



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

Case Reference : **MAN/00CJ/LRM/2013/0021**

Property : **Mill House, Hanover Street,
Newcastle upon Tyne NE1 3AG**

Applicant : **Mill House RTM Company Ltd**

Representative : **Quality Solicitors Punch Robson**

Respondent : **Triplerose Limited**

Representative : **Conway & Co Solicitors**

Type of Application : **Right to Manage - Commonhold &
Leasehold Reform Act 2002 -
Section 84(3)**

Tribunal Members : **Mr S Moorhouse LLB (Chairman)
Mr J Platt FRICS FIRPM**

**Date and venue of
Hearing** : **15 April 2014 - Manor View House,
Kings Manor, Newcastle upon Tyne
NE1 6PA**

Date of Decision : **16 April 2014**

DECISION TO STRIKE OUT

DECISION

The proceedings are struck out in their entirety pursuant to Rule 9(3)(e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

REASONS

Background

1. The application ('the Application') is made pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ('the Act') seeking a determination that the Applicant was on the relevant date entitled to acquire the right to manage the building known as Mill House situated on Hanover Street, Newcastle upon Tyne NE1 3AG.
2. In submitting the Application on 15 November 2013, the Applicant's representatives made reference to an error in the claim notice served on behalf of its client and requested that this be considered as a preliminary point. In submitting its statement of case on 27 December 2013 the Respondent's representatives made reference to the same issue and requested that the Tribunal dismiss the Application.
3. The parties were advised by the Tribunal on 21 January 2014 that the application to strike out would be considered by way of paper determination and that the Tribunal would, if it did not dismiss the proceedings, go on to determine the Application.
4. Prior to the paper determination, the Respondent exercised its right to a hearing which, on 14 March 2014, was listed for 15 April 2014. On 14 April 2014 the Respondent applied for an adjournment. This was denied by the Tribunal. The hearing proceeded on 15 April 2014, the only attendee being Mr Wilkin, the Applicant's solicitor. Whilst the Respondent was not represented at the hearing, a written note of the Respondent's skeleton arguments was received by the Tribunal and by the Applicant's representative prior to the hearing.

Striking out

5. The Tribunal considered as a preliminary matter the application made by the Respondent to strike out the Application. This request related to the requirement under section 80(7) of the Act that a claim notice 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'. The date referred to in subsection (6) is the deadline date for giving a counter-notice.
6. It is common ground that the claim notice fails to specify a date that is at least three months after the deadline date for giving a counter-notice: the deadline for giving a counter-notice is stated to be 23 September 2013 and

the date on which the RTM company intends to acquire the right to manage is stated to be 25 November 2013. The Respondent submits that, as a consequence, the claim notice is invalid. The Applicant submits that the claim notice was nevertheless valid for the reasons summarised below:

7. Section 81(1) of the Act states 'A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80'. It is submitted for the Applicant that the incorrect date of acquisition is an 'inaccuracy' that, by virtue of section 81(1), does not invalidate the claim notice.
8. The Applicant argues also that, since there were four other reasons for opposing the claim notice set out by the Respondent within its counter-notice, the Applicant's proposed date of acquisition became irrelevant - the position is now governed by section 90(4) of the Act.
9. Finally the Applicant refers to the case of *Assethold Limited v 14 Stansfield Road RTM Company Limited [2012] UKUT 262 (LC)*. This case was referred to by the Respondent within its skeleton arguments. The Applicant submits that this authority does not cover the facts in the present case, that the stated date of acquisition is of only academic importance given that the claim notice is opposed for other reasons, that there has been no prejudice to the Respondents as a consequence of the inaccuracy and that a finding that the claim notice is invalid would result in an absurd outcome given that the stated date of acquisition is now irrelevant.
10. The Tribunal considers that the central issue is whether the failure to specify a date of acquisition that complies with section 80(7) of the Act is an 'inaccuracy' within the meaning of section 81(1). The Tribunal relies on two cases in determining this issue. The Applicant has been given the opportunity to review each of them and to make representations to the Tribunal.
11. In *Assethold Limited v 14 Stansfield Road RTM Company Limited*, the Upper Tribunal considered that the correct approach to the interpretation of section 81(1) of the Act was that taken by the Upper Tribunal in *Assethold Limited v 15 Yonge Park RTM Limited [2011] UKUT 379 (LC)*. This requires consideration first of whether the particulars in section 80(2)-(7) have been provided and only then consideration of whether there was an inaccuracy in respect of such particulars. In the words of George Bartlett QC:

'Under section 81(1) a distinction falls to be drawn between the failure to provide the required particulars and an inaccuracy in the statement of particulars. A claim notice is saved from invalidity only in the case of the latter.'
12. In the case of *Assethold Limited v 15 Yonge Park RTM Limited* the Upper Tribunal held that a failure to state the correct address of the RTM company was not an inaccurate particular that could be saved by section 81(1), it was a failure to provide the information required by section 80. In the words of

Her Honour Judge Karen Walden-Smith, *'Providing the wrong name or the wrong registered office of the RTM company is not, in my judgement, an "inaccuracy". It is a failure to provide the mandatory information required by section 80.'*

13. The circumstances in the present case are equivalent. The Applicant failed to meet the mandatory requirement set out in section 80(7) that it must specify a date in the claim notice, at least three months after that specified under subsection (6), on which the Applicant intends to acquire the right to manage the premises. The claim notice is therefore invalid. This is not an 'inaccurate' particular that can be saved by section 81(1).
14. The Tribunal finds that the law in this area is clear, that the claim notice is invalid and that none of the representations made on the Applicant's behalf provide any basis for the Tribunal to find otherwise.
15. Rule 9(3) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 confers on the Tribunal a discretion to strike out the whole or a part of proceedings before the Tribunal in any of the circumstances at paragraphs (a) to (e). Paragraph (e) states 'the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding'.
16. In view of its findings in paragraph 14 above, the Tribunal finds that the Application has no reasonable prospect of success and accordingly strikes this out in its entirety pursuant to Rule 9(3)(e).
17. Having struck out the Application the Tribunal has no jurisdiction to address the remaining issues raised by the Respondent in its counter-notice and in its statement of case.

S Moorhouse
Chairman