



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/24UF/LRM/2015/0010

Property : Jacana Court, Rope Quays, Gosport, Hampshire.
PO12 1EN

Applicant : Rope Quays 2014 RTM Company Limited

Representative : Leasehold Doctors

Respondent : Holding & Management Solitaire (No 2) Limited

Representative : Estates & Management Limited

Type of Application: Application under Chapter 1 Commonhold and
Leasehold Reform Act 2002 relating to (No Fault)
Right to Manage

Tribunal Members : Judge P J Barber
Mr P D Turner-Powell FRICS

Date of Decision : 26th November 2015

DECISION

© CROWN COPYRIGHT 2015

Decision

1. The Tribunal determines in accordance with the provisions of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that on the relevant date, being 1st June 2015, Rope Quays 2014 RTM Company Limited (“the RTM Company”) was not entitled to acquire the right to manage the premises known as 1-30 Jacana Court and commercial unit, Rope Quays, Gosport, PO12 1EN (“the Premises”).

Reasons

BACKGROUND

2. The application is for a determination that on the relevant date, the RTM Company was entitled to acquire the right to manage the Premises, pursuant to Section 84(3) of the 2002 Act. The RTM Company issued a claim notice dated 1st June 2015; by Counter-Notice dated 8th July 2015, the Respondent disputed the claim, alleging by reason of section 72(6) of the 2002 Act, that the entire claim was invalid since it purported to include commercial premises. The Applicant RTM Company filed an application with the Tribunal, for a determination in regard to its claim to acquire the right to manage.
3. Directions were issued in the matter on 8th September 2015, identifying a single issue for determination, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the premises specified in the notice. The directions further provided that the application would be determined on the papers without a hearing, unless a party objected in writing to the Tribunal within 28 days of the date of receipt of those directions. No objection has been received and accordingly the determination in this matter is made on the papers and without an oral hearing.
4. The Tribunal carried out a brief inspection of the Premises on 19th November 2015, in the presence of Mr Torrington, of the Applicant`s agents, Parker Torrington, and also Mr Pulman and Mr Harvey of the Residents` Association. It was noted that there are 29 residential flats in the block; there is no Flat 13; the block also includes a commercial pharmacy unit situated at ground floor level, above which are residential flats, and below which is a basement car park.

THE LAW

5. Section 72 provides that :

72(1) 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*

(2) a building is a self-contained building if it is structurally detached

(3) a part of a building is a self-contained part of the building if-

(a) it constitutes a vertical division of the building,

(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and

(c) sub-section (4) applies in relation to it

(4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it-

(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

(5) Relevant services are services provided by means of pipes, cables or other fixed installations.

(6) Schedule 6 (premises excepted from this Chapter) has effect.

Section 80(2) provides that:

80 Contents of claim notice

(2) it 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.

THE WRITTEN SUBMISSIONS

6. By a written statement of case dated 21st September 2015, the Respondent`s representative made reference to the decision in *Fairhold (Yorkshire) Limited –v- Trinity Wharf (SE16) RTM Co Limited [2013] UKUT 0502 (LC)*, asserting that the claim notice must identify the premises in respect of which the RTM is claimed, specifying them either as a self-contained building or part of a building, and containing a statement of the grounds on which it is claimed that they are premises to which the RTM applies. The Respondent made reference to the description of the premises in each of the claim notice and the Notice of Invitation to Participate in the Right to Manage (“NITP”), being:-

“1-30 Jacana Court and commercial unit, Rope Quays, Gosport, PO12 1EN (“the premises”) Note that management powers obtained through this RTM Claim do not extend to the commercial unit within the premises.”

The Respondent further asserted that the Applicant`s Articles of Association referred to the Premises which it was established to acquire and exercise the right to manage as meaning:

“1-30 Jacana Court and commercial unit, Rope Quays, Gosport, PO12 1EN”

The Respondent referred to the “Note” attaching to the Applicant’s description of the premises in the claim notice as a “disclaimer” which it submitted, there was no provision for, in either of the prescribed form claim notice, or NITP. The Respondent further asserted that having described “the premises” for which the claim was made as including the commercial unit, the “Note” or “disclaimer” were not sufficient to remedy the defect, and that the description of the premises in both the Articles of Association and the claim notice were inaccurate, resulting in the claim failing.

