



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

Case reference	:	CAM/00KF/LRM/2015/0002 & 3
Properties	:	1-6 and 19-22 Parkgate, Westcliff-on-Sea, Essex SS0 7NY
Applicants	:	Parkgate (1-6) RTM Co. Ltd. Parkgate (19-22) RTM Co. Ltd.
Represented by	:	Dudley Joiner (RTMF Services Ltd.)
Respondent Represented by	:	Ground Rents (Regis) Ltd. Laura Cleasby LLB (solicitor)
Date of Applications	:	22nd June 2015
Type of Applications	:	For Orders that the Applicants are entitled to acquire the right to manage the properties (Section 84(3) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”))
The Tribunal	:	Bruce Edgington (lawyer chair) Stephen Moll FRICS John Francis QPM
Date and Venue of Hearing	:	14th September 2015 at Park Inn by Radisson Palace, Church Road, Southend-on-Sea, Essex SS1 2AL

DECISION

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1. The Respondent asked to withdraw its opposition to the case relating to 1-6 Parkgate and the Tribunal consents to such withdrawal.
2. The Application relating to 19-22 Parkgate succeeds and Parkgate (19-22) RTM Co. Ltd. therefore acquires the right to manage that property on the 15th December 2015 (Section 90(4) of the 2002 Act).

3. The application by the Applicants for a costs order pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** (“rule 13”) is refused.

Reasons

Introduction

4. The Respondent accepts that the Applicants are right to manage companies (“RTMs”). Such RTMs gave the Respondent Claim Notices on or about the 31st March 2015 seeking automatic rights to manage the properties. Purported counter-notices dated 5th May 2015 were served denying the right to manage on a single ground, namely that each of the properties did not ‘consist of a self-contained building or part of a building with or without appurtenant property’.
5. When making this application, the Applicants raised another technical matter by alleging that the counter-notices are of no effect because they did not contain a statement providing details of the objection. A subsequent matter is raised in the evidence filed by the Applicants namely that the counter-notices have not been signed correctly.
6. Prior to the hearing, the position of the Respondent seems to have changed. On the 4th June 2015 their agent, Pier Management Ltd., sent a letter to Parkgate (1-6) RTM Co. Ltd. which does not appear to have been sent on a ‘without prejudice’ basis and concedes that as far as 1-6 Parkgate is concerned, the issue raised as to the property being a self contained building or part of a building is withdrawn. However, a further point is then raised as to the alleged failure to serve separate notices for each self contained building or part of a building.
7. Finally, on the 3rd September 2015, a letter was e-mailed to the Tribunal office by Pier Management Ltd. stating that the claims relating to 1-6 and 15-18 Parkgate are now being conceded as valid. It asked for confirmation that the hearing would only relate to 19-22 Parkgate. A response was sent stating that no such confirmation could be given because there appeared to be no live application relating to 15-18 Parkgate and there were still the issues raised by the Applicants over the validity of the counter-notices which may need to be resolved.
8. In essence the written evidence from the Respondent is that 19-22 is a converted part of a semi-detached house consisting of “*4 self contained flats*”. It is said that the chimney stacks are in the middle of the hipped roof and if the 2 semi-detached properties were to be vertically split, such chimney stacks would have to be divided in half and would collapse.
9. It is further said that 19-22 Parkgate and 31 Park Road share a downpipe leading to a shared drain at ground level. Finally, as far as the supply of services etc. is concerned, it is said that “*it is fair to assume the possibility of shared pipe works between 19-22 Parkgate*”

and 31 Park Road” the responsibility for which would be shared by the properties and they cannot therefore be deemed to be self contained.

10. On the morning of the hearing, Mr. Joiner, on behalf of the Applicants produced a skeleton argument seeking, for the first time, a costs order pursuant to rule 13.

Inspection

11. The members of the Tribunal inspected the properties in the presence of Laura Cleasby LLB and Gabriella Mountford from the Respondent and Nick Bignell from RTMF Services Ltd. together with Ian Duval on behalf of the Applicants.
12. As is clearly set out in the evidence and the photographs produced, the property known as 19-22 Parkgate is semi detached to 31 Park Road. Both are fairly large houses in the centre of Southend-on-Sea built in the mid 20th century of partially rendered brick under an interlocking concrete tiled roof. The members of the Tribunal looked at the front and rear of the building but were unable to see inside.
13. The position of the chimneys could be seen together with the front downpipe mentioned by the Respondent. There were separate meters for the supply of services, including water, to the 4 flats.

