

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Block C, 70-78 Southwold Road,  
Watford,  
WD24 7DL/7FH

**Applicant** : Southwold Road (Block C) RTM  
Company Limited

**Respondents** : (1) Peter John Cutler  
(2) Ann Nellie Cutler and  
(3) Barnett Waddingham Trustees Ltd.  
(the trustees of the SGIK Pension  
Scheme)

**Case number** : CAM/26UK/LRM/2010/0004

**Date of Application** : 5<sup>th</sup> August 2010

**Type of Application** : For an Order that the Applicant was, on  
the relevant date, entitled to acquire the  
right to manage the property (Section  
84(3) Commonhold and Leasehold  
Reform Act 2002 ("the 2002 Act")

**The Tribunal** : Mr. Bruce Edgington (lawyer chair)  
Mr. David Brown FRICS MCI Arb

**Date and venue of  
Determination** : 20<sup>th</sup> October 2010 at Unit C4 Quern  
House, Mill Court, Great Shelford,  
Cambs. CB22 5LD

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**DECISION**

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1. This application fails. The Applicant does not acquire the right to manage the property.

**Reasons**

**Introduction**

2. It is not disputed that the Applicant is a Right to Manage Company incorporated as a private company whose specific object is to acquire and exercise the right to manage Block C Southwold Road, Watford. In its written submissions, the Respondents say, at paragraph 8.1, that the Memorandum and Articles of Association of the Applicant only refer

to Block C and "*crucially*" omit any reference to Nos. 70-78. As will be seen later, Block C is Nos. 70-78 Southwold Road and the relevance of this alleged 'crucial' omission is not understood.

3. On the 4<sup>th</sup> May 2010, the Applicant served a Claim Notice pursuant to Section 79 of the 2002 Act giving notice of its intention to take over the management of the property as from 10<sup>th</sup> September 2010. The last date for service of a Counter Notice was said to be 10<sup>th</sup> June 2010.
4. A Counter Notice was served by the Respondents' solicitors on the 9<sup>th</sup> June 2010 denying the right of the Applicant to acquire the right to manage the property. No detailed reasons are given save for an alleged breach of Section 72 of the 2002 Act which is simply the description of the premises to which the RTM provisions apply. According to Section 84(2)(b) of the 2002 Act the Counter Notice should give the specific provision complained of.
5. The reason for this provision is clear. The RTM Company should know exactly why it is alleged that the entitlement to manage is not valid. No-one would know from this Counter Notice what is being alleged. Thus, even if the Counter Notice may specify a Section, it does not say what is actually being said by the Respondents and certainly does not follow the spirit of the provisions in the 2002 Act.
6. All parties are represented by solicitors and these reasons will therefore not recite the law in detail as it will be known to such solicitors.
7. A bundle of documents for the benefit of the members of the Tribunal was lodged presumably in purported compliance with directions issued by the Tribunal. It was defective and unhelpful in several respects. It did not contain the application and accompanying documents (i.e. the Memorandum and Articles of Association of the RTM company etc.), a copy of the directions order, a copy of any of the Notices Inviting Participation or a copy of a plan of the property – either the lease plan or the Land Registry plan of the freehold title.
8. It also contains a number of LVT decisions, a Court of Appeal decision relating to a completely different Statute, set of notices and regulations and a copy of an extract from a book by Brian Jones called "Right to Manage and Service Charges: The New Regime". Of course, the Tribunal looked at this information but none of it is binding on its decision and, frankly, none of this copious information was particularly helpful.
9. A response to the Applicant's statement of case was filed with a letter from the Respondents' solicitors dated 14<sup>th</sup> October 2010. This was also considered by the Tribunal although it does not add greatly to the information in the bundle.

### **The Respondents' Case**

10. According to the Counter Notice, the Respondents allege "...that, by reason of Sections (sic) 72 of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 on 6<sup>th</sup> May 2010 (the Applicant) was not entitled to acquire the right to manage the premises..."
11. In its written submissions, the Respondents point out that Section 78(1) of the 2002 Act is mandatory. This requires that a Notice Inviting Participation must be served on every qualifying tenant who neither is nor has agreed to become a member of the RTM company. It must be in the prescribed form and must be signed. The first objection to the Applicant's case is that the form used in this case was not in the prescribed form, was not signed and did not refer to Southwold Road (Block C) Management Company Limited which was a party to the leases.
12. It is then pointed out that the Notice of Claim is also defective because it does not say whether any appurtenant property is included in the claim. Correspondence subsequent to the Notice of Claim produces an inference by the Respondents, which is denied, that the Applicant made a mistake and that there should have been reference to appurtenant property.

### **Procedure**

13. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. This information was conveyed to the parties in the Directions Order issued on the 18<sup>th</sup> August 2010. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notice was given to the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 1<sup>st</sup> October 2010 and (b) that a hearing would be held if either party requested one before that date. No such request was received.

