

408



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

Case Reference : LON/00AZ/LRM/2013/0028

Property : 37 Whatman Road, London, SE23 1EY

Applicant : 37 Whatman Road RTM Company Limited

Representative : Canonbury Management

Respondent : Assethold Limited

Representative : Conway & Co, solicitors

Type of Application : Application in relation to the denial of the Right to Manage

Tribunal Members :
(1) Mr A. Vance, LLB (Chair)
(2) Mr N Maloney, FRICS
(3) Mr C S Piarroux JP CQSW

Date of Decision : 03.03.14

DECISION

Decision of the Tribunal

1. The tribunal determines that the Applicant is entitled to acquire the right to manage 37 Whatman Road, London, SE23 1EY ("the Premises").

The application

2. The Applicant RTM company applies under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that on the relevant date it was entitled to acquire the right to manage the Premises.
3. Numbers appearing in bold and in square brackets below refer to pages in the hearing before the tribunal.
4. The relevant legal provisions are set out in the Appendix to this decision.

Background

5. Chapter 1 of Part 2 of the Act makes provision for RTM companies, the members of which are qualifying tenants of premises to which the provisions apply, to acquire the right to manage the premises. A landlord who is given a notice claiming the right to manage by an RTM company may give the company a counter notice alleging that the company is not entitled to acquire the right to manage the premises (section 84(2)). The RTM company may then apply to the tribunal for a determination that it was on the relevant date entitled to acquire such right (section 84(3)).
6. By a claim notice dated 16.09.13 the Applicant gave notice that it intended to acquire the right to manage the Property on 26.01.14 [**28**]. The claim notice is addressed to Assethold Limited, the freehold owner of the Property and the Respondent in these proceedings. It appears that a copy of the claim notice was sent to the Respondent at its registered office address of 5 North End Road, Golders Green, London, NW11 7RJ [**27**] and that an additional copy was sent to the Respondent's managing agents, Eagerstates Limited at PO Box 1369, London NW11 7EH [**32**].
7. By counter notice dated 18.10.13 [**48**], the Respondent disputed that the Applicant was entitled to acquire the right to manage. It asserted that the Applicant had failed to establish compliance with sections 81(3), 80(2), 79(6), 80(8) and 80(9) of the Act. These are the only objections raised by the Respondent and are dealt with in turn below.
8. The Applicant subsequently applied to this tribunal under s.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. A case management hearing took place on 03.12.13. This was attended by Mr R McElroy on behalf Canonbury Management and Mr R Gurvits on behalf of Conway & Co. Directions were issued by tribunal the same day.
10. On 31.12.13, the tribunal received an application from the Respondent made under s.88(4) of the Act seeking a determination of the costs to be paid by the Applicant (**LON/00AZ/LCP/2014/0001**) together with a request that it be heard jointly with this application and for a variation in the directions made on 03.12.13.
11. The tribunal considered it appropriate for both applications to be determined together and on 22.01.14 it directed that both applications be determined on the papers and without an oral hearing (the parties having previously agreed to this in respect of this application at the case management hearing on 03.12.13). Further directions were given. These included a direction that the Respondent send to the Applicant a schedule of costs sufficient for a summary assessment by 05.02.14 together with invoices substantiating the costs claimed with the Applicant to respond by 19.02.14.
12. At the date of the tribunal's paper determination on 03.03.14 it was not in possession of a schedule of costs from the Respondent nor sufficient invoices to enable it to carry out a summary assessment of costs. Nor was it in possession of any representations on costs from the Applicant.
13. Enquiries made by the case officer on the day indicated that Canonbury Management may not be instructed by the Applicant in respect of determination of costs. Whether or not that is correct the tribunal did not consider it appropriate to determine costs without a schedule of costs from the Respondent and supporting explanations and invoices. No determination was therefore made in respect of application **LON/00AZ/LCP/2014/0001**. Further directions in respect of that application will be issued by the tribunal.

Section 81(3) – Was an earlier claim notice in force at the relevant date?

14. The Respondent contends that on the date that the claim notice was given an earlier claim notice remained in force. The circumstances surrounding this earlier notice are as follows:
 - 14.1. The Applicant had previously served a claim notice dated 31.03.13 [**65**].
 - 14.2. The Respondent served a counter notice in response on 02.05.13 [**69**].
 - 14.3. On 14.06.13 the Applicant issued proceedings before the tribunal under section 84(3) of the Act seeking a determination of the Applicant's right to manage (**LON/00AZ/LRM/2013/0019**). That application was decided in the Respondent's favour, in a paper determination dated 29.08.13, on what

was described as a “highly technical point” concerning the signature to the claim notice.

