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**HM Courts
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Service**

**LEASEHOLD VALUATION TRIBUNAL
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

In the matter of an Application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (No Fault Right to Manage)

Application to determine a Claim to the Right to Manage premises

Case No: CH1/00HE/LRM/2012/0020
Property: 9-44 and 45-52 Bredon Court Tower Road Newquay Cornwall TR7 1AW
Applicant: Bredon Court (Newquay) RTM Company Limited
Respondent: Wel (No1) Limited
Application Date: 19 November 2012
Date of Hearing: 22 February 2013
Appearances: Mrs Margarita Madjirska-Mossop LLB Mayfield Law (instructed by RTMF) for the Applicant
Venue: Best Western Hotel Bristol Narrowcliff Newquay Cornwall TR7 2PQ
Tribunal: Miss C A Rai LLB Solicitor (Chairman)
Mr W H Gater FRICS ACI Arb Chartered Surveyor
Mr T N Shobrook BSc FRICS Chartered Surveyor
Date of Decision: 14 March 2013
In Attendance: Mr Dudley Joiner of Right to Manage Federation (RTMF)
Ronan and Karen Miles 20 Bredon Court
Barry and Philippa Boothman 28 Bredon Court
Michael and Sarah Williams 38 Bredon Court
David and Anne Ball 42 Bredon Court
Alison Bancroft 43 Bredon Court

SUMMARY OF DECISION

1. The Tribunal determines that the Applicant's claim to acquire the right to manage 9-44 and 45-52 Bredon Court Tower Road Newquay Cornwall TR7 1AW is valid and that it satisfies the requirements of the Commonhold and Leasehold Reform Act 2002

("the Act") and of The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the Regulations"). The reasons for its decision are set out below.

BACKGROUND

2. The Applicant submitted two Claim Notices claiming the right to manage the Property both dated 8 October 2012, (the Claim Notices) to the Respondent. One notice referred to premises at 9-44 Bredon Court Tower Road Newquay and the other referred to premises at 45-52 Bredon Court Tower Road Newquay.
3. The Respondent issued two Counter Notices both dated 8 November 2013 (the Counter Notices), alleging non-compliance with sections 71 - 75 of the Act.
4. On 19 November 2012 the Applicant submitted an application to the Tribunal for the determination of its claim to acquire the right to manage the premises described in both Claim Notices, (the Application).
5. Directions were issued by the Tribunal on 28 November 2012, (the Directions), which required that the Respondent provide more detailed reasons for disputing the Applicant's claim. The Directions also proposed a hearing date and set out a timetable for the parties to submit statements and bundles of documents to the Tribunal and each other.
6. The parties for the most part complied with the Directions and supplied statements and bundles to the Tribunal. The Applicant's bundle included its statement of case dated 14 January 2013. The Respondent's bundle contained two statements of case, the first dated 19 December 2012 and the second dated 31 January 2013, being a response to the Applicant's statement.
7. A letter dated the 15 February 2013, (the Respondent's Letter), was sent by fax to the Tribunal by Stevensons, (the Respondent's solicitors), which stated that following a review of all the relevant papers in the Applicant's bundle it concluded that it had nothing else to say to the Tribunal other than what was already stated in the Respondent's Bundle and in this letter. The Respondent's Letter set out its analysis of the essence of the Applicant's case and why it believed it to be wrong. It also referred to section 88 of the 2002 Act and the liability of a RTM company for the Respondent's reasonable costs. It suggested that, bearing in mind the precise wording of Section 88, the Tribunal may not consider it reasonable that the Respondent be entitled to recover the costs of attending the Hearing. It asked that the Tribunal dismiss the Application and set out, in some detail, the costs which they sought to recover if the Application is dismissed. Finally it was confirmed that the Respondent's would not be attending the Hearing but intended no disrespect to the Tribunal.

