



Property : 99 Cumberland Avenue,
Southend-on-Sea,
Essex SS2 4LG

Applicant : 99 Cumberland Avenue RTM Co. Ltd.

Respondent : Forcelux Ltd.

Date of Application : 19th February 2013

Type of Application : For an Order that the Applicant was, on
the relevant date, 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 MCI Arb

DECISION

1. This Application fails and the Applicant is therefore not entitled to acquire the right to manage the property.

Reasons

Introduction

2. The relevant facts in this case seem to be agreed. The Applicant served a claim notice on the 17th December 2012 seeking an automatic right to manage the property but, unfortunately, it was not a Right to Manage Company ("RTM").
3. From the papers lodged, it is clear that the Applicant was formed as an ordinary private company limited by guarantee. There are no aims and objects and membership is open to anyone. From the Applicant's statement of case and a statement from Grant Beeming of Made Simple Group who acted from the lessees at the time of forming the Applicant company, it is clear that a mistake was made. An application has now been made to Companies House - on the 22nd March 2013 - to change the Memorandum and Articles of Association.
4. A counter-notice dated 24th January 2013 was served denying the right to manage. The application to this Tribunal was made on the 19th February 2013.

Procedure

5. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in a directions order dated 27th February 2013 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 16th April 2013 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

6. Section 79 of the 2002 Act says that a claim notice must be made by an RTM. This is mandatory and therefore cannot be remedied after the event.

Conclusions

7. It is a pity that the Applicant or the lessees did not seek proper advice at the time or at least when they received the Counter-Notice. Only an RTM can serve a claim notice. The Applicant accepts that it was not an RTM at the time and this application must fail. It is not, as is suggested on behalf of the Applicant, a 'minor defect' but is a fundamental procedural defect.
8. It is also argued that this process must be 'as tenant-friendly as possible'. Regrettably that is not relevant in this case. Having said that, the Applicant's representative must understand that taking away a property owner's right to manage its own property by a compulsory process could be described as a very draconian step and care should therefore be taken to ensure that the process has been correctly followed.
9. The Tribunal is also asked by the Applicant in its statement to the Tribunal, to assess the legal costs allegedly incurred by the Respondent which are set out in a copy invoice which is also in the bundle. Without much fuller details of the claim for costs and a proper process of objections and responses, it is impossible for the Tribunal to make any determination. However, it is open to either party to make a separate application to this Tribunal for these costs to be assessed in accordance with Section 88(4) of the 2002 Act.

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Bruce Edgington
President
16th April 2013