The Law

14. The provisions as to exactly who can or should sign a Counter-notice are not specifically set out in the 2002 Act or any regulation made thereunder, although it is clear that a duly authorised agent can sign. It was signed in this case by a Laura Cleasby under the trading name of Pier Legal Services as agent for the landlord. The argument in this case is that the Respondent, as a limited company, must sign in accordance with section 44 of the **Companies Act 2006** (“the 2006 Act”) i.e. by 2 authorised signatories or by a director whose signature is witnessed.
15. The relevant part of the 2002 Act as to a part of a self contained building is set out above save for perhaps the most significant wording in subsection 72(3) which says:-

(3) 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) subsection (4) applies*

(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

16. Rule 13 says that a costs order can be made where there is a finding that “*a person has acted unreasonably in bringing, defending or conducting proceedings*”.

The Hearing

17. The hearing was attended by those who were at the inspection together with Dudley Joiner from RTMF Services Ltd. who represented the Applicants. He produced and relied upon his helpful skeleton argument although he was reminded that with a Tribunal of 3 members 2 of whom were not lawyers, it would have been more helpful to have this in advance.
18. As to 1-6 Parkgate, Ms. Cleasby clarified the position. When the Claim Notices were served, she had thought that 1-6 Parkgate was in fact 2 self contained parts of a building and should therefore have 2 Claim Notices. There were 2 entrances to the building. Upon investigation, it was realised that during the course of re-development, one of the flats in the building was partly positioned over another in the ‘other’ part of the building in which case, of course, there was no vertical division. It was this which led to the Claim Notice being accepted for 1-6 Parkgate.
19. Ms. Mountford then gave evidence which was in accordance with her written statement. She repeated her point that the chimney stacks were part used by each of the 2 semi-detached parts of the building and 19-22 Parkgate would be vulnerable to collapse if 31 Park Road was taken away. She said that despite the Respondent being the freehold owner of the building, she could not say whether the 19-22 Parkgate was self contained when it was bought.
20. Ms. Cleasby said that she had encouraged a possible agreement by suggesting that the Applicants produce expert evidence to show that 19-22 was self contained and would not collapse if 31 Park Road was ‘severed’ from it.
21. When asked by the Tribunal whether the Respondent was satisfied that 19-22 Parkgate was self contained when they bought this semi-detached house, neither Ms. Cleasby nor Ms. Mountford could answer despite being reminded that (a) they had described the Respondent’s part of the building as containing 4 self contained flats and (b) there were no relevant easements or rights recorded on the Land Registry entries provided to suggest that it was anything other than self contained.
22. When discussing the Counter-notices, Ms. Cleasby said that she was an authorised signatory for the Respondent company as well as Pier

Management Ltd. She dealt with all their legal work. This was not challenged.

23. The remainder of the hearing was taken up with legal argument over the technical issues and the effect of these discussions and the Tribunal's views thereon are set out below.

Discussion

24. 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.
25. 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 dismissing the landlord's appeal, the then President of the Upper Tribunal remarked:-

“It is not sufficient for a landlord who has served a counter-notice to say that it puts the RTM company to ‘strict proof of compliance with a particular provision of the Act and then to sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to proof does not create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied.”

26. In **Avon Freeholds Ltd. v Regent Court RTM Co. Ltd.** [2013] UKUT 0213 (LC), the Upper Tribunal (per the President, Sir Keith Lindblom), determined that the provision to strictly serve all non participating qualifying tenants with a Notice of Invitation to Participate was not mandatory despite the 2002 Act saying that it was. In that case, there was clear evidence that a non participating qualifying tenant had not been served with a Notice of Invitation to Participate and, in fact, had no knowledge of it. It had not even been served at the relevant flat.
27. Sir Keith's conclusion, at paragraph 56 of his decision, was to adopt a submission by counsel for the RTM when she said that *“Parliament cannot have intended that in circumstances such as these the whole of the right to manage process will be defeated by the RTM company failing to comply fully with the provisions for giving notice of invitation to participate....there has been – to adopt the expression*

used by Lord Woolf in **R v Immigration Appeal Tribunal, ex parte Jeyanthan** [1999] 3 AER 231 – ‘substantial compliance’ with the statutory requirements, and the consequences of non-compliance in this case were not such as to justify denying the respondent the right to manage the premises”.

