

**SOUTHERN RENT ASSESSMENT PANEL**

Certificate pursuant to Section 84(3) of the Commonhold and Leasehold Reform Act  
2002.

**Re: Sunhill House, Danemore Lane, South Godstone, Surrey, RH9 8JS**

Case No: CHI/43UK/LRM/2006/0004

I certify pursuant to the above-mentioned regulation that there is an error in the Notice  
of the Leasehold Valuation Tribunal's decision in this matter dated 30<sup>th</sup> March 2007.

In the Tribunal's Decision document under paragraph 6, "On the 6<sup>th</sup> November 2005".  
The date should read "**On the 6<sup>th</sup> November 2006**".

Dated 16<sup>th</sup> April 2007



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Mr I R Mohabir LLB (Hons)  
Chairman

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**CHI/43UK/LRM/2006/0004**

**IN THE MATTER OF SECTION 84(3) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**AND IN THE MATTER OF SUNHILL HOUSE, DANEMORE LANE, SOUTH  
GODSTONE, SURREY, RH9 8JS**

**BETWEEN:**

**SUNHILL SOUTH GODSTONE RTM COMPANY LIMITED**

**Applicant**

**-and-**

**PREST ESTATES LIMITED**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application made by the Applicant pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination that it was on the relevant date entitled to acquire the right to manage the property known as Sunhill House, Danemore Lane, South Goldstone, Surrey, RH9 8JS ("the subject property").
2. The subject property is divided into six residential units comprising four flats and two "houses". The conversion of the original house took place in 1988

when it was converted into four flats with one "house" forming the easterly end and known as 2 Sunhill. Later that year an extension to the main building was constructed in the form of a second "house" adjacent to 2 Sunhill and known as 1 Sunhill. The two "houses" have their own rear gardens demised under the respective leases. The remainder of the grounds are subject to communal use by the other lessees. There are no internal communal areas in the building as each of the residential units has their own external front doors.

3. The present lessees are:

No. 1 House	Ian Scobell
No. 2 House	Mary Quilter
No. 3 Flat	Ann Tully
No. 4 Flat	Mr. and Mrs. Good
No. 5 Flat	Anita Reid
No. 6 Flat	Elizabeth Daniell

4. The freehold of the subject property is owned by the Respondent company. Of the 18 shares in the company, each of the lessees holds 3 ordinary shares. The three Directors of the company are E. Daniell, M. Good and A. Reid. It appears that the Respondent is registered as a dormant company and that the management of the building is conducted by Sunhill Management, an organisation that is comprised of all the leaseholders.

5. It is common ground that, on 4 August 2006, the three leaseholders, being Mr. Scobell, Mrs. Reid and Miss Daniell, who were not members of the Applicant

company were served with a notice inviting participation pursuant to section 78 of the Act. Subsequently, the Applicant exercised the right to manage the subject property by serving a Claim Notice on the Respondent pursuant to section 79 of the Act. It is also common ground that the Claim Notice was not served on any of the leaseholders as required by section 79(8) of the Act. By a Counter Notice dated 22 September 2006, the Respondent denied that the Applicant was entitled to manage the subject property by reason of:

- (a) the non-compliance with section 79(8) of the Act, by failing to serve each of the leaseholders with a copy of the Claim Notice.
- (b) the fact that " the landlord is resident in each flat".

6. On 6 November 2005, the Applicant made this application to the Tribunal seeking a determination that it was on the relevant date entitled to acquire the right to manage the premises. Pursuant to the Tribunal's Directions dated 6 December 2006, both parties filed and served their respective statements of case. The Respondent's pleaded case differed materially from the objections made in the Counter Notice. The Respondent continued to maintain that the non-service of the Claim Notice on each of the leaseholders was fatal to the claim. However, the Respondent had apparently abandoned the objection at 5(b) above and sought, in the alternative, to plead an entirely new point. Essentially, it was submitted that the subject property was not premises to which the Right to Manage provisions under Part 2 Chapter 1 applied because it consisted of two houses and four flats, whereas sections 72, 74, 75 and 112 of the Act was only ever intended to apply to flats. As the subject property

was comprised of both houses and flats, the Act had no application in this instance.

