



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

Case Reference : LON/00AR/LEE/2014/0003

Property : Kingswood Lodge, 63 Main Road,
RM2 5EH

Applicant : Kingswood Lodge RTM Company
Limited

Representative : SLC Solicitors

Respondent : Assethold Limited

Representative : Conway and Co Solicitors

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

Tribunal Members : Judge Carr

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

Date of Decision : 19th February 2015

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Applicant is not entitled to acquire the Right to Manage Kingswood Lodge, 63 Main Road RM2 5EH

The application

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 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 27th August 2014 the Applicant, Kingswood Ledge RTM Company Limited, an RTM Company, gave notice to Respondent, Assethold Limited, the freehold owner of Kingswood Lodge, the premises which are the subject of this determination, that it intended to acquire the Right to Manage the premises.
3. By a counter-notice dated 1st October 2014 the Respondent denied 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.
4. 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 Kingswood Lodge.
5. On 5th December 2014 the LVT issued directions in this matter and determined that the matter be decided on the basis of written representations alone and without an oral hearing unless either party requested an oral hearing. Neither party made any such request and therefore the matter is being determined without an oral hearing on the basis of the papers provided by the parties.

The issues

6. The tribunal has identified the relevant issues for determination as follows:
 - (i) Whether on the date on which the notice of claim was given, an earlier Claim Notice was in force

- (ii) Whether the Claim notice was given by an RTM Company which complied with section 79(5) of the Act
- (iii) Whether the notice of invitation to participate had been given to each person required
- (iv) Whether the Claim Notice contained all the required particulars

The law

7. Sections 71 – 94 of the Act set out the statutory framework for the acquisition of the Right to Manage. The relevant sections for the purposes of this determination are s.78(1), s.79(3), s80 ss (8) & (9) and s.81(3). For the convenience of the parties the salient provisions are summarised below.
8. Section 78(1) provides that before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given - (a) is the qualifying tenant of a flat contained in the premises, but (b) neither is nor has agreed to become a member of the RTM company.
9. Section 79 (3) provides that the claim notice must be given by a RTM company which complies with subsection (4) and (5). Section 79(4) provides that 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. Subsection (5) of s.79 provides that 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.
10. Section 80 concerns the contents of the claim notice. Subsection (3) provides that the notice must state the full name of each person who is both the qualifying tenant of a flat contained in the premises, and a member of the RTM company such particulars of his lease as are sufficient to identify it, including the date on which it was entered into, the term for which it was granted, and the address of his flat. Subsection (8) provides that the claim notice must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority. Subsection (9) provides that in addition it must comply with such requirements (if any) about the form of the claim notices as may be prescribed by regulations so made.
11. Section 81(3) provides that where any premises have been specified in a claim notice, no subsequent claim notice which specified – (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.

Arguments in connection with the notice of claim

A. Was an earlier Claim Notice in force on 27th August 2014, the date on which the notice of claim was given?

12. The Respondent's arguments are set out in its statement of case. It argues that at the date the claim notice was given an earlier claim notice remained in force on the same premises.
 - (i) The Applicant served a first Claim Notice seeking to acquire the Right to Manage the premises on 28th May 2014 to which a counter notice was given dated 30th June 2014.
 - (ii) On 27th August 2014 the Applicant served simultaneously upon the Respondent's solicitor the present Claim Notice and a notice of withdrawal of the first Claim Notice.
 - (iii) Section 86(1) of the Act provides for the withdrawal of a claim notice. This must be done by giving a notice of withdrawal which must be given (inter alia) to each person who is a landlord under the lease, any other party to the lease and the qualifying tenant of a flat contained in the premises (86(2)).
13. The Respondent's argument is that the withdrawal of the first claim notice would not take place until every person required by section 86 was given the notice of withdrawal. In addition the simultaneous service of both the second claim notice and notice of withdrawal could not be definitive as a withdrawal of the first notice prior to service of the claim notice pursuant to the requirements of section 86 of the Act.
14. The Respondent's solicitor requested copies of notices of withdrawal by letter on 29th August 2014. These notices of withdrawal have not been produced.
15. The Applicant argues that the first Notice of Claim failed to comply with the statutory requirements because, unbeknownst to the solicitors acting for the Applicant, the Applicant had changed the registered address of the RTM Company prior to the service of that Notice of Claim.

16. The Applicant argues that this failure was such that it rendered the Notice of Claim a nullity, citing *Avon Freeholds Limited v Regent Court RTM Company Limited* [2013] UT 03 and *Assethold Limited v 15 Yonge Park RTM Company Limited* [2013] UKUT 379. The Applicant argues that when the Notice of Claim is flawed by a failure to provide mandatory information, as in this particular case, there is no need to serve notices of withdrawal as the failure renders the Notice of Claim a nullity.
17. Nonetheless the Applicant's solicitors did withdraw the first Notice of Claim in a covering letter dated 27th August 2014 and sent to all qualifying tenants.

The tribunal's decision

18. The tribunal determines that the notice of claim is not defective on the grounds that an earlier Notice of Claim had not been withdrawn but was a nullity.

Reasons for the tribunal's decision

19. The tribunal accepts the argument of the Applicant that the failure to provide the correct address of the RTM company rendered the first Notice of Claim a nullity and therefore there was no need for that Notice of Claim to be withdrawn.

B. Did the notice of claim comply with s.79(5) of the Act

20. The Respondent argues that as there are 12 flats in the Premises the Applicant must establish that the Applicant's membership must comprise at least 6 qualifying tenants of flats in the Premises.
21. The Respondent argues that the Applicant is unable to satisfy the requirement because the Applicant has not complied with the provisions of its Articles of Association and the Companies Act 2006 in the keeping of the Register of Members.
22. The Respondent put the Applicant to proof that 6 or more qualifying tenants were properly entered on its register of members on the relevant date. The Applicant responded by email with attachments with what purported to be a copy of the original of the Register. However the document sent was a blank document. Moreover it was not kept at the registered office address in breach of the Companies Act.

23. The Respondent refers to a letter sent on 29th August 2014 (copied in the bundle) which repeated the request for a copy of the Register of Members
24. The Applicant explains that the blank version of the Register of Members was attached to the email in error by the Applicant's solicitor's secretary. As the Applicant's solicitor works remotely she was unaware that the version sent out was the blank page.
25. The Applicant's solicitor also states that the letter of 29th August 2014 was not received by her and therefore she was unaware that a blank page had been sent.

The tribunal's decision

26. The Tribunal determines the failure to provide a completed Register of Members means that the Applicant has failed to comply with s.79(5).

Reasons for the tribunal's decision

27. The tribunal accepts the arguments of the Respondent. This was an unfortunate mistake made by the Applicant's solicitor's secretary. The Tribunal notes that the Applicant's solicitor argues that she did not receive the follow up letter. However the Tribunal accepts the evidence from a firm of Solicitors that the letter was dispatched. It also considers that the provision of a blank document prevents the Applicant in this case from complying with the statutory requirements.

C. Was the notice of invitation to participate given to each person as required by the statute?

28. The Respondent argues that section 78(1) requires that before making an RTM claim the RTM company must give notice to each person at the time the notice is given who is the qualifying tenant of a flat contained in the premises, but neither is nor has agreed to become a member of the RTM Company.
29. The Respondent put the Applicant to proof that the Applicant had served valid notices inviting participation in accordance with the requirements of the section.
30. The Applicant's solicitor supplied copies of the notices inviting participation to leaseholders at the premises by email dated 10th June 2014.
31. The Respondent argues that these notices were invalid because of the failure to provide a completed Register of Members.

32. The Respondent further argues, in the alternative, that the notice in respect of flat 4 has been served at an address which was not the Flat address and puts the Applicant to proof of valid service of this notice. The request for further information was made in the letter dated 29th August 2014.
33. The Applicant argues that the notices were not invalid as the Register of Members demonstrated the requisite number of qualifying tenants.
34. The Applicant also restates the position that no letter was received from the Respondent's solicitors dated 29th August 2014.

The tribunal's decision

35. The tribunal determines the failure to provide a completed Register of Members means that the Applicant is unable to demonstrate that it complied with the requirements of s.78(1) .
36. The tribunal makes no determination on the Respondent's second point as it is not necessary for the purposes of this determination.

Reasons for the tribunal's decision

37. The Tribunal accepts the arguments of the Respondent. The decision follows its determination of issue B.

D Did the Claim Notice contain all the required particulars?

38. The Respondent's argument is that the claim notice failed to contain the particulars required by regulations. In particular the Respondent argues that the claim notice incorrectly included qualifying leaseholders who were not members of the company and accordingly incorrectly provided the particulars required under sections 80(8) and 80(9) of the Act.
39. The Applicant argues that the Claim Notice did in fact comply with section 80(8) and 80(9) of the Act in that it gave the correct details of each person who is both a qualifying tenant of a flat contained in the premises and a member of the RTM Company.

The tribunal's decision

40. The Tribunal determines the failure to provide a completed Register of Members means that the Applicant is unable to demonstrate that it complied with the requirements of s.80(8) and (9) .

Reasons for the tribunal's decision

41. The Tribunal accepts the arguments of the Respondent. Its determination follows its determination of issue B.

Name: Judge Carr

Date: 19th February 2015