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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00MC/LRM/2013/0018

Property : Flats 1-4, 44 Bulmershe Road,
Reading,
Berks. RG1 5RJ

Applicant : 44 Bulmershe Road RTM Co. Ltd.

Respondent : Sinclair Gardens Investments
(Kensington) Ltd.

Date of Application : 12th June 2013

Type of Application : For an Order that the Applicant was,
on the relevant date, entitled to
acquire the right to manage the
property (Section 84(3) Commonhold
and Leasehold Reform Act 2002 (“the
2002 Act”)

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

1. This Application succeeds and the Applicant therefore acquires the right to manage the property on the 22nd November 2013 (Section 90(4) of the 2002 Act).

Reasons

Introduction

2. The Respondent accepts that the Applicant is a right to manage company (“RTM”). Such RTM served the Respondent with a claim notice on the 22nd March 2013 seeking an automatic right to manage the property and giving the 26th April 2013 as the date by which a counter-notice must be served. On the 24th April 2013, the Respondent freehold owner’s solicitors serving a counter-notice.
3. This counter-notice raised a number of issues but they have all been withdrawn save for one. The Respondent’s submission to the Tribunal confines itself to this one issue and the Tribunal will do the same.

4. It should be noted that although the application was correctly made to the Leasehold Valuation Tribunal on the 12th June 2013, such Tribunal was, as from the 1st July 2013, subsumed into the First-tier Tribunal, Property Chamber and all of its powers and jurisdictions became exercisable by the First-tier Tribunal.
5. The only issue for determination is whether the description "*Flats 1-4, 44 Bulmersche Road, Reading, Berkshire, RG1 5RJ (the premises)*" was a sufficient description of the property bearing in mind that the Applicant was clearly intending to take over management of appurtenant property. The notice went on to say, in clause 2, that "*the premises consist of a self contained part of a building, with or without appurtenant property*". The Respondent's case, in essence, is that appurtenant property must be specifically set out both in the claim notice and in the Memorandum and Articles of Association of the RTM.
6. The problem is that the claim notice says that the claim notice includes "*an outbuilding and outside areas as show edged red on the attached plan*". The Respondent says, and the Tribunal accepts, that the plan was not attached to the original notice. However, when this was pointed out, it was immediately sent. The copy in the bundle is a very small scale plan from the Land Registry title no. BK265076 which does not appear to have any red edging. There is also in the bundle a larger scale plan which appears to be from one of the leases and shows some red edging around a parking space at the rear of the property and 2 areas of garden at the front. All of these areas have the number '2' in them which presumably means that they are either part of or used by flat 2.
7. None of the leases has been presented to the Tribunal, whose members therefore have no idea what is appurtenant property. That will be set out in the leases the terms of which are known to the parties.

Procedure

8. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 19th August 2013 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

9. Section 72(1)(a) of the 2002 Act says, in effect, and for the purposes of the dispute in this case, that the RTM provisions apply to "*premises if they consist of a self contained building or part of a building, with or without appurtenant property*". 44 Bulmershe Road is part of a building as it is semi detached. However, there does not seem to be any dispute that it comes within the definition of premises because it is vertically divided from its semi-detached neighbour.
10. Section 80(2) says that the claim notice "*must specify the premises...*".

11. Section 112(1) defines 'appurtenant property' as "*any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with the building or part (of a building)*".

Discussion

12. The Respondent's case is set out in detail in submissions stretching from page 72 to page 90 in the bundle of documents provided for the Tribunal. Some 9 cases are referred to although there were no case reports in the bundle. This is a bad omission on the part of the Applicant's representatives although, fortunately, the Respondent's solicitors realised the error and submitted the bundle of authorities.
13. The theme of the Respondent's submissions is to show that a claim notice must specifically define what property is included within the 'claim' to manage. In other words, if there is appurtenant property to be included then it must be specifically set out so that those receiving the notice will know exactly what property is being claimed for management. Reference is made to the quoted cases. A comparison is made to the enfranchisement provisions.
14. A considerable amount of time is spent by the Respondent's legal representatives in discussing the case of **Gala Unity v Ariadne RTM Co. Ltd.** reported as an Upper Tribunal case at LRX/17/201 and as a Court of Appeal case at [2012] EWCA Civ 1372. The difficulty with the Respondent's argument is that this case provides a very clear answer to the problem raised. Whilst the Tribunal accepts, in the absence of knowing what is in the leases, that there is some merit in arguing that a claim notice must make it clear to the recipient exactly what is being claimed for management purposes, this Tribunal cannot simply ignore binding authority.
15. In the Upper Tribunal, the then President said these words:-

"14. Section 72(1)(a) was drafted with such an economy of wording as to make its interpretation not entirely clear. The problem lies with the words after the comma, 'with or without appurtenant property'. Do these words mean that if the self contained building has appurtenant property 'the premises' for the purpose of the Act consist of the building plus such appurtenant property as the building may have? Or does it mean that if the building has appurtenant property 'the premises' can either consist of the building plus the appurtenant property or the building alone, leaving it to the claim notice to specify under section 80(2) which of these, for the purpose of the claim, it is? I think it must be the first of these, so that the effect of a valid notice is to extend the right to manage to any property appurtenant to the building or part of a building. It would be unsatisfactory if a claim notice had to specify whether it was made in respect of appurtenant property. The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 do not require this, nor does the form in Schedule 2 of the

regulations provide for any more than a statement of the name of the premises to which the notice relates”

16. When considering the Court of Appeal judgment, this issue is not really mentioned. All one can say from the Court of Appeal judgment is that there was no criticism of the President’s decision or reasons. Indeed, there was only endorsement.
17. The Respondent’s submissions make the point that the definition of ‘premises’ in connection with right to manage was not one which the Upper Tribunal or the Court of Appeal were being asked to address “*by the litigants in person*”. However, they then go on to cite paragraph 14 of the President’s decision which is followed, in effect, by a critique as to why paragraph 14 was wrong. It is right to say that the point was probably not specifically put to the President but he chose to take the point himself and give an interpretation of Section 72(1)(a) which he was entitled to do. Thus, it cannot be argued that this was not a matter considered by the Upper Tribunal. It may not have been fully argued but it was, nevertheless, a carefully considered decision on the point.

Conclusions

18. It is clear that the Upper Tribunal has determined this issue and this Tribunal considers itself bound by that decision. The decision is that describing the premises as Flats 1-4, 44 Bulmershe Road, Reading RG1 5RJ automatically includes appurtenant property, without the need to define it.
19. It is unfortunate that the Applicant decide to try to define the appurtenant property by reference to some red edging on a plan. The Tribunal suspects that the red edging is in fact an inaccurate and misleading attempt to define the appurtenant property. It is probable, in the Tribunal’s view, that appurtenant property includes everything within the freehold title to 44 Bulmershe Road as it all appears to be used by the leaseholders exclusively if one looks at the photographs provided.
20. However, whether the Tribunal is right or wrong about this is irrelevant as it has not seen the leases.
21. The Applicant has been very critical in correspondence about the behaviour of the Respondent’s solicitors who have asked questions and requested information. On looking at the correspondence in the bundle, the Tribunal does not agree. The compulsory taking over of management from a freehold owner is a draconian step with very specific and tightly controlled formalities. A freehold owner is entitled to make sure that all formalities have been adhered to and the Applicant’s representatives can only have themselves to blame for some of the questions raised.

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Bruce Edgington
Regional Judge
22nd August 2013