FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AD/LRM/2016/0006**
Property	:	**293-295 Main Road, DA14 6QL**
Applicant	:	**The Grange Residents RTM Company Limited**
Representative	:	**Mr McElroy, Canonbury Management**
Respondent	:	**Mr Gurvits**
Representative	:	**Scott Cohen Solicitors**
Type of Application	:	**Right to Manage – Commonhold and Leasehold Reform Act 2002**
Tribunal	:	**Mr M Martyński (Tribunal Judge)** **Mr C Gowman**
Date of Review Hearing	:	**13 October 2016**

REVIEWED DECISION

DECISION SUMMARY

1. The Applicant will acquire the Right to Manage The Grange, 293-295 Main Road, DA14 6QL pursuant to its Claim Notice and in accordance with the provisions of section 84(7) Commonhold and Leasehold Reform Act 2002 ('the Act').

PROCEDURAL BACKGROUND

2. This decision follows an application for permission to appeal the tribunal's original decision dated 6 July 2016. In the light of the

application for permission to appeal, we decided to review our decision by way of a hearing. That hearing took place on 13 October 2016.

3. This decision replaces the decision made on 6 July 2016 although it reaches the same conclusion.

BACKGROUND

4. The Building at 293-295 Main Road, DA14 is a purpose-built block of flats.

5. The Applicant Company was formed on 25 February 2016.

6. The Applicant's Claim Notice claiming the Right to Manage the Building is dated 17 March 2016.

7. The Respondent's Counter-Notice challenging the Right to Manage is dated 20 April 2016.

8. The Applicant's application to the tribunal seeking a declaration that it had acquired the Right to Manage is dated 10 May 2016.

THE RESPONDENT'S CASE

9. The Respondent's Statements of Case sets out two grounds to oppose the Applicant's application for a declaration of the Right to Manage as follows.

Mis-description of the property

10. The Articles of Association of the Applicant Company state that the objects of the Company are to acquire and exercise the Right to Manage 'the Premises'. The Articles define 'the Premises' as; '*The Grange, 293-295 Main Road, Sidcup, Kent, United Kingdom, DA14 6QL and any common parts of that building which lessees of that building currently have use of under their leases*'.

11. According to the Land Registry entry for the freehold title of the building, the land is described as; '*Fox House, 293 and 295 Main Road, Sidcup (DA14 6QL)*'.

12. The Respondent's case on this point can be summarised as follows; The Articles of Association of the Applicant Company state that the Company's object is to acquire the Right to Manage, and to go on and manage '*The Grange*'. The freehold title to the building is in fact '*Fox House*'. Therefore the Company's own constitution does not allow it to make any claim in respect of '*The Grange*'.

13. In response, the Applicant states that the building has never been known as '*Fox House*', that there is a sign at the front of the building stating that

it is '*The Grange*' and that it was the Respondent's management company that arranged for the sign in question to be put up.

14. The Applicant also makes the point that there is no difference in the address and postcode of the building between the Articles of Association and the entry on the Land Registry.

15. In its Statement of Case, the Respondent drew our attention to a First-tier Tribunal decision relating to 59 Huntingdon Street dated 10 February 2015 [LON/00AU/LRM/2014/0017]. In that case, the RTM Company's Articles of Association referred to the objective of obtaining the Right to Manage of Flat 1-6, Huntington Street whereas the Land Registry entry for the building was '59 Huntington Street'. The tribunal concluded that there was a material difference between the two descriptions. Accordingly the tribunal found that the Right to Manage had not been acquired.

16. However, we have had regard to the Upper Tribunal decision of *Avon Ground Rents Limited and 51 Earls Court Square RTM Company Limited* [2016] UKUT 0022 (LC). This case, whilst it deals with a slightly different scenario to the one in *Huntingdon Street*, is, we believe as a matter of principle, relevant to the issues in our case

17. In *Earls Court Square* the RTM Company's articles described the premises as '*Flat 1-13, 51 Earls Court Square, London SW5 9DG*'. In its Claim Notice, the Company identified the premises as '*51 Earls Court Square*'. The tribunal made the following comments in that case.

> 26. The issue in this appeal turns solely on the meaning of the articles of association of the Company, and in particular on what the founding members of the Company meant when they stipulated that the expression "the Premises" means "Flat 1-13, 51 Earls Court Square." Just as with the interpretation of any formal document, the meaning of the Company's articles must be determined objectively, by asking what the parties using those words in those circumstances must reasonably be understood to have meant.
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> 27. Where a document, including a company's articles of association, is ambiguous or reasonably capable of bearing more than one meaning, the court or tribunal required to interpret that document will give it the meaning which is more consistent with the parties' presumed intention. If a document contains an obvious mistake, and it is clear what the parties must have intended, the document will be interpreted in accordance with that intention. There are numerous statements of high authority to that effect. Two examples will be sufficient to make the point.

In deciding the question in issue, the tribunal continued as follows;

> 31. The Company's articles say that its object is to acquire the right to manage premises described as "Flat 1-13, 51 Earls Court Square". Immediately on encountering that statement the informed reader would exclude the possibility that the Company had been established to acquire the right to manage a single flat, known as "Flat 1-13". As the reader would know, there is no such single flat; nor, if there was, could the management of a single flat be the object of an RTM company. No reasonable person would

attribute that intention to the members of the Company because it is clear from the context that they must have meant something different.

32. The informed reader, having excluded a literal meaning of the description used in the articles, would go on to consider alternative meanings. The words "Flat 1-13, 51 Earls Court Square" might be a reference to the thirteen flats, numbered 1 to 13, in the building known as 51 Earls Court Square, or alternatively they might signify the building at 51 Earls Court Square, which comprises those 13 flats. In choosing between those alternatives the reasonable person would ask themselves whether the object of the Company could sensibly be the acquisition of the statutory right to manage thirteen individual flats (an object which is legally incapable of fulfilment), or whether the parties must have intended that the right would extend to the whole of the Building comprises the thirteen flats. There is only one possible answer to that question namely that the parties intended to refer to the whole of the Building, it being the only unit of property at 51 Earls Court Square capable of being the subject of an application for the acquisition for the right to manage.

33. I am therefore satisfied that the First-tier Tribunal came to the right conclusion although I would explain that conclusion on the basis that it is clear from the description in its articles that the premises in relation to which the Company is an RTM Company are the whole of the Building at 51 Earls Court Square. There was therefore no obstacle to the Company giving a claim notice asserting the right to manage the Building and the appeal is accordingly dismissed.

18. The same principles as set out by the Upper Tribunal apply to this case. One has to take an objective view to the description of the Premises and how a reasonable person would interpret them. Taking this view, given that;
(a) there is no mistake in the number of the building, the street, the town and the postcode
(b) there is no evidence that the building in question (in its current form) was ever known as 'Fox House'
(c) the Respondent, via its managing agent (who erected the sign saying 'The Grange') could be in no doubt as to the identity of the property
Then, the parties were clear between themselves what premises were being referred to in the Articles and the Claim Notice, and further, any other reasonable person would conclude that the premises in question were those situate at 293-295 Main Road, Sidcup, Kent, DA14 6QL.

19. At the hearing on 13 October 2016, Mr Gurvits for the Respondent stated that he thought that there could be real confusion in the description of the building. He said that he thought that there were two buildings next to each other with shared vehicular access and that the other building may also be known as 'The Grange'. We asked Mr Gurvits if he had inspected the site before making this submission. He told us that he had not. We pointed out that this was not an issue that was raised in the Respondent's Statements of Case made for the original hearing in July 2016 or this review hearing.

20. During the hearing on 13 October 2016 we looked at the 'Google Street View' website. We could clearly see from the views obtainable from various angles that to the right of the subject building (standing from the

road) there is indeed what appears to be a drive leading to a car park behind the building. Next to this drive is another building similar to the subject building. The subject building is clearly defined by a perimeter wall around its front garden and a sign at the entrance to the garden saying "The Grange 293-295 Main Road". The adjacent building is quite clearly separate and has on its front door, in large font, the number '297'. There is clearly no issue that it is an entirely separate building and has nothing to do with the subject building.

21. We were left with the impression that Mr Gurvits introduced this submission (without having previously mentioned it in any Statement of Case without any sound foundation or inspection and in the hope that it might have been true. We unreservedly condemn this method of presenting a case or evidence.

22. It follows from the above therefore that there can be no doubt the Applicant Company's Articles allow it to claim and exercise the Right to Manage the building in question.

Notice to leaseholders

23. The Respondent's Statement of Case (for the hearing on 13 October) deals with this point as follows.

> 11. It is the Respondent's position that the Applicant failed to serve the notice inviting participation in accordance with the requirements of Section 78(1) and 79(2) to all qualifying tenants.
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> 12. The leaseholder of Flat 4 is David Geoffrey Johnston, is not a member of the RTM company and as such is entitled to receipt of a notice inviting participation.....
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> 13. Upon request from the Respondent the Applicant's representative provided documents to assist with the assessment of the claim to include copies of correspondences issuing the notices inviting participation. Enclosed with such documentation was the notice inviting participation addressed to the Qualifying Tenant of Flat 4 at an address of 'Halnacker Hill, Bowlhead Green, Godalming, Surrey UK GU8 6NP'
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> 14. The requirement of section 111(5) of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 however provides that "A company which is an RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he is to be given any such notice".
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> 15. With respect of flat 4 it would appear that the address for service is that shown upon the Land Registry for the leaseholder. ..... The Upper Tribunal have considered the issue of use of a land registry address by an RTM company in the case of Avon Freeholds Ltd v Regent Court RTM Co Ltd...and agreed with the findings of the FTT (paragraph 50 of that decision) that provision at an address stated in the Land Registry did not comply with the method of giving notice in section 111(5) of the Act.....

