



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

Case Reference : **LON/00AY/LOA/2014/0004**

Property : **8 & 9 Estreham Road, London,
SW16 5NT**

Applicant : **8 & 9 Estreham Road RTM Co. Ltd.**

Representative : **Canonbury Management**

Respondent : **Assethold Ltd**

Representative : **Mr Gurvits**

Type of Application : **Right to Manage**

Tribunal Members : **Judge I Mohabir**

**Date and venue of
Hearing** : **17 December 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **9 February 2015**

DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that it was on the relevant date entitled to acquire the right to manage the property known as 8 & 9 Estreham Road, London, SW16 5NT (“the property”).
2. The property is an end of terrace building comprised of 5 self-contained flats known as Flats 8a-b and 9a-c, which are subject to long residential leases. The Applicant company was formed on 9 November 2012. The qualifying tenants who are also members of the company are the leaseholders of Flats 8b, 9b and 9c. Therefore, the leaseholders of Flats 8a and 9a are not members of the company. The Respondent is the freeholder.
3. By a claim notice dated 18 August 2014, the Applicant exercised the entitlement to acquire the right to manage the property.
4. By a counter notice dated 17 September 2013, the Respondent served a counter notice denying that the Applicant was entitled to acquire the right to manage the property on the basis that sections 78(1), 79(8), 79(6) and 79(3) of the Act had variously not been complied with. The respective arguments in relation to each of these sections are considered below.
5. The Applicant then applied to the Tribunal for a determination of the issue as to whether it was entitled to acquire the right to manage the property.

Hearing

6. The hearing in this matter took place on 17 December 2014. The Applicant did not attend and was not represented. The Respondent was represented by Mr Gurvits, a Director.

Procedural

7. By a letter dated 12 December 2014 from Canonbury Management (“Canonbury”), the Applicant had applied for the hearing to be adjourned because the Respondent had served its statement of case a week late and this did not allow the Applicant sufficient time to respond fully.
8. By a decision dated the same date, the application was refused. Essentially, the Tribunal was satisfied that the Applicant had suffered no real prejudice and it issued supplementary Directions allowing the Applicant to serve a supplementary statement in reply. The Tribunal also gave the Applicant permission to make a further application to adjourn the hearing at the commencement of the hearing itself.
9. By a letter dated 15 December 2014 from Canonbury, the Applicant renewed the application to adjourn the hearing for the same reason and set out how it would be prejudiced by the hearing proceeding. In a further letter dated 16 December 2014, Canonbury stated that it would also not be attending the hearing on behalf of the Applicant because it had not been allowed sufficient time to deal with the substantive issues raised by the Respondent in its statement of case.
10. At the hearing, the Tribunal considered and refused the Applicant’s application to adjourn for the same reasons that were set out in the Tribunal’s earlier decision dated 12 December 2014. The reasons advanced by the Applicant were the same and the Tribunal was satisfied that no real or significant prejudice would be suffered by it by refusing the application. The Tribunal’s supplementary directions dated 12 December 2014 had allowed the Applicant a sufficient opportunity to reply to the Respondent’s statement of case and it had chosen not to do so.

Decision

11. The Tribunal then proceeded to consider the submissions made by parties. The Applicant's case is set out in a witness statement made by a Roger McElroy dated 14 November 2014. He is a Director of the Applicant company. The Respondent's statement of case is dated 5 December 2014 and was prepared by Scott Cohen Solicitors. Mr Gurvits said that he relied on the same submissions and had nothing further material to add to them.

Section 78(1) and 79(8)

12. These sections provide, *inter alia*, that:

"78(1) 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 a qualifying tenant of a flat contained in the premises, but*
- (b) neither is nor has agreed to become a member of the RTM company.*

79(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flay contained in the premises."

13. The Respondent submits that the notice inviting participation and the claim notice were not validly served on the lessee of Flats 8a and 9a in compliance with sections 78(1) and 79(8) of the Act. In relation to Flat 8a, it contends that the notice was addressed to the lessee, Mr Khan, as simply 'United Kingdom'.
14. In relation to Flat 9a, the Respondent submits that service of the notice at a different postal address other than the address of the flat does not comply with section 111(5) of Chapter 1 of Part 2 of the Act. The section provides that a RTM company *may* (our emphasis) give a notice on a qualifying tenant of a flat contained in the premises at the flat address unless it has been notified of a different address at which he wishes to be given any notice. The Respondent puts the Applicant to proof that it had been so notified by the lessees of Flat 9a.