THE INSPECTION

8. On the 22 February 2013, prior to the Hearing, the Tribunal inspected the external common parts of the Property. It was not accompanied by any other party.
9. Vehicular access to the site containing the Property could only be gained through electronic gates. There was no barrier or gate preventing pedestrian access along a hard surfaced walkway which the Tribunal assumed to be a public right of way as it provided access to both the site and the beach some distance beyond it. The site within which the Property is located contains a detached terrace of houses as well as

the two blocks of flats comprising the Property. The larger of the blocks contains flats numbered 9 to 44 and the smaller block contains flats numbered 45 to 52. Parking spaces are marked out within the grounds of the site which also contained, what appeared to be, a communal enclosed bin store. The site was effectively dissected by the pedestrian walkway. Low walls constructed either side of that walkway enclosed the open areas adjacent to it.

THE HEARING

10. Only the Applicant's solicitor was present at the Hearing and addressed the Tribunal.
11. The Respondent's arguments set out below are those contained in its two written statements and in the Respondent's Letter.
12. The Applicant's case was contained in two written statements made by Mrs Mossop and contained in its bundle and also presented by her to the Tribunal at the Hearing. She also sent the Tribunal, just before the hearing, a written copy of her skeleton argument.
13. As she did not deal with Respondent's objections to the claim in the same order to that of the Respondent's written statement the Tribunal has, for the sake of clarity considered her arguments in the same order as the Respondent's objections.
14. All of the Respondent's objections relate primarily to interpretation of the Act, the regulations relating to RTM Companies and the memorandum and articles of association of the Applicant. Extracts from the sections of the Act, to which the parties referred in their respective cases, are set out below.

PART 2 LEASEHOLD REFORM CHAPTER 1 RIGHT TO MANAGE

Introductory

S71 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

S72 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.

S73 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 [transferred] [FN1] 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 [transfer] [FN2] is executed.
- [FN1] and [FN2] words substituted by Finance Act (2003 c.14), Sch 20 (2) Para 3

S74 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).

S75 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.

S84 Counter-notices

- (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,.....

15. Prior to the commencement of the Hearing the Tribunal were given a further bundle prepared by the Applicant's Solicitor which contained the case authorities to which she had referred in her skeleton argument. When asked why copies of these cases had not been supplied to the Tribunal prior to the Hearing, (as the Directions required), no satisfactory explanation was offered although Mrs Mossop apologised for this omission prior to presenting her arguments and again at the end of the Hearing.

The Respondents Case and its objection to the Claim Notices

16. Mrs Mossop referred the Tribunal to the Counter Notices and the objections put forward by the Respondent to the Claim Notices.
17. The Respondents had originally objected to the Claim Notices on three grounds but in the course of the exchange of submissions one ground was withdrawn so was not considered at the Hearing or referred to in this decision. The Respondents remaining two objections are:-
 - a) That the Articles of Association of the Applicant RTM Company (the Articles) do not define "premises" as "premises to which the relevant chapter of the Act applies", so the Applicant is not entitled to acquire the right to manage the premises defined in the Articles. For the sake of clarity it is worth noting that the premises referred to in the Articles are the flats numbered 9-44 and 45-52 Bredon Court. This objection is described as the **premises issue**.
 - b) That the only persons entitled to be members of the Applicant are the qualifying tenants of the premises referred to in each Claim Notice. For this argument to succeed its first objection must be valid. The members referred to in the Claim Notices are the qualifying tenants of **both** blocks which according to the Respondent does not comply with the provisions of clause 74(1) of the Act. This objection is described as the **membership point**.