7. In its Reply, the Applicant made three submissions. Firstly, that the Respondent was limited to arguing the points set out in the counter notice. Secondly, that the non-service of the Claim Notice on the leaseholders was not fatal to the claim. Thirdly, that the subject property was a qualifying building within the meaning of section 72 of the Act. In the alternative, it was submitted that the entitlement to the right to manage should apply to the flats in the building or those parts not including the "houses".

### **Inspection**

8. The Tribunal externally inspected the subject property on 14 March 2007. The Tribunal also internally inspected No. 2 Sunhill. The property comprises a large detached house built around 1910 and situated at the end of an unadopted road. It has painted elevations under a slate roof and was converted into four flats and one "house" in 1988 with an extension added around the same time to form a further "house". From the inspection, the property generally appeared in good condition with only minor defects noted. The grounds to the property are quite substantial with a block of garages, each demised with a flat or "house" and some storage sheds not demised. No 2 Sunhill comprised a two storey cottage type property with three bedrooms and a bathroom on the first floor and open plan living area with conservatory, kitchen and cloakroom on the ground floor.

## **Decision**

9. The hearing in this matter also took place on 14 March 2007. The Applicant was represented by Mr. Nicholas Munns. Also in attendance were Mr. Good, Miss Tully and Mrs. Quilter. The Respondent did not attend nor was it represented. Mr. Munns largely repeated on behalf of the Applicant, the submissions already made in its statement of case. The Tribunal considered in turn the submissions made by both parties. It is perhaps appropriate to take the submissions out of order.

### **(a) Non-service of the Claim Notice**

10. As stated above, it was common ground that the Claim Notice had not been served on any of the leaseholders, but only on the Respondent. It was submitted on behalf of the Respondent that this was a mandatory requirement of section 79(8). The word "must" was unambiguous. In other parts of the Act where there is no equivalent mandatory requirement, there was usually a saving provision. There was no such saving provision for section 79(8). Therefore, this procedural error was fatal to the claim. If the Respondent was correct in this submission, then it would not be necessary for the Tribunal to go on to consider either the points raised in relation to the counter notice and whether the right to manage provisions in the Act applied to the subject property.
11. It was accepted by the Applicant that the failure to serve the Claim Notice was not "saved" by section 81(1) of the Act. This provided that the claim notice was not invalidated by any inaccuracy in any of the particulars required by

section 80. A similar provision was contained in section 78(7) in relation to the notice of invitation to participate. However, it was submitted that the requirement of service was "directory" as opposed to being a "mandatory" requirement. The consequences of non-compliance depended on whether there was any real prejudice to the leaseholders and there was none here.

12. The Tribunal did not accept the Respondent submission that the failure to serve the claim notice on each of the leaseholders, as a procedural error, was fatal to this claim. The position here is directly analogous to the facts in *Sinclair Garden Investments (Kensington) Ltd. v Oak Investments RTM Co. Ltd.* [2005] RVR 426. In that case, it was held by the President of the Lands Tribunal, George Bartlett QC, that the failure to serve a notice inviting participation did not invalidate a claim where a right to manage was sought. He relied on the guidance given by the Court of Appeal in *R v Immigration Appeal Tribunal ex parte Jeyanthan*. The Court of Appeal said that the right approach is to regard the question of whether a requirement is directory or mandatory as only a first step. Other questions have to be asked such as whether the statutory requirement has been met where there has been substantial compliance with requirement or whether non-compliance is capable of being waived and, if so, whether it should be. In *Sinclair Garden Investments*, Mr. Bartlett, said that the purpose of serving a notice inviting participation (s.78) and a claim notice (s.79) was to ensure that the interest of a tenant is protected. The provisions are designed to ensure that every qualifying tenant has the opportunity to participate in the RTM Company and is informed that a claim notice has been made by that company. In

determining the effect of the failure to comply with one or other of these requirements, a Tribunal must determine whether or not a tenant had necessary awareness of the proceedings that the statute intended him to have. More importantly, the Court of Appeal said that, in each instance, it was a matter for the Tribunal to determine what are the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises.

