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## Leasehold Valuation Tribunal

- Case Reference** : CAM/26UB/LRM/2013/0012
- Property** : 112-133 Yukon Road,  
Turnford,  
Broxbourne,  
Herts. EN10 6FN
- Applicant** : Canada Fields RTM Company Limited
- Respondent** : Freehold Managers (Nominees) Ltd.
- Date of Application** : 16<sup>th</sup> April 2013
- Type of Application** : For an Order that the Applicant was,  
on the relevant date, 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 MCI Arb

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## DECISION

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1. This Application fails and the Applicant is therefore not entitled to acquire the right to manage the property.

### Reasons

#### Introduction

2. The Applicant is a right to manage company (“an RTM”) whose objects are, amongst other things, to manage “Vancouver Road, Winnipeg Way, Ottawa Court and Yukon Road, Turnford, Broxbourne, Herts EN10”. Such RTM served a Claim Notice dated 21<sup>st</sup> February 2013 seeking an automatic right to manage the property and giving the 29<sup>th</sup> March 2013 as the date by which a Counter-Notice must be served.
3. The notice was addressed to Freehold Managers (Nominees) Ltd, Yukon Road Freehold Ltd and Canada Fields Management Ltd. On the 10<sup>th</sup> March 2013 a Counter-Notice was prepared and served alleging:-
  - (a) That the Memorandum and Articles of Association of the Applicant described one of its objects as the management of the addresses as

described above which meant that the RTM was in breach of Section 73(2) of the 2002 Act because its object should be to manage 'the premises' i.e. 112-133 Yukon Road.

- (b) The premises are contained within 2 buildings with separate freehold owners
- (c) The Notices of Invitation to Participate fail to name the landlord and tenants correctly

### **Procedure**

- 4. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in a directions order dated 23<sup>rd</sup> April 2013 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 10<sup>th</sup> June 2013 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
- 5. A bundle of documents was sent to the Tribunal but this did not include a copy of the application or the directions order. It also did not include a copy of the Respondent's statement which is not dated but was enclosed with a letter from the Respondent dated 30<sup>th</sup> May. The reason for this was that the Respondents had failed to comply with directions and lodge their statement on time. The Tribunal considered whether to defer making a decision in this case to allow the Applicant to respond to this statement but, for the reasons stated below, decided to proceed.

### **The Law**

- 6. Section 73(2) of the 2002 Act states that a company is an RTM in relation to premises if "*its articles of association state that its objectives or one of its objectives, is the acquisition and exercise of the right to manage the premises*".

### **Analysis**

- 7. The Counter-Notice is clear in its allegation that the objects of the RTM do not comply with the 2002 Act. Whilst the Applicant did not have the benefit of any further submissions from the Respondent when it prepared its statement in support of the application, it chose not to deal with this point. It simply says that the premises are 'deemed as one self-contained building', whatever that may mean.

### **Conclusions**

- 8. The Memorandum and Articles of Association of the RTM say that it has been set up to acquire the right to manage what appear to be not only the premises but all buildings in the streets set out in its definition of 'the premises'. Those streets are not 'premises' as defined by Section 72 i.e. "*a self-contained building or part of a building, with or without appurtenant property*". In view of this, it is clear that the Applicant has not been formed to manage 'the premises' and the

application must fail. It has been formed to manage whole streets of buildings.

9. For this reason, and as the subsequent statement from the Respondent does not add anything, in that respect, to the Counter-Notice, the Tribunal considers that the Applicant has had adequate opportunity to deal with this point which is why the proceedings have not been deferred.
10. The Tribunal makes no determination in respect of the other matters raised. In its statement, the Respondent seeks to add another ground for refusing the right to manage i.e. that the Notices of Invitation to Participate do not state the days upon which inspection of the Articles can be made. It is doubted whether this ground would have been considered because of the county court decision in *Bishopgate Foundation v Curtis* [2004] 46 EG 152 and the Court of Appeal decision in *Cawthorne and others v Hamdan* [2007] EWCA Civ 6, both of which are enfranchisement cases but both of which indicate that following service of a valid Counter-Notice, it is not open to the landlord to start raising other issues at a later date.
11. As to whether the premises are a self contained building or part of a building, that is a matter of fact. If the other technical problem had not arisen, the evidence was not sufficient to enable the Tribunal to make a determination. The copy plans supplied to the members of the Tribunal had no colouring. As the Applicant has chosen to use the words 'deemed as one self-contained building', one can only infer that there is more than one building. However, as has been said, the evidence provided is insufficient and without the technical problem, the Tribunal would have been obliged to inspect, despite there being no request for an inspection.
12. If there is any subsequent application, it will be for the parties to produce clear evidence i.e. by way of photographs, properly coloured title plans and/or witnesses as to whether the premises are contained within one self contained building or part of a building.

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**Bruce Edgington**  
**President**  
**11<sup>th</sup> June 2013**