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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AH/LRM/2013/0029**

Property : **Windermere Court, 44 Park Road,
Kenley, Surrey CR8 5AR**

Applicant : **Windermere Court Kenley RTM
Company Limited**

Representative : **Messrs R W Hemmings & Co
solicitors**

Respondent : **Sinclair Gardens Investments
(Kensington) Limited**

Representative : **Messrs W H Mathews & Co
solicitors**

Type of Application : **Application in relation to the denial
of the Right to Manage.
Commonhold and Leasehold
Reform Act 2002 (the Act)**

Tribunal Members : **Mr Andrew Dutton - Tribunal
Judge
Mr Neil Martindale FRICS**

**Date and venue of
Determination** : **5th March 2014 at 10 Alfred Place,
London WC1E 7LR**

Date of Determination : **5th March 2014**

DECISION

The Tribunal determines that the Applicant is not entitled to acquire the right to manage the Property for the reasons set out below

REASONS

Background/Submissions

1. This matter came before us on 5th March 2014 for the purposes of determination as a paper case. We had before us a bundle containing the following documents
 - the Claim notice,
 - Counter-notice,
 - a previous decision,
 - the Respondent's initial statement of case dated 16th January 2014,
 - the Applicant's reply dated 10th February 2014
 - letters
 - directions
 - the Respondent's first response to the Applicants response dated 17th February 2014
 - a further response by the Respondents dated 24th February 2014
2. Initially there were a number of issues raised by the Respondent in the Counter- notice. However, in the initial response dated 16th January 2014 , a document which appeared to be a treatise on the law, whether or not it applied to this specific case, it was possible to discern that, subject to proper disclosure by the Applicant the Respondent was relying at that stage on breaches of sections 80(7), 80(2) and presumably 79(5) although this is not clearly stated and instead reference is made to s112 of the Companies Act 2006. This document was responded to by the Applicants, which document is undated and somewhat confusingly refers to the Respondent's statement dated 23rd September 2013, which is, in fact, the date of the Counter-notice. The Respondent's further response dated 17th February 2014 discontinues complaints under s80(2) but reserves its position on other potential breaches pending full disclosure. Such disclosure took place by letter dated 14th February 2014. This resulted in a further response dated 24th February 2014 where it is alleged that there have been breaches of sections 78(1), (2) and (3) and 79(2). The Applicant has not responded to this document but has written to the Tribunal enclosing further papers under cover of letters dated 27th February and 5th March 2014.
3. The Notice of Claim is dated 29th August 2013 and requires the Respondent to give any Counter-Notice not later than 30th September 2013. At paragraph 6 of the Notice it informs the Respondent that it intends to acquire the right to manage the premises on 31st December 2013.

4. The Respondent having discontinued complaints under s80(2) therefore appears to rely on s80(7) and it seems s79(5). In addition the matters raised in the further response dated 24th February 2014 are, it seems, being pursued.

The Law.

5. Section 80 of the Act states:

80 Contents of claim notice

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
 - (a) the qualifying tenant of a flat contained in the premises, and
 - (b) a member of the RTM company,and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
 - (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

Findings

6. If indeed the Respondent says there has been a breach of s79(5) we find that is not the case. The register of members shows more than 50% of the leaseholders had been registered by the time the notice of claim was issued in August 2013

7. In so far as the matter raised in the further response dated 24th February 2014 are concerned we do not propose to make any findings in respect of same. Our reason for this is that the response, the third by the Respondent, was dated 24th February 2014. The Applicant has not, for reasons that are not wholly clear, specifically responded to the matters raised. By reason of our findings below we do not think it proportionate to adjourn the matter for the Applicant to file a further response, with the attendant costs. It is not necessary for us to make findings, which we would be reluctant to do, without giving the Applicant the right to respond to this late further response by the Respondent.
8. We have carefully considered all that has been submitted in writing on the impact of s80(7). We find, with some reluctance, that we must follow the Respondent's submissions. We say 'with reluctance' because this legislation is intended to be "no fault right to manage" and should not be laying pitfalls in front of parties who wish to acquire such right. However, the Act must be followed and we are somewhat nonplussed that, as in this case, the Applicant puts itself in a position where there can be a challenge to the procedures. If they had inserted, for example, the date of 1st January 2014 in the Notice of Claim for the purposes of section 80(7), this issue would not have been raised. Given that the period of three months was in any event due to expire in the middle of Christmas and New Year holidays to choose a date of 31st December seems illogical. The question as to prejudice, is we think, aimed at the prejudice suffered by the tenants in respect of any failure. The Landlord, it being a no fault right, can only rely on technical issues.
9. We have considered the findings by the House of Lords in the Dodds case and the speech of Lord Diplock and the following opinion "*My Lords, reference to "a month" in a statute is to be understood as a calendar month. The Interpretation Act 1978 says so. It is also clear under a rule that has been consistently applied by the Court since Lester v Garland (1808) 15 Ves 248 [1803 – 13] All ER Rep 436 that, in calculating the period that has elapsed after the occurrence of the specified event such as the giving of notice, the day on which the event occurs is excluded from the reckoning. It is equally well established, and is not disputed by counsel for the tenant, that when the relevant period is a month or a specified number of months after the giving of a notice the general rule is that the period ends on the corresponding date in the appropriate subsequent month, ie the day of the month that bears the same number as the as the day of the earlier month on which notice was given.*"
10. In addition we have borne in mind the decisions of our colleagues in 2013. We accept that we are not bound by those decisions but nonetheless we do strive for consistency where the facts are the same. They have not been the subject of appeal. We find that the reasoning behind the decisions in 2013 is sound, and is adopted by us in this case.
10. Accordingly the date of 30th September 2013 at s80(6) should have led to a date of not earlier than 1st January 2014 in s80(7), this being 'a date, at least three months after that specified under subsection (6)'.

The inclusion of the word “after” means that the date must be after 31st December 2013, being three calendar months from the date contained at s80(6), ignoring that day in calculating the period. .

11. We do not consider that the cases cited in paragraph 7 of the Applicant’s response assist in the determination of this issue. The Pineview case deals with two issues, the status of the signature to the Claim Notice and appurtenant property, neither of which relate to this case. The Assethold and 7 Sunny Gardens case related to the status of a deceased leaseholder and the Fairhold Mercury case refers to the description of the RTM company. It may well be that the Avon Freeholds Limited v Regent Court RTM Company Limited case would assist the Applicant in respect of the allegation that there have been the breaches as set out at paragraph 2 above referring to the response dated 24th February 2014. However for the reasons stated above we do not need to consider those issues as we find that the RTM company has breached the provisions of s80(7). The Respondent’s case is not improved by incurring further costs asking the Applicant to respond to the latest response dated 24th February 2014.

Andrew Dutton

Andrew Dutton
Tribunal Judge

5th March 2014