



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

Case Reference : **LON/00BD/LRM/2015/0012**

Property : **Metropolitan Court 2-10 Clarence
Street Richmond TW9 2SA**

Applicant : **Metropolitan Court RTM Company
Ltd**

Representative : **Mr S Charles**

Respondent : **Gamma Investment Ltd**

Representative : **Ms K Helmore, Counsel**

Type of Application : **S84(3) Commonhold and
Leasehold Reform Act 2002 (Right
to Manage)**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mrs E Flint FRICS**

**Date and venue of
Hearing** : **10 June 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 June 2015**

DECISION

The Tribunal declines to grant the Applicant's application under s84(3) Commonhold and Leasehold reform Act 2002 for the reasons cited below.

Reasons

1 The Applicant RTM company applied to the Tribunal on 25 March 2015 asking the Tribunal to grant an order under s84(3) Commonhold and Leasehold Reform Act 2002 entitling the Applicant to manage the building known as Metropolitan Court 2-10 Clarence Street Richmond TW92SA (the property).

2 The Applicant had previously served notice on the Respondent landlord on 26 January 2015 in response to which the Respondent's counter-notice, served on 24 February 2015 asserted that the Respondent denied that the Applicant was entitled to acquire the right to manage the property on the basis that the premises to which the claim relates are not part of a self-contained building as they do not constitute a vertical division of the building.

3 The matter was considered by a Tribunal at an oral hearing on 10 June 2015 at which the Applicant was represented by Mr S Charles and the Respondent by Ms K Helmore of Counsel.

4 The property forms part of a mixed development which includes a medical centre. The ramp which leads to the disabled and buggy access to the medical centre together with vehicular access to the car park, part of which is used by medical centre staff as well as by the tenants of the property, runs underneath flats 4,6,8 and 10 Metropolitan Court and no part of that area is part of the demise to the flats which comprise the property which is the subject of this application. The extent of the property which forms part of the demise to the flats is clearly shown on the plan at page 71 of the hearing bundle. Rights over the access way are given to the tenants of the flats in their respective leases and similarly in the lease granted to the medical centre.

5 For the Respondents it was argued that the existence of the access way prevented the property from complying with the requirements of the statute contained in s72 of the Commonhold and Leasehold Reform Act 2002 (see below). In support of that contention the Respondent cited *Re Holding and Management (Solitaire) Ltd* [2008] L&TR 16, *Gala Unity Limited v Ariande Road RTM Company Ltd* [2011] EWCA Civ 1372 and *Albion Residential Ltd v Albion Riverside Residents RTM Company Ltd* [2014] UKUT 6.

6 The Applicants argued that the access way and ramp did not form part of the building and that it was therefore possible to sever the property by vertical division as a separate unit. They were unable to produce any authority for their assertion.

7 The hearing bundle contained a number of plans and clear colour photographs of the property and its environs (not disputed by the Applicants) which clearly show that the access way underneath flats 4,6 8 and 10 creates a void underneath the property. The Tribunal is of the opinion that this void prevents the property from satisfying the criteria contained in section 72 Commonhold and Leasehold Reform Act 2002 that the property must be a vertical division of the building, capable of being redeveloped independently of the rest of the building. As currently constructed the property could not be independently re-developed without trespassing on the rights of the owner(s) and users of the access way and ramp which pass beneath the flats.

8 The Tribunal considered that the views of the property shown in the photographs provided sufficient clarity of the property and its lay out and that a physical inspection was not required.

9 The Law (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.

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.

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 a long 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.

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.

84 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,

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.

Judge F J Silverman as Chairman

Date 10 June 2015

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a

request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.