



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

Case Reference : MAN/00FB/LOA/2012/0006

Property : 11A Trinity Road Bridlington YO15 2EZ

Applicant : Management Trinity RTM Company Limited

Representative : Mrs Dawn Darley
(Flat 1, 11A Trinity Road Bridlington)

Respondent : Bartlett Lee & Co Ltd

Type of Application : Application under Section 85(2) of the Commonhold and Leasehold Reform Act 2002 for an order that the Applicant RTM company is to acquire the right to manage the Property

Tribunal Members : A Robertson (Chairman)
J W Holbrook

Date of Decision : 27 January 2014

DECISION

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The Tribunal Order that Management Trinity RTM Company Limited be given the right to manage 11A Trinity Road Bridlington with effect from 1 February 2014.

REASONS

BACKGROUND

- 1 On 18 December 2012 the Tribunal received 4 applications under Section 85(2) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for an order that Management Trinity RTM Company Limited is to acquire the right to manage ("RTM") premises at 11A Trinity Road Bridlington. The names of the Applicants given on the application forms are in each case the tenants of long leases of the 5 flats at 11A Trinity Road but it is clear that the lessees are collaborating and that they intend the Application to be a single Application of the RTM Company.
- 2 The Building, 11A Trinity Road is a semi-detached dwelling now containing 5 flats.
- 3 Each of the five lessees are qualifying tenants and each are members of the RTM company.
- 4 Copy leases in respect of each flat and official copies of register of title of each leasehold interest have been submitted to the Tribunal. A copy of the register of the freehold land showing the entries on 14 November 2012 was also before the Tribunal. This showed the proprietor of the title absolute as Thorgills & Kormac Limited of 15 Belgrave Crescent Scarborough YO11 1UB. The title documents, and the leases themselves, show that each lease is for a term of 999 years commencing in June 2008.
- 5 A copy of the Notice of Claim served on the Landlord and its agent on 15 November 2012 was also before the Tribunal. This was addressed to the Landlord's agent Thorgills & Kormac Ltd at 77-78 Westborough Scarborough and at Belgrave House, Belgrave Crescent Scarborough, and to the Landlord at its last address at Office 4, 219 Kensington High Street London W8 6BD.
- 6 It would appear that both the Landlord and their Management Company (Bartlett Lee & Co and Thorgills & Kormac Ltd respectively) who had common owners, are no longer trading and are certainly not now present at the addresses they formerly occupied. This would seem to have been the position from mid 2012 and only in September 2012 were Mr & Mrs Darley able to be registered as owners of their leasehold interest in flat 1 following their solicitor, Graham and Rosen having prepared an application to the Land Registry to register the title without the landlord's consent required by lease. The solicitor, despite diligent enquiries, had been unable to contact the Landlord or agent.

THE LAW

- 7 Section 72(1) of the Act provides that the RTM applies to premises if they consist of a self-contained building or part of a building, containing two or more flats held by qualifying tenants and 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.
- 8 Section 72(3) provides that part of a building is a self-contained part of the building if it constitutes a vertical division of the building, could be redeveloped independently of the rest of the building and subsection (4) applies in relation to it.
- 9 Subsection 72(4) applies if the relevant services provided for occupiers of the self-contained part are provided independently of the relevant services provided for occupiers of the rest of the building.
- 10 Section 73 of the Act specifies what is a RTM company and Section 74 gives details of membership and regulations thereof.
- 11 Section 75(2) defines a qualifying tenant as a tenant of a flat if he is tenant of the flat under a long lease.
- 12 Section 76(2)(a) provides that a lease is a long lease if it is granted for a term of years certain exceeding 21 years.
- 13 Sections 79, 80 and 81 and paragraphs 3 and 4 of the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2003 ("the Regulations") give details of the claim notice which must be given by the RTM company.
- 14 Section 79(1) defines the relevant date as the date on which notice of claim is given.
- 15 Section 79(5) states that the membership of the RTM company must on the relevant date include a number of qualifying tenants which is not less than one-half of the total number of flats contained in the premises.
- 16 Subsection (6) requires that the claim notice must be given to each person who on the relevant date is the landlord under a lease of the whole or any part of the premises.
- 17 Subsection (7) states that 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.
- 18 Section 80 specifies requirements with which the claim notice must comply and Schedule 2 of the Regulations sets out a prescribed form of claim notice.

- 19 Section 85 sets out the law applicable when Landlords are not traceable. In these circumstances when an RTM company complies with subsection (5) of section 79 (number of qualifying tenants being not less than half the number of flats) it may apply to the Tribunal for an order that it is to acquire the right to manage the premises.
- 20 Subsection 85(3) requires the company to give notice of the application to each person who is a qualifying tenant of a flat within the premises.
- 21 Other subsections of Section 85 enable the Tribunal to order the company to take further steps by way of advertisement or otherwise for the purpose of tracing landlords and set out procedures in the event of a landlord being traced.

REPRESENTATIONS

- 22 Whilst correspondence, including directions, has been sent by the Tribunal to the Respondent and their agent at addresses supplied, no submissions or indeed acknowledgement have been received from them.
- 23 The Applicant, within their application and in subsequent correspondence and at a pre-trial review confirmed that they are seeking an Order that it acquires the right to manage the Property.
- 24 Whilst RTM is a no-fault procedure, the tenants have concerns regarding the poor state of repair of the Property and the landlord's failure to meet their repairing covenants. The landlord has not accounted for service charges paid to them as a condition of the lessees' purchase. In the absence of any contact with the landlord the tenants are presently dealing with maintenance and insurance themselves - more or less as if the Order now sought had been made.
- 25 The company, the tenants and their respective solicitors had all made extensive efforts to contact the landlords and their agents. Mail is returned marked 'no longer at this address' and premises have been visited and found to be vacant.

THE TRIBUNAL'S CONSIDERATION

- 26 The Tribunal considered each element of law relevant to the Application.
- 27 It considers that the Property satisfies the requirements of subsections 71(1) and 72(3) of the Act (the premises consist of two or more flats, each of the five flats are occupied by qualifying tenants, there is a vertical division and it could be redeveloped independently of the rest of the building).
- 28 Section 73 and 74 of the Act is satisfied (the RTM Company has articles of Association in accordance with Companies (Model Articles)(England) Regulations 2009).

- 29 All of the Company members are qualifying tenants (s 75(2)).
- 30 Each lease is a long lease (s 76(2)(a)).
- 31 An appropriate claim notice was sent (ss 79, 80 and 81) to the Landlord, but on the balance of probability not received.
- 32 Section 79(5) is satisfied (each of the five qualifying tenants are members of the RTM company).
- 33 Subsections (6) and (7) of Section 79 are considered together. The Tribunal conclude that the claim notice was not received by the Landlord who cannot be found and that section 85 applies.
- 34 Notice of the Applicant's application under Section 85 was given to each qualifying tenant (who were each members of the Applicant company (s 85(3))).
- 35 Given the history of this case and the efforts made by the Company, its members and their solicitors to find and contact the Landlords and/or their agents, the Tribunal do not consider it appropriate to require the Company to take further steps to trace the Landlord.
- 36 The Applicant satisfies each element of the relevant law and there are cogent reasons for it to assume management of Property. The Tribunal determines to grant the Order sought.