399.

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00MC/LRM/2013/0017**
Property	:	**20 Kennet Street Reading**
Applicant	:	**20 Kennett Street (Reading) RTM Company Limited**
Representative	:	**Mr A Strong Assoc RICS MIRPM Atlantis Managing agents**
Respondent	:	**Sinclair Garden Investments (Kensington) Limited**
Representative	:	**Mr Wigeyaratne**
Type of Application	:	**Application in relation to the denial of the Right to Manage**
Tribunal Members	:	**Mrs E Flint DMS FRICS** **Prof S J Bright**
Date and venue of hearing	:	**22 October 2013** **County Court 160-163 Friar Street Reading RG1 1HE**
Date of Decision	:	**20 November 2013**

Decision

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DECISION OF THE TRIBUNAL

1. The application to acquire the right to manage the premises fails, the applicant is not entitled to manage the property.

2. The application for wasted costs is refused.

BACKGROUND

3. On 17 May 2013 the tribunal received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act").

4. By a claim notice dated 15 March 2013, the applicant gave notice that it intended to acquire the Right to Manage the premises.

5. By a counter notice dated 15 April 2013, the respondents disputed the claim alleging that the applicant had failed to establish compliance with sections 78(1), 78(2), 78(3), 79(2), 79(3), 79(8), 80(2) and 80(9) of the Commonhold and Leasehold Reform Act 2002. The schedule attached to the counter notice stated that the Notices Inviting Participation had not been served on all Qualifying tenants 14 days prior to the service of the Notice of Claim; the Notice of Claim failed to refer to appurtenant property and the Claim Notice had not been served on all persons required to be served.

6. The relevant legal provisions are set out in the Appendix to this decision.

THE HEARING

7. Mr Wigeyaratne of counsel, on behalf of the respondent, set out in detail the grounds on which the respondent relied in disputing the RTM company's claim to manage the premises.

Service of Notice of Intention to Participate and Claim Notice

8. He stated that the applicant had not complied with S75(2) which identifies who is a qualifying tenant and S75(5) which states that no flat may have more than one qualifying member. Where there are joint tenants they are to be regarded jointly as the qualifying tenant of the flat and both must be served with the Notice Inviting Participation unless the tenant is or has agreed to become a member of the RTM company. This contention was supported by considering a table at p40 of the bundle relating to flats numbered 3, 7, 14, 20, 22, 23, 25, 65, 72, 81 and 82 where it was claimed that the relevant persons had not been properly served. During the course of the hearing the contentions in respect of flats 20 and 72 were withdrawn. Evidence was provided at the hearing to suggest that the owner of flat 3 was known by more than one name.

9. In addition incorrect information had been supplied with both the Invitation to Participate and the Claim Notice in respect of the names of the members of the RTM company in that the names of joint tenants had been shown as members where only one of the joint tenants in each of the flats referred to was a member of the company. It was a mandatory requirement that the information should be supplied therefore errors in respect of this information must invalidate the process, the list of members of the company was misleading owing to its inaccuracies. The requirements of the Act have not been satisfied.

10. Mr Strong for the applicants said that the purpose of the scheme was to allow a group of tenants to take over the management of the building. The application was supported by 78% of the tenants. In the case of joint tenants correspondence had been sent to "The owner" at the property and where the tenant was not resident also to the last known address of the qualifying tenants. He considered that it was beyond reasonable doubt that all tenants were aware of what was going on. He confirmed that the application had proceeded on that basis because there had been a great deal of discussion among the tenants regarding the proposal.

11. It was accepted that Miss Parrott of flat 7 had not been served however Mr Edge the joint tenant of the flat was a member of the RTM company. The situation was similar in respect of each of the flats with joint tenants. In each case where there were joint tenants, one of them had become a member of the RTM company. After an adjournment for lunch Mr Strong produced the counterfoil of the membership certificate for flat 65.

12. He considered that the guidance provided in Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKUT 0213(LC) at paragraph 47 was relevant: it was a matter of looking at the prejudice, if any, suffered. He was of the opinion that there was none because of the level of discussion among the tenants.

