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

Case Reference : **Lon/00AM/LRM/2014/0025**

Premises : **13 Murray Grove, London N1 7JY**

Applicant : **13 Murray Grove RTM Company Limited**

Representative : **Moore Blatch Solicitors**

Respondent : **Candle Investments Limited**

Representative : **Mr Scott Samuel, Director**

Type of Application : **Section 84(3) Commonhold and Leasehold Reform Act 2002 – an order that the RTM company is to acquire the right to manage the premises**

Tribunal Member : **Judge John Hewitt**

Date of Determination : **12 February 2015**

Date of Decision : **13 February 2015**

DECISION

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Decision

1. The decision of the tribunal is that the applicant was on the relevant date entitled to acquire the right to manage the premises,
2. The reasons for this decision are set out below.

Background

3. The applicant served on the respondent a claim notice dated 8 September 2014.
4. Paragraph 5 of that notice specified a date of 13 October 2014 as being the date on which any counter-notice was to be given.
5. Paragraph 6 of that notice specified a date of 15 January 2014 as being the date on which the RTM company intends to acquire the right to manage the premises. Section 80(7) of the Act is to the effect that the date to be given on which the RTM company intends to acquire the right to manage must be at least three months after the date specified for the giving of any counter-notice.
6. The respondent gave a counter-notice. It is dated 10 October 2014. The counter-notice asserted that the RTM company was not entitled to acquire the right to manage the premises for a number of reasons therein set out.
7. On 10 December 2014 the applicant RTM company made an application to this tribunal pursuant to section 84(3) of the Act seeking a determination that it was on the relevant date entitled to acquire the right to manage the premises.
8. Directions were duly given from which it emerged that the only point now relied upon by the respondent was that the date specified in paragraph 6 of the notice was not at least three months after the date specified in paragraph 5 of the notice.
9. The parties were informed that the tribunal proposed to determine the application without an oral hearing pursuant to rule 31. No objection to that has been taken and no request for an oral hearing has been received.
10. The tribunal has received written representations from the respondent. They are dated 5 January 2015. It has received written representations from the claimant. They are dated 16 January 2015.

The dispute

11. It is not in dispute that the date specified in paragraph 6 is not at least three months after the date specified in paragraph 5 of the claim notice.
12. The gist of the case for the applicant is that it was intended to insert in paragraph the date 15 January 2015 and by accident, slip or typing error it inadvertently inserted the date 15 January 2014.
13. The respondent asserts that the error is fatal, the claim notice is invalid and of no effect and the error cannot be cured by the provisions of section 81 of the Act.

The statutory provisions

Commonhold and Leasehold Reform Act 2002

14. **“80 Contents of claim notice**

(1) *The claim notice must comply with the following requirements.*

(2) *It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.*

(3) *It must state the full name of each person who is both—*

(a) *the qualifying tenant of a flat contained in the premises, and*

(b) *a member of the RTM company,
and the address of his flat.*

(4) *And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—*

(a) *the date on which it was entered into,*

(b) *the term for which it was granted, and*

(c) *the date of the commencement of the term.*

(5) *It must state the name and registered office of the RTM company.*

(6) *It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.*

(7) *It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.*

(8) *It 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.*

(9) *And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.*

81 Claim notice: supplementary

(1) *A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.*

(2) ...*(4)*

The gist of the respondent’s case

15. The gist of the respondent’s case is that the date in paragraph 6 of the claim notice is plainly not more than three months later than the date specified in paragraph 5 and thus paragraph 6 does not comply with the provisions of section 80(7) of the Act.

16. In support of this proposition the respondent relied upon the decision of the President of the Upper Tribunal (Lands Chamber) in *Moskovitz and others v*

75 Worple Road RTM Company Limited [2010] UKUT 393 (LC). In that case the issue was the effect of the date specified in paragraph 5 was less than one month after the relevant date contrary to the requirement of section 80(6) of the Act. The President noted that the effect of this was that the landlord had been given less than one's months notice to give a counter-notice. The RTM company submitted that the date inserted in the claim notice was an inaccuracy in a particular required by section 80 and thus could be saved by the provisions of section 81 of the Act. The President rejected that submission holding that the only particulars mentioned in section 80 were those mentioned in subsections (4) and (8) and thus section 81 was of no relevance to subsection (6).

The gist of the RTM company's case

17. The material submissions are those of Mr James Browne of counsel dated 16 January 2015.
18. The *Moskovitz* decision is acknowledged but he submits that it has been overtaken and is no longer good law. He cites the decision of HHJ Walden-Smith in *Assethold Limited b 15 Yonge Park RTM Company Limited* [2011] UKUT 379 (LC). This case concerned the effect of wrongly stating the registered address of the RTM company contrary to section 80(5) of the Act and whether the error could be saved by section 81. Having reviewed the authorities the judge concluded in paragraphs 17-20 that *Moskovitz* had been wrongly decided and that section 81 was capable of saving an inaccuracy in the mandatory details required by section 80. Thus she held that an inaccuracy in the details of the registered office, perhaps a spelling error or a typographical error, might be saved, but in the case before her a completely wrong address had been given and she held that could not be saved by section 81. As part of her reasoning the judge cited the House of Lords decision in *Mannai Investment Co Ltd v Eagle Star Life assurance Co Ltd* [1997] AC 749, an authority also relied upon by Mr Browne.
19. In *15 Yonge Park* HHJ Walden-Smith remarked that in *Moskovitz* the attention of the President had not been drawn to the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010 and she considered that these Regulations give strong support for the correct statutory interpretation of section 81 being that the 'the particulars' refers to sub- sections 80(2) to 80(8) of the Act inclusive and not merely subsections (4) and (8).

Conclusions

20. Mr Browne makes compelling submissions that the error in giving '2014' instead of '2015' is an obvious typing error or an inaccuracy or lack of exactness such that it may be saved by section 81(1) of the Act. That submission strikes a chord with me and in my experience in January of each year it is a common error to cite the previous year instead of the current year. I have made such an error myself and have seen it occur to others on numerous occasions.
21. I find that the *Mannai* test is met and that the reasonable recipient of the subject claim notice would readily appreciate the nature of the error. I am reinforced in this view by the fact that the printed form issued by the stationer bears a side note

making plain that the date to be inserted into paragraph 6 is to be a date at least three months after that specified in paragraph 5.

22. I therefore conclude that the error in paragraph 6 of the subject claim notice does not render that notice invalid by reason both of the provisions of section 81(1) of the Act and by the reasoning given in *Mannai*.
23. Neither party cited the recent Court of Appeal authority of *Natt and another v Osman and another* [2014] EWCA 1520 given on 28 November 2014. In this case the Court undertook a detailed review of the validity of statutory notices containing inaccuracies, errors and misdescriptions and the conflicting authorities particularly arising in the residential property sector. Although not an authority relied upon by me for arriving at my conclusions I have tested the present case against the guidance given by The Chancellor in *Natt* and I am satisfied that my conclusions are not contrary to that guidance.
24. For these reasons I find that on the relevant date the applicant RTM company acquired the right to manage the premises.

Judge John Hewitt
13 February 2015.