

248.



LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AR/LOA/2011/0004

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 84(3) OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

Applicant: Queenswood Lodge RTM Company Ltd
Respondent: Assethold Ltd
Property: Queenswood Lodge, 61A Main Road, Romford, RM2 5EH
Date of hearing: 16 January 2012

Appearances

Applicant

Mr A Sheftel Counsel
Ms C Tuplin The Beavis Partnership LLP, Solicitors

Respondent

Did not attend and was not represented

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)
Mr J Barlow JP FRICS
Mr J Francis

Introduction

1. This is an application made by the Applicant pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that it was on the relevant date entitled to acquire the right to manage the property known as Queenswood Lodge, 61A Main Road, Romford, RM2 5EH (“the property”).
2. The property appears to be comprised of 13 flats, all of which are held by qualifying tenants as defined by section 75(2) of the Act. Of the 13 leaseholders, only the lessees of Flats 10 and 12 do not participate.
3. By a claim notice dated 23 August 2011, the Applicant exercised the entitlement to acquire the right to manage the property.
4. By a counter notice dated 29 September 2011, the Respondent served a counter notice denying that the Applicant was entitled to acquire the right to manage the property for variously not complying with requirements of sections 78, 79 and 80 of the Act.
5. By an application dated 16 November 2011, the Applicant applied to the Tribunal for a determination of the issue as to whether it was entitled to acquire the right to manage the property. On 21 November 2011, the Tribunal issued Directions. The basis upon which the Respondent denies that the Applicant is not entitled to acquire the right to manage is set out in its statement of case dated 29 November 2011. The arguments advanced by the Respondent are particularised and dealt with below in turn.

Hearing and Decision

6. The hearing in this matter took place on 16 January 2012. The Applicant was represented by Mr Sheftel of Counsel. The Respondent did not attend and was not represented. However, it filed a written submission that morning, which effectively repeated the arguments set out in its statement of case together with two supporting authorities.

Sections 79(2) and 78(1)

7. Section 79(2) of the Act provides that a claim notice cannot be served unless each qualifying lessee has been given a notice of invitation to participate at least 14 days before. Section 78(1) provides that before making an RTM claim, the RTM company must give notice to each person who at the time the notice is given is the qualifying tenant of a flat contained in the premises, but neither is nor has agreed to become a member of the RTM company.
8. The Respondent put the Applicant to proof that it had served notices inviting participation as required by sections 79(2) and 78(1) and, specifically, on Sidney Black, the lessee of Flat 4, who on the relevant date was not a member of the RTM company.
9. It appears that all of the qualifying tenants were members of the Applicant company save for the lessees of Flat 9 (Maureen Sheed), Flat 10 (Dionne Marie Crowley) and Flat 12 (Leslie Alan Beech). The Tribunal had in evidence copies of the notices of invitation to participate, each dated 23 June 2011 addressed to each of those tenants. In the absence of any evidence to the contrary, the Tribunal found that the notices had been served on each of those lessees in accordance with section 78(1). The Tribunal is supported in that finding by the fact that subsequently, on 15 July 2011, Ms Sheed (Flat 9) applied to become a member of the Applicant company. The Tribunal was satisfied that she would not have made that application unless service of the notice of invitation to participate had been effected on her and the other non-participating lessees. The Tribunal also found that service had been effected no earlier than 23 June and no later than 15 July 2011 and, therefore, the claim notice had not been given at least 14 days before the date of the claim notice in accordance with section 79(2) of the Act in any event.
10. As to the failure to serve on Mr Black, the lessee of Flat 4, the Tribunal was provided with a copy of his death certificate that he had died on 4 April 2011. The Tribunal was also provided with evidence that the legal and beneficial interest in the flat had been held by Mr Black and Lillian Lucy Black as joint tenants. As such, upon Mr Black's death, his legal and beneficial interest was

succeeded by Ms Black by right of survivorship. Ms Black, therefore, became the only qualifying tenant within the meaning of the Act who could become a member of the Applicant company. As to the date of her membership, the Tribunal heard witness evidence from Ms Tuplin, the Solicitor with conduct of this matter on behalf of the Applicant, that Ms Black became a member on 15 May 2011. The Tribunal accepted that evidence and found in those terms.

11. Accordingly, the Respondent did not succeed on this point.

Section 79(3)

12. The Respondent simply put the Applicant to proof as to the requisite number of members in compliance with section 79(5) of the Act. In short, the section requires membership to be not less than one half of the number of qualifying tenants of flats contained in the premises.

13. A register of 11 members was exhibited to the Respondent's statement of case, which the Tribunal accepted as *prima facie* evidence of membership. In addition, the Tribunal had before it copies of the membership applications of each of the 11 participating lessees. Ms Tuplin gave evidence that each of those applications were received on the various dates stated on each, which was accepted. Having regard to this evidence, the Tribunal found that, save for the lessees of Flats 10 and 12, the remaining qualifying tenants were members of the Applicant company and, clearly being over half in number, the requirement of section 79(5) was met. The Respondent, therefore, did not succeed on this point.