The Tribunal's decision

13. The application to manage the property fails.

Reasons for Tribunal's decision

14. The notices were addressed to "The owner" and not to the individual qualifying tenants. Only one notice was sent to each of the eight flats mentioned in paragraph 8 above where there were joint qualifying tenants: the Act directs that all qualifying tenants should have been served. The tribunal accepts that although the tenants living within the block would probably have been aware of the progress of the RTM application; it is not satisfied that that would necessarily have been the case. Nor can it be satisfied that where the joint tenants lived elsewhere they would have been aware - as was the case for flats 14, 22, 25 and 81. The Notice of Intention to Participate is to be served on a qualifying tenant who neither is nor has agreed to become a member of the RTM

company to ensure that the qualifying tenant's interests are protected. The tribunal is of the opinion that it cannot be shown that those tenants who were not properly served did not suffer prejudice on that account.

15. The Tribunal accepted that there had been no need to serve a Notice Inviting Participation on: i) Flat 3 because the evidence produced at the hearing showed beyond reasonable doubt the tenant was a member of the RTM, and ii) Flat 65 because evidence produced at the hearing indicated that the tenant was a member of the RTM and in any event there was no prejudice.

16. Both the notice inviting participation and the claim notice were defective because the list of members was incorrect: it included qualifying tenants who were not only not members of the company at the date of service but were not even members by the date of the hearing. These inaccuracies resulted in the list being misleading and may have been prejudicial to the landlord. The tribunal finds as a fact that taken together these matters result in substantial non-compliance with the requirements of the statutory scheme.

17. There were arguments presented with regard to the description of the premises over which the right to manage was sought although in view of the above their effect on the decision of the tribunal is academic.

The Premises

18. The premises are defined in the Act as being "*a self-contained building or part of a building, with or without appurtenant property*". Appurtenant property means "*garage, outhouse, garden, yard, or appurtenances belonging to, or usually enjoyed with, the building or part or flat*". The RTM company must specify the premises over which it seeks to acquire the right to manage.

19. Mr Wigeyaratne contended that as the claim notice does not specify any appurtenant premises or the grounds on which the Act applies to any such premises it did not comply with the Act: the omission of a required particular was "*an incurable and invalidating defect*". In support of his opinion that appurtenant property should have been included in the Notice he referred to the lease plan which shows the communal access way and paths cross hatched. There was a clear distinction in Schedule 6 of the lease between areas of internal and external common parts of the development.

20. He considered the decision in Gala Unity Ltd v Ariadne Road RTM Company Ltd [2011] UKUT 425(LC) to be of little assistance in view of the content of The Right To Manage (Prescribed Particulars and Forms) (England) Regulations 2010 which he contended require not only that the premises and appurtenant property must be specified but also the grounds on which the appurtenant property is claimed.

21. He referred to various cases regarding the content of notices including Speedwell Estates v Dalziel [2002] EGLR 55, a case under the

Leasehold Reform Act 1967 where it was held that an omission is not an inaccuracy and the claim notice was consequently invalid; Moskovitz & Ors v 75 Worple Road RTM Company Ltd where the Lands Tribunal held that "inaccuracy" should be narrowly interpreted and Assethold Ltd v 14 Stansfield Road RTM Company Ltd where a distinction was drawn between the failure to provide required particulars and an inaccuracy in the statement of particulars, it was held that only the latter saved the Notice from invalidity.

22. Mr Strong explained that the whole of the premises are known as 20 Kennet Street, it is a self-contained building, the car park is contained within the envelope of the building and there is minimal amenity land within the boundary of 20 Kennet Street. A recipient of the notice would understand that the notice related to the building and its surroundings. The notice should not be invalidated because there is no reference to appurtenant property.

Decision of the Tribunal

23. The address of the property was sufficient to identify the premises over which the right to manage was sought.

Reasons for the Tribunal's decision

24. A recipient of the notice would have known that the premises in their entirety are known as 20 Kennet Street, the basement car park and 3 blocks of flats above form a self-contained building. The tribunal follows the reasoning at paragraph 14 in Gala Unity where the President said "it would be unsatisfactory if a claim notice had to specify whether or not it was made in respect of appurtenant property. The Right To Manage (Prescribed Particulars and Forms) (England) Regulations 2010 do not require this, nor does the form in Schedule 2 of the Regulations provide for any more than a statement of the name of the premises to which the notice relates."