- 14.4. The period within which the tribunal’s decision of 29.08.13 could have been appealed expired on 27.09.13. No appeal was made.
15. The Respondent’s position is that by virtue of section 84(6) the first claim notice did not cease to have effect until the first RTM application was finally determined, which in this case was when the time for appealing the tribunal’s decision of 29.08.13 expired. As the Applicant gave its second claim notice on 17.09.13, before the deadline for a possible appeal expired, the first claim notice was, it says, still in effect. This is prohibited by section 81(3) which does not allow a claim notice to be served where one is already in force. The second claim notice was therefore invalid.
16. The Applicant, however, maintains that the first claim notice was withdrawn by letter dated 10.09.13, sent to the Respondent [96] and Eagerestates Limited [95].

Decision and Reasons

17. The tribunal rejects the Respondent’s contention that the first claim notice remained in force on 17.09.13, the date on which the second notice was given. In order to have been ‘in force’ on that date the notice must have the potential to have some operative impact on the subject matter of the application.
18. However, by that date the first claim notice had been determined by a tribunal to be invalid. Given that finding of invalidity (which neither party contends was incorrect) this tribunal considers that the Applicant was not prevented from serving a second claim notice when it did. In the tribunal’s view the first notice ceased to be ‘in force’ for the purposes of section 81(3) once the tribunal made its determination on 29.08.13. As such, the prohibition on a subsequent notice contained in section 81(3) did not apply since the first notice was not a notice under section 79 and, therefore, was not in force.
19. Section 84(6) specifies that a claim notice ceases to have effect where there has been a final determination that a RTM company is not entitled to acquire the right to manage. However, that does not prevent a claim notice from ceasing to have effect for some other reason, including invalidity or where a notice is withdrawn. In our determination section 84(6) cannot prevent a RTM company, who a tribunal has determined has served an invalid notice, from serving a further notice until such time as the application is finally determined.
20. Nor, following the tribunal’s determination of 29.08.13, can the letter from Canonbury Management dated 10.09.13 operate as an effective withdrawal of the first notice. As the notice was invalid, and of no further effect, it was not capable of being withdrawn.

21. Despite this determination, this tribunal is of the view that even though the first notice was invalid, it still amounted to a claim notice for the purposes of the Act and should therefore be regarded as such for the purpose of the Respondent's application for costs under s.88(4).

Section 80(2) – Inadequate statement of grounds

22. The Respondent contends that the claim notice failed to comply with the requirement of section 80(2) in that the statement of grounds provided was misleading. Rather than specifying which of the possible statutory grounds applied, the Applicant had recited all of them.
23. The Applicant disputes that the particulars provided represent an inaccuracy that would invalidate the claim form.

Decision and Reasons

24. The requirement under section 80(2) is to specify the premises and a statement of grounds on which it is claimed that they are premises to which the right to manage provisions contained in the Act apply.
25. The tribunal considers this requirement has been met. The premises have been correctly identified and whilst the Applicant has not specifically indicated whether or not the Premises consist of a self-contained building or part of a building and whether or not there is appurtenant property, we do not consider its' failure to do so to amount to a defect in the notice. Alternatively, if it is a defect, it is an inaccuracy in particulars that, by virtue of section 81(1) of the Act, do not invalidate the claim notice.
26. The net effect of the wording in paragraph 2(b) of the notice is that the Applicant is stating that the right to manage provisions apply because the Premises is *either* a self-contained building *or* part of a building for the purposes of the Act and that it *may* or *may not* have appurtenant property. This is sufficient, in the tribunal's judgment, to amount to a statement of grounds despite the generality of the statement.

Section 79(6) – Service of the Claim Form

27. The Respondent's position is that the Applicant had been provided with an address for service of notices on the Respondent pursuant to s.48 Landlord & Tenant Act 1987, namely PO Box 1369 London, United Kingdom, NW1 7EH. However, the Respondent had been served at its registered office address which, it is submitted, is not in accordance with s.111 of the Act.
28. The Applicant contends that proper service took place and that copies of the claim notice were sent to the Respondent at both addresses stated in service charge demands

issued by the Respondent's agents as being relevant for the purposes of s.47 & 48 of the 1987 Act **[86]**.

