



Property : Flats 7, 9, 11, 15, 17 & 19 Stanstrete Field, (described as 1-12 in application) Great Notley, Braintree, Essex CM77 7PR

Applicant : Stanstrete Field RTM Co. Ltd.

Respondent : Holding & Management (Solitaire) Ltd.

Date of Application : 8th February 2013

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

DECISION

1. This Application fails and the Applicant is therefore not entitled to acquire the right to manage the property.

Reasons

Introduction

2. The Applicant is a right to manage company ("an RTM") whose objects are, amongst other things, to manage the property. Such RTM served a claim notice on the 21st November 2012 seeking an automatic right to manage the property and giving the 24th December as the date by which a counter-notice must be served.
3. As at the date of the claim notice the following people were the long lessees i.e.

Flat 7	Mr. and Mrs. Christopher Petts
Flat 9	Mr. and Mrs. Mark Young
Flat 11	Mr. Edward Larnerd
Flat 15	Mr. and Mrs. Daniel Westhorpe
Flat 17	Mr. and Mrs. Gary Orme
Flat 19	Ms. E. Le Blanc

4. On the 19th December 2012, Estates & Management Ltd ("E & M"), agents acting for the Respondent freehold owner, served a counter-notice stating that the Notices of Invitation to Participate are wrong or have been wrongly served.

Procedure

5. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in a directions order dated 20th February 2013 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying 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 10th April 2013 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

6. Section 78(1) of the 2002 Act says that before serving a claim notice, an RTM must give notice to each person who is a qualifying tenant and "*neither is nor has agreed to become a member*" of the RTM. This is called a Notice of Invitation to Participate.
7. Section 79(1) defines the 'relevant date' as being the date when a claim notice is 'given'. Section 80(6) states that the claim notice "*must specify a date, not earlier than one month after the relevant date*" by which a counter-notice must be given.
8. Section 79 (2) says that if it is necessary to serve a Notice of Invitation to Participate, then 14 days must pass after such notice is served before a claim notice can be served.

Conclusions

9. The counter-notice makes specific detailed allegations of failure to deal with the Notices of Invitation to Participate as follows:
 - (a) They were served on the 9th November 2012 which was less than 14 days before service of the claim notice. This appears to be a correct statement of fact. The relevant lessees i.e. those who were not members of the applicant RTM (Mr. Larnerd and Mr. and Mrs. Orme) have statements in the evidence filed giving their full support to the application and to the Applicant. Unfortunately, these statements do not say that they have "*agreed to become a member*" of the RTM.
 - (b) No notice was served on Mr. and Mrs. Murphy of flat 19. The evidence is that they became owners of the leasehold interest in this flat on the 19th December 2012 i.e. well after the date of the claim notice. This objection therefore fails.
 - (c) The co-owners of flats 9 and 15 had not been served. The co-owner of flat 9 is referred to as Zoe Hollis by the Respondent but she has signed her statement as Zoe

Young. The Tribunal infers that this is the same person. Both she and Mrs. Westhorpe of flat 15 have signed statements to say that they received the notices and the Tribunal notes that the letters enclosing the same are addressed to both lessees. This objection fails.

- (d) Ms. Le Blanc is a member of the RTM company but is alleged not to be a qualifying tenant. The Tribunal finds, for the reason stated above, that she was a qualifying tenant at the date of the claim notice and this objection therefore fails.
- (e) A notice was not validly served on Mr. Larnerd. In the Respondent's submissions this allegation is withdrawn.
- (f) The notices do not state the day when the Memorandum and Articles of Association of the Applicant can be inspected. The evidence is that everyone involved was sent copies and this objection therefore fails.

10. In the Respondent's submissions they make 1 further allegation namely that the Applicant in the application form is said to be Mr. D. Westhorpe and not the RTM company. That was corrected by the Tribunal on receipt of the application as was clear from the directions order. This objection therefore fails.
11. Thus, the only objection which has merit is the first. In this case, there were, technically, 6 qualifying tenants of which 4 were members of the RTM company. The Act says quite specifically that people who are not members and have not agreed to become members must be served with a Notice of Invitation to Participate at least 14 days before the service of the claim notice.
12. In this case, the tenants of 2 of the flats i.e. Mr. Larnerd and Mr. and Mrs. Orme were allegedly served with such a notice but it was less than 14 days before the claim notice. Unfortunately, Section 79 of the 2002 Act is mandatory and it says that a claim notice cannot be served until the 14 days has expired. The saving provisions in Sub-section 81(1) do not offer any relief.
13. Mr. and Mrs. Orme's signed statement says that they were members of the RTM company on the 21st November whereas the evidence suggests that they weren't. Their names do not appear on the back of the Memorandum and Articles of Association and the Applicant's submissions do not suggest that they were. They are not named on the claim notice as members. The rest of their statement simply expresses support for the application and the RTM company.
14. Mr. Larnerd's statement again only expresses support. However, the main point is that this statement appears to be signed by his son and the Tribunal cannot therefore be satisfied that he has been served with the notice. The statement appears to be signed by L. Larnerd and adds "*As instructed by my Father who lives in Spain*".
15. For these reasons, the application fails. The Applicant may feel that this is unfair but it must realise that provisions which take away the

right of an owner to manage its own property are draconian. The procedural requirements are precisely set out in the 2002 Act with the clear message that if they are not strictly complied with, the result will be no compulsory takeover of managerial responsibility.

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Bruce Edgington
President
2nd May 2013