The Applicants Case

Premises Issue

18. Mrs Mossop referred the Tribunal to sections 71 to 75 of the Act all of which are contained in Part 2 of Chapter 1 of the Act. She took the Tribunal through the various sections arguing amongst other things that "premises" was always plural. She also said that there was nothing within the relevant sections which limited the number of premises which one RTM company could manage. She does not accept the validity of the Respondent's argument that premises in section 72 can only refer to one set of premises. Her interpretation of "premises" in section 72 is that it must refer to **all** of the types of premises to which the Act may apply. This definition is intended to extend the application of the Act to a wide range of premises not to physically limit the number of premises to which the Act applies.
19. Her justification of her argument is that as a single building can be subdivided vertically or otherwise into one or more self-contained parts, so each part would satisfy the definition of premises within section 72. The Respondent's argument that it applies only to one set of premises would result in an absurdity.
20. Mrs Mossop put forward further arguments as to why the references to premises should always be interpreted as if it were a plural which the Tribunal found to be unconvincing. When questioned by the Tribunal Mrs Mossop accepted that her

- arguments in relation to premises being plural were tenuous at best given that premises is a plural word.
21. When asked to explain why two Claim Notices had been served she suggested it was "custom and practice" because of the uncertainty as to the interpretation of the provisions of the Act, but when prompted by the Tribunal, she accepted that the format of the Claim Notice, which is in a form prescribed by the Regulations, is consistent with the service of a separate notice for each block of flats.
 22. When asked how Parliament could have restricted the definition of premises she said Parliament could have inserted an exclusion in section 73 if a RTM company has no right to manage multiple buildings. Her interpretation of the Act is that as it does not, it must follow that a RTM company may claim the right to manage multiple buildings or premises.
 23. When asked to address the specific point as to whether the RTM company could manage a multiplicity of buildings in different locations she said that in practice it was unlikely because there would be no common interest amongst the members of that company for it to do so.
 24. She explained that the RTM company is a company limited by guarantee. One of its objects is the acquisition and exercise of the powers of an RTM company. She contends that the restriction of its objects to manage only a single set of premises would be wrong.
 25. She contends that each Claim Notice is valid. She also said that section 72 may apply to a multiplicity of premises. She referred the Tribunal to the many examples of interpretation within the Act and in particular and in reliance upon clause 24 of her skeleton argument she says that section 81(3) supports her contention that the Act refers to multiple premises because it prohibits more than one claim notice subsisting in relation to the same premises.
 26. It is her view that Parliament intended to avoid duplication of management. Certainty is necessary and she refers to a line of authorities the majority of which were Leasehold Valuation Tribunal cases. Whilst she accepted that the decisions are not binding on the Tribunal she believe it **may** and **should** take them into account to achieve consistency and certainty with regard to the interpretation of the Act.
 27. She referred in particular to the LVT cases of Dawlin RTM v Oakfield Park Estate LON/00AG/LEE2005/00012 and Chelsea Bridge Wharf RTM Co Ltd v Fairfield Artemis Ltd the Belmont Hall Court & Elm Court RTM Ltd v The Halliard Property Co Ltd and also to the two Gala Unity Cases, a decision of the Upper Tribunal Land Chamber in Gala Unity Ltd v Ariadne Road RTM Co Ltd [2011] UKUT 425(LC) and a decision of the Court of Appeal in Gala Unity Ltd v Ariadne Road RTM Co Ltd [2012] EWCA Civ 1372.
 28. Her primary objective is to establish that the Applicant is entitled to acquire the right to manage the Property.
 29. In Dawlin the tribunal had to decide if a single RTM company can validly give separate claim notices in respect of five buildings. It determined that the applicant was entitled to manage the five separate blocks of flats.
 30. In Chelsea Bridge the applicant had served claim notices in respect of five buildings on the estate known as Chelsea Bridge Wharf. In that case the tribunal considered Dawlin and accepted that, whilst it was not bound to follow it, it was happy to do so.

31. One of the issues considered by the tribunal in Belmont Hall was whether or not a RTM company could be incorporated with the object of acquiring the right to manage more than one building. The tribunal in that case concluded that there was no express statutory restriction on the number of premises to which the RTM company could relate.
32. Both the Gala Unity cases were primarily concerned with the definition of appurtenant property within the Act.

