

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/24UL/LRM/2006/0005

In the matter of Chapter 1 of Part 2 of the Commonhold & Leasehold Reform Act  
2002

and

In the matter of Barton Court, Cambridge Road West, Farnborough Hants

**BETWEEN**

Barton Court (Farnborough) RTM Company Limited                          Applicant

And

Sinclair Gardens Investments (Kensington) Limited                          Respondent

Hearing            26<sup>th</sup> February 2007

Appearances: Mr F Maitland FRICS for the Applicants

Written representations were received from Messrs P Chevalier & Co on behalf of the  
Respondents

**DECISION**

Issued:            6<sup>th</sup> March 2007

**Tribunal**

Mr R P Long LLB (Chairman)  
Mr J H S Preston JP FRICS  
Mrs M Phillips JP

## **Decision**

1. The Tribunal has determined, for the reasons that appear below, that the purported exercise of the Right to Manage (RTM) contained in Chapter 1 of Part 2 of the Commonhold & Leasehold Reform Act 2002 (“the Act”) by Barton Court (Farnborough) RTM Company Limited (“the Company”) fails on several grounds. Chronologically from the earliest of them to occur, those grounds are:
  - a. failure properly to give notices inviting participation as the Act requires;
  - b. inadequacy of the notice of claim; and
  - c. failure properly to serve the notice of claim.

For the avoidance of doubt, if there is any conflict between this summary and the detailed reasons stated below then the latter have precedence.

## **Reasons**

### *General*

2. The matter was dealt with at a hearing, but because of the nature of the issues it was not necessary for the Tribunal to inspect Barton Court. The account of the history of the matter, the issues and the arguments that follows is derived from the statements of case provided by the parties to the Tribunal before the hearing and the matters discussed at the hearing itself.
3. The general facts of the matter as they appeared from the evidence before the Tribunal are that on 18<sup>th</sup> July 2006 Mr Maitland wrote to the other lessees of the nine flats at Barton Court to propose that they collectively should form an RTM Company and thereafter exercise the right to manage Barton Court. He received indications of approval from all of the lessees except (at that time) the lessee of flat 9, whose letter was addressed to that flat, but whose actual whereabouts at that time were not known. Subsequently Mr Maitland was told in conversation with Mr Latifzadeh and Ms Sanjari of Flat 1 that all communications in respect of that flat should go to Mr Latifzadeh on behalf of both of them. The lessee of flat 9 proved to have been abroad. He eventually wrote to Mr Maitland on 5<sup>th</sup> February 2007 saying that he would wish to participate.
4. In the light of the approvals received, Mr Maitland went ahead with the incorporation of the Company. The lessees of flats 1-8 inclusive (with the exception of Ms Sanjari, the lessee of flat 9 and of Mrs Maitland who is joint lessee with her husband of flats 3 and 6) were the first directors, and Mr Maitland the Company Secretary. The Company was incorporated on 11<sup>th</sup> October 2006. A copy of the memorandum of association and a copy of the articles of association of the Company have been provided with the application. No issue has been taken over the form of these documents which (though no detailed inspection of them was necessary for the purposes of the present proceedings) appear on the face of matters to be in the form required

by the RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (SI 2003/2120).

5. On 24<sup>th</sup> October 2006 Mr Maitland wrote to the Respondent with a notice of claim given by the Company of its right to manage Barton Court. Issue is taken both as to the form and the service of that notice, the detail of each of which appears under the relevant heading below. Correspondence ensued with the solicitors acting for the Respondent, and it does not appear that a formal counter notice was served.

#### *The Notices to Participate*

6. Section 78(1) of the Act requires that before it makes a claim to acquire the right to manage any premises, an RTM Company must give notice to each person who at the time when the notice is given is the qualifying tenant of a flat contained in the premises but neither is nor has agreed to become a member of the RTM Company. The notice, called a notice inviting participation must, by the ensuing sub sections of section 78 inform the recipient that the RTM Company intends to acquire the right to manage the premises, give the names of its members, and invite the recipient to become a member of the Company, and must (pursuant to section 79(2)) be given at least fourteen days before any notice of claim is given by the Company to the landlord. It must either provide a copy of the memorandum and articles of association of the RTM Company or include a statement allowing them to be inspected and copied. It must include information specified both by subsection 5 of section 78, and must comply with the provisions of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 (SI 2003/1988) both as to form and further content.
7. Section 112(5) of the Act provides that where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in Chapter 1 of Part 2 of the Act to the landlord or to the tenant or to the qualifying tenant is (unless the context otherwise requires) a reference to both or all of the persons who jointly constitute the landlord or the tenant or the qualifying tenant, as the case may require.
8. It is common ground that at the time when the Company was incorporated, and at the time when the notice of claim was given, Ms Sanjari as the joint lessee of flat 1, Mrs Maitland as the joint lessee of flats 3 and 6, and the lessee of flat 9 were not members of the Company, although only Mrs Maitland had not been an addressee of Mr Maitland's original letter of 18<sup>th</sup> July 2006. It is also common ground that that letter was not in the form required by SI 2003/1988, neither was it from the company. By definition the letter could not have given the information about the RTM Company that both the Act and SI 2003/1988 require because at the time the letter was written the Company did not exist.
9. The Respondent's solicitors submit that the fact that notices of invitation to participate were not given to the lessees mentioned, coupled with the fact that the letter did not contain the required information and was not in the

