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

Case Reference : **CAM/22UG/LRM/2017/0003**

Property : **5-12 Cotswold Court, Highwoods,
Colchester CO4 9RT**

Applicant : **Cotswold RTM Company Limited**

Representative : **Mr Dudley Joiner
RTMF Services Limited**

Respondent : **Holding and Management (Solitaire)
Limited**

Representative : **Mr Milton McIntosh
Estates and Management Limited**

Type of Application : **Section 84(3) Commonhold and
Leasehold Reform Act 2002 –
determination whether the right to
manage has been acquired**

Tribunal Members : **Judge John Hewitt
Mr Roland Thomas MRICS
Mr John Francis QPM**

**Date and venue of
hearing** : **14 August 2017
SSCS Colchester**

Date of Decision : **7 September 2017**

DECISION

The issue before the tribunal and its decision

1. The issue before the tribunal was whether the applicant had acquired the right to manage.
2. The decision of the tribunal is that the applicant has acquired the right to manage. Accordingly, the date of acquisition will be the date specified in accordance with section 90(5) of the Act.

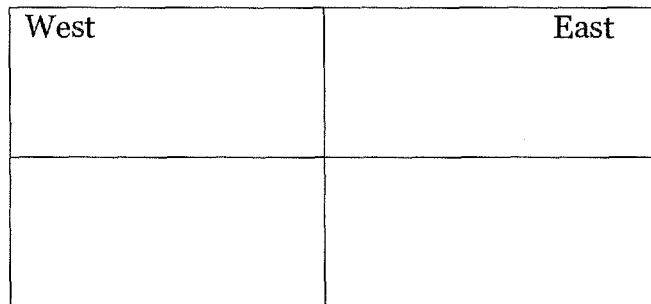
NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. By a claim notice dated 31 January 2017 [9] and given pursuant to section 79 of the Act, the applicant claimed to have acquired the right to manage the premises known as 5, 6, 7, 8, 9, 10, 11, and 12 Cotswold Court (the premises).
4. By a counter-notice dated 6 March 2017 [15] the respondent asserted that the right had not been acquired. Two grounds for that position were relied upon that:
 1. Contrary to section 72(1) of the Act the premises do not consist of a self-contained building or part of a building, but in fact comprise two self-contained buildings; and
 2. Contrary to section 78(1) of the Act the applicant did not give to every person entitled notice of the claim. This ground was not pursued by the respondent at the hearing and thus it is unnecessary to give further details of it.
5. By an application dated 28 April 2017 [1] and made pursuant to section 84(3) of the Act, the applicant sought a determination from the tribunal that it had acquired the right to manage.
6. Directions were given on 9 May 2017 [42]. Pursuant to those directions we were provided with a page numbered file of material documents.
7. On the morning of Monday 14 August 2017, the tribunal had the inestimable benefit of an inspection of the premises. We were accompanied by Mr Joiner, a representative of the applicant, Mr McIntosh, a representative of the respondent's managing agents, and Ms Sue Stewart the property manager. A number of physical features of the premises were drawn to our attention.
8. Later, on 14 August 2017 the hearing took place. Neither party called any evidence, the basic facts were not in dispute. The parties' respective representatives made submissions to us on what they said was a legal point.

The premises

9. It was not in dispute that there is a single rectangular two storey structurally detached building which comprises the eight flats. Broadly it runs west to east. There are four flats on each floor. In the west facing flank wall there are two street doors each of which give direct access into one of the two ground floor flats at that end of the building. In the middle of that flank wall there is another street door which gives access to a stairway leading to a small first-floor landing area. To the left and the right of the landing there are doors each of which gives access to one of the first-floor flats. That design and layout is replicated in the east facing flank wall. In very simple terms the footprint of the premises is:



10. In essence, the premises comprise a modest single building made up of two blocks placed back to back (in mirror image) with an internal dividing wall to form the rectangle. Apart from the roof, minor common services such as guttering and drainage there were no common parts or common structures.

It appeared that each flat had its own separate connection to utilities, services and drainage.

11. The service charge structure was that each flat contributed 25% of the costs incurred in connection with the block of which the flat was part. To that extent each block has its separate service charge accounts although evidently in practice the two blocks are managed together as one because the services which each need are very similar, and sometimes identical.
12. It was not in dispute that the building was self-contained building which is structurally detached within the meaning of section 72(2) of the Act.

Although neither party had any 'as built drawings' each party was prepared to assume that the building could be severed vertically down the centre line internal dividing wall to create two self-contained parts of a building within the meaning of section 72(3) and (4) of the Act. On that basis, each block would be able to acquire the right to manage, subject only to compliance with other qualifying conditions.

13. Although not immediately of relevance, it is convenient to record here that of the four participating lessees who are members of the applicant, three have flats in one block and one has a flat in the other block.