Decision and Reasons

29. The Respondent has not provided any supporting documentary evidence as to the address that it states was notified to the Applicant for the purposes of section 48 of the 1987 Act. The only documentary evidence before the tribunal is the service charge demand provided by the Applicant which states the address for service of notices as being c/o Eagerstates Ltd, PO Box 1369, London, NW11 7EH.
30. In this case, the evidence indicates that the claim notice was sent both to the Respondent and Eagerstates Ltd under cover of letters dated 16.09.13. One letter was sent to Eagerstates Ltd at PO Box 1369, London, NW11 7EH and the other to Assethold Limited at its' registered office address.
31. We determine that the claim notice, which is itself addressed to the Respondent, was served on it at the address specified for service of notices for the purpose of section 48 of the 1987 Act, namely the address stated in the service charge demand, *Eagerstates Ltd, PO Box 1369, London, NW11 7EH*. The fact that a further copy was sent to the Respondent at its' registered office address does not alter the fact that valid service had been effected.

Section 80(8) and (9) – Inaccurate Particulars

32. Section 80 (8) requires that a claim notice must contain such other particulars as may be required to be contained in claim notices by relevant regulations. Section 80(9) requires that the notice must comply with requirements about the form of claim notices as described by relevant regulations.
33. The relevant regulations are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. Regulation 8 of those Regulations provides that claim notices shall be in the form set out in Schedule 2 to the Regulations. This form requires the provision of information in respect of the leases of persons who are both qualifying tenants and members of the RTM company. It requires details of the date that each person's lease was entered into; the term for which it was granted; the date of commencement of the term and such other particulars as are necessary to identify it (paragraph 4 of Schedule 2 to the regulations).
34. The Respondent contends that particulars in the claim notice contained inaccurate information in that the lease for Flat A contained an incorrect commencement date and the lease for Flat B incorrectly stated the date the lease was entered into as well as the commencement date of the lease.
35. These inaccuracies, it says, negate the purpose of providing particulars, which is to enable the Respondent to assess whether or not the properties qualify for the right to

manage. It appears to be being asserted that this amounts to non-compliance with the requirements of sections 80(8) and that this renders the claim notice defective.

36. The Applicant rejects that argument and asserts that the errors are not material errors.

Decision and Reasons

37. The details of the lease to Flat A appear to contain an error when checked against the Office Copy Entries for that flat [74] in that the date the lease was entered into was 09.02.06 and not 01.03.06 as stated in the claim form.

38. There appears to be only one error concerning the lease of Flat B when compared to the relevant Office Copy Entries [76] in that the date the lease was entered into was 28.04.06 and not 23.06.06 as stated in the claim notice. The commencement date specified in the claim notice of 31.03.06 is correct.

39. In the tribunal's view these are inaccuracies in particulars required by section 80(8) that, by virtue of section 81(1) of the Act, do not invalidate the claim notice. The tribunal does not accept that the number of errors is sufficient to render the notice defective.

40. The tribunal therefore determines that the Applicant is entitled to acquire the right to manage the Premises.

Name: Amran Vance

Date: 13.03.14

Annex - Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 79 Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is—
- (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the . . . tribunal or court by which he was appointed

Section 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.

Section 81 Claim notice: supplementary

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.

(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

(a) the premises, or

(b) any premises containing or contained in the premises,

may be given so long as the earlier claim notice continues in force.

(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

(a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) ceased to have effect by reason of any other provision of this Chapter

Section 84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to [the appropriate tribunal] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7) A determination on an application under subsection (3) becomes final—

(a) if not appealed against, at the end of the period for bringing an appeal, or

(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect

Section 88 Costs: general

(1) A RTM company is liable for reasonable costs incurred by a person who is—

- (a) landlord under a lease of the whole or any part of any premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,
- in consequence of a claim notice given by the company in relation to the premises.
- (2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
 - (3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before [the appropriate tribunal] only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.
 - (4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by [the appropriate tribunal].

Section 89 Costs where claim ceases

- (1) This section applies where a claim notice given by a RTM company—
 - (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
 - (b) at any time ceases to have effect by reason of any other provision of this Chapter.
- (2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.
- (3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).
- (4) But subsection (3) does not make a person liable if—
 - (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and

(b) that other person has become a member of the RTM company.

(5) The reference in subsection (4) to an assignment includes—

(a) an assent by personal representatives, and

(b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c 20) (foreclosure of leasehold mortgage).

Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010

8 Form of notices

(1) Notices of invitation to participate shall be in the form set out in Schedule 1 to these Regulations.

(2) Claim notices shall be in the form set out in Schedule 2 to these Regulations.

(3) Counter-notices shall be in the form set out in Schedule 3 to these Regulations.

SCHEDULE 2 - Form of Claim Notice

Regulations 4 and 8(2)

"COMMONHOLD AND LEASEHOLD REFORM ACT 2002

CLAIM NOTICE

To [*name and address*] (*See Note 1 below*)

1

[*Name of RTM company*] ("the company"), of [*address of registered office*], and of which the registered number is [*number under Companies Act 2006*], in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") claims to acquire the right to manage [*name of premises to which notice relates*] ("the premises").

2

The company claims that the premises are ones to which Chapter 1 of the 2002 Act applies on the grounds that [*state grounds*]. (See Note 2 below)

3

The full names of each person who is both--

- (a) the qualifying tenant of a flat contained in the premises, and
- (b) a member of the company,

and the address of that person's flat are set out in Part 1 of the Schedule below.

4

There are set out, in Part 2 of the Schedule, in relation to each person named in Part 1 of the Schedule--

- (a) the date on which that person's lease was entered into,
- (b) the term for which it was granted,
- (c) the date of commencement of the term
- (d) *such other particulars of the lease as are necessary to identify it.

*may be ignored if no other particulars need to be given.

5

If you are--

- (a) landlord under a lease of the whole or any part of the premises,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 to act in relation to the premises, or any premises containing or contained in the premises,

you may respond to this claim notice by giving a counter-notice under section 84 of the 2002 Act. A counter-notice must be in the form set out in Schedule 3 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. It must be given to the company, at the address in paragraph 1, not later than [*specify date not earlier than one month after the date on which the claim notice is given*]. If you do not fully understand the purpose or implications of this notice you are advised to seek professional help.

6

The company intends to acquire the right to manage the premises on [specify date, being at least three months after that specified in paragraph 5].

7

If you are a person to whom paragraph 5 applies and--

(a) you do not dispute the company's entitlement to acquire the right to manage;
and

(b) you are the manager party under a management contract subsisting immediately before the date specified in this notice,

you must, in accordance with section 92 (duties to give notice of contracts) of the 2002 Act, give a notice in relation to the contract to the person who is the contractor party in relation to the contract and to the company. (**See Note 3 below**).

8

From the date on which the company acquires the right to manage the premises, landlords under leases of the whole or any part of the premises are entitled to be members of the company (**See Note 4 below**).

9

This notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or regulation 5 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. If you are of the opinion that any of the particulars contained in the claim notice are inaccurate you may notify the company of the particulars in question, indicating the respects in which you think that they are inaccurate.

SCHEDULE

PART 1

FULL NAMES AND ADDRESSES OF PERSONS WHO ARE BOTH QUALIFYING TENANTS AND MEMBERS OF THE COMPANY

[set out here the particulars required by paragraph 3 above]

PART 2

PARTICULARS OF LEASES OF PERSONS NAMED IN PART 1

[set out here the particulars required by paragraph 4 above]

Signed by authority of the company,

[Signature of authorised member or officer]

[Insert date]

NOTES

1

A claim notice (a notice in the form set out in Schedule 2 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 of a claim to exercise the right to manage specified premises) must be given to each person who, on the date on which the notice is given, is--

- (a) landlord under a lease of the whole or any part of the premises to which the notice relates,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 to act in relation to the premises, or any premises containing or contained in the premises.

But notice need not be given to such a person if he cannot be found, or if his identity cannot be ascertained. If that means that there is no one to whom the notice must be given, the company may apply to a . . . tribunal for an order that the company is to acquire the right to manage the premises. In that case, the procedures specified in section 85 of the 2002 Act (landlords etc not traceable) will apply.

2

The relevant provisions are contained in section 72 of the 2002 Act (premises to which Chapter 1 applies). The company is advised to consider, in particular, Schedule 6 to the 2002 Act (premises excepted from Chapter 1).

3

The terms "management contract", "manager party" and "contractor party" are defined in section 91(2) of the 2002 Act (notices relating to management contracts).

4

Landlords under leases of the whole or any part of the premises are entitled to be members of the company, but only once the right to manage has been acquired by the company. An application for membership may be made in accordance with the company's articles of association, which may be inspected at the company's registered office, free of charge, at any reasonable time."