



Property : 7, 9, 11 & 15 Timken Way South,
Duston,
Northampton,
NN5 6FE

Applicant : Timken Way RTM Co. Ltd.

Respondent : Sinclair Gardens Investments
(Kensington) Ltd.

Date of Application : 19th October 2012

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 fails. The Applicant is not entitled to manage the property.

Reasons

Introduction

2. Most of the relevant facts in this case are agreed. The Applicant is a Right to Manage Company ("RTM") formed to manage the property and on the 23rd August 2012 it served a claim notice on the Respondent seeking the automatic right to manage the property.
3. A counter-notice dated 10th September 2012 was served denying the right to manage. It alleges "*...that, by reason of Sections 73(2)(b), 80(2) and 81(3) of the Commonhold and Leasehold Reform Act 2002 Timken Way RTM Company Limited ("the Company") was not entitled to acquire the right to manage the premises...*".
4. These allegations are not particularised and the Respondent is effectively saying that the Applicant must prove compliance with those subsections. This approach has recently been criticised by the Upper Tribunal. However, in essence, the allegations are that the Memorandum and Articles of Association of the Applicant do not

specify the premises as being the property over which managerial status is claimed; the Claim Notice does not specify such premises or say why they are premises which comply with the 2002 Act and that when the Claim Notice was served a previous Claim Notice relating to these premises was still in force.

5. On 14th January 2012, a Claim Notice had been served by the Applicant claiming the right to manage flats 7, 9, 11 and 15 Timken Way. The Respondent objected to that Claim Notice and served a Counter-Notice. There was an application before a differently constituted Tribunal when the Respondent alleged 3 things, namely the Claim Notice included a description of the premises which did not comply with the 2002 Act; the description of the premises should have included 'appurtenant property' and the definition of the premises in the Memorandum and Articles of Association of the Applicant was too wide.
6. The previous Tribunal dealt with the case on the 11th July 2012 and issued its decision on the 3rd August 2012. However, it was not sent to the parties until 10th August. Thus, the 21 day period for appeal expired on the 30th August 2012. On the first 2 points it ruled in favour of the Applicant but in favour of the Respondent on the 3rd point.

Procedure

7. 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 in a directions order dated 26th October 2012 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 18th December 2012 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
8. When the Tribunal received the hearing bundles, it noted from the Applicant's statement of case that it had not really dealt with the final point of objection i.e. that there was a previous Claim Notice still in force with regard to the premises. The Tribunal chair therefore caused a letter to be written to the Applicant's representative inviting specific submissions on the point.

The Law

9. Section 81(3) of the 2002 Act says that "*where any premises have been specified in a claim notice, no subsequent claim notice which specifies...the premises...may be given so long as the earlier claim notice continues in force.*"
10. Section 81(4) says that a Claim Notice remains in force until it is actually or deemed to have been withdrawn or it ceases to have effect because of some other provisions in the 2002 Act.

11. Section 84(6) says that where an application to an LVT is "*finally determined...the claim notice ceases to have effect*". Section 84(7) says that such a determination becomes final "*if not appealed against, at the end of the period for bringing an appeal*".

Conclusions

12. The Tribunal has taken the view that as the Claim Notice in this case was served whilst the previous Claim Notice was still 'in force', the application must fail. It therefore does not consider that it needs to look at the other two points. However, it is likely that such points would have been decided in favour of the Applicant. Apart from anything else, the Respondent appears to have misunderstood the Upper Tribunal's decision in the case of **Ariadne** which decided that appurtenant property does not have to be specified in the Claim Notice.
13. As to the main issue, the Applicant's submission is that it told the Respondent that it was not going to appeal the first decision and it must have been obvious that it was withdrawing the previous Claim Notice. It complains that the Respondent's solicitors are always taking these technical points and the Tribunal should support the Applicant.
14. The problem with the first part of such submission is that the previous Claim Notice was not actually withdrawn and despite what the Applicant may consider to have been obvious, it would have been open to the Applicant to seek permission to appeal up to the 30th August 2012. It decided to serve its second Claim Notice on the 23rd August 2012. It is clear from the wording of the 2002 Act that it was not entitled to do this.
15. The Claim Notice is therefore void and there is therefore no basis in law for the Applicant to take over management of the property. The application therefore fails for this reason.
16. As a matter of comment only, this Tribunal does agree that generally worded and unspecific allegations in Counter-notices which simply put RTM companies to 'proof' are unacceptable and the Upper Tribunal has given its view about this. However, if a client instructs a solicitor to oppose an application, that solicitor has a professional duty to use all possible lawful ways, technical or otherwise, to achieve that objective provided such technical points are specified in detail.

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Bruce Edgington
Chair
11th January 2013