15. In relation to Flat 8a, the Applicant submitted that it had validly served the notice inviting participation and the claim notice not only on the lessee, Mr Khan, but also the Bank of Ireland as the flat is subject to a Shari'ah compliant mortgage and the bank holds the superior title. The bank was served with the notice by a letter dated 29 July 2014 and with a copy of the claim notice by a letter dated 18 August 2014.
16. In relation to Flat 9a, the Applicant advanced no specific arguments save to make a general assertion that it had validly served the notice inviting participation and the claim notice on the lessees.
17. It is perhaps trite to say that the requirements of sections 78 and 79 of the Act have to be satisfied in turn in relation to all of the qualifying tenants. It is a prerequisite to serving a valid claim notice under section 79 that a valid notice inviting participation must be given pursuant to section 78.
18. Section 111 of the Act sets out how notices are to be "given".
19. It is again perhaps trite to say that any notice inviting participation and a claim notice must be served on a qualifying tenant. In relation to Flat 8a, it is necessary first of all to decide who is the qualifying tenant and then whether they had been validly served with the respective notices by the Applicant.
20. The office copy entries relating to Flat 8a reveal that the head lease is held by the Bank of Ireland dated 18 March 2009 for a term of 125 years from 29 September 2007. It appears that a underlease dated 4 June 2009 was granted for a term of 25 years from 18 March 2009. It is common ground in this case that the underlease is held by Mr Khan.
21. Section 76(2) of the Act defines a long lease as having been granted for a term certain exceeding 21 years. Both the leases held by the Bank of

Ireland and Mr Khan's underlease are, therefore, long leases within the meaning of the Act.

22. Section 75(6) provides that where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat. It follows from this that only Mr Khan, by virtue of his underlease of Flat 8a can be the qualifying tenant for the purposes of the Act.
23. The issue is then whether Mr Khan was validly served with the notice inviting participation and the claim notice. Both notices were addressed to him as simply 'United Kingdom'. There is no other evidence before the Tribunal that demonstrates that the notices had been served otherwise on Mr Khan or come to his attention. On any view, the notices do not satisfy the requirements in section 1111 of the Act as to how service may be effected by post.
24. Accordingly, for the reasons set out above, the Tribunal found that the notice inviting participation and the claim notice had not been validly served on Mr Khan within the meaning of sections 78(1) and 79(8) and consequently, the Applicant is not entitled to acquire the right to manage the property.
25. Although it is not strictly necessary for the Tribunal to do so, it went on to consider the position in relation to Flat 9a. Although, the notice inviting participation and the claim notice were not served on the lessees at the address of the flat, it is clear that they were served at another postal address. A reasonable inference to draw is that the Applicant would not have done so unless it had been notified by the lessees of that address. On balance, therefore, the Tribunal found that the lessees of Flat 9a had been validly served with the said notices. However, given that Mr Khan was not validly served, this application fails.

Section 79(6)(a)

26. The Respondent took a further point under this section, which provides that a claim notice must be given to each person who on the relevant date was a landlord under a lease of the whole or any part of the premises. Again, it is not strictly necessary for the Tribunal to consider this point, but it does so for the avoidance of doubt.
27. The Respondent submitted that, in breach of section 79(6)(a), the Applicant had failed to serve the Bank of Ireland as required by section 111 of the Act. It has served the bank with the claim notice addressed to Flat 8a and not the correct address of the bank.
28. The Tribunal accepted the Respondent's submission as being correct. Under section 111(2), a RTM company is required to serve a notice on a person who is a landlord under a lease of the whole or any part of premises at the address specified under subsection (3), namely, addresses furnished pursuant to sections 47 and/or 48 of the Landlord and Tenant Act 1987.
29. It has already been established that the Bank of Ireland is the superior landlord of the lessee of Flat 8a, Mr Khan, by virtue of its headlease. Office copy entries of the leasehold title show that the bank's address on the proprietorship register to be P O Box 27, One Temple Quay, Bristol, BS99 7AX. That is the address at which it should have been served with a copy of the claim notice and not the address of the flat concerned. It is beyond doubt that this did not happen and the Tribunal found that section 79(6)(a) had not been complied with in relation to Flat 8a.

Section 79(3)

30. The Respondent took a further point about this section about the Applicant's member register. However, given that the application has not succeeded on any basis, it was not necessary for the Tribunal to go on to consider this issue and to make any finding in this regard.

31. In conclusion, the Tribunal determined that the Applicant does not acquire the Right to Manage the property and this application is dismissed.

Costs

32. At the hearing Mr Gurvits made an application for costs under Regulation 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 on the basis that it had acted unreasonably by bringing an application that was bound to fail, had not sought to vary the Directions and had ultimately failed to attend the hearing whereas the Respondent had been obliged to do so.

33. The Tribunal does not make any order under Regulation 13. The test of what amounts to unreasonable conduct is a high one and the Tribunal was satisfied that the points in issue were arguable and required determination. As such, by bringing this application and seeking to contest it, the Applicant's conduct could not be regarded as being unreasonable.

Judge I Mohabir
9 February 2015