28. The 2 basic principles established by these cases are (1) that it is for the landlord to establish grounds for objection and (2) that the right to manage process should not be thwarted by unmeritorious technical points provided there has been substantial compliance and no extra prejudice to the landlord – save for the right to manage process itself, which most landlords consider to be prejudicial.

The Validity of the Initial Notices

29. After discussion at the commencement of the hearing, Ms. Cleasby accepted that what she was really saying was that the Claim was not valid because it related to a property which was not a self contained part of a building. She was not now arguing that the Claim Notice itself was technically invalid.

The Self Contained Part of a Building Issue

30. In the **Holding and Management (Solitaire) Ltd.** case relating to **1-16 Finland London SE16** (LRX/138/2006) the then President of the Upper Tribunal was dealing with a case involving the definition of a vertical severance of a building which the LVT described as being “*mostly vertical severance in this building, but if the whole of the parking area was taken into account, there was also some lateral severance*”. The parking area was under the flats.
31. The President determined that this description was correct and it was not, therefore, a vertical severance but added, in paragraph 8, “*deviations from the vertical that are de minimis could no doubt be ignored...*”.
32. In **St. Stephens Mansions RTM Co. Ltd. v. Fairhold and others** [2014] UKUT 0541 (LC), determined by the Deputy President, the questions of pipes for services was discussed in a case where 2 adjoining semi detached buildings were supplied with water from a single pipe through a single pump after which the water was split between the 2 sets of premises.
33. It was said on behalf of the landlord that a single source of water meant that it was impossible to regard the services as independent. The Deputy President did not agree saying, in paragraph 83, that “*the test in s.72(4)(b) contemplates ‘the carrying out of works’ to render the supply of services independently to different parts of the building*”.
34. In paragraph 86, he went on to say “*I do not consider that the use of a shared pipe from the water main to the pump house to be significant. It is in the nature of many services provided by means of pipes, cables*

or fixed installations that mains conduits are subdivided at a point close to the point of delivery to the consumer; until that point is reached the supply to any individual customer or group of customers is not independent of the supply to any other group. That fact cannot prevent the relevant service from being supplied independently for the purpose of s.72(4). A sensible line has to be drawn”.

35. In this case, the only ‘service’ identified with particularity by the Respondent is a down pipe at the front of the building which appears to take rainwater from the roof into a joint drain. The assertions about other services appear to be guesswork. The Respondent is the freehold owner of 19-22 Parkgate which it has described as consisting of ‘4 self contained flats’. If they are self contained, one wonders what logic there is to suggesting that the semi detached part of the building consisting of those same 4 flats together is not, of itself, self contained.

The Validity of the Counter-notices Issue

36. The assertion by the Applicant was that the Counter-notices were not in the prescribed form. It is true to say that they were not because the notices purporting to be in the prescribed form did not particularise the complaint about the Claim Notice. However, a letter accompanied the Counter-notices and this sets out the complaint referring to section 72 and saying that the building is not part of a self contained building.
37. It was put to Mr. Joiner that the notice and the letter, taken together, did contain the requisite information i.e. they jointly made up the prescribed notice or, at least, they were jointly substantially the same as the prescribed notice with the paragraph setting out the objection being contained in the letter. He did not accept this.

The Signature Issue

38. The Counter-notice has these words at the end of it:

“Signed:.....

Pier Legal Services as authorised agents of Ground Rents (Regis) Limited”

The person who signed is the solicitor employed by Pier Management Ltd. under the trading name of Pier Legal Services who is called Laura Cleasby LLB (hons). Her signature is clear and obvious.

39. What the Applicants are saying is that because the Respondent is a limited company, section 44 of the 2006 Act must be complied with i.e. there must be 2 approved persons signing or 1 director’s signature plus that of a witness. What they do not seem to acknowledge is that the Respondent has not actually signed the counter-notices. They have been signed by someone duly authorised.

