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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

LON/00AG/LRM/2009/0020

Premises: 99 CANFIELD GARDENS LONDON NW6 3DY

Applicant: 99 CANFIELD GARDENS RTM COMPANY
LIMITED

Represented by: SEDDONS, SOLICITORS

Respondent: SIMONE MIRIAM LESTER

Represented by: CONWAY & CO, SOLICITORS

Tribunal: HELEN CARR

Date of Hearing: 15/02/10

Date of Decision: 15/02/10

LON/00AG/LRM/2009/0020

99 Canfield Gardens London NW6 3DY

DECISION

The Applicant is entitled to acquire the right to manage 99 Canfield Gardens London NW6 3DY

FACTS

1. This is an application by 99 Canfield Gardens RTM Company Limited (the Applicant) for a determination under section 84 of the Commonhold and Leasehold Reform Act 2002 (the Act) that it was, on the relevant date, entitled to acquire the right to manage the property known as 99 Canfield Gardens London NW6 3DY.
2. The landlord, Simone Miriam Lester, (the Respondent) opposed the application.
3. Both the Applicant and the Respondent agreed that the matter should be dealt with on the basis of written representations and the Tribunal directed that the application would be dealt with without an oral hearing.
4. The Applicant was represented by Seddons, solicitors and the Respondent by Conway & Co, solicitors.
5. The Applicant served a claim notice in accordance with section 79 of the Act dated 17th August 2009. The claim notice stated that the qualifying tenants for the purposes of the Act were Hanna Whitwell, Flat 1, Sabine Christine Vinck, Flat 2, Jose Ricardo Negro Sequeira Esteves De Matos and Anat Talmor of Flat 3, and Rajiv Mohan Singh Ahluwalia and Jiazi Chen of Flat 4. It also stated that each of the qualifying tenants were members of the RTM company.
6. The Respondent served a counternotice on 29th September 2009 alleging that the Applicant was not entitled to acquire the right to manage the property because the details of the members were incorrectly noted with the claim notice and because the claim notice did not comply with the requirements of the form of claim notices as required by The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003.

THE LAW

7. The relevant procedures for the Applicant, being a Right to Manage company, to acquire the right to manage the property are set out in sections 75, 78, 79, 80 and 88 of the Act. The most salient provisions for the purposes of this determination are section 79, 80 and 81 set out below:

79 Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (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.
- (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.
- (6) The claim notice must be given to each person who on the relevant date is—
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

S80 Contents of claim notice

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
 - (a) the qualifying tenant of a flat contained in the premises, and
 - (b) a member of the RTM company, and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
 - (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

S81 Claim notice: supplementary

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
 - (a) the premises, or
 - (b) any premises containing or contained in the premises,may be given so long as the earlier claim notice continues in force.
- (4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—
 - (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
 - (b) ceased to have effect by reason of any other provision of this Chapter.

SUBMISSIONS BY THE PARTIES

8. In the Respondent's statement of case dated 18th December 2009 her solicitors argued as follows:

'Upon review of the register it was noted that only Ms Vinck, Mr Esteves de Matos, Ms Whitwell and Mr Ahlivwalia were entered as members of the company, neither have the notices of invitation to participate listed such persons as members. The Claim Notice however under part 1 included the names of both Anat Talmor and Jiazi Chen as members of the company.

Under Section 80 of Para 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (CLARA) there is the requirement that the claim notice provide the details of the members of the company. By the inclusion of names of persons who were not at the relevant date, such members, it is the Respondent's position that the Applicant has not complied with the relevant section of the act.

Under Section 80(9) of Part 2 Chapter 1 of CLARA, there is provision that the claim notice must comply with such requirements (if any) about the form of claim notice as may be prescribed by the regulations. Such regulations are The Right to Manage (Prescribed Particulars and Forms) England) Regulations 2003. Under Schedule 2, the form of claim notice to be used is included which provides under paragraph 3 that the full

name of each person who is both the qualifying tenant and member of the company is to be identified in Part 1 of the Schedule to the form of claim notice.

The claim notice which is subject of this application failed to comply with section 80(9) as it did not comply with the requirements of the form of claim notice and did not enter the necessary information in compliance with the regulations’.

9. The Respondent argues that the identity of the necessary members is crucial to any RTM claim where the ability to give the claim notice is contingent to achieving the requisite number of members under section 79 (4) and (5) of the Act. In addition she argues that the identification of the necessary members is relevant even if there is no challenge under section 79 as such individuals are all jointly and severally responsible for the costs incurred as a consequence of giving the claim notice. The point that is made is that the claim notice that has been given provides that Mr Talmor and Mr Chen could be individually pursued for such costs where this is not the case.

10. The Applicant’s response to the Respondent’s statement of case dated 15th January 2010 argues as follows:

‘The Applicant says that it has met every requirement of Section 80 by listing the full names and addresses of all Qualifying Tenants and members of the Company. The inclusion of two additional names (Jiazi Chen of Flat 4 and Anat Talmor of Flat 2) who are both Qualifying Tenants of their respective flats does not alter the underlying factual position and does not invalidate the Notice.

The Applicant also says that the alleged omission in the particulars is not an omission. The applicant has inadvertently listed too many people as members. In any event Miss Chen and Miss Talmor have now applied to be and are members of the Company’.

11. The Applicant relies on *Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Company Limited* LRX/52/2004 and *Bennets Courtyard RTM v Ground Rents (Regisport) Limited*. It accepts that compliance with the provisions to include the requisite number of members is essential so that the Right to Manage is not handed over against the wishes of the majority of tenants but it argues that in this particular case the Respondent was well aware that the Applicant had the requisite members.

12. It submits that the error is at most an inaccuracy and that the inaccuracy can be cured by applying the reasonable recipient test set out in *Mannai Investments v Eagle Star* 1997 AC 759. Alternatively it argues that the Claim Notice is not invalidated by reason of the saving provision at section 81(1) of the Act. In the further alternative it argues that if there was an inadvertent error, it has caused no prejudice to the Respondent. The Applicant refers to *R v Immigration Appeal Tribunal ex parte Jeyanthan* (1999) (CA) AER 231.

13. The Applicant further submits in response to the second objection raised by the Respondent, that the Notice does comply with the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003.

14. The Applicant also asks for a determination under section 20C of the Landlord and Tenant Act 1985 on the basis that the Respondent's allegations lack real substance and are bound to fail in view of the saving provisions.

DECISION

15. The Tribunal in reaching its decision has taken full account of the law relating to the acquisition of the Right to Manage. It is clear that the notice of claim contained an error. However, as the decision of the Landlords Tribunal in *Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Company Limited* LRX/52/2004 makes clear, an LVT is entitled to consider the effect of any failure to comply with statutory requirements and to consider whether the landlord is prejudiced.

16. The purpose of section 80(3) of the Act is to communicate to the landlord that a sufficient proportion of tenants are members of the RTM so that the Right to Manage is not handed over against the wishes of the majority of tenants. The notice of claim served by the Applicant fulfilled that statutory purpose. Moreover any defect in the notice is saved by section 81(1) of the Act. Therefore the Tribunal **determines** that the Applicant was on the relevant date entitled to acquire the right to manage the Premises.

17. In relation to the section 20C application, the Tribunal **determines** that the application fails. In its view the Respondent is entitled to raise apparent errors in the documentation and it is for the Tribunal to determine whether there is prejudice or not.

Signed Helen Carr

Dated 15/02/10