UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – RIGHT TO MANAGE – description of premises in company's articles of association – whether a self-contained building – whether an RTM company - interpretation of articles – Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 - appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

AVON GROUND RENTS LIMITED

Appellant

and

51 EARLS COURT SQUARE RTM COMPANY LIMITED

Respondent

Re: 51 Earls Court Square,
London
SW5 9DG

Before: Martin Rodger QC, Deputy President

Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
11 January 2016

Justin Bates, instructed by Scott Cohen, Solicitors, for the appellant
Mark Loveday, instructed under the Direct Public Access Scheme for the respondent

The following cases are referred to in this decision:

Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896

G & S Brough Limited v Salvage Wharf Ltd [2009] EWCA Civ 21

Introduction

1. The sole issue raised by this appeal is whether the respondent, 51 Earls Court Square RTM Company Limited ("the Company"), is an RTM company for the purpose of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002. If it is an RTM company it is now common ground that the Company is entitled to acquire the right to manage the building at 51 Earls Court Square from which it derives its name ("the Building"). If it is not, then a claim to acquire the right to manage the Building which the Company made on 8 January 2015 was of no effect.

2. The appellant, Avon Ground Rents Limited, owns the freehold interest in the Building. It originally resisted the Company's claim to acquire the right to manage on a number of grounds, but only one is now maintained. That is that the premises identified in the Company's articles of association as the premises of which it is its object to acquire and exercise the right to manage, are not the Building, but are only part of the Building, namely that part described in the articles as "Flat 1-13, 51 Earls Court Square, London SW5 9DG". Those premises, the appellant contends, are not a self-contained building or part of a building satisfying the qualifying conditions for Chapter 1, but are simply a collection of individual flats in respect of which the statutory regime for the acquisition of the right to manage cannot apply.

3. By a decision given on 22 April 2015 the First-tier Tribunal (Property Chamber) found that the Company was an RTM company and that it would acquire the right to manage in accordance with its claim notice. The Tribunal recognised that the contrary view was arguable and granted permission to appeal.

The relevant facts

4. The relevant facts are not in dispute and can be very briefly stated. Earls Court Square is a garden square in the Borough of Kensington and Chelsea. On its western side is a terrace of late Victorian houses, many of which had been converted into blocks of flats. At the northern end of that terrace, at No.51, stands the Building, a self-contained building divided into 13 flats each of which is let for a term of 125 years from 25 December 1983.

5. The Company was incorporated on 5 December 2004. There were 17 subscribers to its memorandum of association, each of whom was a qualifying tenant (alone or jointly with other subscribers) of one of the flats in the Building. All 13 flats had at least one qualifying tenant who was a subscriber.

6. The Company's articles of association are in the model form prescribed by the RTM Companies (Model Articles) Regulations 2009. By regulation 2(1) the articles of association of an RTM company take the model form, article 1(1) of which comprises a list of defined expressions. These included a definition of "the Premises" as meaning simply "*[name and address]*" indicating that it is for the company, when it is formed and adopts its articles, to supply the missing details and so define the premises in relation to which it is intended to be an RTM company.

7. In the Company's articles the critical definition has been completed so that "the Premises" means "Flat 1-13, 51 Earls Court Square, London SW5 9DG". Article 2 records that the name of the Company is 51 Earls Court Square, RTM Company Ltd.

8. I was also referred to the Company's objects as they are defined in article 4 and to some of the specific powers conferred by article 5. These provide as follows:

> "4. The objects for which the Company is established are to acquire and exercise in accordance with the 2002 Act the right to manage the Premises.
>
> 5. These objects shall not be restrictively construed but the widest interpretation shall be given to them. In furtherance of the objects, but not otherwise, the Company shall have power to do all such things as may be authorised or required to be done by a RTM Company by and under the 2002 Act, and in particular (but without derogation from the generality of the foregoing) –
>
> (a) To prepare, make, pursue or withdraw a claim to acquire the right to manage the Premises;
>
> (b) To exercise management functions under leases of the whole or any part of the Premises in accordance with sections 96 and 97 of the 2002 Act;
> ….
>
> (y) To monitor and determine for the purpose of voting or for any other purpose, the physical dimensions of the Premises and any part or parts of the Premises and to take or obtain any appropriate measurements."

9. On 8 January 2015 the Company served a claim notice informing the appellant of its claim to acquire the right to manage the Building, which it identified in the claim notice as "51 Earls Court Square …" and referred to as "the premises". The appellant then served a counter notice challenging the Company's right to manage the Building and in due course the dispute came before the First-tier Tribunal.

