First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KF/LRM/2015/0005**
Property	:	**Oakleigh Lodge,** **125 Pall Mall,** **Leigh-on-Sea,** **Essex SS9 1RF**
Applicant	:	**Oakleigh Lodge RTM Co. Ltd.**
Respondent	:	**Westleigh Properties Ltd.**
Date of Application	:	**16th July 2015**
Type of Application	:	**For an Order that the Applicant is 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**

DECISION

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1. This Application succeeds and the Applicant therefore acquires the right to manage the property on the 15th December 2015 (Section 90(4) of the 2002 Act).

2. The Applicant's application for costs pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("rule 13") in the sum of £1,716.00 is refused.

Reasons

Introduction

3. The Respondent accepts that the Applicant is a right to manage company ("RTM"). Such RTM gave the Respondent a Claim Notice on or about the 28th April 2015 seeking an automatic right to manage the property. A Counter-notice dated 29th May 2015 was served denying the right to acquire the right to manage "*by reason of Sections 72(1)*

and 80(2) of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002".

4. The relevant part of the Claim Notice is the description of the property which is said to be *"Oakleigh Lodge, 125 Pall Mall, Leigh-on-Sea, Essex, SS9 1RF....the* (RTM) *claims that the premises are ones to which Chapter 1 of the 2002 Act applies on the grounds that at least two-thirds of the flats within the premises are let to qualifying tenants, no part of the premises is commercial and the premises do not fall within the Residential Landlord exemption and the company members are qualifying tenants who comprise of at least half of the number of flats within the premises"*

Procedure

5. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' 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 and (b) an oral hearing would be held if either party requested one. No such request was received.

The Law

6. As the opposition to this application is based on 2 subsections of the 2002 Act, these are quoted in full. Subsection 72(1) says, in effect, that right to manage 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"*

7. Subsection 80(2) says that the Claim Notice must "*specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies*".

Discussion

8. There is no doubt that the statutory and regulatory burden on a right to manage company is substantial. In the years since the relevant part of the 2002 Act has been in force, the emphasis on compliance has changed. Landlords take the view that the right to manage provisions are effectively a compulsory purchase of their right to manage their own properties and every possible technical objection was raised and often succeeded. It is fair to say that in recent times, the pendulum has started to swing the other way.

9. In the decision of **Assethold Ltd. V 14 Stansfield Road RTM Co. Ltd.**[2012] UKUT 262 (LC); LRX/180/2011, at the end of the judgment

14. 4 cases are then referred to including the **Avon Freehold** and **Assethold** cases referred to above. The other 2 are **Mutual Place Property Management Ltd. v. Blaquiere** (1996) 2EGLR78CC and **Gala Unity Ltd. v. Ariadne Court RTM Co. Ltd.** (2012) EWCA Civ1372.

15. The case of **Mutual Place** involved a collective enfranchisement which failed because the claim notice did not attach a plan as is required by the relevant legislation. However, the Court of Appeal, in **Osman and another v. Natt and another** [2014] EWCA Civ 1520, at paragraph 28 of the judgment of Sir Terence Etherton C, sought to clarify the types of case where strict compliance with legislation was important, i.e. prejudice was not relevant. Those cases where strict compliance was necessary were (a) those in which the decision of a public body is challenged and (b) those "*where the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question*".

16. Paragraph 30 of that judgment then sets out a whole series of cases falling into the latter category, all of which are either lease extension or collective enfranchisement cases. None of them are right to manage cases and there is no suggestion in the remaining part of the judgment that such cases would be included. Patten LJ and Gloster LJ simply agreed with the lead judgment. It is this Tribunal's determination that a right to manage is not within that category as it does not affect the title to the property at all. It cannot be conferring a '*property or similar right on a private person*'.

17. In the **Gala Unity** case, a decision was made, in effect, that there was no need to specify 'appurtenant property' which could be described as one of the minimum requirements in subsection 72(1) relied upon by the Respondent.

18. The most interesting part of the Respondent's reply is that there is no mention of the property not in fact complying with subsection 72(1). It is clear that as the Respondent owns the property and is fully aware of whether it comes within Chapter 1 of the 2002 Act, the number of flats and the number of qualifying tenants, it will know if there is non-compliance and it would have specifically alleged such non-compliance.

Conclusion

19. The Claim Notice should have been more explicit about why it complies with subsection 72(1) of the 2002 Act. However, it does say specifically that it does so comply. It sets out full details of 7 flats and their lessees who are all qualifying tenants and members of the RTM, together with details of the leases.

20. The Tribunal exercises the discretion given to it by the Upper Tribunal in the **Avon Freeholds** case by determining that a freehold owner of

premises in this particular situation will know why the premises comply with subsection 72(1) because it owns and manages the premises and will have all the relevant information at its fingertips. Neither in the counter-notice, nor in its submissions to this Tribunal has the Respondent asserted anywhere that the premises do not come within subsection 72(1).

21. Parliament could not have intended that this sort of highly technical matter, which does not prejudice the Respondent in the slightest, should justify the Applicant being denied the right to manage.

Costs

22. The Applicant has applied for a costs order pursuant to rule 13. The basis of the application is recorded in a letter written by the Applicant's solicitors to the Respondent's solicitors on the 3rd July 2015. It says that unless the Respondent confirms that the Applicant has the right to manage, then this application to the Tribunal will be issued and "*Should that prove necessary we confirm that we will seek an order that your client meets our client's costs of those proceedings on the basis that it has acted unreasonably or vexatiously in opposing our client's claim*".

23. These words seem to be based on wording in Schedule 12, Paragraph 10 of the 2002 Act which has now been superseded by rule 13. This now says that such an order can be made where there is a finding that "*a person has acted unreasonably in bringing, defending or conducting proceedings*".

24. However, the starting position is that proceedings before this Tribunal do not attract costs orders, whatever the merits or otherwise of an application or the defence of an application. Thus, there has to be some unreasonable behaviour relating to the bringing, defending or conducting the proceedings themselves. The only behaviour within the proceedings themselves which could be described as unreasonable is the fact that the Respondent failed to comply with the direction to file and serve its statement of case by the 7th August. This was enclosed with a letter of the 25th August without any explanation for the delay.

25. However, the Applicant was still able to file and serve a response to this and the Tribunal has taken both the reply and the response into account. There was some correspondence between the Applicant's solicitors and the Tribunal about whether the directions order should be amended but this was really on the premise that the orders made were 'unless' orders which they were not.

26. The merits of this application for costs do not warrant an order being made. Apart from anything else, the Claim Notice is actually defective for the reasons stated above. It did not contain a full "*statement of the grounds on which it is claimed that they are premises to which this Chapter applies*" because it did not say that the premises were a self

contained building or part of a building. The Respondent was entitled to ask the Tribunal not to exercise its discretion and there is no behaviour within the proceedings themselves which should have caused the Applicant to suffer extra expense.

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Bruce Edgington
Regional Judge
18th September 2015