ONE BLOCK OR TWO WITH YOUR RTM?

The residential service charge world is reconciling itself to sitting on tenterhooks for another five months following the adjournment to 13 October 2014 of the Court of Appeal hearing in *Phillips v Francis* [2012] EWHC (Ch).

In that respect it joins its Right To Manage ("RTM") counterpart, which has, since January this year, had the rug of certainty pulled from under its feet by the granting of permission to appeal in *Ninety Broomfield Road RTM Company Ltd v Triplerose Ltd* [2013] UKUT 0606 (LC).

Ninety Broomfield Road has since been joined on the path to the Court of Appeal by *Fencott Ltd v Lyttelton Court 1 14-34a RTM Company Ltd* [2014] UKUT 0027 (LC), although at the time of writing it is not known whether the Court of Appeal will hear the two appeals together.

The key question in both cases was whether a single RTM company can acquire the right to manage more than a single set of premises.

As Martin Rodger QC noted in *Lyttelton Court*, the acquisition of the right to manage "is often strenuously and ingeniously resisted by landlords who wish to retain the benefits of management in their own hands". *Fairhold Mercury Ltd v HQ (Block 1) Action Management Company Ltd* [2013] UKUT 0487 (LC), in which the Upper Tribunal dismissed an appeal challenging the validity of a company without RTM in its name, is generally considered to be one of the prime examples of ingenious resistance.

Both *Ninety Broomfield Road* and *Lyttelton Court* arose from the service of a claim notice for each block in respect of which the right to manage was sought. Those notices were accompanied by what might be called an overarching notice seeking the right to manage all of the blocks, that right to be undertaken by one RTM company.

Just two years ago, in *Gala Unity Ltd v Ariadne Road RTM Company Ltd* [2012] EWCA Civ 1372, the right of an RTM company to manage more than one block of flats was uncontentious.

It is now hotly contested. In *Ninety Broomfield Road*, Judge McGrath held that definition of the premises to which the RTM provisions applied did "not limit the number of self-contained buildings or parts of self-contained buildings to which the right will apply. Its purpose is to define self-containment". She held however that the qualifying conditions must be satisfied in relation to each building, and that the RTM company "may prefer to serve separate notices simply for the sake of clarity".

In *Lyttelton Court*, the Upper Tribunal was not obliged to follow *Ninety Broomfield Road* – but it did, noting that at least sixteen estate-wide right to manage applications had been granted at LVT level since the coming into force of the RTM provisions.

"The decision of the Tribunal in *Ninety Broomfield Road* therefore provided a simple, pragmatic and attractive solution to an important problem", observed Martin Rodger QC, although it is probably safe to say that the landlords in *Ninety Broomfield Road* and *Lyttelton Court* are not amongst those who share that view.

Philip Rainey QC, head of Tanfield Chambers, is leading counsel in the *Lyttelton Court* appeal.

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