

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LRM/2007/0005

DECISION

Application : Section 84(3) Commonhold and Leasehold Reform Act 2002 as amended ("the 2002 Act")

Applicant : WRAC11 Limited

Respondents : Mr D Graeme, Beyaz Limited, Mr A Taylor, Mr J Doherty, Miss H Bennett

Building : 11 Warren Road, Bournemouth, Dorset, BH4 8EZ

Flats : the flats comprising parts of the Building

Date of Application : 13 August 2007

Date of Hearing : 1 November 2007

Venue : Terrace Suite, Royal Bath Hotel, Bournemouth

Appearances for Applicant : Mr Graeme

Appearances for Respondents : Mr J Bowen, LPMA

Also in Attendance : Mr A Barrett, LPMA, Mr B Collins, Bourne Estates, Mr M Irving, partner of Miss H Bennett, and Mr A Taylor (from 11.32 am only)

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), and Mr M J Greenleaves

Date of Tribunal's Decision : 1 November 2007

Preliminary

1. On the 13 July 2007 the Applicant company served what purported to be a claim notice under section 79 of the 2002 Act
2. On the 13 August 2007 the Applicant company applied for a determination that the Applicant company was entitled to acquire the right to manage the Building

Issues

3. In view of comments contained in correspondence before the Tribunal, the Tribunal invited submissions whether, in the light of sections 96(2) and 97(2)(c) of the 2002 Act, Mr Taylor's management functions in relation to the Building would continue after the right to manage the Building had been acquired by an RTM company
4. Mr Bowen initially submitted that Mr Taylor's management functions would continue despite the provisions of Part 2 of the 2002 Act, because Mr Taylor's appointment as manager had been by previous order by the Tribunal, which had been by consent
5. However, having been referred by the Tribunal to the provisions of sections 96(2) and 97(2)(c) of the 2002 Act, Mr Bowen conceded on reflection that those provisions were clear, and made no distinction between a Tribunal appointment by consent, and a Tribunal appointment after a contested hearing, and that, in either event, Mr Taylor's management functions would cease in the event of an RTM company acquiring the right to manage the Building
6. The Tribunal also invited submissions whether, in the light of the definition of "the premises" as "Flat 204, 11 Warren Road" in the memorandum and articles of association of the Applicant company, and in the light of sections 73(2)(b) and 72(1)(b) of the 2002 Act, the Applicant company was an RTM company for the purposes of Part 2 of the 2002 Act
7. Mr Graeme submitted that :
 - a. the Applicant company had already noticed this point, which had been a typing error by the company formation agents, despite their instructions to define "the Premises" as "11 Warren Road"
 - b. it had now been corrected by issuing amended memorandum and articles of association of the Applicant company, defining "the Premises" as "11 Warren Road", although Mr Graeme conceded that the amended version had not been registered at Companies House until after the date of the application to the Tribunal
 - c. however, it was a matter of form, not substance, which had not been noticed or objected to by the other Respondents, who had accepted the notice inviting participation, the claim notice, and the application to the Tribunal, as relating to the whole Building
8. Mr Bowen submitted that :
 - a. the Applicant company was not an RTM company for the purposes of section 73 of the 2002 Act because its objects and powers were limited to those set out in its memorandum and articles of association
 - b. those powers and objects had to be interpreted strictly, and if the Applicant purported to act outside those powers it would be acting ultra vires
 - c. those powers were limited to Flat 204, and did not include the Building as a whole
9. Mr Bowen also submitted that the Applicant company was not an RTM company for the purposes of section 73 of the 2002 Act because :

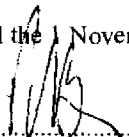
- a. two of the qualifying tenants of flats in the Building had not been invited to be members of the Applicant company prior to its formation; however, having been referred by the Tribunal to the provisions of sections 74 and 78 of the 2002 Act, Mr Bowen conceded on reflection that the only statutory requirement was for qualifying tenants to be given the opportunity to become members of an RTM company after formation, and that there was no statutory requirement for any such invitation before formation
 - b. the Applicant company had been formed by people who had not been qualifying tenants; however, having again been referred by the Tribunal to the provisions of sections 74 and 78 of the 2002 Act, Mr Bowen conceded on reflection that there was no statutory requirement for any of the people forming an RTM company to be qualifying tenants, and, again, that the only statutory requirement was for qualifying tenants to be given the opportunity to become members of an RTM company after formation
 - c. at the dates of service of the notice inviting participation, the claim notice, the application to the Tribunal, and the hearing itself, there were members of the Applicant company who were not qualifying tenants, namely Mr Pitkin, Mr Fitt and Mrs Fitt, according to Mr Graeme's letter dated the 13 September 2007; however, having been referred by the Tribunal to the provisions of sections 74, 78, and 79(5) and of the 2002 Act, and articles 5 and 49 of the articles of association of the Applicant company, Mr Bowen conceded on reflection that :
 - the only statutory requirement in relation to service of a claim notice was for the membership of the RTM company to *include* a specified minimum number of qualifying tenants
 - there was no statutory requirement that *all* the members had to be qualifying tenants
 - in any event, there was no evidence before the Tribunal that any of Mr Pitkin, Mr Fitt, or Mrs Fitt, as directors or secretaries of the Applicant company, had ever been members of the Applicant company, or that any of them were required to be so under the articles of association of the Applicant company
10. The Tribunal indicated its intention to decide the issue whether the Applicant company was an RTM company for the purposes of Part 2 of the 2002 Act as a preliminary issue at the hearing, and both Mr Graeme and Mr Bowen indicated their wish that the Tribunal should do so

Decision

11. Having considered all the evidence and submissions in the round, the Tribunal indicated at the hearing its findings as follows :
- a. the version of the memorandum and articles of association of the Applicant company in the Tribunal's bundle referred to the Applicant company as having the object and power of managing only Flat 204
 - b. that version was the then current version on the respective dates of the notice inviting participation, the claim notice, and the application to the Tribunal, Mr Graeme

- having conceded that any amendment to the memorandum and articles had been made after the notices and application
- c. the reference to only Flat 204 was a matter of substance, not just form, even if not spotted by the recipients of the notices and application, and the Tribunal accepted Mr Bowen's submission that the memorandum and articles of association had to be construed strictly, and that anything purportedly done by the Applicant company which was not authorised by its memorandum and articles of association was ultra vires
 - d. accordingly the Applicant company was not an RTM company for the purposes of Part 2 of the 2002 Act on the respective dates of the notice inviting participation, the claim notice, or the application to the Tribunal
 - e. Mr Taylor's appointment as manager therefore continued in accordance with the existing Tribunal orders in that respect, unless and until an RTM company acquired the right to manage the Building
12. As the Applicant was not an RTM company, the Tribunal does not have jurisdiction to make any decisions on the application other than as above. The application is accordingly dismissed

Dated the 1 November 2007


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P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor