



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AX/LRM/2013/0025**

Property : **7 Brunswick Road, KT2 6SB**

Applicant : **Brunswick House RTM Company Limited**

Representative : **The Leasehold Advice Centre**

Respondent : **Chancery Lane Investments Limited**

Representative : **Moreland Estate Management**

Type of Application : **Application for a declaration of the Right to Manage**

Tribunal Judge : **S O'Sullivan**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 December 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant acquired the right to manage the property known as 7 Brunswick road Kingston Surrey KT2 6SB on the relevant date being 12 November 2013.
- (2) The tribunal determines that pursuant to rule 13(1)(b)(iii) of The Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013 the Applicant is allowed its costs sum of £1050 plus Vat and disbursements of £25.86.

The application

1. The tribunal has before it an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the “Act”).
2. Directions were made dated 30 September 2013 which provided for the application to be considered by way of a paper determination. It was considered on 17 December 2013.

The Applicant’s case

3. The Property comprises a block of 5 self-contained flats sold on long leases, the freehold of which is owned by Chancery Lane Investments Limited.
4. By a claim notice dated 30 June 2013 the Applicant gave notice that it intends to acquire the Right to Manage the property known as 7 Brunswick Road, KT2 6SB (the “Property”) on 12 November 2013.
5. By a counter notice dated 8 August 2013 the Respondent denied that the Applicant was entitled to acquire the right to manage.
6. The Applicant relied on its claim notice and documents lodged in support of the application.

The Respondent’s case

7. The Counter Notice served dated 8 August 2013 disputed the claim under section 74(1), 78(1), 79(5) and 80(6) of Part 2 of the Act.
8. The Applicant’s representative responded to the counter notice on 27 August 2012 responding to the challenges and seeking clarification on the grounds stated in the counter notice.

9. A short email reply was received to that letter dated 12 September 2013 from the Respondent which stated simply

“Upon reviewing the file again I have now advised our client that the RTM process has not been carried out in the correct manner and the RTM Notice was not served correctly in accordance with statute and therefore was invalid/could be refused. We would suggest that attention to detail will assist in future.”

10. By an email dated 12 September 2013 the Applicant’s representative replied and again requested clarification of exactly why it was alleged that the RTM process had not been carried out in the correct manner.
11. By an email dated 13 September 2013 the Applicant’s representative confirmed that in the absence of a response an application would be made to the tribunal which would include an application for costs.
12. The directions dated 30 September 2013 specifically directed the Respondent on or before 25 October 2013 to send a statement of case setting out in detail the exact reasons for its denial of the right to manage so that the Applicant knows what case it has to meet. The Respondent failed to serve a statement of case and bundles were lodged on 7 November 2013 by the Applicant together with a schedule of costs. A copy of that bundle and the schedule of costs was sent to the Respondent.
13. By letter dated 24 November 2013 the Respondent then wrote to the tribunal. It attached a copy of a letter dated 3 September 2013 which it says it had sent to the Applicant which set out its grounds of opposition to the claim. The Applicant disputes that this letter was ever sent and questions why it was not referred to in the email dated 12 September 2013 if this were the case. The challenges and the Applicant’s responses are as follows;

- (i) At the date of incorporation of the RTM company namely 10 June 2013 the only member was Ground Rent Trading Limited.

The Applicant says that this is clearly untrue. The Applicant is unfamiliar with the name Ground Rent Trading Limited. All the flat owners were members from the incorporation date and remain so.

- (ii) No Memorandum & Articles of Association were provided with the notice.

The Applicant says that there is no requirement that they should be so attached. Had a request been made they would have been provided.

- (iii) On a visit to inspect the statutory books on 12 and 22 August 2013 they were unable to gain access.

It is disputed that these attempted inspections took place but in any event no requests for appointments were made nor were any requests for copy documents received. Also the Applicant points out that the visits post date the service of the counter notice and questions why such a visit would have taken place when a counter notice denying the right had already been served.

- (iv) It is not accepted that the owners of all 5 flats were members of the company when the claim notice was given on 2 July 2013.

This is denied. The Applicant says that all flat owners were members as at the date of the notice of claim.

The tribunal's decision

- 14. The tribunal determines that the Applicant acquired the right to manage on the relevant date being 12 November 2013.

Reasons for the tribunal's decision

- 15. The Applicant enclosed all documents in support with its application. By directions dated 30 September 2013 the Respondent was directed to serve a statement of case by 25 October 2013 specifying its exact grounds for challenging the right to manage. It failed to do so and in fact has not engaged with the tribunal at all.
- 16. The only document which sets out any grounds for challenge is a letter dated 3 September 2013. This was purportedly sent to the Applicant on that date although it was not received by them until it was sent to the tribunal on 25 November 2013. The Applicant responded to that letter by letter dated 25 November 2013.
- 17. The tribunal does not consider that any of the challenges raised by the Respondent are valid for the following reasons adopting the same numbering set out in paragraph 13 above;
 - (i) The first minutes of the RTM company clearly show all five flat owners as members of the company.
 - (ii) There is no requirement for the Memorandum and Articles of Association to be sent with the Claim notice. No request was made for these documents to be provided.

- (iii) There is no evidence that any request was made for an appointment to inspect the statutory books.
- (iv) All flat owners were clearly members of the company when the Claim notice was given.

Application for costs under Rule 13

- 18. The Applicant made an application for costs on lodging the application on the basis that the Respondent's failure to give any meaningful reason to its denial of the Right to manage constituted frivolous and vexatious behaviour.
- 19. The application is made under rule 13(1)(b)(iii) of The Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013.
- 20. The grounds for the application are that;
 - (i) The Respondent has been frivolous and vexatious in the service of a Counter Notice upon which there were no grounds to refute the claim.
 - (ii) The respondent was asked to provide clarification and further details on several occasions and failed to do so save for one email which failed to provide any more detail.
 - (iii) The letter dated 3 September 2013 which was allegedly sent to the Applicant but was not received failed to raise any points of substance and contained only incorrect statements as to the members of the RTM company.
 - (iv) The queries raised in the letter of 3 September 2013 were raised after the application had been made to the tribunal.
 - (v) Had the Respondent acted reasonably no application to the tribunal would have been necessary.
- 21. A schedule of the costs was provided. The person with conduct of the matter of a partner in the firm for 27 years with a charge out rate of £175 plus Vat per hour. The breakdown of fees totals £2,608.86. A fixed fee of £2047.86 was agreed with the client and the disbursements of £25.86 relate to postage and folders for bundles, receipts are attached.
- 22. In its letter of 24 November 2013 the Respondent commented on the costs schedule prepared and submitted it was an unjustified sum. It is suggested that the person with conduct of this matter is an estate agent

and submits that a charge of £250 is appropriate given that the letter of 3 September 2013 was not responded to.

Costs – the tribunal’s decision

23. Pursuant to rule 13 (1) (b)(iii);

(1) The Tribunal may make an order in respect of costs only—

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(iii)a leasehold case

24. The tribunal was satisfied that the Respondent has acted unreasonably in defending the proceedings. It has failed to comply with the tribunal’s directions in providing a statement of case and did not give any reason for its non-compliance. Reasons for the challenge to the notice were not received by the Applicant until 25 November 2013, after the application had been made and shortly before the matter was due to be considered. The tribunal is not satisfied that the letter dated 3 September 2013 was in fact sent to the Applicant on that date if at all. Had it been sent it is likely that it would have been referred to by the Respondent in further correspondence after that date. Had the Respondent set out its challenges in a timely fashion it may be that the need for the application to the tribunal may have been avoided.

25. The tribunal considered the schedule of costs provided by the Applicant. It was satisfied that Mr Bazin was a professional with extensive experience in this field and that his charge out rate fell within a reasonable range. It considered the time spent however to be excessive, in particular almost 4 hours was spent on drafting a straightforward application to the tribunal and 3.75 hours spent preparing bundles for the hearing. The preparation of bundles should have taken much less time and could have been carried out by a more junior colleague. The tribunal therefore allowed a total of 6 hours of time at the rate of £175 plus Vat plus disbursements of £25.86.

Name: S O’Sullivan

Date: 17 December 2013