7. In an undated written statement in reply to the Respondent’s statement, the Applicant submitted that the non-residential area is significantly less than 25% of the internal floor area of the Premises and so is not excluded. The Applicant further asserted that both the NITP and claim notice are valid and not defective, adding that, *“A statement was added to provide additional information to leaseholders, many of whom are not familiar with the details of the 2002 Act. We believe it is reasonable to provide this information, and does not invalidate the Notices”*. The Applicant had previously stated in an undated “Applicant Summary (initial response to Counter Notice)”, that there was and is no intent to manage the commercial portion of the premises and further submitting that *“The reason that the description of the premises includes the commercial unit is because the commercial unit (pharmacy) is an integral part of the Jacana Court building. Flats 1-30 would not have been a complete description of the premises...In order to avoid doubt, both the Notices of Invitation to Participate and Claim Notice had separate statements specifically excluding management of the commercial unit.”*

THE DETERMINATION

8. In essence, the Respondent alleges that the Applicant’s claim notice was fatally flawed by inclusion in it of a description and/or definition of the Premises intended to be the subject of the claim, as *“1-30 Jacana Court and commercial unit, Rope Quays, Gosport, PO12 1EN”*. The Respondent submits that the claim to the right to manage cannot succeed since the Premises include a commercial element. However, Schedule 6 to the 2002 Act allows that the right to manage may be claimed in respect of premises with a partial commercial element, provided such element does not exceed 25% of the internal floor area of the premises taken as a whole. The Applicant alleges that it never had any intention to manage the commercial portion of the Premises and relies on the *“separate statements specifically excluding management of the commercial unit”*, adding that *“Flats 1-30”* would not have been a complete description of the Premises and also that the *“statement was added to provide additional information to leaseholders, many of whom are not familiar with the details of the 2002 Act.”* However, contrary to the view expressed by the Respondent, the 2002 Act does not wholly exclude altogether the possibility of the right to manage including in part, some element of commercial premises, subject nevertheless to the limitations at Section 75(3) and Schedule 6. Accordingly, the Applicant might have considered making a claim in respect of both the residential elements and the commercial pharmacy unit.
9. Section 72 of the 2002 Act provides in broad terms, that the right to manage applies to premises if they consist of a self-contained building or part of a building, contain two or more flats held by qualifying tenants, and the total of flats held by such tenants is not less than two thirds of the total number of flats contained in the

premises. The Tribunal considers that the claim notice description of the Premises being the subject of the claim clearly defines them as:- “1-30 Jacana Court and commercial unit, Rope Quays, Gosport PO12 1EN”. Such description is then followed by a separate “Note” or statement – “*Note that management powers obtained through this RTM claim do not extend to the commercial unit within the premises*”. However on the face of it “the premises” as described, must be taken to include both the Flats 1-30 and the commercial unit. The Tribunal considers that the status of the subsequent “Note” is unclear; having defined “the premises” for which the right is claimed, the note appears to be a form of proviso or reservation to the effect that management powers obtained would not extend to the commercial unit. However the statutory right to manage is more extensive than merely being “management powers”; it may include for example, receiving accrued service charges, granting or withholding approvals under leases, and otherwise. It follows that the status and meaning of the “note” is far from clear; did it, as the Applicant suggests, exclude any application of the right to manage whatsoever, from the commercial unit, or merely exclude “management powers” and if so, what exactly was the intended extent of such exclusion?

10. The Applicant further sought to explain the addition of the “Note” or statement as being necessary to provide additional information to leaseholders unfamiliar with the 2002 Act. However the precise intention or relevance of such explanation, inserted after the premises description and at a crucial section in the claim notice, is unclear and not fully explained. The Respondent submits that the claim notice must identify the premises in respect of which the right is claimed, as a self-contained building or part of a building. The Applicant submits that it never had any intention to manage the commercial unit. The Tribunal concludes nevertheless that the description of the premises in the claim notice did include the commercial unit, in circumstances where by its own admission, the Applicant did not in fact intend it to be so included. Section 80(2) of the 2002 Act further requires the claim notice to contain a statement of the grounds on which it is claimed that the premises specified, are ones to which Chapter 1 applies. In these circumstances the view of the Tribunal is that the claim notice was unclear and equivocal as to the premises for which the right to manage was actually being claimed.
11. Whilst Section 81(1) of the 2002 Act provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by Section 80, the Tribunal considers the failure of the claim notice clearly and unequivocally to specify the premises, was not a mere inaccuracy, but a fundamental failure correctly to provide mandatory information required by the 2002 Act. The intended status, significance and/or meaning of the “Note” is not clear. The Tribunal does not accept on the face of the somewhat limited evidence and submissions provided, that the “Note” was such as wholly or effectively to exclude the commercial unit from the ambit of “the premises” as defined by the Applicant, as those to which its claim relates. The Tribunal considers the description of the subject premises, in the claim notice to be contradictory and fatally flawed, particularly given the statement by the Applicant in evidence, that it never intended the commercial unit to be included in the claim.
12. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.