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Residential
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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Commonhold and Leasehold Reform Act 2002 Section 84

LON/00BA/LRM/2011/0045

Premises: 75 Worple Road London SW19 4LS

Applicant: 75 Worple Road RTM Company Ltd

Represented by: Colemans – Ctts Solicitors

Respondent: Israel and Chavi Moskovitz (1)
Solomon Reich (2)
The trustees of Achiezer Arad (3)
Y and Y Management Ltd (4)

Represented by: Conway and Co Solicitors

Tribunal: Dr Helen Carr (Chairman)
Mr Neil Maloney FRICS

Date of Decision 16th February 2012

Decision

The Tribunal determined that the Applicant is entitled to acquire the Right to Manage of 75 Worple Road London SW19 4LS

Background

1. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') makes provision for RTM companies, the members of which are qualifying tenants of premises to which the provisions apply, to acquire the right to manage the premises. A landlord who is given a notice claiming the right to manage by an RTM company may give the company a counter-notice alleging that the company is not entitled to acquire the right to manage the premises (section 84(2)), and the RTM company may then apply to the LVT for a determination that it was on the relevant date entitled to acquire such right (section 84(3)).
2. By a claim notice dated 5th September 2011 and delivered by letter dated 15th September 2011 the Applicant, 75 Worple Road RTM Company Ltd, an RTM company, gave notice to the Respondents the freehold owners of 75 Worple Road London SW19 4LS , the premises which are the subject of this determination, that it intended to acquire the Right to Manage the premises .
3. The premises contain 27 flats.
4. By a counter-notice dated 18th October 2011 the Respondent disputed the claim alleging that by reason of section 72 of the Act the Applicant was not entitled to acquire the Right to Manage the premises.
5. The Applicant has therefore applied to the Tribunal pursuant to section 84 of the Commonhold and Leasehold Reform Act 2002 for a determination that it was, on the relevant date, entitled to acquire the Right to Manage 75 Worple Road London SW19 4LS.
6. On 6th December 2011 the LVT issued directions in this matter and determined that the matter be dealt with on the basis of papers received unless either party requested an oral hearing. No such request having been received the matter is therefore being determined on the basis of the papers submitted by the parties.

The issue

7. The issue before the Tribunal is whether on the date on which the notice of claim was given the Applicant was entitled to acquire the Right to Manage the premises specified in the notice. The Respondent in its statement of case dated 20th December 2011 gave five reasons for disputing the entitlement of the Applicant. In substance those reasons are as follows:

- a. The status of the Applicant Company
 - b. It put the Applicant to strict proof that on 16th September 2011 the RTM company had the requisite number of participating members as required by s.79(5) of the Act.
 - c. It challenged whether the Notice of Invitation was served on all relevant leaseholders contrary to s.79(2) and s.78(1) of the Act.
 - d. It argued that the claim notice was not served on all of the requisite parties contrary to s.79(8) and s.79(6).
 - e. It argued that the claim form submitted does not contain the particulars and is not in the form required under the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 contrary to s. 80(8) and s.80(9) of the Act.
8. Each of these matters is dealt with under the relevant heading below.

The determination

9. The papers that the Tribunal used in their determination are the papers contained in the bundle prepared by the parties in accordance with the directions issued on 6th December 2011.

The status of the Applicant Company

10. The Respondent argues that the Applicant does not have the requisite status to acquire the right to manage. Specifically it puts the Applicant to proof that the company had the requisite members in compliance with section 79(5) of the Act. Section 79(5) requires that the membership of the RTM company must on the relevant date – the issue of the claim notice - 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. The argument seems to be that there is no evidence that the number of members of the RTM company is sufficient for the purposes of the Act.
11. The Applicant originally incorporated for purposes other than RTM on 23rd April 2009. On 9th June 2009 the Company changed its name to 75 Worples Road RTM Company Ltd and by a special resolution on 7th December 2010 the RTM memorandum and articles were adopted. The special resolution listed four subscribers of the RTM company. Participation notices were issued to all qualifying tenants on 9th April 2009 which indicated the qualifying tenants' willingness to become members of the RTM company as soon as practicable. The claim notices confirm under schedule part 1 that there are nineteen members of the company. Therefore the requirements of s.79(5) are met.
12. **The Tribunal therefore determines that the RTM company had the necessary membership and status to acquire the RTM.**

22. The Respondents argue in connection with Flat 17 that no notice of invitation to participate was served on Mr Imran Hamood Khavwaja who is a qualifying tenant of Flat 17.
23. The Applicant's response is to attach the notice of invitation to participate served upon Mr Imran Hamood Khavwaja. The Tribunal has perused this notice and accepts that it was appropriately served.
24. The Tribunal, having had sight of this document, therefore determines that invitation notices have been served on all qualifying tenants.

Service of claim notice under s.79(8)

25. Section 79(8) provides that 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.
26. The Respondent repeats the arguments that it made in connection with the service of the invitations to participate. In addition the Respondent has noted that in respect of flat 17 the Land Registry address was used for correspondence with Ms Hanratty. The Respondent does not set out what that address was.
27. The Applicant argues that the notices have been served in the same manner as the service of invitations to participate and that the Tribunal should make the same determination in connection with the service of the claim notice. The Applicant provided to the Tribunal copies of all the relevant claim notices in the bundle.
28. The Tribunal notes that the service of the claim notice for Ms Hanratty is to the same address as the notice of invitation to participate. The Tribunal can see no reason why the Land Registry address is not the appropriate address for service without further argument from the Respondent.
29. The Tribunal accepts the argument of the Applicant and having noted the copies of the notice of claim determines the requirements of section 79(8) have been complied with.

Claim notice compliance – s.80(8) and s.80(9) of the Act

30. The Respondent's argument in connection with the claim notice is that it does not comply with s.80(78) of the Act because it does not contain such other particulars as required by regulations. Specifically it refers to (i) the need for a 'wet' rather than electronic signature (ii) the claim notice refers to the 2003 regulations rather than the 2010 regulations
31. The Applicant argues that there is no requirement for a 'wet' signature to the claim notice in order to comply with the Act.

32. The Tribunal is not aware of any determination on the point. It considers that in the current state of technology it has become normal practice to accept electronic signatures. Indeed there is no material difference between an electronic signature, which is a scanned and reproduced signature, and a photocopy of a signature.
33. The Tribunal therefore determines that the electronic signature is sufficient to comply with the Act.
34. The Applicant explained that reference to the 2003 regulations is an obvious error. It points out that the working of regulation 4 and regulation 8(2) in the 2003 regulations is identical to the 2010 regulations and indeed there is no difference between the two sets of regulations. In its opinion the reference to the 2003 regulations was no more than an inaccuracy. It drew the attention of the Tribunal to s.81(1) of the Act which states as follows:

‘A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80’

35. The Tribunal considered the point carefully. It accepted that because the contents of the Regulations had not changed in substance that the reference to the 2003 Regulations was an inaccuracy rather than a matter which caused prejudice to the Respondent. Indeed it noted that the Respondent did not claim any prejudice. It therefore determined that the failure to refer accurately to the 2010 regulations did not invalidate the claim notice.

36. The Tribunal therefore determines that that the Applicant is entitled to acquire the Right to Manage of 75 Worple Road London SW 19 4LS

Helen Carr

Chairman

A handwritten signature in black ink, appearing to read 'Helen Carr', written in a cursive style.

16th February 2012