The Membership Point

33. Originally Mrs Mossop did not appear to have understood the basis of the Respondent's objection to the list of members listed in each Claim Notice. She suggested that the Respondent's statement was vexatious because it provided only allegations and no particular substantiation of its objections. She said that under section 74(1) of the Act a RTM company can manage multiple premises and on that basis qualifying tenants of each set of premises would be entitled to be members of one single RTM company.
34. She believed that the central issue is whether a single RTM company can manage multiple premises. The Respondent complains that the premises specified in the Claim Notices are not premises within the Act. She referred the Tribunal to paragraph 6 of page 82 of the Respondent's bundle. It is her contention that the original statement, (page 13 of that bundle), did not adequately explain the Respondent's argument and objection to the Claim Notices. Their issue seems to be how many sets of "premises" must be described in the Claim Notices.
35. As she believes that this argument fails because of her interpretation of the Act the Respondent's objection must fail and should be rejected by the Tribunal.

The Law

36. The title of Part 2 of Chapter 1 of the Act which contains all of the relevant statutory provisions is "Right to Manage". The Respondent's two objections to the Applicant's claim are both based upon its interpretation of the Act.
37. Under section 84(3) of the Act where the RTM company has been given one or more counter notices containing a statement alleging that by reason of a specified provision of this Chapter the RTM company is not entitled to acquire the Right to Manage that company can apply to the Tribunal for a determination as to whether it is entitled to the right to manage.
38. The Counter Notices refer to alleged non-compliance with sections 71-75 of the Act. However section 71 is introductory and Section 75 explains whether there is a qualifying tenant and how it is established that such a person is a qualifying tenant. There is no dispute between the parties in this Application as to whether the members of the Applicant are qualifying tenants. The objections of the Respondent appear to rest wholly upon the interpretation of sections 72-74.
39. Section 72 is contentious, (between the parties), as it defines the premises to which the Act applies and the parties do not agree what this means.
40. Section 73 specifies what a RTM Company is and section 74 refers to its membership and regulations. Briefly a RTM company must be a private company limited by guarantee and its Articles must state that its objects, or one of them, is the

acquisition and exercise of the right to manage the premises. It is accepted that the Applicant is such a company and that Articles refer to premises being both of the two blocks which comprise the Property.

THE DECISION AND REASONS

The Premises Issue

41. The Respondent's first objection is that the premises referred to in the Claim Notices are not premises for the purpose of section 72 of the Act.
42. The Applicant rejects this argument on the basis that it does not believe that the Act prevents the claim notices being validly submitted in respect of more than one set of premises. The Tribunal finds its argument, insofar as it relates to an interpretation of section 72, less than helpful.
43. Section 72 in essence states that the Act applies to premises if:-
 - they consist of a self-contained building or part of the building
 - a building is a self-contained building if it is structurally detached
 - a part of the building is self-contained if it constitutes a vertical division or infrastructure that it could be redeveloped independently of the rest of the building or if subsection 72(4) applies.
44. Mrs Mossop suggested that because premises must be self-contained a single building can contain any number of premises. The Tribunal considers that her argument misses the disputed point. There is no doubt that flats within each block are self-contained in terms of occupation, but they are not self-contained in a way that enables them to exist independently of each other. Structurally the flats within each block are connected. Both blocks share common access and services.
45. The Tribunal interprets the reference to premises in Chapter 1 of Part 2 of the Act as simply defining the premises to which a right to manage applies. The definition is not complex, or intended to be so, and if the criteria are satisfied there is no reason why premises cannot consist of one or more blocks particularly if blocks share common grounds or services and it is appropriate that they be managed collectively. The Act intended to offer a wide range of leaseholders of property a right to manage and it is not helpful to imply an interpretation which interferes with such an objective unless there is wording within the Act which clearly suggests a different interpretation.
46. The Property in this case consists of two blocks of flats on one site containing communal grounds. There is every reason why it is both appropriate and practical for a single RTM company to manage both blocks.
47. Having considered the case law to which the parties referred, the Tribunal concludes that it does not find the Gala Unity cases intrinsically helpful as these are for the most part concerned with the definition of appurtenant property. Their only relevance is that the premises in those cases comprised two separate blocks which is the same as the Property in this Application.
48. The Tribunal rejects the Respondent's argument that the premises defined in the Articles should be identical to the premises described in the Claim Notices. If the Respondent's argument is correct two separate RTM companies would have had to be formed to manage each of the blocks which together comprise the Property.
49. The Respondent also suggested that a logical consequence of a single RTM company having the right to manage more than one block of premises would enable such a

