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

Case Reference : CHI/00HN/LRM/2014/0010

Property : Matthew Court
122 Southbourne Road
Bournemouth
BH6 3QJ

Applicant : Matthew Court RTM Company Limited

Representative : Brady Solicitors

Respondent : Waterpark Securities Limited

Representative : Scott Cohen Solicitors

Type of Application : Section 84(3) of the Commonhold and
Leasehold Reform Act 2002.
No fault Right to Manage Application

Tribunal Members : Judge R. Norman (Chairman)

Date of Decision : 13th January 2015

DECISION

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Decision

1. On the date the notice of the claim was given, Matthew Court RTM Company Limited (“the Applicant”) was entitled to acquire the Right to Manage Matthew Court, 122 Southbourne Road, Bournemouth BH6 3QJ (“the subject property”).

Background

2. A Claim Notice dated 1st May 2014 was served by the Applicant under the provisions of the Commonhold and Leasehold Reform Act 2002 (“the Act”) on Waterpark Securities Limited (“the Respondent”).

3. The Applicant claimed the right to manage the subject property.

4. A Counter-Notice was served on behalf of the Respondent and it was asserted that by reason of Sections 80(8) and 80(9), 79(3), 79 (5), 78(2)(b), 78 (2)(d) and 78(3) of the Act the Applicant was not entitled to acquire the right to manage the subject property.

5. An application was made under Section 84(3) of the Act for a determination that on the relevant date the Applicant was entitled to acquire the right to manage the subject property.

6. Directions were issued which included that “The Tribunal considers that this matter is suitable to be determined as a paper determination on the basis of written representations only without an oral hearing, under Rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 unless any party shall have written to the Tribunal office within 28 days of receipt of these directions requiring an oral hearing.” No such written requirement has been received. Directions were also given as to the supply of a statement of case by the Respondent, a statement in reply by the Applicant and the preparation of a bundle of documents. A bundle has been received which includes a statement of case from the Respondent and a statement in reply from the Applicant.

7. I have considered all the documents supplied and have found that on the date the notice of the claim was given the Applicant was entitled to acquire the Right to Manage the subject property.

8. The following paragraphs deal with each of the challenges made by the Respondent.

Sections 80(8) and 80(9) of the Act

The case for the Respondent

9. The Respondent asserts that the claim notice fails to comply with the form of claim notices and contain the requisite particulars as ‘the Company’ and intended ‘Premises’ are not defined within the claim notice as provided by the Regulations. Within paragraph 1 of the prescribed notice there are spaces

to insert the name of the RTM company followed by (“the company”) and the name of the premises followed by (“the premises”) so that the meaning of the same may be contained throughout the body of the claim notice. The result is that the claim does not contain the required statements in paragraphs 1-9 onwards as the references to a company and premises are without meaning. The definition of the premises is further obscured as the premises is described as self contained buildings (pluralised) and as such it is not clear the extent of property intended by the Claim Notice with no definition of premises stated.

10. The Respondent submits that given the legal effect of the RTM Claim Notice, obscurity within these details shows a basic lack of compliance with the statutory scheme and that this is not an “inaccuracy” but a complete omission of the necessary wording to provide paragraphs 1-9 with their intended statutory effect. The Respondent then refers to Section 81 of the Act which is aimed at saving an error, not dispensing with a statutory requirement.

11. The Respondent has cited in support of its assertion, the case of Assethold Limited and 15 Yonge Park RTM Company Limited before the Upper Tribunal (Lands Chamber) where HHJ Walden-Smith held that a failure to provide the information required in paragraphs 80(2) to 80(8) results in the claim notice being invalid. Section 81(1) cannot save it from invalidity. All that section 81(1) does is save from invalidity a claim notice that has an “inaccuracy” or “lack of exactness” in those particulars. In that case the wrong registered office of the RTM company had been given and the failure to include the registered office was not an inaccuracy.

12. The Respondent has also referred to paragraph 94 of the decision of the Upper Tribunal (Lands Chamber) in the case of Elim Court RTM Company Limited and Avon Freeholds Limited LRX/25/2013 and Others.

