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

Case Reference : **MAN/00BW/LRM/2017/0011**

Property : **Prospect House, Green Lane,
Standish, Wigan WN6 0TU**

**Applicant
Representative** : **Prospect House WN60TU RTM Company Ltd
Canonbury Management**

**Respondent
Representative** : **Theowal Ltd
Estates & Management Ltd**

Type of Application : **Commonhold and Leasehold Reform Act 2002
– section 84(3) (the “Act”)**

Tribunal Members : **Judge W.L. Brown
Mr ID Jefferson FRICS**

Date of Determination : **1 March 2018**

Date of Decision : **15 March 2018**

DECISION

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DECISION

1. On the Relevant Date (28 September 2017) the Applicant was entitled to acquire the right to manage the Property.
2. No order as to costs.

REASONS

Background

1. The Application concerns the Right to Manage (“RTM”) under Chapter I of the Act. It relates to residential flats let on long leases at Prospect House (the “Property”). The Applicant is the Right to Manage company. The Respondent is the landlord of the Property. The parties having agreed, this matter is determined without a hearing or inspection of the Property.
2. On 12 May 2017, the RTM company was registered at Companies House.
3. The Applicant gave a claim notice dated 28 September 2017 (the “Relevant Date”) under section 79 of the Act to the Respondent regarding the Property and indicating that the Applicant intended to acquire the RTM on 7 February 2018. The Respondent served a Counter-notice dated 30 October 2017. ") The Application was made on 8 December 2017, within the statutory timelimit of two months beginning with the day on which the counter-notice was given.
4. The Respondent alleged in the Counter-notice that the Applicant was not entitled to exercise the RTM because contrary to:

Section 78(1) of the Act, before making the claim to acquire the RTM, the Applicant failed to give Notice of Intention to Participate (“NIP”) in the RTM company to every person who was a qualifying tenant, but who was neither, nor had agreed to be, a member of the RTM company, specifically that in respect of Flat 6 notice was not served on The Estate of Mark Alex Collins; and

Section 79(8) a copy of the claim notice was not given to each person who on the relevant date was the qualifying tenant, specifically to The Estate of Mark Alex Collins, but the claim notice was sent to “Mark Alex Collins”.
5. At the Relevant Date and subsequently the registered proprietor at Land Registry of the leasehold titles for Flats 2 (MAN69436) and 6 (MAN67260) was recorded as Mark Alex Collins.
6. The Tribunal made directions on 29 December 2017.

The Law

7. A right to manage (RTM) company is entitled to acquire the right to manage if:
- the premises in question satisfy the requirements of section 72 of the Act;
 - the RTM company is properly constituted (in accordance with section 73);
 - it has given, before making a claim to acquire the right to manage, all necessary notices (under section 78) inviting participation in the process;
- and
- it has then given a valid claim notice to each person to whom such a notice is required to be given by section 79.

8. **Section 75 states:**

.....

- (2) *Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.*

.....

Section 78 states:

Notice inviting participation

- (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 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.*
- (2) *A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—*
- (a) *state that the RTM company intends to acquire the right to manage the premises,*
 - (b) *state the names of the members of the RTM company,*
 - (c) *invite the recipients of the notice to become members of the company, and*
 - (d) *contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.*

.....

- (7) *A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.*

Section 79 states:

Notice of claim to acquire right

.....

- (6) *The claim notice must be given to each person who on the relevant date is—*
- (a) *landlord under a lease of the whole or any part of the premises,*
-
- (8) *A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.*

.....

Section 82 states:

Right to obtain information

- (1) *A company which is a RTM company in relation to any premises may give to any person a notice requiring him to provide the company with any information—*
- (a) *which is in his possession or control, and*
- (b) *which the company reasonably requires for ascertaining the particulars required by or by virtue of section 80 to be included in a claim notice for claiming to acquire the right to manage the premises.*
- (2) *Where the information is recorded in a document in the person's possession or control, the RTM company may give him a notice requiring him—*
- (a) *to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and*
- (b) *to supply the company with a copy of the document containing the information in a readily intelligible form on payment of a reasonable fee.*
- (3) *A person to whom a notice is given must comply with it within the period of 28 days beginning with the day on which it is given.*

9. A person who is given a claim notice by an RTM company is entitled to give a counter-notice under section 84 of the Act. The counter-notice may allege that, by reason of a failure to satisfy any of the above conditions, the RTM company is not entitled to acquire the right to manage the premises in question. Service of a counter-notice entitles the RTM company to apply to the Tribunal (under section 84(3) of the Act) for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
10. It is important to note that the right to manage regime established by the Act does not depend upon any finding of fault on the part of the landlord: if the statutory conditions are satisfied then the RTM company is entitled to acquire the right to manage without further evidence. A claim notice given under the Act cannot be successfully challenged for any other reason than for a failure to satisfy one or more of the above conditions.

Submissions

11. As the Applicant was responding to the Respondent's objection this decision will deal first with the submissions of the Respondent.