company, theoretically at least, to manage all the flats in Newquay. The Tribunal rejects this as being a fanciful argument. It believes such an occurrence would be unlikely as it would be all but impossible to satisfy the membership criteria for qualifying tenants of a multiplicity of apartment blocks throughout a town. There would be no commonality of interest in having the right to the overall management of such disparate and unconnected property.

50. Having considered all of the cases to which the parties referred, it accepts that whilst it has no obligation to follow other tribunal decisions, it is minded to follow the decision in Dawlin which was that it is appropriate and within the statutory provision:
 - (a) for a single RTM to manage multiple blocks of premises and
 - (b) to serve individual notices in respect of individual blocks sharing the same grounds but which are connected and may together form premises within the Act.
51. It also accepts the arguments put forward by the applicant's counsel in paragraph 6(b) of that case which suggested it was appropriate to issue independent claim notices for each block to ensure that no leaseholder could be disenfranchised as each building (in that case) had over 50% of qualifying residents as members of the RTM. That argument was also approved by the tribunal (in passing), in paragraph 15 of the decision.
52. Belmont Hall follows Dawlin in that the tribunal in that case accepted that there is no express statutory restriction as to the number of premises to which a RTM company might claim to manage.

The Membership Point

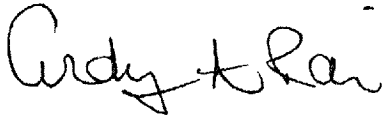
53. The Respondent's second objection relates to the membership of the RTM. Section 74 of the Act states that the only persons who are entitled to be members of the RTM company are the qualifying tenants of the flats within the premises (referred to in each notice).
54. Each of the two separate notices shows all of the tenants of both blocks as members of the RTM company. The Respondent suggests that is incorrect because the blocks comprised two separate sets of premises and therefore the only persons entitled to be members of the RTM company claiming the right to manage the dedicated block are tenants of flats within that block. The Applicant's argument is that if a single RTM company can successfully apply to be entitled to manage both blocks collectively, the reference to the members being the qualifying tenants of both blocks must be correct.
55. The Tribunal concludes that it would be entirely inappropriate for the Act to be interpreted in a way that would not enable a single RTM company to apply to manage the two adjoining blocks which together comprise the Property. It does not accept that there is any merit in the Respondent's arguments that such an interpretation would enable a single RTM company to apply to manage a series of unrelated properties. In practice the membership point and the requirement that only qualifying tenants can become members of the RTM company would effectively prevent that from happening.
56. It is clearly unsatisfactory for the law to be inconclusive as to whether or not a single claim notice can be submitted in respect of premises comprising more than one block

but which are capable of management as a single entity. For this and all of the reasons set out above the Tribunal accepts the validity of the Claim Notices.

57. Since it accepts that the Applicant succeeds in its claim for the right to manage both blocks referred to in the Claim Notices it follows that the members of the RTM are correctly listed in both.
58. The Tribunal determines that the Applicant is entitled to acquire the Right to Manage the Property.

Costs

59. As the Applicant has succeeded in relation to the claim, section 88 of the Act will limit the costs recoverable by the Respondent to those relevant costs which do not relate to the proceedings before the Tribunal.
60. The Tribunal hopes that the parties can agree between them what element of the Respondent's costs are recoverable and makes no order in relation to costs albeit that either party may apply to the Tribunal again if they are unable to agree.



Cindy Alpona Rai LLB Solicitor
Chairman