### **Analysis**

14. The Respondents say that the Notice Inviting Participation should have been in the form prescribed by **The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010** ("the 2010 Regulations"). The Notices are said by the Applicant to be dated 24<sup>th</sup> March 2010. In their final submissions, the Respondents have now conceded that the Notice Inviting Participation was sent before the 2010 Regulations came into effect.
15. The 2010 Regulations contain no transitional arrangements. It therefore appears that the 2010 Regulations apply to the Claim Notice but the earlier 2003 Regulations apply to the Notice Inviting Participation. As it happens, the relevant differences in the two sets of Regulations is not of great importance so far as this case is concerned.
16. A more important provision is contained in Section 78(7) of the 2002 Act itself which says "*a notice of invitation to participate is not*

*invalidated by any inaccuracy in any of the particulars required by or by virtue of this section."*

17. The Respondents assert, without producing evidence, that the Notices were not signed. The Applicant says that the original Notices were signed even if the copies produced were not. In their latest submissions, the Respondents say that evidence should have been produced by the Applicant to prove evidence of signature. The Tribunal is prepared to accept the clear assertion made by the Applicant that the originals were signed.
18. It is also true that Southwold Road (Block C) Management Company Limited was a party to the leases and was not mentioned in the Notices, as the 2003 Regulations require. However, the Applicant produces evidence that this company was dissolved in 2000. Therefore the inclusion of this particular in the Notices would have no meaning and the Tribunal applies the Section 78(7) exemption.
19. The difficulty with the Notices which cannot be overcome in this way is with the Statutory requirement in Section 78(5)(b) that the dates when recipients of the Notices can inspect the Memorandum and Articles of Association of the RTM Company must include a Saturday or a Sunday or both. This is mandatory. Indeed, it seems clear that specific times and dates should be offered "*on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given*". The Notices simply say "9am – 5.30pm Monday to Friday".
20. The Applicant's response to the Respondents' representation does not deny the omission but says that it is an inaccuracy in the particulars which is saved by the Section 78(7) exemption. Regrettably the Tribunal cannot accept that this is an inaccuracy in the particulars. It is an omission of a specific requirement of the Act itself.
21. Thus the Tribunal can only conclude that these Notices were defective.
22. In these circumstances, it is not really necessary to consider the Notice of Claim because a correct Notice Inviting Participation is essential for the right to manage process to be completed correctly. Failure to have a correct Notice is fatal to this application. However, in order to assist the parties, the Tribunal briefly deals with the issues raised in respect of the Notice of Claim.
23. There is really only one substantive issue i.e. did the Notice of Claim include all the information it was required to include. Specifically, did the notice include a proper description of the property. Section 72(1)(a) of the 2002 Act says that the premises must be "*...a self contained building or part of a building with or without appurtenant property*". It is therefore said, on behalf of the Respondents, that the description of the property in the Notice of Claim must say whether it includes appurtenant property.

24. It should be made clear that neither Sections 80 and 81 of the 2002 Act nor the 2010 Regulations which deal with the content of a Notice of Claim make any mention of having to include or exclude appurtenant property. In the Notice itself the property is described as being "Block C, 70-78 Southwold Road, Watford". The next section of the Notice then recites the above quotation from Section 72(1)(a) without making it clear that the property either includes or does not include appurtenant property.
25. It is common ground that the registered freehold title for the property describes it as "Block C, 70-78, Southwold Road, Watford" i.e. exactly the same as in the Notice of Claim. It is true that the Respondents' solicitors did seek clarification in correspondence that the Notice of Claim includes the whole of the land in title no. HD28783 and the reply came back that it did. In fact the correct title no. is HD287830 which both solicitors seem to have missed.
26. It is this Tribunal's view that the Notice does comply with the 2002 Act and the 2010 Regulations. Any reasonable person would infer that the property described as it is would be the property described in exactly the same way as at the Land Registry. The notice did not say "only the flats in Block C...". It included all the property known as Block C which includes the common parts. The Respondents' solicitors sought clarification which was forthcoming.

### **Conclusions**

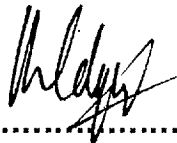
27. The Tribunal concludes that the Notices Inviting Participation failed to comply with Section 78 of the 2002 Act and are thus defective. This means that the whole process has been compromised and the application must fail.
28. Having said that, the Tribunal must comment on the Respondents' behaviour in this matter which leaves much to be desired.
29. Their statement of case in the bundle makes all sorts of quite unnecessary comments about the scheme of Right to Buy set out in the 2002 Act and why they feel that they have acted in a reasonable and temperate way in opposing this application. They refer to the fact that they must seek to ensure that there are no disputes without producing a scrap of evidence to suggest that there are any.
30. They say that some lessees have been late in making payments which means that those people may not be able to comply with lease terms and would feel excluded if they had not been given the opportunity to participate in the RTM company. Again, no evidence is produced to substantiate this comment.
31. Finally, the Respondents' solicitors have made two very clear comments in the correspondence produced to the Tribunal which would lead any reasonable recipient to conclude that the Respondents were content to accept that the RTM company could take over management. On the 21<sup>st</sup> June 2010, the solicitors wrote:-

*"Section 84(5)(b) envisages that even though a Landlord serves a Counter Notice containing a section 84(2)(b) statement it may subsequently consent to the Application. Our client will consider admitting the right to manage if all the land included in their title No HD 28783 shown on the attached plan is included in the right to manage as appurtenant property".*

32. The Applicant did confirm this. Subsequently, the Respondents' solicitors, having pointed out their view that the Notice of Claim was defective then said, on the 9<sup>th</sup> August 2010:-

*"In those circumstances it may be simplest for your client to serve a Claim Notice including the Appurtenant property to which our client can serve an affirmative Counter Notice"*

33. No evidence was produced that any non participating lessee was prejudiced by the failure to provide the detail as to when the Memorandum and Articles of Association could be inspected. With such a small development, enquires could have been made of those concerned if the Respondents really felt that people were being prejudiced.
34. The overall result of this is that costly litigation has ensued when it seems clear from the evidence lodged that the Respondents (a) were content on at least two occasions, to overlook any procedural defect and accept the right to manage claim and (b) either did not give any thought as to what allegations it wanted to make when it prepared its Counter Notice or were deliberately obtuse.



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**Bruce Edgington**  
**Chair**  
**20<sup>th</sup> October 2010**