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H.M.COURTS & TRIBUNALS SERVICE
LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Commonhold and Leasehold Reform Act 2002. Part 2. (the Act)

Ref. LON/00AR/LRM/2012/0014

Premises: 13-24 Romside Place, Brooklands Lane,
London RM7 7EE

Applicant: 13-24 Romside Place RTM Company Limited
(the RTM Co.)

Representative: Vision Property & Estate Management UK Limited
(Vision)

Respondent: Assethold Limited

Date of
Determination: 17th August 2012

Tribunal: A.ENGEL M.A.(Hons.) - Chairman
M.CARTWRIGHT F.R.I.C.S.
S.WILBY

DETERMINATION

The RTM Co. was entitled to acquire the right to manage the Premises on the relevant date (16th March 2012).

REASONS

(References to Page numbers are references to Pages in the Bundle)

The Application

1. By written application, dated 24th May 2012, the RTM Co. applied to the Leasehold Valuation Tribunal (pursuant to Section 84(3) of the Act for a determination that it was, on the relevant date, entitled to acquire the right to manage the Premises.

Hearing, Evidence and Submissions

2. A hearing took place before the Tribunal on 17th August 2012 when the RTM Co. was represented by Mrs Mahoney (the Managing Director of Vision) and the Respondent was represented by Mr Gurvits (a Director of Assethold Limited, the Respondent).
3. The Tribunal had before it a Bundle of documents. In addition, Mr Gurvits produced an additional document (a copy of an entry in the Land Register) at the hearing.
4. The Bundle included a witness statement of Mrs Mahoney and Mr Gurvits cross-examined Mrs Mahoney at the hearing.
5. Both Mr Gurvits and Mrs Mahoney made oral submissions at the hearing.

The Claim Notice

6. The Claim Notice is dated 16th March 2012.
7. Accordingly, 16th March 2012 is “the relevant date” – see Section 79(1) of the Act – as both Mrs Mahoney and Mr Gurvits agreed at the hearing.
8. The Claim Notice was addressed to both the Respondent (Assethold Limited) and Bermac Properties plc (Bermac) and we are satisfied that it was served on both these companies (as well as the other requisite recipients).
9. No issue arises in respect of the content of the Claim Notice – but the Respondent submits that it is invalidated by errors in other documents.

Notice inviting Participation - Facts

10. Before serving a Claim Notice, a RTM Company must serve a Notice Inviting Participation (NIP) on various persons – see Section 78 of the Act.
11. The Bundle contained two different versions of the NIP – Pages 42 to 46 and Pages 145 to 148. . Both are dated 20th February 2012 and both name Bermac as the Landlord.
12. The difference is that the Notice on Pages 42 to 46 names Roisin Mahoney as a member of the RTM Co. whereas she is not named as a member on Pages 145 to 148.
13. Roisin Mahoney (Mrs Mahoney) is the Managing Director of Vision and she was responsible for the formation of the RTM Co. It is clear that she was not, at any time, a member of the RTM Co. and we so find as a fact.
14. It is not clear which version of the NIP was served by Vision (on behalf of the RTM Co.). In our view, it is likely that the version on Pages 42 to 46 (including Rosin Mahoney as a member) was served and we so find as a fact.
15. Page 46 contains a Register of Members of the RTM Co. – which was served as part of the NIP.
16. Mr Gurvits queried the dates listed on the basis that they corresponded with the dates on the applications for membership. Mrs Mahoney suggested that the dates were the dates she received the applications as they were sent by e-mail. However, Mrs Mahoney was unable to provide evidence to support this suggestion and we find as fact (on the balance of probabilities) that some, at least, of the applications for membership were received shortly after the dates recorded on the Register of Members. We also find as a fact that all applications were received and properly processed before 20th February 2012.

Register of Members

17. In our view, it is not improper for a Register of Members to refer to dates of application rather than dates of receipt but even if we are wrong, this information is not required by either Section 78 of the Act or the relevant Regulations - The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (the Regulations) or, in the alternative, would be an “inaccuracy” - see Section 78(7) of the Act which provides:-

“A notice of intention to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.”

18. Further, the information (as to membership – other than Mrs Mahoney) was correct when the NIP was served and it is clear that no person (individual or company) was prejudiced.

19. We conclude that the NIP was not invalidated on this ground.

Reference to Mrs Mahoney

20. It is clear that the (incorrect) reference to Mrs Mahoney as a member of the RTM Co. did not cause any prejudice to any person (individual or company). In this regard it is of note that the address next to her name is Vision’s business address.

21. Section 78(2)(b) of the Act provides that a NIP must state the names of the members of the RTM Company. This NIP complied with that requirement; the incorrect reference to Mrs Mahoney as a member was mere “surplusage” and did not, in our view, invalidate the NIP.

22. Further, if we are wrong, we are satisfied that the (incorrect) reference was an “inaccuracy” – within Section 78(7) of the Act.

23. Thus, we conclude that the NIP was not invalidated on this ground.

Bermac

24. Bermac was the Landlord prior to Assethold Limited. The evidence establishes that the freehold was acquired by Assethold Limited from Bermac on 24th January 2012 and that Assethold Limited was shown as the Freehold Owner on the Land Register on 20th February 2012.
25. At the hearing, Mrs Mahoney conceded that the reference to Bermac in the NIP was in error.
26. Regulation 3(2)(b) of the Regulations provides that a NIP shall contain the name of the Landlord. This NIP did not do so.
27. Having regard to the decisions of the Upper Tribunal (Lands Chamber) in the cases of Assethold Limited v 125 Yonge Park RTM Company Limited [2011] UKUT 379 (LC) and Assethold Limited v 14, Stansfield Road TRM Company Limited [2012] UKUT 262 (LC), we find that this error cannot be categorised as an “inaccuracy” and therefore the defect is not cured by reason of Section 78(7) of the Act.
28. Thus, the issue we must determine is whether this error in the NIP invalidates the Claim Notice.
29. The Claim Notice was served on Assethold Limited (as well as Bermac) and it is clear that no person (individual or company) was prejudiced by the error in the NIP.
30. The Claim Notice itself contained no errors.
31. In these circumstances, we conclude that the error in the NIP did not invalidate the Claim Notice.

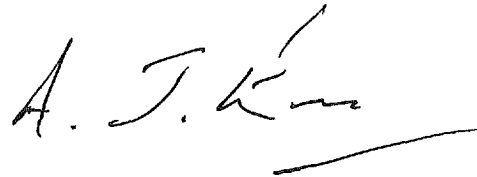
Costs

32. Mr Gurvits applied for costs to be awarded to the Respondent—pursuant to Paragraph 10 of Schedule 12 to the Act.

33. As the Respondent's case did not succeed, an order for costs would be most unusual in any jurisdiction. Our jurisdiction is (very) limited and there is no evidence that the Applicant has acted, in any way, frivolously, vexatiously, abusively, disruptively or otherwise unreasonable in connection with these proceedings.

34. Accordingly, we make no Order for costs.

SIGNED:

A handwritten signature in black ink, appearing to read 'A. J. Engel', with a long horizontal flourish extending to the right.

(A.J.ENGEL – Chairman)

DATED:

17th August 2012