The Respondent

12. The Respondent's challenges in the Counter-notice are on the basis that Mark Alex Collins died on 3 August 2013, as evidenced by the copy of his death certificate and while the Land Registry titles for Numbers 2 and 6 have not been altered and still show his name as registered proprietor it was open to the Applicant under Section 82 of the Act to seek information prior to commencement of the RTM claim, which would have allowed it to comply with Sections 78(1) and 79(8).
13. Following a request for information made by the Respondent it discovered that as expressed in the Counter-notice regarding Flat 6, the NIP dated 10 September 2017 regarding Flat 2 was served on Mark Alex Collins, who at that time had ceased to be the qualifying tenant as a result of his death. It relies upon the decision in *Fairhold (Yorkshire) Limited v Trinity Wharf (SE16) RTM Co Limited* [2013] UKUT 0502 (LC) to permit it adding this objection to the RTM to those grounds appearing in the Counter-notice.
14. There has been a failure to comply with Section 78 regarding the NIP, thereby invalidating the Claim Notice of Section 79. There is no saving provision for failure to validly serve a NIP.

The Applicant

15. It stated that the death of Mark Alex Collins was not known and hence the invitation to participate as a member of the RTM company was directed to him.

16. The only opportunity for the RTM company to discover who is the owner of each flat is to search the register at Land Registry, which the Applicant did and therefore served the Claim Notice upon the person it could reasonably be expected to have identified as the owner of the flat; therefore there had been compliance with Section 79.

The Tribunal's Reasons and Conclusion

17. The issue for the Tribunal concern compliance with Section 78(1) concerning the giving of the NIP and whether there has been compliance with Section 79(1) regarding the validity of the Notice of Claim. Relevant is the definition of a "qualifying tenant", to which both provisions refer and whether the information recorded in the Land Register should be regarded as definitive as to identity of such a person.
18. Firstly, there was no opposition from the Applicant to the addition of an objection to the Notice of Claim, as described in paragraph 14. The Tribunal follows the authority of the Upper Tribunal (Lands Chamber) in *Fairhold (Yorkshire) Limited v Trinity Wharf (SE16) RTM Co Limited*, allowing for the Tribunal to consider the overall procedural integrity of the RTM process. Therefore the additional objection will be taken into account, although it merely repeats the basis of objection regarding Flat 2, as set out in the Counter-notice, for Flat 6.
19. The Tribunal finds that Section 82 of the Act permits a RTM company to seek information prior to commencement of the RTM claim and that request may extend to enquiry as to legal ownership of property to be affected by the anticipated Notice of Claim. The question is whether it is mandatory to undertake such an enquiry, or whether the Applicant may rely upon proper enquiry of the register held by Land Registry.
20. The Tribunal is satisfied that the Land Registry title entries for both flats 2 and 5 have continued to record the proprietor of those flats as "Mark Alex Collins", whereas that gentleman died on 3 August 2013.
21. The Tribunal notes the limited definition of a qualifying person - Section 75(2) –and it refers to a clear legal status as a leaseholder. The issue here is whether a leaseholder ceases to be such upon their death and whether the RTM Company ought to do more than rely on the Land Registry entries to be alert to who is the leaseholder so as to be a qualifying person.
22. The Applicant purported to comply with Section 78(1) (giving the NIP referable to Flats 2 and 6) acting on reliance of the Land Registry entries. It is understood that the objection concerns the identity of the requisite person to be served with the NIP in accordance with Section 78(1).
23. The Tribunal has carefully considered the submission of the Respondent that the Applicant should have made use of the Section 82 enquiry process. However, the Tribunal determines that this section is enabling, not prescriptive.

No authority was provided to the Tribunal that it is a requirement that the RTM company should have definitive evidence of who is a qualifying person for the purposes of Section 78, such that it would identify that the Land Registry entries were defective as to ownership of legal title.

24. In the way that Land Registry office copy entries of a title are out of date from the moment after they are issued to an enquirer, it also is the case that a reply to an enquiry pursuant to Section 82 of the Act also potentially ceases to be definitive after the response is issued. A subsequent change in the factual position may occur, with no obligation on the supplier to update the enquirer (save in particular circumstances regarding Land Registry). Therefore the scope of the Respondent's argument must be limited to the extent of enquiry that must be undertaken before the issuing of a NIP or notice under Section 79(1).
25. The Tribunal also is aware of *Sinclair Gardens (Investments) Ltd v Oak Investments RTM Company Ltd* LRX 52 2004, a Decision of the Lands Tribunal, which makes it clear that a claim notice is not automatically invalidated by an inaccuracy in the particulars required and the Tribunal may waive any defect if it considers there has been no prejudice to the landlord. This Tribunal does not consider that the landlord (the Applicant) in this particular case has suffered any prejudice.
26. In addition the Tribunal notes the saving provision at Section 78(7) but does not rely solely on it in making its decision.
27. The obligation in Section 78 is to give the NIP to the qualifying person. The Tribunal finds that on the facts of this case the Applicant took adequate steps so as to comply through identifying the appropriate person by enquiry of the Land Registry regarding entries for Flats 2 and 6. It therefore follows that the objection regarding compliance with Section 78(1) must fail.
28. Further, the same findings are made regarding compliance with Section 79(8) in the giving of the Claim Notice to the qualifying person. Therefore the second objection in the Counter-notice is determined by the Tribunal to fail.
29. In consequence the Tribunal determines that the Applicant was entitled on the Relevant Date (28 September 2017) to acquire the right to manage the Property.
30. Neither party made an application regarding costs of the proceedings or made representations about costs. Therefore the Tribunal makes no order as to costs.

Judge WL Brown
Tribunal Judge
15 March 2018