



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00ET/LRM/2015/0002**

Property : **Flats 1-15, Randle Mews, Sayce Street, Widnes
WA8 6FP**

Applicant : **Randle Mews Right to Manage Company
Limited**

Respondent : **Ground Rent Trading Limited**

**Type of
Application** : **Commonhold and Leasehold Reform Act
2002 - Section 84(3)**

Tribunal Members : **Mr J R Rimmer
Mr J Rostron**

Date of Decision : **12th June 2015**

DECISION

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Order : The Tribunal upholds the claim notice and dismisses the Respondent's objections thereto.

Application and background

- 1 The Applicant is a management company established for the purpose of managing the 14 flats (there being no flat 13) numbered 1-15 within the Randle Mews development in Widnes, Cheshire. They seek ultimately to manage the property through managing agents, Bann Management Services, based in Portadown, Ulster, but according to submissions made to this Tribunal, managing a number of properties in England. The Respondent is Ground Rent Trading Limited, the freehold owner of the development: which company has been latterly managing the property through an entity known as Moreland Estate Management.
- 2 The development at Randle Mews dates from 2007, but the current freeholders acquired the freehold in November 2011. There appears to be some element of agreement between the parties that there have been historic difficulties with the management of the development but no agreement as to the causes of those problems. They do however appear to include the winding up and striking off of two previous management companies, The Boffin management Company Limited and Sayce Street Management Company Limited.
- 3 Against the background of that brief outline a Claim Notice seeking the right to manage the property under the "no fault" provisions of the Commonhold and Leasehold Reform Act 2002 and Dated 14th April 2014 was served on behalf of the current Applicant in these proceedings upon the Respondent. Thereafter there was extensive correspondence as to the effect of the Claim Notice in the light of no Counter Notice being issued by, or on behalf of, the Respondent. In view of that dispute the Applicant, through its solicitor, withdrew the Claim notice and served a new one dated 9th December 2014. To all intents and purposes two notices are identical save that there is one less tenant in the later Notice listed as being a qualifying tenant for the purposes of the application. The relationship between the earlier notice and that which is the subject of this application is considered at paragraph 23 onwards, below.
- 4 The relevant legislation, and its application by the Tribunal to the circumstances of this application, are set out below, but in summary the principle of the "no fault" right to manage provisions is that once an application is made seeking the right to manage it is then for the Respondent to show why, within the parameters of the legislation, that right should not, or cannot, be exercised.

5 In its statement of case the Respondent puts forward two grounds for objecting to the application:

- (1) That the Applicant is barred from making this latest claim by virtue of the closeness in time of its last application.
- (2) A recent decision by the Court of Appeal has determined that an application for the right to manage may only relate to one building and not more than one building. The respondent alleges that Randle mews is three buildings rather than one.

Inspection

6 In order to assist with its deliberations the Tribunal inspected the development at Randle Mews on the morning of 12th June 2015 and found that it comprised a large, two-storey building with loft space above the second floor utilised as living accommodation. It is of brick construction under a slate roof with grounds to front, side and rear, together with an extensive, marked parking area. There is also a bin storage area and an enclosed outhouse/storeroom attached to one of the gable walls. The building is divided into three sections with 4 flats accessed by a front door to each section: there being two flats on each of the two storeys, one on either side of the stairwell. In the centre section, which is set slightly forward of the two wing sections there are two additional penthouses in the loft space which extend into the loft space of one or other of the wings. There are therefore a total of 14 flats. They are accessed by a continuation of the staircase from the second floor. Those penthouses enjoy the benefit of a large garage structure which also occupies a part of the site. The development is reasonably situated for the amenities of Widnes town centre and public transport to further afield.

The Law

7 The law relating to the “no fault” right to manage might usefully be set out at this point as its application is crucial to the determination that is required to be made by the Tribunal. It is contained in sections 71-112 Commonhold and Leasehold Reform Act 2002, together with Schedules 6 to 8. Those provisions are reproduced here only insofar as the Tribunal considers them relevant to the consideration of this application.

- 8 Section 72 provides for the right to manage premises if-
- (a) They consist of a self-contained building or part of a building...
 - (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
- Thereafter the section defines a building as being self-contained if it is structurally detached and a self-contained part of a 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) Relevant services by way of pipes, cables and other fixed installations are provided independently to the rest of the building or could be so provided without causing significant disruption to the occupiers of the rest of the building.
- 9 Sections 75-77 set out the criteria for being a qualifying tenant for the purposes of the exercise of the right to manage, being an appropriate leaseholder, holding a long lease of a flat that satisfies the criteria set out in Sections 76-77.
- 10 Sections 79 onwards deal with the requirements of a notice of claim to acquire the right to manage and within Section 79 (at sub-section 5) is the requirement, for a development which is the size of Randle Mews, that there must be at least qualifying tenants for at least one half of the total number of flats in the premises as members of the Right to manage Company. It appears on the face of the Applicant's Notice of Claim that this is the case and no issue upon that point has been taken by the Respondent. By virtue of Section 80(4) where a claim notice is given it continues in force from the relevant date until it is withdrawn, or deemed to be withdrawn under the provisions of the Act or cease to have effect in accordance with any other provisions of the Act. (the relevant date is the date upon which a notice is first given).
- 11 Section 86 deals with the withdrawal of a claim notice and provides:
- (1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect...
 - (2) A notice of withdrawal must be given to each person who is
 - (a) Landlord under a lease of the whole or any part of the premises
 - (b) Party to such a lease other than as landlord or tenant
 - (c) A manager...in relation to the premises...
 - (d) The qualifying tenant of a flat contained in the premises.

