HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KG/LRM/2013/0009
And CAM/00KG/LRM/2013/0010

Properties	:	**Garner Court, Dock Road, Tilbury, and** **122, 124 and 126 Dock Road, Tilbury, Essex RM18 7BJ**
Applicant	:	**Garner Court RTM Co. Ltd.**
Respondent	:	**Freehold Managers (Nominees) Ltd.**
Date of Applications	:	**27th February 2013**
Type of Application	:	**For an Order that the Applicant was, on the relevant date, entitled to acquire the right to manage the properties (Section 84(3) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David S Brown FRICS MCI Arb**

DECISION

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1. This application fails and the Applicant is not entitled to manage both properties.

Reasons

Introduction

2. The Applicant right to manage ("RTM") company served one Claim Notice each in respect of the two buildings involved in this case.

3. Counter-Notices for each of the Claim Notices were served on the 3rd January 2013. They are in the same terms and allege that the Applicant cannot manage more than one self contained building.

Procedure

4. The Tribunal suggested that this was a case which could be determined on a consideration of the papers without an oral hearing. This information was conveyed to the parties in the Directions Orders issued on the 8th March 2013. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notice was given to the parties (a) that a determination

would be made on the basis of a consideration of the papers including the written representations of the parties on or after 1st May 2013 and (b) that a hearing would be held if either party requested one. No such request was received.

5. Both the parties and the Tribunal agreed that these 2 applications should be dealt with together and one comprehensive bundle has been prepared.

The Law

6. Section 72 of the 2002 Act defines premises in the following way:-

> *"(1)(a) they consist of a self contained building or part of a building, with or without appurtenant land"*

7. Section 79 of the 2002 Act says that on the date the Claim Notice is given, membership of the RTM company "*must...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*".

Inspection

8. There was no inspection of the property in view of the agreed fact that the application relates to two separate self contained buildings. The Tribunal did offer to inspect if either party made a written request, but no such request was made.

9. By co-incidence, the Tribunal chair was the chair in an application to consider the reasonableness of service charges relating to one of the buildings in question in 2012. Thus he is able to recall that the 2 buildings are, indeed, 2 separate buildings with a common car park between them. As is indicated in the application forms, the 2 buildings are actually known as Garner Court with one building consisting of flats 1-48 and the other consisting of flats 49-68.

Conclusions

10. The first point to make is that the Memorandum and Articles of Association of the Applicant describe 'the premises' as consisting of both buildings. As has been said, the applications fail. However, it could be said that one of the applications could have succeeded and the other failed which would have answered the Respondent's point. However, if another RTM company was formed, there would then be 2 RTM companies with the main object being to take over the management of the 'other' building with qualifying lessees being members of both.

11. This would be untenable. There would be members of the 'successful' RTM company who were lessees of the other block which would negate the object of the legislation in that it gives qualifying tenants the right to manage their own block without interference from others.

12. The Tribunal carefully considered the Statute and then the previous LVT and Upper Tribunal decisions provided in its bundle. When considering whether the single self contained building or part of a building referred to in Section 72 should, as a matter of interpretation, be deemed to include the plural, the Tribunal looked at Section 6(c) of the **Interpretation Act**

1978. It concluded that this does not apply because the specific words used here showed a contrary intention.

13. The Tribunal determines that this application must fail because the premises are not a self-contained building or part of a building. The Respondent's arguments on this topic were accepted by the Tribunal. It could be said that forcing a landlord to give up managing its own property was a draconian step and should require a very strict interpretation of the Statutory provisions.

14. The definition of 'premises' in Section 72(1)(a) clearly suggests the intention of the legislature namely that an RTM Company will only manage premises which consist of 'a self contained building or part of a building' (our underlining). The reason is perhaps obvious i.e. it is intended that the parties to the relevant long leases i.e. the lessees and the landlord will be the members of the RTM Company in their building.

15. In this case, for example, there are two separate blocks of unequal numbers. The long lessees of one of those blocks will always be able to out vote the long lessees of the other block. In an extreme situation, this could be done in order to ensure that money is spent on the larger block to the detriment of the smaller block. This would remove the whole point of the right to manage provisions because the long lessees of the smaller of the two blocks will not then be managing their self contained building at all. There would also be no point in having a minimum percentage of lessees in 'the premises' i.e. the self contained building, if an RTM company could assume management of any number of buildings.

16. One RTM company could take over managing one of these buildings and the car park as appurtenant land which would mean that the other would not be able to manage the car park, but the point is that that the contractual obligations in the long leases of both blocks would not change. The rights and obligations of leaseholders in both blocks to use the car park and contribute towards its maintenance would not be affected.

17. There is also a point of wider significance. If one RTM company were able to convince the necessary number of lessees to take over management of, say, 20 buildings in Tilbury, what would then happen if there was a dispute as to how the management was being handled? What would happen if the lessees of a proportion of the buildings just decided to resign as members of the RTM company?

18. The Respondent puts forward a strong practical argument by saying that these two buildings have always been managed as one unit and it would make sense for this to continue. This is relevant. The problem is one of definition and the legislators have set out what they considered to be the only certain way of dealing with this. There is, of course, nothing to stop two RTM companies working together and perhaps employing one managing agent. However, the point is that if that should happen, it would still be open to either building or RTM company to withdraw from such arrangement if the tenants of that particular 'self- contained' building did not feel that they were being dealt with fairly.

19. The Respondent puts forward a number of previous LVT decisions where one RTM company was permitted to manage more than one building. This Tribunal is also aware of a number of opposing decisions where this has not been permitted. The Upper Tribunal case of **Gala Unity Ltd. V Ariadne Road RTM Co. Ltd.** [2011] UKUT 425 (LC); LRX/17/2010 is well known to this Tribunal. The case report has been produced by the Respondent. It is true that the RTM company in that case was attempting to take over the right to manage 2 buildings. However, the main issue in that case was whether this could happen when the appurtenant land including parking facilities was used by both blocks. The issue as to whether an RTM company could take over the management of two buildings was not argued and formed no part of the *ratio* of the decision. In those circumstances, it is wrong to say, as is suggested by implication if nothing else, that the Upper Tribunal endorsed that principle by 'default'.

20. In view of the inconsistency of decisions at first instance on the issue of whether one RTM company can take over the management of more than one building, the case of **Hunting Gate RTM Company Limited v Proxima GR Properties Ltd.** case no. CAM/22UG/LRM/2012/0003 was determined by the two members of this Tribunal, being the President and Vice-President respectively, and with the concurrence of the other 4 LVT Panel Presidents, to establish what appeared to them to be the correct legal position subject, of course, to any determination of any appellate body. This decision follows that one.

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Bruce Edgington
President
1st May 2013