The case for the Applicant

13. The Applicant asserts that the RTM company and the premises are clearly defined in the opening paragraph of the claim notice and that there is no uncertainty in respect of the identity of the same and avers that the omission of the words ‘company’ and ‘the premises’ is a minor inaccuracy and therefore saved by Section 81(1) of the Act. The Applicant does not believe that the case of Elim Court RTM Company Limited and Avon Freeholds Limited assists the Respondent, since it is the Applicant’s view that the definitions aspect of the legislation would have been intended to be substantially complied with and since no prejudice would have been caused by the omission as identified by the Respondent this failure would not be detrimental to the validity of the claim notice.

Reasons

14. Sections 80(8) and 80(9) of the Act require as to the contents of the claim notice that:

80(8) It must also contain such other particulars (if any) as may be

required to be contained in claim notices by regulations made by the appropriate national authority.

80(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

15. Paragraph 8 of the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010 provides that claim notices shall be in the form set out in Schedule 2 to the Regulations.

16. Section 81 (1) of the Act provides that:
A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

17. Providing the wrong registered office of the RTM company is not an "inaccuracy" and a claim notice providing the wrong registered office of the RTM company cannot be saved from being invalid by section 81(1) of the Act. However, in the present application, it is not suggested that the wrong particulars, such as the registered office address of the RTM company, were provided but that by the omission from the claim notice of the words "the company" and "the premises" that was not an inaccuracy but a complete omission of the necessary wording to provide paragraphs 1-9 of the claim notice with their intended statutory effect.

18. I have considered the case of Elim Court RTM Company Limited and Avon Freeholds Limited LRX/25/2013 and Others and in particular the helpful guidance provided by the Deputy President at paragraph 94 of his decision and have come to the conclusion that the case does not assist the Respondent.

19. Having considered the wording of the claim notice I am satisfied that as a result of the omission of the words "the company" and "the premises" there could be no misunderstanding. The Applicant and the subject property are named in the first paragraph of the claim notice and the references to the company and the premises in the following paragraphs of the claim notice clearly refer to the Applicant and the subject property. It is difficult to see how they could refer to any other company or any other premises. The omission of the words "the company" and "the premises" does not amount to the omission of a required particular but is a minor inaccuracy and consequently is saved by Section 81(1) and there has been substantial compliance with the statutory requirements. The Respondent has asserted that by the use of the word 'buildings' as opposed to 'building' in paragraph 2 of the claim notice the Applicant causes the definition of the premises to be further obscured and that as such the extent of the property intended to be the subject of the claim notice is not clear. The Applicant in response has not referred to the use of the word 'buildings' but I am satisfied that the addition of the 's' did not cause any misunderstanding. There has been substantial compliance with the statutory requirements. This was an inaccuracy and as such the validity of the claim notice is saved by Section 81(1) of the Act.

Sections 79(3) and 79(5) of the Act

The case for the Respondent

20. The Respondent contends that the Applicant is unable to satisfy the requirements of section 79(3) "because the Applicant has not complied with the provisions of its Articles of Association and the Companies Act 2006 in the registration of Members and in the keeping of the Register of Members so that (1) The Company has insufficient members in compliance with section 79(5), its membership only consists of the original subscribers tenants and/or (2) the Tribunal is unable to assess whether it fulfilled the requirements of sections 79(3) and particularly the number of members upon the Relevant Date."

21. In respect of a previously issued claim notice and in respect of the present claim notice, the Applicant's solicitors had supplied the Respondent's solicitors with a Register of Members.

22. The Respondent's solicitors had compared the two documents and found them to be entirely different documents. The present document "shows qualifying tenants as members both earlier and later than the initial register and does not include the dates of removal of the Members shown upon the initial Register. The document is undated and there is no evidence to indicate when it was compiled."

23. The Respondent makes the suggestion that "it would appear that the process envisaged by section 26(6) of the Articles of Association has not been followed in the entry of members."

24. The Respondent cites the case of Southall Court Residents Limited & Others and Buy Your Freehold Limited & Others and avers that there is no valid register of members.

The case for the Applicant

25. The Applicant's solicitors have explained that:

(a) This was the Applicant's second attempt at pursuing the Right to Manage the subject property; the first taking place in or around July 2013.

(b) Following the first attempt, due to inaccuracies in the Notices of Invitation to Participate, it was decided to recommence the process from the very beginning in 2014. It was for that reason that the names of the qualifying tenants who had agreed to be members of the RTM company in the first proceedings were subsequently removed from the Register. This was done to simply reflect the fact that proceedings were being started again and new Notices of Invitation to Participate were sent out to all qualifying tenants.