- 12 Notwithstanding the absence as to information relating to precise compliance with those provisions there appears to be no dispute between the parties that the withdrawal of the earlier claim notice had taken place and had been accepted as withdrawn by the Respondent. It also appeared to the tribunal that as a result of that withdrawal the Respondent had purported to resume management responsibility for the development.
- 13 Where there has been a claim and a subsequent withdrawal of that claim Paragraph 5 of Schedule 6 is of application and provides-
- (1) (the right to manage provisions do) not apply to premises falling within section 72(1) at any time if-
- (a) The right to manage the premises is at that time exercisable by a RTM company, or
- (b) That right has been so exercisable but has ceased to be so exercisable less than four years before that time.
- (2)...
- (3) (The First-tier Property Tribunal) may, on an application made by a RTM company, determine that sub-paragraph (1)(b) is not to apply in any cases if it considers that it would be unreasonable for it to apply in the circumstances of the case.
- 14 The Tribunal understands from the nature of the Respondent's case that it is the application of sub-paragraph (1)(b) to the situation, following the withdrawal of the earlier notice of claim that now prevents the Applicant from any further claim for a period of 4 years.

Determination

- 15 Whilst it is clear that the Respondent only takes issue with the Applicant upon a limited number of issues it is necessary for the Tribunal to consider, as an enquiring tribunal, that an application meets all other necessary criteria for a valid claim to be made, whilst not raising issues that have not concerned the parties where it is not necessary to do so. On that basis the Tribunal is satisfied that if, and only if, the grounds of objection put forward by the Respondent are not made out, either collectively or separately, the claim will otherwise be valid and satisfies the general qualifying criteria required by Section 71 onwards.
- 16 The Tribunal must therefore consider whether or not the structure at Randle Mews containing the 14 flats is one self-contained building (or part of a building) or three separate self-contained buildings. The Respondent refers the Tribunal to *Triplerose Ltd v Ninety Broomfield Road RTM Co Ltd* (2015)EWCA Civ 282, being a recent and widely reported decision of the Court of Appeal. It is important and the Respondent quite rightly and helpfully provided the Tribunal with a copy of the judgments handed down.

- 17 Its importance lies in the principle that an RTM company cannot seek to gain the right to manage more than one relevant building, or part of a building. If, as the Respondent suggests, Randle Mews is more than one self-contained building then the claim fails. The Respondent contends that it is three separate, self-contained parts of a building, being three sections of the one structure, each with a separate entrance and staircases to the flats in those separate sections, there being a dividing vertical wall between them. It is not relevant that the structure and the flats within it share common grounds and parking areas, nor that there is one "groundsmen's hut" as Section 72(4-5) limit the circumstances in which shared services may cause sufficient difficulty to prevent a structure being considered as containing separate buildings.
- 18 The Tribunal was, however, particularly concerned to note the incomplete vertical division of the structure by virtue of each of the two attic flats in the centre section extending over one or other of the adjoining wings. If, which the Tribunal considers to be the case, the structure is one building, the two separate wings at either end, and indeed the centre section, cannot properly be described as self-contained buildings, or parts of buildings. For this reason the Tribunal does not support the Respondent's contention that the claim fails on that ground.
- 19 The Tribunal must then consider the second objection raised by the Respondent: that the premises have previously been managed by a RTM company which need not necessarily be the same RTM company as now applies for the right to manage) exercising the right to manage, but has ceased to be able to exercise that right within the last years.
- 20 It appears to the Tribunal that within the last 4 years there has been an exercise of the right to manage following the service of the earlier notice of claim dated 14th April 2014 and then subsequently withdrawn to enable, from the Applicant's viewpoint, the service of the Claim notice in these proceedings.
- 21 That first claim notice was not disputed by the Respondent and in the absence of any counter notice from the Respondent the right to manage passed by default to the Applicant and it appears that via their managing agents, Bann Management the Applicant did start, for a short period, to manage the building.

- 22 The starting point for the Tribunal is that paragraph 5(1) of Schedule 6 applies and that if a RTM company has managed the premises for that period between the operation of the first notice and its withdrawal then the right to manage is not exercisable for a further 4 years. In the Tribunal's view this creates a difficulty for the Respondent in that if there was no counter notice served on the Applicant then the claim takes effect from the date specified in it, 25th August 2014, but the Tribunal is satisfied that in this case the parties have acted on the assumption that the first claim was withdrawn and replaced by the second.
- 23 The general tone of the correspondence between the parties, both traditional and in electronic form suggests to the Tribunal that the purported withdrawal of the first claim notice by the Applicant's solicitors was an attempt to finalise the position as between the tenants, the landlord and whoever took control of the management of the building.
- 24 With this in mind the Tribunal notes the discretion given to it by paragraph 5(3) of Schedule 6 to waive the 4 year rule on an application by a RTM company if it considers that it would be unreasonable to apply it in the circumstances of the case.
- 25 Given the overall history of the matter and the observations made in relation to the operation of the first claim notice together with the reason for its withdrawal in October 2014 the Tribunal is entirely satisfied that it can have two bites at the cherry to the effect that either the first notice was effective from 25th August 2014 and its purported withdrawal ineffective, or, if the Tribunal is wrong in that view, it is not unreasonable to allow a further claim notice within the 4 year period. In the latter case The Tribunal formally upholds the claim notice served on the Respondent and dated 9th December 2014.