Wasted Costs

25. The respondent's claim under paragraph 10 of Sch12 of the Act related to the costs incurred in relation to the dismissal hearing on 6th September which was held because service of the bundle was several days late. Neither party attended the hearing: there were written representations only. The amount claimed at the dismissal hearing was £1600 + VAT however at this hearing the costs were reduced to £375 + VAT as some of the original costs had not been wasted as the matter had proceeded to a substantive hearing. It was claimed that the applicant's behaviour was unreasonable in that the bundle had not been sent until the end of the proper period for service.

26. Mr Strong accepted that it was his firm's fault that the bundle was served late however he did not accept that he or his firm had acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably", the delay was due to an administrative issue within the

office. There was no intention to act in the manner suggested by the schedule.

The Tribunal's decision

27. The application for a costs order is refused.

Reasons for the Tribunal's decision

28. Although the bundle was late this was due to an administrative error in the office of the applicant's representative. There was no evidence of an intention to act in a frivolous, vexatious, abusive, disruptive or unreasonable manner.

Name: Evelyn Flint **Date:** 20 November 2013

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

71. The right to manage

(1)This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).

(2)The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.

Qualifying rules

72. Premises to which Chapter applies

(1)This Chapter applies to premises if—

(a)they consist of a self-contained building or part of a building, with or without appurtenant property,

(b)they contain two or more flats held by qualifying tenants, and

(c)the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

(2)A building is a self-contained building if it is structurally detached.

(3)A part of a building is a self-contained part of the building if—

(a)it constitutes a vertical division of the building,

(b)the structure of the building is such that it could be redeveloped independently of the rest of the building, and

(c)subsection (4) applies in relation to it.

(4)This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—

(a)are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b)could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

(5)Relevant services are services provided by means of pipes, cables or other fixed installations.

(6)Schedule 6 (premises excepted from this Chapter) has effect.

73 RTM companies

(1)This section specifies what is a RTM company.

(2)A company is a RTM company in relation to premises if—

(a)it is a private company limited by guarantee, and

(b)its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.

(3)But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).

(4)And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.

(5)If the freehold of any premises is conveyed or transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the conveyance or transfer is executed.

74. RTM companies: membership and regulations

(1)The persons who are entitled to be members of a company which is a RTM company in relation to premises are—

(a)qualifying tenants of flats contained in the premises, and

(b)from the date on which it acquires the right to manage (referred to in this Chapter as the "acquisition date"), landlords under leases of the whole or any part of the premises.

(2)The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.

(3)A RTM company may adopt provisions of the regulations for its memorandum or articles.

(4)The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.

(5)A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.

(6)The regulations have effect in relation to a memorandum or articles—

(a)irrespective of the date of the memorandum or articles, but

(b)subject to any transitional provisions of the regulations.

(7)The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—

(a)sections 2(7) and 3 (memorandum), and

(b)section 8 (articles).

75. Qualifying tenants

(1)This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.

(2)Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

(3)Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.

(4)Subsection (2) does not apply where—

(a)the lease was granted by sub-demise out of a superior lease other than a long lease,

(b)the grant was made in breach of the terms of the superior lease, and

(c)there has been no waiver of the breach by the superior landlord.

(5)No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.

(6)Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.

(7)Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

76. Long leases

(1)This section and section 77 specify what is a long lease for the purposes of this Chapter.

(2)Subject to section 77, a lease is a long lease if—

(a)it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,

(b)it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not along lease),

(c)it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20)(leases terminable after a death or marriage),

(d)it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,

(e)it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or

(f)it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).

(3)"Shared ownership lease" means a lease—

(a)granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or

(b)under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises

(4)"Total share", in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired.

77. Long leases: further provisions

(1)A lease terminable by notice after a death or marriage is not a long lease if—

(a)the notice is capable of being given at any time after the death or marriage of the tenant,

(b)the length of the notice is not more than three months, and

(c)the terms of the lease preclude both its assignment otherwise than by virtue of section 92 of the Housing Act 1985 (assignments by way of exchange) and the sub-letting of the whole of the demised premises.

(2)Where the tenant of any property under a long lease, on the coming to an end of the lease, becomes or has become tenant of the property or part of it under any subsequent tenancy (whether by express grant or by implication of law), that tenancy is a long lease irrespective of its terms.

(3) A lease

(a)granted for a term of years certain not exceeding 21 years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and

(b)renewed on one or more occasions so as to bring to more than 21 years the total of the terms granted (including any interval between the end of a lease and the grant of a renewal),

is to be treated as if the term originally granted had been one exceeding 21 years.

(4)A lease—

(a)is or was continued for any period under Part 1 of the Landlord and Tenant Act 1954 (c. 56) or under Schedule 10 to the Local Government and Housing Act 1989 (c. 42), or

(b)was continued for any period under the Leasehold Property (Temporary Provisions) Act 1951 (c. 38),

it remains a long lease during that period.

(5)Where in the case of a flat there are at any time two or more separate leases, with the same landlord and the same tenant, and—

(a)the property comprised in one of those leases consists of either the flat or a part of it (in either case with or without appurtenant property), and

(b)the property comprised in every other lease consists of either a part of the flat(with or without appurtenant property) or appurtenant property only,

there shall be taken to be a single long lease of the property comprised in such of those leases as are long leases.

Claim to acquire right

78. Notice inviting participation

(1)Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—

(a)is the qualifying tenant of a flat contained in the premises, but

(b)neither is nor has agreed to become a member of the RTM company.

(2)A notice given under this section (referred to in this Chapter as a "notice of invitation to participate") must—

(a)state that the RTM company intends to acquire the right to manage the premises,

(b)state the names of the members of the RTM company,

(c)invite the recipients of the notice to become members of the company, and

(d)contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3)A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4)A notice of invitation to participate must either—

(a)be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or

(b)include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.

(5)A statement under subsection (4)(b) must—

(a)specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,

(b)specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both)within the seven days beginning with the day following that on which the notice is given,

(c)specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and

(d)specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6)Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7)A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

79. **Notice of claim to acquire right**

(1)A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2)The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3)The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4)If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5)In any other case, 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.

(6)The claim notice must be given to each person who on the relevant date is—

(a)landlord under a lease of the whole or any part of the premises,

(b)party to such a lease otherwise than as landlord or tenant, or

(c)a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31)(referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

(7)Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8)A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9)Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

80. Contents of claim notice

(1)The claim notice must comply with the following requirements.

(2)It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3)It must state the full name of each person who is both—

(a)the qualifying tenant of a flat contained in the premises, and

(b)a member of the RTM company,

and the address of his flat.

(4)And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

(a)the date on which it was entered into,

(b)the term for which it was granted, and

(c)the date of the commencement of the term.

(5)It must state the name and registered office of the RTM company.

(6)It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7)It must specify a date, at least three months after that specified under subsection (6),on which the RTM company intends to acquire the right to manage the premises.

(8)It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9)And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

81. Claim notice: supplementary

(1)A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2)Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one)which is not less than one-half of the total number of flats contained in the premises on that date.

(3)Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

(a)the premises, or

(b)any premises containing or contained in the premises,

may be given so long as the earlier claim notice continues in force.

(4)Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously

(a)been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b)ceased to have effect by reason of any other provision of this Chapter.

82. Right to obtain information

83. Right of access

84. Counter Notice

(1)A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2)A counter-notice is a notice containing a statement either—

(a)admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b)alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3)Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4)An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5)Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a)on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b)the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6)If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7)A determination on an application under subsection (3) becomes final—

(a)if not appealed against, at the end of the period for bringing an appeal, or

(b)if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8)An appeal is disposed of—

(a)if it is determined and the period for bringing any further appeal has ended, or

(b)if it is abandoned or otherwise ceases to have effect.