The First-tier Tribunal's decision

10. The First-tier Tribunal noted in its decision that nobody had been misled or prejudiced by the description of the premises in the Company's articles as "Flat 1-13, 51 Earls Court Square", but it did not consider that an absence of prejudice was something to which any weight could be given. The sole question was whether the Company was an RTM company or not, which the tribunal considered turned on whether the premises identified in the Company's articles were premises to which section 73 of the 2002 Act applied i.e. that they were a self-contained building. The tribunal nevertheless agreed with the submission made by Mr Loveday that when the Company was formed it was necessary for it to describe the premises only in general terms; at the point of formation only the members of the company were interested in its articles, so "loose terminology" was not fatal. The need for precision came later, when the Company claimed to be entitled to interfere with the proprietary rights of persons who were not its members. That point was not reached until the

Company served it claim notice on those currently responsible for the management of the premises, including the freeholder. In this case there was no doubt that, at that point, the Company had claimed the right to manage the whole of the Building which it identified in its claim notice as 51 Earls Court Square. The tribunal concluded that "giving the articles a wide interpretation" they did allow the Company to claim the right to manage the whole of the Building. The Company had therefore been formed to manage premises to which the 2002 Act applied and was an RTM Company.

11. The First-tier Tribunal referred to similar issues having arisen in other cases, and at the hearing of the appeal I was shown three first-tier decisions in which articles of association had identified premises over which the right to manage was claimed by listing the flats within the relevant building rather than by giving the name and address of the building (as the model form contemplates). Some tribunals have applied a more stringent approach than others when faced with this issue, but a common theme has been the practical importance of the articles of association of an RTM company unambiguously identifying the premises in relation to which the right to manage is intended to be exercised.

The statutory scheme

12. The acquisition of the statutory right to manage affects not only the members of the RTM company but also their immediate and superior landlords, as well as managing agents or contractors engaged to undertake the management of the premises on their behalf and lessees of flats in the building who are not members of the company; all of these may find their contractual rights terminated or interfered with without fault, compensation, or even, in some cases, the opportunity for any objection of theirs to be heard. If the procedural requirements laid down by the 2002 Act are properly implemented the right to manage is acquired by operation of law, causing entitlement to the custody of substantial sums of money and responsibility for the performance of onerous covenants to be transferred and frustrating contractual rights. If there is doubt about the procedural integrity of a claim, significant problems may arise in the management of premises and in the legal relationships between affected parties.

13. The existence of a company, properly constituted as an RTM company in relation to premises to which the statutory regime applies, is the first of the procedural preconditions to the acquisition of the right to manage.

14. The right to manage regime is introduced by a statement in section 71(1) of the 2002 Act that provision is made "for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM Company)." The following sections identify the premises to which Chapter 1 applies and specify what is required for a company to be an RTM Company.

15. By section 72(1) the Chapter applies to premises if certain qualifying conditions are satisfied. The premises must consist of "a self-contained building or part of a building, with or without appurtenant property" and must contain two or more flats held by qualifying tenants.

16. Section 73(2) specifies what an RTM company is:

> "A company is a RTM company in relation to premises if –
>
> (a) it is a private company limited by guarantee, and
>
> (b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises."

17. It is apparent from section 73(2) that no company may be an RTM company in the abstract, but only "in relation to premises". Those premises are required to be identified in its articles of association as premises over which it is the company's object to exercise the right to manage.

18. An unambiguous identification of the premises in relation to which a company is an RTM company is obviously important to the statutory scheme. Two examples will help to explain why. It is the policy of the Act that there cannot be more than one RTM company in relation to the same premises, and by section 73(4) a company is not an RTM company in relation to premises if another company is already an RTM company in relation to those premises or to any premises containing or contained in those premises. The need clearly to identify the premises is further emphasised by section 74(1) which initially restricts the membership of an RTM company in relation to premises to the qualifying tenants of flats contained in the premises. It is therefore important to be able to identify whether, in relation to any premises, there exists an RTM company and the premises in respect of which it is an RTM company.

19. Under the statutory scheme the only source of that information is the company's articles of association, and in particular the definition of "Premises" in article 1(1) of the model articles.

