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

Case References : BIR/00CR/LRM/2013/0001

Properties : 9/47 Aintree Close, Kidderminster, Worcestershire, DY11 5ED

Applicants : Stirling Court RTM Company Ltd.
Mr M.Markham

Representative : C.M. Stephen-Haynes, Director, Sterling Court RTM
Company Ltd.

Respondent : Sinclair Gardens Investments (Kensington) Ltd.

Representative : Messrs P. Chevalier & Co., Solicitors

Type of Application : An Application for a Determination that a Right to Manage
Company is entitled to acquire a Right to Manage subject to
the Commonhold and Leasehold Reform Act 2002.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
D.R. Salter LLB

**Date and Venue of
Hearing** : The parties requested a paper determination without Hearing

Date of Decision : 13 August 2013

DECISION

Introduction

- 1 The Applicants served Notice on the Respondent dated 29 November 2012 claiming the right to manage property at '9/47 Aintree Close, Kidderminster ("the premises")' under the no fault Right to Manage provisions of the Commonhold and Leasehold Reform Act 2002 ('the Act').
- 2 The Respondent served a Counter-Notice dated 19 December 2012 rejecting the right and the Applicants subsequently applied to the Leasehold Valuation Tribunal by application dated 7 February 2013 for the right to be granted.
- 3 The Tribunal issued Directions dated 3 May 2013 and the parties made submissions, requesting the matter be dealt with by paper determination without a Hearing.
- 4 The Tribunal has considered the parties' cases and find as follows.

Relevant Law

- 5 The right to manage provisions are contained in Part 2, Chapter 1, sections 71 to 113 of the Act. The provisions allow the Secretary of State to make regulations to be read in conjunction with the Act and the current regulations are in The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010.
- 6 The basic scheme of the Act is for an RTM Company to give notice to each qualifying tenant who neither is nor has agreed to become a member of the RTM Company, inviting participation in the company.
- 7 There then follows a period of at least 14 days after which the RTM Company is able to serve a Claim Notice on the landlord or in certain circumstances a managing agent claiming the right to manage, providing the requirements of the Act are met.
- 8 The recipients can either accept or reject it by serving a Counter Notice within time scales set by the Act. If as in the present case it is rejected, the RTM Company can apply to the Tribunal for a determination granting it the right to manage the property.

Facts Found

- 9 The Tribunal inspected the site on 13 August 2013. It comprises a 1960s two storey block of 20 flats with garages in a residential part of Kidderminster.

Submissions and Decision on Each Point

For the Applicants

- 10 Mr Stephen-Haynes sent copies of the following documents to the Respondent dated 13 May 2013 to support the information on the application form:
 - 11 Notices of Invitation to Participate;
The Memorandum and Articles of Association of Stirling Court RTM Company Ltd.
The Register of Directors of Stirling Court RTM Company Ltd.
The Register of Members of Stirling Court RTM Company Ltd.
Land Registry extracts showing the qualifying tenants' titles where available
A specimen copy of a Lease for a Flat in the development.
- 12 There was no 'Statement of Case' compliant with paragraph 6 of the Tribunal Directions and, accordingly, the Tribunal treats the letter of 13 May and the application form as the Applicant's Statement of Case.

For the Respondents

13 Messrs P. Chevalier & Co. submitted the Respondent's Statement of Case by letter to the Tribunal dated 24 June 2013.

14 For ease of reference the Tribunal has considered each objection raised by the Respondent and find as below. The paragraph numbers adopted are those used by the Respondent.

4 Notice inviting participation must be in the prescribed form

15 The Respondent submitted that the Notice Inviting Participation should have contained Notes required by the Regulations and that their omission was fatal to the application.

Tribunal Decision

16 Section 78(3) of the Act states that the notice of invitation *must* (the Tribunal's italics) comply with the prescribed regulations.

Regulation 3(1) states that 'A notice of invitation to participate *shall contain* (our italics) ... the particulars mentioned in paragraph (2).

Paragraph (2) states 'The particulars referred to in paragraph (1) are - ... (j) the information provided in the notes in the form set out in Schedule 1 to these Regulations.'

The Tribunal has been provided with no evidence that the notes had been provided and as this is a mandatory requirement that cannot be avoided we find for the Respondent and refuse the application. However, for completeness, the Tribunal finds in respect of the other grounds of objection as below:

6 Non-Service of Notice Inviting Participation

17 **1)** The Respondent claimed that Richard and Anne-Marie Faloon who were qualifying tenants of Flat 11 had not been served with the correct Notice. Richard Faloon was a Member of the RTM who would have had notice but a notice inviting participation should also have been served on his wife, Anne-Marie Faloon.

