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H M COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case Number : CHI/19UJ/LRM/2011/0012

Between:

Corscombe Close Block 4 RTM Company Limited
(Applicant)

And

Rosleb Limited
(Respondent)

**In the Matter of Section 84 of the Commonhold and Leasehold Reform Act 2002
("CLARA")**

Premises : Block 4 Corscombe Close, Weymouth, Dorset DT4 OUF
("the Premises")

Date of Hearing: At the parties request determined on the papers without a Hearing

Tribunal:

Mr. S. B. Griffin. LLB (Lawyer Chairman)
Mr. D. Agnew. BA.LLB.LLM

Background

1. On 15th July 2011 the Applicant submitted an Application to the Tribunal under Section 84(3) of CLARA for a determination that as at the relevant date the Applicant was entitled to acquire the right to manage the premises under Chapter 1 of Part 2 of CLARA.
2. The Tribunal issued Directions on the 21st July 2011 for the determination of the Application upon the papers unless either party requested a Hearing. No such request was received and the Tribunal accordingly proceeded on the 29th September 2011 to determine this matter on consideration of the papers alone and without an oral hearing or inspection.
3. It then became apparent to the Tribunal that insufficient information had been supplied and accordingly on that date Further Directions were issued which provided:

- (a) For the Applicant to provide to the Respondent and to the Tribunal a copy of the Decision in the case of *Beanby Estates Limited –v- The Egg Stores (Stamford Hill) Limited* 9th May 2003 (High Court Chancery Division) 2003 21EG190(CS) together with any other authority turning on the question of service by recorded delivery.
- (b) For the Applicant to provide to the Respondent and to the Tribunal documentary evidence by way of confirmation that the Block 4 RTM Companies Articles of Association in force at the time of the service of the Claim Form did specify the premises to which they related.

Both parties complied with the Further Direction and accordingly the Tribunal reconvened to consider the matter, again without a Hearing, on the 8th December 2011 at the Hearing Room, Southern Rent Assessment Panel, First Floor, 1 Market Avenue, Chichester PO19 1JU.

The Law

- 4. Chapter 1 of Part 2 of CLARA 2002 provides that a Right to Manage Company may acquire from the Landlord or a Management Company the right to manage premises (with or without appurtenant property) which comprises flats with the requisite number of qualifying tenants without there having been any fault on the part of the existing management. There are however certain qualifying conditions that must apply set out in the Act and a certain procedure to be followed before the right to manage can be acquired. The rules concerning right to manage companies are set out in Sections 73 and 74 of CLARA 2002 and in the RTM Companies (Model articles) (England) Regulations 2009 and the procedural requirements are set out in Sections 78 to 84 of CLARA 2002. The relevant provisions relating to this case are set out in the submissions below. In the event

that the Landlord or Management Company opposes the right to manage being acquired by the RTM Company an application may be made to a Leasehold Valuation Tribunal under Section 84(3) of CLARA 2002 for a determination as to whether or not the RTM Company was on the relevant date (the date of giving the Claim Notice) entitled to acquire the right to manage.

The Respondent's Objections

5. The Respondent's case was as follows:

Ground 1. Section 73(2) (B) of the Act provides that a Company is an RTM Company in relation to premises if (inter alia) its Memorandum of Association states that its object, or one of its objects is the acquisition and exercise of the right to manage the premises. The Memorandum of Association of the Company did not specify the premises to which it relates.

Ground 2. That the notice of Claim was undated
Section 80(9) of the Act states that a notice of Claim must comply with such requirements about the form of claim notice as may be prescribed by regulations. The Right to Manage(Prescribed Particulars and Forms)(England) Regulations 2010 are the current regulations dealing with the form of Notices. Schedule 2 to the Regulations contains the claim Notice. This Notice makes provision for a date and that it must have been envisaged by Parliament that such a Notice should be dated at the time of service.

Ground 3. That the Memorandum and Articles of Association does not specify the premises

The Applicant's Response

6. It was the Applicant's case, that the objections raised by the Respondent were invalid for the following reasons:-

(a) The Memorandum and Articles of Association are in the form required by the Companies Act 2006 and the Memorandum clearly states that it is the Memorandum of Corscombe Close, Block 4 RTM Company Limited and

(b) There is no requirement for the Notice of Claim to be dated under Section 80 of the Act. Section 80 states that the date for the service of a Counter Notice must not be earlier than one month after the "Relevant Date". The Relevant Date is defined at Section 79 of the Act as "the date on which the Notice of Claim was given". The date of their covering letter is therefore the Relevant Date and in this case the Claim was given on the 12th May 2011 by Recorded Delivery. The Applicant maintains that when a document is sent by Recorded Delivery it is the date on which it is sent that is the date of service as per *Beanby Estates Limited –v- The Egg Stores (Stamford Hill) Limited* 2003 21EG190(CS)(CMT).

(c) The additional objection (Ground 3) was out of time and therefore invalid but in any event the Company's Articles of Association in force at the time of serving the claim form did specify the premises. An initial draft of the Articles of Association without the premises so specified had been filed with Companies House in error .

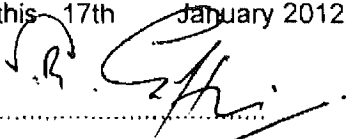
The Determination

7. As this is a paper determination the Tribunal is forced to rely on the relatively brief written submissions made on behalf of the parties. However as regards the Respondent's first and third ground of objection, as a result of changes introduced by the Companies Act 2006 Memoranda and Articles of Association have been replaced by a single document (the Articles). The Tribunal accepted that the RTM Company's Articles of Association in force at the time of the serving of the claim notice did specify the premises. The Applicant (pursuant to the Further Directions and as requested therein) had provided further documentary evidence thereof which bore the imprimatur of Companies House dated 18th February 2011. The Articles state that "the premises" means Block 4 Corscombe Close Weymouth Dorset DT4 OUF and also state that the objects of the company are "to acquire and exercise in accordance with the 2002 Act the right to manage the premises". The Tribunal therefore concluded that the Respondent's objections with regard to the Memorandum and Articles of Association were unfounded.

8. As regards the Respondent's second ground of objection it appears to be common ground between the parties that the Notice of Claim itself was undated and was sent by Recorded Delivery by the Applicant to the Respondent under cover of a letter dated 12th May 2011. The Tribunal decided that the covering letter and Notice could be read together and the date on the letter was sufficient as conveying to a recipient the date of the Notice also. There is no specific statutory requirement that the date should appear in any particular place. Consequently, the Tribunal decided that the Respondent's objection concerning the absence of a date in the form of Notice itself was not fatal to the validity of the Notice.

9. The Tribunal therefore found that ,the Respondent having failed to prove any of its grounds of opposition to the Applicant's Notice, at the relevant date the Applicant was entitled to acquire the right to manage Block 4 Corscombe Close, Weymouth.

Dated this 17th January 2012

A handwritten signature in black ink, appearing to read 'S.B. Griffin', written over a dotted line.

S.B.Griffin.LLB.(Lawyer Chairman).