position is that the Applicant has failed to supply a valid register of members so that the Tribunal (noticeably, not the Respondent) is unable to assess whether it fulfilled the requirements of section 79(5) as at the relevant date. It is alleged that the copy Register of Members provided is obviously unreliable in that it mistakenly refers to the issue of share whereas the RTM company is limited by guarantee, is undated and omits the address of each flat so the properties for which the 2 persons noted in the Register are members cannot be ascertained. Thus the Respondent contends the Tribunal cannot rely upon the validity of the Register and there is insufficient evidence to establish the membership of the RTM of the relevant date.

The Applicant's Submission

24. The Applicant accepts that the Register mistakenly refers to the members holding shares, when no shares have been issued. But it is said that such an error does not effect the fact that the persons named are and were at the material time members of the RTM company. The fact the Register is not dated the Respondent submits is irrelevant; there is nothing to indicate that this is a requirement nor any challenge to the authenticity of the document.
25. Ultimately, the Applicant submits that this is a frivolous objection. At all material times there have been and remain two members of the RTM as shown on the Register, namely Lesley Mary March and Margaret Elizabeth Smith. Further, as the Applicant points out is well known to the Respondent from the relevant registered titles, the premises comprise 4 flats subject to long leases, flats 1, 3 and 4 owned by Ms March and flat 2 owned by Ms Smith.

Reasons

26. In this regard the Tribunal has no hesitation in accepting the Applicant's submissions and rejecting this objection. There is no issue that the premises contain 4 flats, nor does the Respondent actually contest, whatever doubts may be cast upon the Register, the fact that on the relevant date there were 2 members of the RTM company who were qualifying tenants of flats contained in the premises. In the circumstances it appears clearly to be the case here that the requirements of section 79(5) are satisfied, and the Tribunal so determines.

3) Sections 80(8) and (9)

The Respondent's Submission

27. Lastly, the Respondent contends that the Applicant's notice of claim is invalidated because in breach of sections 80(8) and (9) it fails to comply with the Prescribed Form Regulations. In fact the submission appears only to go to a breach of section 80(9), in that it is alleged only that the Applicant is in breach of paragraph 8 of the Prescribed Form Regulations the Applicant. Firstly, because it has failed to set out in full within Schedule 1 the name and addresses of persons who are both qualifying tenants and members of the RTM company.
28. Secondly, because whilst there are only 2 members in the Register of Members and this correlates with the information provided under Part 1 of the Schedule, by contrast 'Part 2 of the Schedule provides details of 4 separate persons.' Thus the Respondent submits '..the number of members, the flats against which membership has been entered and particulars of the same are matters which should be readily identifiable from the contents of the documents and not issues to be construed,' and thus presumably that the notice is defective.

The Applicant's Submission

29. The Applicant rejects these arguments as both factually incorrect and disingenuous. Factually incorrect because in Part 1 of the Schedule under the prescribed heading 'Full names and addresses of persons who are both qualifying tenants and members of the company' both Ms March and Ms Smith are named. Whilst Part 2 does not give details of 4 persons as alleged, but again correctly provides particulars of the 4 leases of the 2 persons named in Part 1. There is nothing, therefore, the Applicant submits that requires to be 'construed', all of the information is clearly set out as required.

Reasons

30. Reviewing the notice of claim and considering the competing submissions of the parties, the Tribunal again has no hesitation in accepting the Applicant's case in this regard. The Schedule at page 3 (of 4) of the notice of claim is in the prescribed form. Part 1 correctly provides, in accordance with the said heading, the particulars required by paragraph 3 of the Prescribed Form Regulations, that is to say the full names of the 2 persons who are both qualifying tenants and members of the company. Equally, Part 2 patently provides, again in accordance with the appropriate heading, the particulars of the 4 leases of the 2 persons named in Part 1 all as required by paragraph 4 of the Prescribed Form Regulations.
31. In the circumstances in the Tribunal's view there is nothing in the points raised by the Respondent under section 80(8) or (9) that could possibly be regarded as invalidating the notice of claim, and the Tribunal rejects this objection also.

Decision

32. For the reasons set out above and each of them the Tribunal rejects the objections raised by and on behalf of the Respondent. In the Tribunal's view none of the points relied upon by the Respondent can be said to invalidate the notice of claim, and the Tribunal accordingly determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises, namely Winston Court, 14 Melville Road, Bournemouth, Dorset BH9 2PL.

Appeal

33. Pursuant to rule 36(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules') the parties are duly notified that they have a right of appeal against the decision herein. That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be

sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application (a) written reasons for the decision or (b) notification of amended reasons for, correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.

Dated: 24 May 2016