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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CA/LRM/2015/0007**
Premises	:	**Dukes Court** **50 Part Street** **Southport** **PR8 1HY**
Applicant	:	**DCL (Southport) RTM Company Limited**
Representative	:	**Hodge Halsall, Solicitors**
Respondents	:	**Christopher Churchill (aka Christopher Bibby) and David Kay (aka David Kershaw)**
Representative	:	**Mr Eden**
Type of Application	:	**Commonhold and Leasehold Reform Act 2002 – section 84(3)**
Tribunal Members	:	**Judge J Holbrook** **Judge S Duffy**
Date and venue of Hearing	:	**Determined without a hearing**
Date of Decision	:	**21 December 2015**

DECISION

DECISION

A. On the relevant date (31 July 2015) the Applicant was entitled to acquire the right to manage the premises known as Dukes Court, 50 Part Street, Southport, Merseyside PR8 1HY.

B. The Respondents are ordered to pay costs to the Applicant in the sum of £241.20.

REASONS

Background

1. On 31 July 2015 ("the relevant date") the Applicant gave a claim notice under section 79 of the Commonhold and Leasehold Reform Act 2002 ("the Act") to each Respondent. The premises specified in the claim notices were Dukes Court, 50 Part Street, Southport, Merseyside PR8 1HY ("the Premises").

2. The Respondents are the freehold owners of the Premises and the current landlords under a number of long leases of apartments within the Premises. On 6 August 2015 they gave the Applicant a counter-notice under section 84 of the Act alleging that it was not entitled to acquire the right to manage the Premises on the relevant date. In particular, the counter-notice alleged that the Applicant was not entitled to acquire the right to manage by reason of:

> "Law of Property Act 1925 and by virtue of a deed of covenant 06-10-1972 "General Scheme"."

3. On 17 September 2015, an application was made to the Tribunal under section 84(3) of the Act for a determination that the Applicant was on the relevant date entitled to acquire the right to manage the Premises.

4. Following a case management hearing which was held before Judge Holbrook in Liverpool on 9 November 2015, directions were given for the conduct of the proceedings. The parties were informed that the Tribunal considered it appropriate for this matter to be dealt with on the basis of written representations provided by the parties, without holding a further oral hearing (unless a hearing should be requested). Written representations were subsequently received from each party, but neither party requested a hearing. The Tribunal therefore convened in the absence of the parties to determine the application on the date of this decision.

5. At the same time, the Tribunal considered an application for costs which had been made on behalf of the Applicant at the case management hearing.

6. The Tribunal did not inspect the Premises.

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. 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.

9. 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 more. Put another way, 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.

Conclusions

Right to manage

10. It is plain that the matters alleged in the Respondents' counter-notice do not touch upon any of the statutory requirements referred to in paragraph 7 above. Consequently, they are not valid grounds for opposing the Applicant's claim.

11. In a letter to the Tribunal dated 18 November 2015 from a Mr Eden (who apparently holds himself out as the representative of the Respondents), it was alleged that the claim notice was defective as it was not executed by the Applicant in accordance with section 44 of the Companies Act 2006. However, there is no requirement for a claim notice given under the Act to be executed by the RTM company: it is sufficient for the claim notice to be signed by someone having authority to do so. In the present case, the claim notices were signed by a director of the Applicant RTM company. There is no reason to suppose that the signatory lacked authority to sign the notice on the company's behalf. This ground of objection must therefore fail also.

12. As no valid grounds of objection to the claim notices have been raised before the Tribunal, we find that the Applicant was entitled to acquire the right to manage the Premises on the relevant date.

Costs

13. The Applicant seeks an order for costs in respect of the attendance of its solicitor at the case management hearing on 9 November 2015 and also in respect of its solicitors' costs in preparing a response to the Respondents' objections to the claim notices. The Applicant argues that the Respondents acted unreasonably by persisting in their objection to the claim without any valid basis for doing so, and also by failing to attend the case management hearing.

14. The Tribunal's powers to make orders for costs are governed by rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and the general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal.

15. As far as the Respondents' non-attendance at the case management conference is concerned, Mr Eden informed the Tribunal (by letter dated 17 November 2015) that the Respondents had been unaware that a case management hearing had been listed. He referred to an email which had been sent to the Tribunal on 9 November enquiring whether "any dates have been set for case management in this matter having received notice of claim some weeks ago".

16. The Applicant's solicitor has questioned the veracity of the assertion that the Respondents were unaware of the case management hearing. However, we note that the addresses to which the Tribunal sent notice of the hearing differed from the correspondence address for the Respondents supplied by the Applicant (and used subsequently by Mr Eden). Although those notices were not returned undelivered by Royal Mail, it is possible that they were not received by the Respondents. It would thus be inappropriate to find that the Respondents acted unreasonably in failing to attend the case management hearing.

17. However, the Applicant also contends that it should have been obvious to the Respondents that they had no good reason to persist with their objection to the claim and that, by doing so, they unreasonably caused the Applicant to incur unnecessary additional costs in connection with the preparation of a formal response to Mr Eden's letter of 18 November. We agree.

18. We note that, on 13 August 2015, the Applicant's solicitors wrote to the Respondents to point out that the grounds of objection specified in their counter-notice were not valid grounds for objecting to the claim under the Act. The letter recommended that they seek independent legal advice. The Applicant's contention that there were no valid grounds for objection was set out in the Tribunal's subsequent directions, which also stated:

> "It should be noted that, to be valid, such allegations must be by reason of a provision of Chapter 1 of Part 2 of the 2002 Act."

19. Mr Eden has acknowledged that the directions had been received before he wrote to the Tribunal on 18 November. Nevertheless, in that letter, he made it plain that the Respondents continued to object for reasons which included the deed of covenant mentioned in the counter-notice. Mr Eden also questioned whether the claim notice had been properly executed by the Applicant. Although this did potentially touch upon a valid ground for objection (namely, whether the claim notices were valid), it was doomed to failure from the outset for the reason stated at paragraph 11 above. Moreover, as authority for this contention, Mr Eden referred us to "Elim Court". We take this to be a reference to the decision of the Upper Tribunal (Lands Chamber) in the case of *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2014] UKUT 397 (LC). However, that case does not support the objection Mr Eden was making: in fact, it provides authority for the contrary proposition.

20. Mr Eden has also referred (with evident disapproval) to the fact that a right to manage claim is being pursued at a time when the Respondents have offered to sell the freehold of the Premises to the leaseholders. The Applicant has rightly pointed out that the leaseholders are perfectly entitled to prefer the first course of action over the second, and it does appear to us that the Respondents' resistance to the right to manage claim is motivated to at least some degree by their desire to secure a sale of the freehold. This is not a valid reason for objection and indeed we consider it to be unreasonable. Moreover, given the previous indications given by the Tribunal and by the Respondents' solicitors that the objection required valid grounds (coupled with Mr Eden's evident awareness of the Elm Court decision), we find that the Respondents acted unreasonably in continuing to dispute the claim following receipt of the Tribunal's directions. It is therefore appropriate that they should be ordered to pay the Respondents' solicitors costs in preparing a formal response.

21. As far as quantum of costs is concerned, the Applicant asserts that its solicitor (being a grade A fee earner) spent one hour on the preparation of the response at a cost of £201.00 plus VAT, being £241.20. We consider this claim to be reasonable and we order the Respondents to pay that amount forthwith.