(c) Since some of the qualifying tenants, who had agreed to be members of the RTM company in 2013, agreed again to be members in 2014 they were re-entered onto the Register in May 2014. It is for that reason that the dates of entry onto the Register differs between the two Registers sent to the Respondent's solicitors. The Applicant asserts that this does not make the entries on the Register unreliable and simply reflects the administrative

process undertaken by the Applicant as a result of there being a second attempt to acquire the Right to Manage the subject property.

(d) The Applicant denies that the variances in the dates on the Register of Members invalidates the membership and the Applicant maintains that there is the required number of members in order to proceed with the acquisition of the Right to Manage.

(e) At the date of service of the present claim notice the Applicant had a membership of the required 50%.

Reasons

26. Subsections (3), (4) and (5) of Section 79 of the Act provide that:

79(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

79(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

79(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

27. Subsection (5) is the relevant subsection in this case.

28. In the case of Southall Court Residents Limited & Others and Buy Your Freehold Limited & Others there was no Register of Members. HHJ Reid QC held that the question to be determined was whether the RTM had established that on the relevant date the members of the company included "a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained". In order for a person other than a subscriber to be a member that person must (a) have agreed to become a member and (b) had their name entered in the register of members.

29. I note that the Respondent makes the suggestion that "it would appear that the process envisaged by section 26(6) of the Articles of Association has not been followed in the entry of members." The basis for that suggestion has not given the Respondent the confidence to assert as a fact that the process has not been followed; there is just a suggestion that "it would appear...". I am not satisfied that the process was not followed.

30. In the present application there is a register of members. There are 10 flats and it is agreed that there need to be at least 5 tenants to be members of the company. The register of members does show 5 members at the relevant date and the Applicant's explanation of the different dates is accepted. I find that the Applicant was entitled to serve a claim notice.

Sections 78(2) and 78(3) of the Act

The case for the Respondent

31. By reason of the matters raised in the allegation by the Respondent that the Applicant is unable to satisfy the requirements of section 79(3) of the Act, the Respondent asserts that the notices of invitation to participate failed to accurately state the members of the RTM company. This was on the basis that upon that date there was no valid register of members or alternatively the persons shown upon the register at exhibit 4 to the Respondent's statement of case were not included.

32. Further and alternatively the Respondent submits that members listed are incorrectly listed as individual members when in fact they jointly qualify in each case with other individuals.

The case for the Applicant

33. The Applicant repeats its response to the allegation by the Respondent that the Applicant is unable to satisfy the requirements of section 79(3) of the Act.

34. The Applicant maintains that there is sufficient membership to acquire the Right to Manage the subject property.

35. The argument raised by the Respondent in Respect of individual and joint membership only applies to the membership of Mr. and Mrs. Shingleton.

36. Mr. Shingleton is a director of the Applicant and therefore is not required to apply to be a member of the Applicant. His wife, Mrs. Shingleton, is listed as a member of the Applicant and therefore the Applicant avers that the Applicant has the required membership to acquire the Right to Manage.

37. In any event, the Applicant will rely on section 78(7) of the Act which provides that the notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by virtue of section 78 of the Act.

Reasons

38. The Respondent in its statement of case has referred to section 78(2) of the Act and has quoted section 78(2)(d) which provides that a notice of invitation to participate must contain such other particulars as required by regulations made by the appropriate national authority. The regulations are the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010. Although not quoted, presumably the Respondent relies also on section 78(2)(b) which provides that the notice of invitation to participate must state the names of the members of the RTM company.

39. The Respondent in its statement of case has referred to section 78(3) of the Act which provides that a notice of invitation to participate must comply with such requirements about the form of notices of invitation to participate

as required by regulations made by the appropriate national authority. Paragraph 8 of the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010 provides that the form of such notices comply with the prescribed form of notice exhibited in Schedule 1 to the regulations.

40. Having found that there was a valid register of members, the Respondent's objection on the basis that there was no valid register falls away.

41. I accept the Applicant's explanation in respect of joint members and I am satisfied that valid notices of invitation to participate were issued.

42. I am satisfied that on the date the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the subject property.

Appeals

43. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

44. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

45. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

46. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman