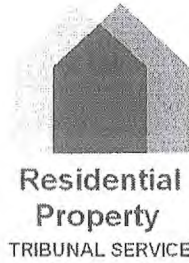


271



**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BJ/LRM/2011/0015

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
COMMONHOLD & LEASEHOLD REFORM ACT 2002 – Schedule 12

PREMISES: Argento Tower, Mapleton Road, London SW18 4GA
APPLICANT: Argento RTM Company Limited
REPRESENTED BY: Urban Owners
RESPONDENT: Peverel OM Limited
TRIBUNAL: Ms F Dickie, Barrister, Chairman
Mr M Taylor, FRICS
DECISION: 21 November 2011

Summary of Determination

An order for costs of £500 is made against the Applicant.

Preliminary

1. The Tribunal received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002, which has since been withdrawn. This is the determination on the Respondent's application for costs of £500 under Paragraph 10 of Schedule 12 to the Act.
2. By a claim notice dated 18 March 2011 the Applicant Argento RTM Company Limited gave notice that it intended to acquire the Right to Manage the premises on 1 August 2011. By a counter notice dated 20 April 2011 the Respondent disputed the claim, alleging that the Applicant had failed to establish compliance with section 72(1) of the Act, since the premises are not self contained either as a single building or part of a building capable of independent redevelopment. Directions were issued

on the application on 28 June 2011 for a decision on the papers, but the application was withdrawn before the tribunal made a determination.

The Premises

3. The subject premises are a block of residential flats arranged over 22 floors and are joined to another block of flats known as Palladio Court comprising one ground floor commercial unit and social housing residential flats arranged over 8 floors. We did not consider it necessary to carry out an inspection. We have had sight of the report of Alastair Mason FRICS of Bunch & Duke Chartered Surveyors dated 10 August 2011, and amongst its findings are that there are shared services, horizontal overlaps at 1st to 7th floor levels and the structural design cannot be vertically severed from Palladio Court. The premises are joined to Palladio Court at various points across a number of levels, a multi-storey car park is located between the lower levels of the two blocks, with a number of access points from both blocks, and between the blocks is a roof terrace joined to and accessible by both blocks.
4. The freehold in both blocks is held by the London Borough of Wandsworth and the land and buildings are demised to the Homes and Communities Agency under a single headlease. Argento Towers is sublet under an intermediate headlease to the landlord Wandsworth Parkside LLP. Palladio Court is sublet under a separate intermediate headlease to Notting Hill Home Ownership Limited. The Respondent is the Management Company, which is a party to the individual leases of the flats in Argento Towers.

The Costs Application

5. Paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 provides for the following power to award costs up to £500:
 - (1) a leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
 - (2) The circumstances are where –
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
6. The Applicant's statement of case was served on the Respondent on 12 July 2011 and has been provided to us. The Respondent in its statement of case has argued that the Applicant has issued and conducted this application frivolously or otherwise unreasonably within the meaning of paragraph 10 of Schedule 12 to the Act. The Respondent's grounds for the application are that the Applicant made no effort to inspect the premises and those adjoining so as to determine whether in fact there are overlapping structures, failed to address the practical issue as to whether the premises are capable of independent redevelopment, and failed to make enquiries or investigate regarding shared services. The Respondent has incurred costs since issuing proceedings, including the surveyor's report at £400 plus VAT, and seeks an order for costs in the sum of £500.

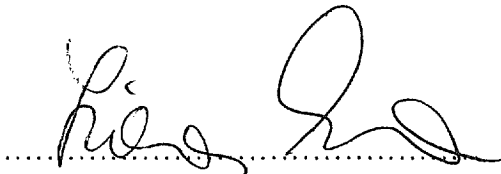
7. By a letter received on 30 August 2011 Urban Owners on behalf of the Applicant withdrew the application. It has accepted liability for Peverel's costs prior to issue of the LVT application in the sum of £342 plus VAT, but disputes that it has any further liability for costs in connection with the tribunal case.

Evidence and Determination

8. The Applicant observes that the Respondent's counter notice stated that the RTM Company "was not entitled to acquire the right to manage the premises specified in the Claim Notice because the premises are not premises within the meaning of Chapter 1, Part 2 of the Act in that they are not self contained premises within the meaning of Chapter 1, Part 2 of the Act in that they are not self-contained either as a single building or part of a building capable of independent redevelopment".
9. The Applicant complains that the Respondent did not amplify its grounds in the counter notice, considering that if more detail had been provided as to why the Respondent felt the premises did not qualify, the application could have been avoided. We do not consider that the Respondent was under a duty to expand on its objection, and this question is distinct from consideration of whether the Applicant had reasonable justification for believing the premises did come within the provisions of the Act.
10. The Applicant asserts that "before making the application to the LVT ... the Applicant did properly consider and investigate whether the Premise qualified under Section 72 of the Act and strongly felt that the Premise did qualify". However, it has not supported this statement with an explanation of the investigation it understood and the reasons for concluding that the premises qualified. It is not suggested that an inspection was carried out. Further written submissions have been made by the Applicant on 5 November and by the Respondent on 11 November, and we have considered them.
11. The Applicant was aware that the issue disputed by the Respondent was whether the premises were self contained either as a single building or part of a building capable of independent redevelopment. We have considered the contents of the application, and find it does not disclose that the Applicant had any rational grounds for making it. Reliance was placed on the Land Registry plans, which are inadequate for the purpose of determining whether there were overlapping structures or shared services, and whether the premises are capable of independent redevelopment. That the premises and Palladio Court are separately insured and registered on separate Land Registry titles is also irrelevant to the matters in issue.
12. There is no evidence that the Applicant gave consideration to the structure of the block. The existence of the car park and roof terrace alone should have alerted them to the difficulties with separation or independent redevelopment. The burden of proof in the proceedings lay with the Applicant. Reliance on the Respondent or the tribunal to input the professional evidence required to make out a claim is not a proper approach.

13. The Applicant did not apply for an order under Regulation 11 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 dismissing the proceedings as frivolous, but might properly have done so. Such an order would have given the tribunal discretion to award costs under Paragraph 10(2)(a).
14. We are of the view that the Procedural Chair was correct to conclude that the Applicant was entitled to withdraw the application, and that since it was not dismissed, the tribunal has no jurisdiction to determine costs as a party to the proceedings under section 88(3). The fact that there is no power to award the costs of proceedings under s.88 unless they are dismissed is not an excuse to issue unmeritorious claims that will put the Respondent to unnecessary cost.
15. The power to award costs under Paragraph 10 of Schedule 12 should not be used as substitute for the absent power to award costs under section 88 where proceedings are withdrawn. However, having considered the application, statements of case and submissions, we are satisfied that the Applicant did act frivolously and unreasonably in bringing this application, since it was done without apparent grounds for believing it well founded. In all of the circumstances, we consider it appropriate to make an order that the Applicant refunds to the Respondent costs of £500.

Signed

A handwritten signature in black ink, appearing to be 'P. C. [unclear]', written over a horizontal dotted line.

Chairman

Dated

21 November 2011