Sections 80(8) and 80(9)

14. In short, each of these sections requires that a claim notice must satisfy the content and form as prescribed by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the Regulations").
15. The Respondent alleged that the claim notice did not comply with the Regulations because it stated Kim Waller and Stuart George Bull to be the

joint owners of Flat 6 whereas the register of members only stated that Ms Waller was a member of the Applicant company.

16. The requirement of paragraph 3 of Schedule 2 to the Regulations is that a claim form must state the full names of each person who is both a qualifying tenant of a flat contained in the premises and a member of the company and their address in Part 1 of the Schedule.
17. The Respondent did not challenge the fact that Ms Waller and Mr Bull are the joint owners of Flat 6 and the latter was, therefore, a qualifying tenant also. Indeed, the Respondent did not expressly deny that Mr Bull was a member of the company. As the Tribunal understood it, the Respondent's case was that the omission of Mr Bull as a stated member in relation to Flat 6 was a breach of the Regulations and, therefore, sections 80(8) and 80(9) of the Act.
18. It was clear to the Tribunal that, by an application form dated 3 May 2011, Ms Waller applied as the qualifying tenant of Flat 6 to be a member of the company. Similarly, by an application form dated 11 May 2011, Mr Bull also applied as a qualifying tenant of both Flats 6 and 7 to be a member of the company. The omission on the register of members to state that Mr Bull was also a member of the company by virtue of his joint ownership of Flat 6 with Ms Waller, possibly as a result of an administrative or clerical error, was irrelevant. The register of members is simply an internal document created for the Applicant company. The Act or the Regulations have no application to such a register and, therefore, the omission to state that Mr Bull was a member of the company by virtue of his joint ownership of Flat 6 is of no effect. In any event, as the Applicant correctly submitted, section 81(1) of the Act provides that such a minor clerical error does not invalidate a claim notice.
19. For the avoidance of doubt, the Tribunal finds that Mr Bull was a member of the Applicant company and that the claim form did comply with the requirements of Schedule 2 of the Regulations as to its form and content. It follows, that sections 80(8) and 80(9) of the Act have not been breached and the Respondent also fails on this point.

Section 79(8)

20. The Respondent had initially put the Applicant to proof that a copy of the claim notice had been given to each qualifying tenant. However, in its written submissions received on the morning of the hearing, it confirmed this point was conceded and was no longer being pursued.

21. Accordingly, the Tribunal concluded that the Applicant is entitled to acquire the right to manage the property and that the relevant date under section 90(4) of the Act is 3 months after the date of this determination.

Costs

22. Both parties made cross applications for costs in this matter under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. This gives the Tribunal a discretion to make an order that one party pay the costs incurred by another party up to a maximum contribution of £500 where it makes a finding that the offending party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

23. The Respondent had applied for such an order on the basis that the Applicant's solicitors had conducted themselves in an unhelpful and antagonistic manner when requests for copy documentation had been made. To compound matters, the Applicant's statement of case (32 pages) had been faxed to the Respondent, which was an abuse of faxing facilities and a waste of resources. It was submitted this conduct was vexatious.

24. Having carefully considered the inter partes correspondence, the Tribunal saw no evidence of vexatious conduct on the part of the Applicant or its legal representative. The service of procedural documents by fax is an accepted method of service. The Tribunal concluded that there was no evidence of vexatious conduct on the part of the Applicant and dismissed the Respondent's application for costs.

25. At the hearing, Mr Sheftel made a similar cross application for costs. He submitted that the Respondent's conduct had been vexatious for the following reasons:

(a) that as long ago as 23 September 2011, by letter the Applicant's solicitors had in a conciliatory manner invited the Respondent to set out its position and it had failed to do so.

(b) that the Respondent had failed to attend the hearing.

(c) that the Respondent had taken 4 technical points, 3 of which simply put the Applicant to proof and 1 was conceded at a very late stage.

26. The Tribunal concluded that points (a) and (c) above were made out on the evidence before the Tribunal and the Respondent had acted vexatiously and unreasonably. It was clear that the Respondent had been given the opportunity to make its position clear as to what objections it was raising in this matter and it had failed to do so. Indeed, in their letter of 23 September 2011, the Applicant's solicitors expressly reserved their position on costs in the event that the Respondent failed to make their position known.

27. In addition, the points taken by the Respondent were highly technical in nature and were of no real merit and were wholly rejected by the Tribunal. In so doing, it regarded the Respondent's conduct as being obstructive. The Applicant had been obliged to make this application thereby incurred both time and costs. It was, therefore, entirely right and proper that the Respondent pay a contribution of £500 towards the Applicant's costs.

28. Accordingly, the Tribunal order the Respondent to pay the Applicant a contribution of £500 in costs in 28 days from the date of this order.

Dated the 1 day of March 2012

CHAIRMAN.....

Mr I Mohabir LLB (Hons)