20. Mr Loveday submitted that it was not necessary for the premises to be defined with precision at the point at which an RTM company is formed. Precision was required only when the company gave a claim notice which, in accordance with section 80(2), is required to "specify the premises". Mr Loveday contrasted the requirement for a claim notice to specify the premises with the model articles of association which, he suggested, require only the name and address of the premises. I do not accept that any contrast is intended. Nor do I accept that the Act contemplates a process of refinement in the identification and specification of the premises in relation to which a company may be an RTM Company. It seems to me to be clear from section 73 that the premises in respect of which a Company seeks the right to manage must be those which are identified by their name and address in its articles of association. It is only those premises in relation to which the company will be an RTM company, and only those for which it will be within its objects to seek to acquire the right to manage.

The appeal

21. In support of the appeal Mr Bates submitted, correctly, that the right to manage applies to premises only if they are within the description in section 72(1) i.e. to a self-contained building or part of a building containing two or more flats. If for any reason those qualifying condition are not satisfied, none of the remaining provisions of Chapter 1 have any application, and the right to manage cannot be acquired in relation to the premises.

22. Mr Bates pointed out that it was for the company, in its articles of association, to define the premises over which it sought to acquire the right to manage; having done so, it could only claim the right in relation to different premises by amending those articles. In this case the Company's articles identify the premises as "Flat 1-13, 51 Earls Court Square" but in its claim notice it sought the right to manage "51 Earls Court Square". There was a clear difference between the premises described in the two different instruments. The claim notice obviously referred to the whole of the Building by its postal address, which is also the manner in which it is described in the land register. The premises described in the articles of association were more limited, and comprised the flats themselves and not, for example, the foundations, common parts or roof of the Building. The premises identified were only part of a self contained building, rather than of the whole of a building, in circumstances where the only unit of property in relation to which an RTM company could exist was the whole Building.

23. Mr Bates submitted that by describing the premises as comprising only the flats themselves the Company had failed to constitute itself as an RTM company, the premises so described were not premises to which Chapter 1 applied, and the claim notice did not refer to land which it was the object of the Company to manage.

24. In response Mr Loveday first submitted that the meaning of the Company's articles was clear. It was apparent from the Company's name that it was formed to manage the whole of the Building. Because the statutory right to manage could only be acquired in relation to a single self-contained building (or part of a building as defined in section 72(2)), it could only have been the intention of the members to acquire the right in relation to the whole of the Building. The only reason for mentioning the flats was to emphasise that it was the whole Building containing all of the flats, and not simply part of the Building containing some of the flats, which the Company proposed to manage.

25. Mr Loveday also relied on the express power given to the Company by article 5(y) "… to determine for the purpose of voting or for any other purpose, the physical dimensions of the Premises…" I do not think that power is relevant to this appeal. It is concerned only with the dimensions of the premises and not with their identity. The power in article 5(y) is relevant where a landlord becomes a member of an RTM as its voting entitlement is in proportion to the non-residential floor area of the premises (see article 33(3)(b) of the model articles); it does not enable the company to re-define the premises described in its objects.

Discussion and conclusion

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.

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.

28. In *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 Lord Hoffmann's famous summary of the principles of interpretation of documents included the following:

> "(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. …
>
> (5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."

29. In *G & S Brough Limited v Salvage Wharf Ltd* [2009] EWCA Civ 21 Jackson LJ explained that:

> "Where a written agreement as drafted is a nonsense and it is clear what the parties were trying to say, the court will, as a matter of construction, give effect to the obvious intention of the parties."

Further examples of the principle that an obvious mistake may be corrected as part of the process of construction are given in Chapter 9 of Lewison's The Interpretation of Contracts, 5th Ed (2011).

30. With that principle in mind the answer to the question posed by this appeal seems to me to be obvious. If the premises described in its articles are not a self-contained building or part of a building as defined in section 72 the Company will not be an RTM Company and will be unable to exercise the statutory right to manage. Yet it is quite clear that this Company, and any company which adopts the model articles of association prescribed by the 2009 Regulations, intends to do exactly that. The name of the Company, its objects ("to acquire an exercise in accordance with the 2002 Act, the right to manage the premises") and the powers conferred on the Company by article 5 (which extend to "all such things as may be authorised or required to be done by a RTM Company by and under the 2002 Act") make it indisputable that the premises specified in article 1(1) are intended to be premises capable of forming the subject matter of the statutory right. The document must be read and understood with that in mind, as it would be by any reasonable, informed reader.

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.

Martin Rodger, QC

Deputy President

14 January 2016