The statutory provisions

14. Material extracts from the relevant statutory provisions are set out in the appendix to this decision.

The crux of the issues

The respondent

15. The respondent raised two issues:
1. As a matter of law, can the applicant acquire the right to manage multiple self-contained parts of the same building?
 2. On the facts, do the premises comprise 2 self-contained parts of a building? This question was not in dispute in that it was not in dispute that each block was capable of being a self-contained part of a building within the meaning of section 72(3) of the Act.
16. The respondent submits that section 72 of the Act operates to limit the number of premises that an RTM company can acquire to a single premises and that multiple self-contained parts of a single building qualify as multiple premises. In support of that proposition Mr McIntosh relied upon *Triplerose v Ninety Broomfield Road RTM Co Ltd* [2015] EWCA Civ 282. Mr McIntosh argued that if there are vertical divisions they should be respected and the Act does not enable a whole terrace of self-contained parts of a building to be subject to the management of one RTM company. Mr McIntosh accepted that the legislation was not well drafted and that within the Act the expression 'premises' is used to mean different things in context and that the expression should be used or interpreted 'loosely' depending on context.
17. Mr McIntosh drew attention to the fact that in the present case three participating lessees were in one block and one in the other. That gave rise to the risk of prejudice in that one block might control the other contrary to the wishes of the majority of lessees in the other block. Drawing on paragraph 52 of the judgment in *Triplerose* Mr McIntosh submitted that:
1. One block might want to increase service charges whereas the other might not;
 2. One block might wish to grant approvals for, e.g. sub-letting to periodic tenants, whereas the other might not;
 3. One block might wish to undertake major works (e.g. at a particular time) whereas the other not;
 4. Estate rules and regulations might be waived to benefit one block at the cost of the other, e.g. the allocation of parking, storage, use of gardens etc.

Mr McIntosh argued that these points apply whether the two blocks are physically attached, as in the subject case, or are physically separate, as in *Triplerose*.

18. Mr McIntosh also sought to rely on *St Stephens Mansions and St James Mansions* [2014] UKUT 0541 (LC) in which he said that the buildings were joined along one of the walls to form an 'L-shape' and separate notices were served, one for each wing or block.

The applicant

19. The principal submission of the applicant was that the premises comprise one self-contained building which is structurally detached and so falls squarely within section 72(1) and (2) and that is the end of it.

It also happens that the premises comprise two self-contained parts of a building which are capable of vertical division and to which section 72(4) applies, so that each self-contained part is capable of falling within section 72(3).

In these circumstances, it is open to the participating lessees to arrange their affairs as they see fit. They could set up one RTM company to manage the whole building, or they could seek to manage each block separately if they so wished and if they had the requisite number of participants in each block.

The fact that the premises are capable of comprising two self-contained parts does not preclude them from exercising the right to manage the whole building.

20. In support of this submission Mr Joiner argued that Parliament intended that premises qualifying for RTM may comprise both the whole building or smaller self-contained parts of it. Mr Joiner drew attention to several sections of the Act where the expression: "*premises containing or contained in the premises*" is to be found. Examples include ss 73(4), 79(9), 81(3), 83(2)(d), 105(4) and Schedule 6, paragraph 2. Mr Joiner said that Schedule 6 paragraph 2 would not be required if in relation to a building which contains a self-contained part, lessees were only able to acquire RTM in relation to each self-contained part and not a larger part of the whole of the building.
21. In support of that proposition Mr Joiner relied upon *Crafrule Ltd v Albert Place Mansions (Freehold) Ltd* [2011] EWCA Civ 185 in which the Court of appeal considered the expression 'self-contained building or part of a building' as used in section 3 Leasehold Reform, Housing and Urban Development Act 1983. In paragraph 21 of the judgment it was made plain that there was nothing within the section which suggested a justification for putting a gloss on the clear statutory words so as to require that a self-contained part must be the smallest possible self-contained part. The submission that the right attached only to the smallest possible self-contained part was rejected.

22. Mr Joiner submitted that *Triplerose* did not apply to the subject case. In discussing section 72(1) of the Act Gloster LJ said: “*Importantly for present purposes sub-paragraph (a) imposes the condition that the premises ‘consist of a self-contained building or part of the building’, which satisfies the conditions (b) and (c) ... This makes it clear that the acquisition and the exercise of rights to manage applies ... to a self-contained building (i.e. structurally detached – see section 72 (2) or to a part of a building.*”

Discussion

23. We prefer the submissions made by Mr Joiner for the following reasons.
24. Section 72(1) provides that the Chapter applies to premises if they consist of a self-contained building or part of a building. Section 72(2) provides that a building is a self-contained building if it is structurally detached. We find that the subject premises comprise a self-contained building which is structurally detached. In fact, that was not in dispute.

Section 72(3) and (4) go on to make provisions as to what constitutes a self-contained part of a building. We are not directly concerned with those provisions because the subject premises fall squarely within section 72(1) and (2).

25. Mr McIntosh relies heavily upon *Triplerose* to support the submission that a RTM company cannot acquire the right to manage multiple self-contained parts of the same building. We have considered his submissions carefully but we reject them. *Triplerose* concerned three developments. The first concerned two purpose-built structurally detached blocks of flats. The second concerned two separate blocks of flats + a communal car park. The third concerned seven self-contained blocks of flats on an estate which also contained about 20 freehold houses.