Tribunal Decision

18 On this point, the Tribunal assumes there was a typing error in the Respondent's Submission, it refers to Flat 11 but in fact all the other documents in the bundle refer to Mr and Mrs Faloon of Flat 13.

19 However, on the main issue, while accepting that notice was not specifically served on Mrs Faloon the Tribunal finds that she would have had constructive notice of the invitation through her husband's membership of the RTM and that no parties were prejudiced by taking this point. Accordingly, the Tribunal dismisses this ground of objection.

20 **2)** The Respondent further objected that Maureen and Andrew Partridge of Flat 17 who were also qualifying tenants were not Members of the RTM. The letter inviting participation had been addressed to Andrew Partridge but not Maureen Partridge and the main content of the letter had been addressed to both parties. Accordingly, the Respondent claimed that Mrs Partridge had not been given notice.

Tribunal Decision

21 Again, the Tribunal finds that the intent was clear, no party had been prejudiced by this minor technicality and, accordingly, this ground of objection is dismissed.

7 The Claim Form must be in the prescribed form

22 The Respondent submitted that the Claim Notice should have contained Notes required by the Regulations and that their omission was fatal to the application.

Tribunal Decision

23 Section 80(9) of the Act states that the claim notice *must* (the Tribunal's italics) comply with the prescribed regulations.

24 Regulation 4 states that 'A claim notice *shall contain* (our italics) ... (e) the information provided in the notes to the form set out in Schedule 2 to these Regulations.'

25 The Tribunal has been provided with no evidence that the notes had been provided and as they are a mandatory requirement that cannot be avoided. Accordingly, the Tribunal finds for the Respondent.

8 The Claim Notice incorrectly stated Anne-Marie Faloon to be a member of the Company

26 The Respondent submitted that the Claim Form incorrectly stated Mrs Faloon to be a member of the Company whereas according to the Register of members she was not.

Tribunal Decision

27 The Tribunal finds that while the Respondent is technically correct, this is a minor point that has caused no prejudice to the parties. Section 81(1) of the Act states 'a claim is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80' which the Tribunal finds to be the case here and, accordingly, dismisses this ground of objection.

9 & 13 The Claim Notice failed to define the 'Premises'

28 The Respondent submitted that the Claim Notice provided insufficient information to define the premises for the purposes of the Act or whether the premises included any 'appurtenant property'. The Respondent cited *Gala Unity Ltd. v Ariadne Road RTM Company Ltd.* [2011] UKUT 425 (LC); [2012] EWCA Civ 1372 and drew attention to the particular problems that can arise in large developments where ancillary property such as garages, paths and gardens between and around buildings may be treated as 'appurtenant property' for the purposes of the Act.

Tribunal Decision

29 The Tribunal accepts that in many cases the extent of appurtenant property will be crucial and needs to be carefully defined. The managers need to know how costs are allocated and unless the parties know what is included there is potential for dispute.

30 However, having seen the property, the Tribunal finds this is not the case here. The extent of the property including the ground and garages is clearly identified on site and covered by the address in the Claim Notice of '9/47 Aintree Close, Kidderminster'.

31 Furthermore, the leases and Land Registry extracts include both the flats and garages within the same demise and address, for example, the Registered Title to Flat 17 refers to 'Flat 17 Aintree Close, Kidderminster and Garage' and while the claim notice referred to 'a self contained building', the description is sufficiently wide to include the garages and appurtenant property. No suggestion has been made that the Respondent owns adjacent land that could potentially be in dispute by failing to specify 'the premises' to any greater extent. Reading the Claim Notice, lease and other submitted documents as a whole, the Tribunal dismisses this as a ground for refusing the right to manage.

16 Gala

32 The Respondent admitted that *Gala* was not dispositive of this Application.

Tribunal Decision

33 The Tribunal agrees. The issues in *Gala* differed from the instant case and have no bearing on the principle issue at Aintree Close.

Summary

34 The requirements for service of notices containing the relevant notes are mandatory and for the protection of the parties. Their exclusion cannot be regarded as minor or typographical omissions and, accordingly, the Tribunal finds for the Respondent and dismisses this Right to Manage Application by the Applicants.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 18 OCT 2013