16. It is the Respondent's position therefore that the notice were not served upon the qualifying tenant as required by the 2002 Act.

24. It is necessary to set out paragraph 50 and some the following paragraphs of the *Regent Court*[1] decision in full:

> 15. There is no complaint about the form or content of the respondent's notice of invitation to participate. The appellant does not say that the notice itself was invalid because it lacked any of the particulars required by the relevant statutory provisions. Nor is this a case of the RTM company simply neglecting to give notice to a particular tenant. The respondent did give notice to the Chapmans, not at their flat in the premises, but at the only other addresses it had for them. This plainly did not comply with the method of giving notice provided for in section 111(5), and there was no evidence that the attempt at service was effective. Equally, however, there is nothing to show that the Chapmans were any more likely to have received the notice had it been left at their flat in Regent Court than they were at the places to which it was in fact sent. In reality, the prejudice they suffered was no greater than is accepted in the statutory provisions themselves. If they did not receive the notices sent to the addresses given in the Proprietorship Register at the Land Registry they would have been no worse off than any absentee tenant to whom notice was given, in accordance with section 111(5), at his "flat contained in the premises". In either situation the risk that the tenant will not actually get the notice hangs on any forwarding arrangements he has chosen to put in place. Besides, the Chapmans did not lose, once and for all, their chance to take part in the management arrangements. As the LVT said (in paragraph 37 of its decision), a qualifying tenant is entitled to become a member of a RTM company at any time, in accordance with section 74(1)(a).
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> 16. Mr Bates submitted that there was irremediable prejudice to the Chapmans because they were not included in the right to manage process, and that the prejudice they suffered was quite different from any prejudice suffered by the respondent as the RTM company.
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> 17. I see no force in those submissions. The consequences for the Chapmans cannot be gauged in the abstract. They were non-resident tenants, who had, it seems, shown no interest in the management of Regent Court. Because they were absentee tenants the giving of notice at their flat, in accordance with the statutory provisions, would probably have been ineffective. And I see nothing to indicate that they sustained any significant prejudice as a result of the notice being given elsewhere.
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> 18. As to prejudice to the appellant as landlord, one must remember, as Mrs Mossop submitted, that the statutory provisions for the giving of notice to tenants were not designed to protect landlords, nor to aid them in opposing a right to manage process – whether or not that process is supported by a clear majority of qualifying tenants.
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> 19. The LVT concluded (at paragraph 36) that the effect of non-compliance with the notice requirements might actually be a benefit to the appellant, because "[if] anything, it would work to the [appellant's] advantage if the tenants of Flat [16] decided to become a member after acquisition, since it would *pro tem* have greater voting rights". The fact that it was only the tenants of a single flat in the block who were not given notice in accordance with the statutory provisions was, I accept, relevant to the question of prejudice to the appellant as landlord. But I think the notional advantage to the landlord could hardly be seen as significant.

[1] [2013] UKUT 0213 (LC)

> 20. Mr Bates submitted that there was prejudice to the appellant as landlord because all members of a RTM company are jointly and severally liable for the landlord's costs of the right to manage process (under sections 88 and 89 of the 2002 Act). The more qualifying tenants there are in the RTM company, the better it is for the landlord when seeking to recover his costs. I do not think there is anything in that submission. After all, as I have said, there is no evidence that the tenants of flat 16 would have wished to become members of the respondent. So Mr Bates' point is really no more than conjecture.

25. Mr Gurvits argued that, as the notice had not been addressed to the flat owned by Mr Johnston in the block but to the Land Registry address, the Respondent had put the Applicant to proof that there was no prejudice caused to Mr Johnston and there had been no response to this. The Respondent itself was not able to provide any evidence as to prejudice.

26. We reject this argument. The Commonhold and Leasehold Reform Act 2002 simply provides that the notice inviting participation *may* be sent to the address of the flat in question (subject to any other address being given). The Act *requires* that the Notice be in writing and states that it *may* be sent by post. That leaves us with the presumption in Section 7 of the Interpretation Act 1978 that a properly addressed letter is served. The Respondent did not provide any evidence to cast doubt on the delivery of the letter to Mr Johnston at the Land Registry address. We presume therefore that the Notice was delivered to Mr Johnston at that address.

27. Absent any further evidence as to delivery of the Notice to the Land Registry address, we do not consider that the question of prejudice arises. Even if it did, we do not consider that, absent any information or evidence to the contrary, the Applicant is required to prove, for each leaseholder in question, that the leaseholder did not suffer any prejudice.

28. In our view, the facts in the case of *Regent Court* are the same as they are here and the same reasoning of the tribunal applies in this case; far from supporting the Respondent's case, *Regents Court* supports our view that the Respondent's argument on this point has no force.

Mark Martyński, Tribunal Judge
9 December 2016