13. Applying this test to the present case, the Tribunal was satisfied that each of the leaseholders, both participating and non-participating, were on notice that the Applicant intended to exercise the right to manage the subject property. In other words, the Tribunal was satisfied that there had been substantive compliance with s.79(8) of the Act. It did so for the following reasons:
  - (a) the notice inviting participation had been served on all the leaseholders. At this stage, they were all aware that the Applicant intended to exercise the right to manage the subject property.
  - (b) the Respondent is a "tenant owned" company and the claim notice was in fact properly served on it. All of the leaseholders are shareholders in this company. It could be argued that, in the circumstances, service on the company amounted to a good service within the meaning of section 79(8).
  - (c) it is not said by any of the non-participating tenants at any stage that they have been either deprived of the opportunity to serve a counter notice to the claim or, indeed, that they oppose the application.



(d) the Tribunal found no assistance in the earlier LVT decisions of **3 Kings Road Westcliffe Essex RTM Co Ltd v Westleigh Properties Ltd** (CAM/OOKF/LRM/2005/0001) and **23 Albert Road RTM Co Ltd v Oasis Properties Ltd** (CHI/OOML/2004/0004) relied on by the Respondent because those decisions were on an entirely different point, that is the validity of the claim notice itself. It is not contended by the Respondent here that the claim notice is defective or invalid in any way.

**(b) The Counter Notice**

14. The Tribunal then considered the Applicant's submission that the Respondent was not entitled to take a further point about whether the Act applied to the subject property, as this had not been "pleaded" in the counter notice.
15. At paragraph 2.1 of its written submission, the Respondent submitted that despite this point not having been set out in the counter notice, there was nothing to prevent it from doing so "*as it was the Tribunal's task to examine all of the facts, and not just those mentioned in the counter notice*", see: **3 Kings Road Westcliffe Essex RTM Co Ltd** (ante) at paras. 23 & 25.
16. The Tribunal accepted the Applicant's submission that it was not entitled to raise the issue of "qualifying premises" if it had not been stated in the counter notice, as being a ground upon which the claim to be entitled to manage was denied. The present case can be distinguished from the facts in **3 Kings Road Westcliffe Essex RTM Co Ltd**. In that case, the issue before the Tribunal was

the validity of the claim notice. In this case, the validity of either the claim notice or the counter notice does not arise. It is not contended by the Applicant that the counter notice is invalid. It is simply submitted that it was incumbent upon the Respondent to inform the Applicant in the counter notice of *all* of the grounds on which the claim was denied. Indeed, this is an express requirement of s.84(2)(b) of the Act, which does not contain a saving provision in this regard. This is consistent with the requirement in any litigation for each party to tell the other at the outset exactly what their case is, so that each may know the case it has to meet. This did not occur in this instance. It is now settled law that a Respondent in a claim such as this must fully plead its case and, in default thereof, will not be entitled to raise any other issues at a later stage in the proceedings, see: *Dawlin RTM Ltd v Oakhill Park Estates* (LON/00AG/LEE2005/00012). Accordingly, the Tribunal found that the Respondent's case was limited to the point considered at paragraph 10 above. It follows from this that the Respondent was not entitled to raise the additional issue of "qualifying premises" and, therefore, it was not necessary for the Tribunal to go on to consider this

17. In the light of the Tribunal's finding above, it granted the application and determined that the Applicant was on the relevant date entitled to acquire the right to manage the subject property. Pursuant to s.90(4) of the Act, the acquisition date is *3 months* from the date of this Decision.

**Costs**

18. For the avoidance of doubt, neither party in this matter is entitled to recover from the other any or all of its costs incurred in these proceedings (s.88).

Dated the 30 day of March 2007

CHAIRMAN..... *I. Mohabir*

Mr I Mohabir LLB (Hons)