statutorily required form is fatal to the claim. It is clear that the notices to participate were not given to the three lessees mentioned. Section 79(2) makes it plain that a notice of claim may not be given until that requirement has been complied with. The letters of 18<sup>th</sup> July 2006 could not have complied with it for the reasons given in the previous paragraph. They were not, and could not by definition be, notices to participate in the sense of the requirements of section 78 despite the fact that they very reasonably set out to inform everyone of what was intended. In the Tribunal's judgement that fact alone deals a fatal blow to the claim. The provisions of section 78(7) to the effect that the omission of any particulars required by or by virtue of section 78 are not sufficient to save the situation; that is because what is primarily in issue is the fact that notices were not given when they should have been, not whether or not they contained the right content or were in the right form. That being so it is not necessary for the tribunal to consider the Respondent's solicitors' arguments on the question whether or not notices failed because they were not in the statutory form.

#### *Inadequacy of the notice of claim*

10. The notice of claim is in the form required by SI 2003/1988. An issue arises however concerning the part of the notice that deals with the statement of the grounds on which the Company relies that the premises are ones to which Chapter 1 of Part 2 of the Act applies. That statement is required by section 80(2) of the Act. Section 72 defines 'premises' to which the Chapter applies in respect of a self-contained building like Barton Court in terms of the physical nature of the building in question and of the proportion of qualifying tenants who hold flats in it. The notice of claim when describing the grounds states "The service charge is excessive"; it does not address the matters set out in section 72.
11. Mr Maitland submits that this does not matter because section 81(1) provides that a claim notice is not invalidated by any inaccuracy of the particulars required by, or by virtue of, section 80. In the Tribunal's judgement that submission must fail because the failure here is not an inaccuracy of particulars, it is a failure to give the required particulars at all. His further submission that the further information given in a letter to the Respondent's solicitors of 15<sup>th</sup> November 2006 supplements the notice and saves the situation must similarly fail. There is no provision at all in the Act for an amended notice to be given unless the first one is withdrawn or otherwise has failed, and similarly no provision for a notice once given to be supplemented. In the Tribunal's judgement the notice did not fulfil the statutory requirements and the defect was not capable of being cured in the way that Mr Maitland sought to do. That being so, the notice appears to the Tribunal to have been invalid.

#### *Failure to serve the Notice of Claim*

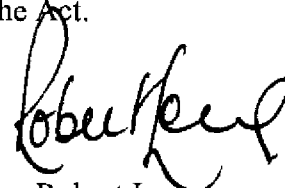
12. Even if the Tribunal is wrong about each of the preceding two aspects, it is satisfied that the notice was not "given" as section 79(1) requires. The word "given" is not defined in the Act, and the Respondent's solicitors treat it in

their representations as being synonymous with “served” albeit without offering any authority on the point. Mr Maitland did not challenge their interpretation. The Tribunal is aware of the decision in *Re 88 Berkley Road* [1971] Ch 648 in which it was held, albeit in connection with a notice of severance under section 36(2) of the Law of Property Act 1925, that there is no distinction between the two expressions, and considers that, in addition to the fact that no issue has been raised upon the point in argument, it is authoritative for the purposes of this case.

13. Since the landlord is a limited company, it follows that the notice in this case might have been given by service at its registered office. Alternatively, service might have been properly effected at the address given by the landlord to the lessees in accordance with the provisions of section 48 of the Landlord and Tenant Act 1987. The registered office of the Respondent is at 16 The Parade Bognor Regis West Sussex PO21 5SB according to the copy company search on page 90 of the bundle before the Tribunal, and the address given for service in accordance with section 48 on a copy demand that Mr Maitland helpfully produced to the Tribunal at the hearing is Suite 8, 207 Hook Road, Chessington, Surrey KT9 1 EA.
14. If the notice had been sent to either of those addresses that would in the Tribunal’s judgement have been an effective ‘giving’ of the notice in this particular case. However, it was sent to the address of the landlord’s managing agent at PO Box 65 Bognor Regis West Sussex PO21 4UL. By no standard would that have been effective service of a notice and, in accordance with the decision in *Re 88 Berkley Road* it was not an effective “giving” of the notice for the purposes of section 80 of the Act. It is not a matter for the Tribunal to speculate whether a notice so addressed might or might not in practice have ended up in the landlord’s registered office.

#### *Conclusion*

15. For all of these reasons the Tribunal has concluded that the Applicant has not successfully exercised the right to manage conferred by the Act.



Robert Long  
Chairman  
2<sup>nd</sup> March 2007