40. It is a very well known principle that solicitors within court proceedings can sign documents on behalf of their clients. Some documents require a statement of truth and, in those circumstances, a person from the solicitors' office must be identified and give the specific assertion required by a statement of truth. Other formal court documents such as interlocutory applications, directions questionnaires and listing questionnaires are simply signed in the name of the solicitors.
41. These Tribunals are now courts of record and, in the view of this Tribunal, the signature of the solicitor Laura Cleasby on behalf of the Respondent with the evidence that she is authorised to sign on its behalf is sufficient. In any event, neither the Respondent nor Pier Management Ltd. were 'executing' a document which is when compliance with section 44 is required by the 2006 Act.
42. The Tribunal also takes note of the Upper Tribunal decision in **Pineview Ltd. v 83 Crampton Street RTM Co. Ltd.** [2013] UKUT 0598 (LC) where the Deputy President found that the signature 'Wallace LLP' on behalf of the RTM in that case, did not render the Claim Notice void (paragraph 52). In this case, a similar representative signature on a Counter-notice must surely not render it void for the reasons expounded by the Deputy President.
43. Finally, on this issue, Mr. Joiner sought to rely on the case of **Elim Court RTM Co. Ltd. and other appeals** [2014] UKUT 0397 (LC) where the Deputy President had again given views about the signature issue. Mr. Joiner had been the signatory of the RTM in those cases and the Deputy President said that his signatures were valid. His relevant comments are contained in paragraphs 55-57. The point was that Mr. Joiner was signing the notices personally but was saying that he was a director of the secretarial company which, in turn, was the company secretary of the RTM.
44. The landlord's cases that he could not sign in those capacities were rejected. Commenting on the role of Mr. Joiner in signing the notices, Martin Rodger QC said, in paragraph 55, "*I do not consider that, simply by the provision of such additional information, Mr. Joyner's (sic) signature was prevented from being an effective signature by a person with authority to sign the claim notice on behalf of the RTM Company and became, instead, an ineffective purported signature by the secretarial company*".
45. Thus, the conclusion drawn by this Tribunal is that the Upper Tribunal was simply making it a requirement that a signatory to a Claim Notice can be the RTM signing in accordance with section 44 of the Companies Act or a 'person' with authority to sign such claim notice on behalf of the RTM, despite any wording which may be suggesting that he was signing in some other capacity.

46. In this case, Ms. Cleasby clearly signed the Counter-notice and the evidence is that she had authority to sign on behalf of both the Respondent and Pier Management Ltd. Trying to differentiate this case from **Elim Court** by saying that Ms. Cleasby did not type her name under her signature, which meant that she was not signing in a personal capacity, is not accepted.

Conclusions

47. The Tribunal concludes that for the reasons stated above, the Counter-notices were valid and were signed properly by someone authorised to sign them on behalf of the Respondent.

48. The Tribunal also concludes that the building known as 19-22 Parkgate is a self-contained part of a building for the reasons outlined above. In any event, it concluded that the chimney stacks were in a single line and were probably part of the single party wall. The 2002 Act clearly anticipates a semi-detached property as being self contained. As with most semi-detached properties, if the 'next door' building was to be demolished, it would be fairly straightforward to strengthen the remaining wall with buttresses (if required) and re-direct the chimneys and any pipes. The drain pipe to the front of the building could easily be split in 2.

49. However, that is not, of course, the appropriate test. That test is whether the structure of the building is such that it could be redeveloped independently of the rest of the building. When this particular building was divided into 4 'self-contained' flats – to use the words of the Respondent – it is self evident that it had been redeveloped independently. The evidence showed that the provision of services to the individual flats was independent in the sense that it had nothing to do with 31 Park Road. The down pipe is probably not a 'service' as such, but it could be separated off very easily.

50. If the vertical severance was diverted by the chimneys, this would be slight and certainly *de minimis* to use the expression of the then President of the Upper Tribunal in the **Holding and Management (Solitaire)** case (above).

Costs

51. The claim for costs was presented on the day of the hearing and was opposed by the Respondent. It was not quantified. Mr. Joiner said that such costs should be summarily assessed by the Tribunal. Without any idea of the time spent and the amounts being claimed, it was somewhat difficult to understand how it would do this.

52. 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 identified

by the Applicants is to suggest that the opposition of these applications had no merit. The Tribunal does not accept that, on its own, this is a good reason for concluding that there was unreasonable 'behaviour'. Also, it must be remembered that the Applicant pursued an argument that the Counter-notices were invalid and that argument has not succeeded.

53. The merits of this application for costs do not warrant an order being made. The Respondent was entitled to ask the Tribunal not to exercise its discretion in favour of the Applicants and there is no behaviour within the proceedings themselves which should have caused the Applicants to suffer extra expense over and above that which would have had to be expended in any other such application before the Tribunal.

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Bruce Edgington
Regional Judge
15th September 2015