



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/00MG/LRM/2014/0167
Property	:	Barrington Mews, Oldbrook, Milton Keynes, MK6 2TH
Applicant	:	Barrington Mews RTM Co. Ltd.
Respondent	:	Holding & Management (Solitaire) Ltd.
Date of Application	:	24th October 2014
Type of Application	:	For an Order that the Applicant is entitled to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”))
The Tribunal	:	Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS

DECISION

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1. This Application fails and the Applicant therefore does not acquire the right to manage the property.
2. The Applicant’s claim for costs is dismissed.

Reasons

Introduction

3. The Respondent accepts that the Applicant is a right to manage company (“RTM”). Such RTM served the Respondent with a Claim Notice on or about the 22nd September 2014 seeking an automatic right to manage the property. It had served a prior notice in August which was withdrawn although there seems to be a dispute about whether this was validly done.

4. Counter-notices in similar but not identical terms were served on or about 20th October by Estates and Management Ltd. on behalf of the Respondent and OM Property Management Ltd. In view of recent case law stating that Respondents are not restricted to matters set out in Counter-notices, the Tribunal ordered the Respondent to set out what objections it was now pursuing. According to submissions filed on behalf of the Respondent dated 19th November 2014, the objections are now:-

- (a) Whether Notices of Invitation to Participate were valid and served on all qualifying tenants who were not already members of the RTM,
- (b) Whether the Notice of Claim was valid and served on all relevant parties,
- (c) Whether the RTM company has demonstrated the required level of membership and
- (d) Whether the RTM company has provided evidence of service of the Notice of Withdrawal of a previous RTM claim in accordance with section 86(2)(d) of the 2002 Act

Procedure

5. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

6. There is no doubt that the statutory and regulatory burden on a right to manage company is substantial. In the years since the relevant part of the 2002 Act has been in force, the emphasis on compliance has changed. Landlords take the view that the right to manage provisions are effectively a compulsory purchase of their right to manage their own properties and every possible technical objection was raised and often succeeded. It is fair to say that in recent times, the pendulum has started to swing the other way.
7. In the decision of **Assethold Ltd. V 14 Stansfield Road RTM Co. Ltd.**[2012] UKUT 262 (LC); LRX/180/2011, at the end of the judgment dismissing the landlord's appeal, the then President of the Upper Tribunal remarked:-

"It is not sufficient for a landlord who has served a counter-notice to say that it puts the RTM company to 'strict proof of compliance with a particular provision of the Act and then to sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to proof does not

create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied.”

8. In **Avon Freeholds Ltd. v Regent Court RTM Co. Ltd.** [2013] UKUT 0213 (LC), the Upper Tribunal (per the President, Sir Keith Bloomsbury), determined that the provision to strictly serve all non participating qualifying tenants with a Notice of Invitation to Participate was not mandatory. In that case, there was clear evidence that a non participating qualifying tenant had not been served with a Notice of Invitation to Participate and, in fact, had no knowledge of it. It had not even been served at the relevant flat.
9. Sir Keith’s conclusion, at paragraph 56 of his decision, was to adopt a submission by counsel for the RTM when she said that “*Parliament cannot have intended that in circumstances such as these the whole of the right to manage process will be defeated by the RTM company failing to comply fully with the provisions for giving notice of invitation to participate....there has been – to adopt the expression used by Lord Woolf in **R v Immigration Appeal Tribunal, ex parte Jeyanthan** [1999] 3 AER 231 – ‘substantial compliance’ with the statutory requirements, and the consequences of non-compliance in this case were not such as to justify denying the respondent the right to manage the premises”.*
10. In this case, there is no substantial dispute about the law, merely a dispute about whether it has been breached and, if so, whether such breach should be fatal to the ambitions of the Applicant.

Discussion and Conclusions

11. The suggestion that a previous Notice of Claim dated 29th August 2014 was not withdrawn properly because notice was not served on all the people it should have been served upon, is simply an assertion without evidence from the Respondent. The Applicant has now provided a sheet of paper setting out those upon whom service was said to be effected. The Tribunal agrees that this objection has not been made out.
12. As far as the Notices of Invitation to Participate are concerned, the allegation is, once again, that no evidence of the form of the notice or its recipients has been produced. A sample of such notice and another sheet setting out those upon whom it was served have now been provided. The Tribunal agrees that this objection has not been made out.
13. One member of the Applicant is Denise Alwyn Cattel and the correct spelling of her surname is Cattle. This is a specific objection raised by the Respondent and the Applicant admits the mistake and says that it

was a simple typing error. It is clearly a very trivial matter which should not have been raised. This objection is dismissed.

14. It is said on behalf of the Respondent that the Notice of Claim was served on Estates and Management Ltd. rather than the Respondent landlord and, thus, service is invalid. The 2 companies are at the same address. The Applicant says that a Notice of Claim "*was sent in the same recorded envelope to Estates & Management (E & M) and Holding & Management (Solitaire) Limited*". The Respondent has produced a copy of the envelope which has the recorded delivery label on it but is only addressed to Estates & Management Ltd.
15. However, there is a letter in the bundle dated 2nd October 2014 from Estates & Management Ltd. to the Applicant which says quite specifically "*Estates & Management Ltd. act on behalf of Holding and Management (Solitaire) Limited. We acknowledge receipt of the Claim Notice **served upon our client** dated 22 September 2014 and confirm that we will be dealing with the matter on their behalf*" (emphasis added). To now suggest that there has not been adequate service is quite reprehensible and the objection is dismissed.
16. However, the final point raised is, in the Tribunal's view, the most important one i.e. the fact that the Notice of Claim gives the names of all the qualifying tenants as being both qualifying tenants and members of the Applicant company. This point has being made clearly from the outset by the Respondent but has not been dealt with by the Applicant.
17. There are 2 important reasons why this is serious. Firstly, any reasonable landlord will want to know whether the requisite number of qualifying tenants are involved as members of the company. On the face of it, the landlord will have concluded that all the tenants were behind the RTM which may have persuaded it that there was little point in raising any technical defects in procedure as indicated in the **Avon Freehold** case referred to above. In fact this landlord did make appropriate enquiries which revealed that only just over 50% of the qualifying tenants were members. A very different picture to that portrayed by the Notice of Claim.
18. The second point is that it is quite wrong as a matter of principle for the Applicant to assert that the other 46% of qualifying tenants were members of the company (when they were not) and, by implication, agreed to the Notice of Claim when it was quite probable that the opposite was the case. It is wrong for those tenants to have their positions falsified in this way.
19. It is this Tribunal's view that the present case law puts a burden upon it to consider whether there has been substantial compliance with the 2002 Act. If there has, then minor defects which did not create an injustice could be overlooked. However, in this case, the Notice of Claim is clearly wrong to describe all the qualifying tenants as members

of the company and this is a basic flaw in procedure which could have had serious consequences.

20. In fact this Respondent was able to ascertain the true position and it could, perhaps, be said that no injustice has been caused. However, the message cannot be given that such a serious defect can be accepted just because of a vigilant landlord has bothered to investigate matters properly. If the Notice had just been accepted, a serious injustice could have occurred. In the circumstances, the application must be dismissed.
21. The Applicant has made an application for a costs order because it feels that the Respondent has behaved unreasonably. For reasons which are obvious from the decision reached on the main application, such application for costs is dismissed.

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Bruce Edgington
Regional Judge
16th January 2015