The thrust of the decision was that an RTM company could not acquire the right to manage more than one self-contained building.

The case did not concern or address issues as to the one self-contained building being made up of two or more self-contained parts of the building.

26. We are reinforced in our conclusion by the reference to several provisions in the Act cited by Mr Joiner where the expression “*premises containing or contained in the premises*” is to be found. We reject Mr McIntosh’ submission that those words should be interpreted loosely depending in context. We note that in *Triplerose* Gloster LJ said at paragraph 62:

“*Accordingly in my judgment the relevant provisions of the Act, construed as a whole, in context, necessarily point to the conclusion that the words “the*

premises" have the same meaning wherever they are used (save where otherwise expressly provided). That means that the references in section 72 to "premises" are to a single self-contained building or part of the building, and that likewise references to "the premises" or "premises" or "any premises" in sections 73, 74, 78 79 and other provisions of the Act are likewise references to a single self-contained building or part of the building. That interpretation is consistent with the provisions for model articles contained in the Regulations and is the only basis upon which the machinery for acquisition of the right to manage can operate. Accordingly in my view it is not open to an RTM company to acquire the right to manage more than one self-contained building or part of a building and the Upper Tribunal was wrong to reach the decision which it did."

27. Care always has to be taken when considering authorities which construe or interpret an expression which is used in two or more different statutes because context is so important. However, we find that we can derive some assistance from *Crafrule* because the words are so similar and the context is so similar. Both statutes provide for the rights of long lessees of flats in a building. In one the right to enfranchise, in the other the right to manage. The *Crafrule* decision reinforces and supports our findings on the proper construction of s72 of the Act.

28. Mr McIntosh submitted that there was scope for prejudice or unfairness where a RTM company might manage two separate blocks of flats as raised in *Triplerose*. That risk is not a matter which assists in the proper interpretation of the statute.

In any event the service charge structure of the subject development is that the two blocks are managed separately. That is what the landlord has been doing since the grant of the leases. We infer that from time to time the respondent, as landlord, has consulted, whether formally or informally, on management issues. It may well that what is right for one block is not right for the other. But, the applicant will be required to do exactly the same; it will be required to manage the two blocks separately. We see no reason to infer that the applicant will act unfairly in carrying out its obligations to manage the two blocks. Certainly no evidence to support Mr McIntosh' proposition was put before us.

29. Mr McIntosh also placed reliance on *St Stephens Mansions and St James Mansions*. We did not derive any assistance from that authority. The case concerned an 'L-shaped' block and two self-contained parts of a structurally detached building where two separate claim notices had been given. One of the issues in the case concerned technical points on the content of documents, the other was the extent to which the two parts were self-contained having regard to common services and the application of section 72(4) of the Act.

There is no doubt that where there are two self-contained parts of a building a claim notice can be given in respect of each part which qualifies. The authority did not discuss or address the issue as to what

the position would have been if one claim notice had been given in respect of the whole structurally detached self-contained building.

30. We find there is no authority or support for the proposition advanced by Mr McIntosh that where a building is a structurally detached self-contained building which comprises two or more self-contained parts the right to manage is limited to each separate smallest possible part.
31. The applicant sought the right to manage a structurally detached self-contained building. We find that the subject premises is such a building and that it falls squarely into the provisions of section 72(1) and (2). In these circumstances, we have determined that the applicant has acquired the right to manage the subject premises.

Judge John Hewitt
7 September 2017

Appendix Statutory materials

Leasehold Reform, Housing and Urban Development Act 1993

3.— Premises to which this Chapter applies.

(1) Subject to section 4, this Chapter applies to any premises if—

- (a) they consist of a self-contained building or part of a building;*
- (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) For the purposes of this section a building is a self-contained building if it is structurally detached, and a part of a building is a self-contained part of a building if—

- (a) it constitutes a vertical division of the building and the structure of the building is such that that part could be redeveloped independently of the remainder of the building; and*
- (b) the relevant services provided for occupiers of that part either—*
 - (i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or*
 - (ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building;*

and for this purpose “relevant services” means services provided by means of pipes, cables or other fixed installations.

Commonhold and Leasehold Reform Act 2002

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 [articles of association state]¹ 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.

79 Notice of claim to acquire right

(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 tribunal or court by which he was appointed.

81 Claim notice: supplementary

(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.

83 Right of access

(2) The persons referred to in subsection (1) are—

- (d) any manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, and any person authorised to act on behalf of any such manager.

105 Cessation of management

(4) The right to manage the premises ceases to be exercisable by the RTM company if a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, begins so to act or an order under that Part of that Act that the right to manage the premises is to cease to be exercisable by the RTM company takes effect.

Schedule 6

2 Buildings with self-contained parts in different ownership

Where different persons own the freehold of different parts of premises falling within section 72(1), this Chapter does not apply to the premises if any of those parts is a self-contained part of a building.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.