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

Case reference : **LON/00AH/LRM/2017/0013**

Property : **1 Cargreen Road, London SE25 5AD**

Applicant : **1 Cargreen Road RTM Company Limited**

Respondent : **Triplerose Limited**

Type of application : **Right to Manage**

Tribunal member : **Judge P Korn**

Date of decision : **20th June 2017**

DECISION

Decision of the Tribunal

The application is granted. The Applicant is entitled to acquire the Right to Manage on the date which is three months after the Tribunal's determination becomes final.

The application

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("**the Act**") that on the relevant date it was entitled to acquire the Right to Manage the Property.
2. By a claim notice dated 17th January 2017 the Applicant gave notice that it intended to acquire the Right to Manage on 1st June 2017. By a counter-notice dated 27th February 2017 the Respondent disputed the claim on the ground that another company was already a RTM company in relation to the Property. On 25th April 2017 the Applicant applied to the Tribunal for a determination that it was entitled to acquire the Right to Manage.
3. This case involves a single issue, namely whether on the date on which the claim notice was given another company was already a RTM company in relation to all or part of the Property.

Paper determination

4. The Tribunal has identified the case as being suitable for a determination on the papers alone without a hearing, and neither party has requested an oral hearing. Accordingly the case is being determined on the papers alone.

Applicant's case

5. The Applicant notes the Respondent's position, namely that another company, Cargreen Road RTM Ltd ("**the Other Company**"), was set up on 20th December 2011 to acquire the right to manage premises including the Property. The Other Company's Articles of Association describe the premises to be managed by it as "Flats 1 to 4, No 1 Cargreen Road, London SE25 5AD and Flats 1 to 4, No 4 Cargreen Road, London SE25 5AD".
6. In support of its own position, the Applicant refers the Tribunal to the decision of the Court of Appeal in *Triplerose Ltd and Ninety Broomfield Road RTM Co Ltd (2015) EWCA Civ 282*, a case to which the Respondent was a party. In particular, the Applicant quotes from Lady Justice Gloster's judgment in which she analyses the meaning of "premises" for the purposes of the relevant part of the Act.

7. In the Applicant's submission, by virtue of the Court of Appeal's decision in the abovementioned case, the premises covered by the Other Company's Articles of Association do not fall within the definition of "premises" contemplated by the relevant part of the Act. Accordingly, the Other Company is not a RTM company in relation to the Property for the purposes of the relevant part of the Act and therefore its existence is not an impediment to the Applicant acquiring the Right to Manage in respect of the Property.

Respondent's case

8. The Respondent refers to section 73(4) of the Act, noting that a RTM company is not a RTM company in relation to premises if another company is already a RTM company in relation to those premises or to any premises containing or contained in the premises.
9. The Respondent states that the Other Company was set up to manage premises which include the Property and submits that the Other Company is a RTM company in relation to the Property. It further states that despite a notice being filed on 10th January 2017 for the compulsory strike-off of the Other Company this was discontinued on 14th January 2017 and the Other Company remained active on the date on which the claim notice was given.
10. The Respondent also refers to the decision of the First-tier Tribunal in the case of *Forum (York) RTM Company Ltd v Abacus Land (Oxip) Ltd and Trinity (Estates) Property Management Ltd (Ref: MAN/00FF/LRM/2014/0005/6/7)*, submitting that the FTT's decision in that case is authority for the proposition that RTM companies from previous unsuccessful claims continue in existence as RTM companies until dissolved.

Tribunal's analysis

11. Section 71(1) of the Act states: "*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)*".
12. Section 72(1) of the Act states: "*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*".

13. Section 73(4) of the Act states: “*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*”.
14. Section 74(1) of the Act states: “*The persons who are entitled to be members of a company which is an 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 ... landlords under leases of the whole or any part of the premises*”.
15. In the decision of the Court of Appeal in *Triplerose Ltd and Ninety Broomfield Road RTM Co Ltd* referred to above, Lady Justice Gloster – with whom Patten LJ and Sir David Keene agree – states that in her judgment the relevant provisions of the Act necessarily point to the conclusion that the words “the premises” have the same meaning wherever they are used in the relevant part of the Act. All references to “premises” are, in her view, to a single self-contained building or to a single part of a self-contained building.
16. Under sections 71(1) and 72(1) of the Act, the relevant part of the Act only applies to premises satisfying the three separate conditions set out in paragraphs (a) to (c) of section 72(1), and the condition in paragraph (a) is that the premises must consist of a self-contained building or part of a building. It is clear from section 74(1) that only tenants/landlords of “premises” can be members of the relevant RTM company, and therefore the whole scheme of this part of the Act is to allow RTM companies to be set up to manage a single set of “premises”. Lady Justice Gloster goes on to give examples of how unfair the legislation would be if an RTM company could be set up to manage more than one set of premises, and she concludes, also by reference to other parts of the Act, that such a result cannot be what the statute had in mind.
17. Therefore, for the purposes of this part of the Act, it is only possible to set up a RTM company to manage a single set of premises, and a company set up to manage more than one set of premises is not a RTM company for the purposes of section 73(4) of the Act.
18. The Respondent does not deny, and in any event it is clear from the Articles of Association, that the Other Company was set up to manage “Flats 1 to 4, No 1 Cargreen Road, London SE25 5AD and Flats 1 to 4, No 4 Cargreen Road, London SE25 5AD”. The Respondent has not sought to argue that No 1 Cargreen Road and No 4 Cargreen Road form part of the same premises for the purposes of the relevant parts of the Act.
19. The Respondent has referred the Tribunal to the FTT decision in *Forum (York) RTM Company Ltd v Abacus Land (Oxip) Ltd and*

Trinity (Estates) Property Management Ltd. However, the point drawn out by the Respondent from that case is whether a company ceases to be a RTM company on making an unsuccessful claim. This point is not relevant to the present case, as – based on the decision of the Court of Appeal in *Triplerose Ltd and Ninety Broomfield Road RTM Co Ltd* as applied to the facts of the present case – the Other Company did not become a RTM company in the first place as it was set up to manage more than one set of premises.

20. Accordingly, the Respondent's objection based on section 73(4) is not a valid objection and the Applicant is entitled to acquire the Right to Manage in respect of the Property.

Name: Judge P Korn

Date: 20th June 2017

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.