



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

Case Reference : CHI/00LC/LRM/2015/0001

Property : Magnolia House, 20-42 The Chimes (evens) 1-11
Tenor Drive (odds), Hoo, Rochester, Kent.
ME3 9GZ

Applicant : Magnolia House RTM Company Limited

Representative : AM Surveying Property Services Limited

Respondent : Backpen Limited

Representative : Estates & Management Limited

Type of Application: Application under Part 2, Chapter 1 Commonhold
And Leasehold Reform Act 2002 – no fault right to
manage

Tribunal Member : Judge P J Barber

Date of Decision : 9th April 2015

DECISION

Decision

1. The Tribunal determines in accordance with the provisions of Part 2, Chapter 1 Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that the Applicant was not on the relevant date entitled to acquire the right to manage the Property.

Reasons

Introduction

2. The application is for the Tribunal to determine that the Applicant RTM Company was, on the relevant date, entitled to acquire the right to manage the Property, pursuant to section 84(3) of the 2002 Act. The “relevant date” is defined under section 79(1) of the 2002 Act as meaning the date on which notice of the claim is given. The application is in respect of property at Magnolia House, 20-42 The Chimes (evens) & 1-11 Tenor Drive (odds) Hoo, Rochester, Kent ME3 9GZ (“the Property”). The claim notice to which the application relates is dated 6th October 2014. By counter-notice dated 12 November 2014, the Respondent alleged that by reason of section 81(3) of the 2002 Act, the Applicant was not entitled to acquire the right to manage, because an earlier claim notice dated 12th August 2014 continued in force and had not been withdrawn.
3. Directions were issued by the Tribunal on the 9th January 2015 providing for determination on the papers without a hearing unless a party objected; no objection was made.

The Law

4. Section 84(3) of the 2002 Act provides that :-

“(1) 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 a [leasehold valuation tribunal] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.”

Sections 81(3) & (4) of the 2002 Act provides that:-

“(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 an 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.

The written representations

5. By a statement dated 29th January 2015, the Respondent referred to the decision in *Fairhold (Yorkshire) Limited v Trinity Wharf (SE16) RTM Co Limited [2013] UKUT 0502*, and in which case the Respondent submitted that the Applicant RTM company was not entitled to exercise the right to manage the Property specified in the claim notice, on the basis that there was on the date of service of the claim notice, a previous notice in force that had not been withdrawn contrary to section 81(3) of the 2002 Act. The Respondent further submitted that the description of the Property in the claim notice, differed from that shown in the RTM Company's Articles of Association and thus failed to comply with section 80(2) of the 2002 Act. The Respondent submitted that an earlier claim notice had been submitted on 12th August 2014, as a result of which it considered the Applicant was not entitled to exercise the right to manage on that date. The Respondent submitted that the first claim notice should have been withdrawn, and disputed the Applicant's view that it was not necessary to withdraw, owing to the first claim notice having been invalid. The Respondent also referred to the decision in *Avon Freeholds Limited v Regent Court RTM Co Limited [2013] UKUT 213*, in which at paragraph 68, the parties had agreed before the LVT, that a first claim notice had been invalid. The Respondent further asserted that the decision in *Plintal SA & Anor v 36-48a Edgewood Drive RTM Co Ltd [2008] EWLands LRX 16 2007*, was to the effect that a claim notice which failed to comply with section 80, was not invalid and a nullity but had continuing validity unless and until the LVT held otherwise. The Respondent submitted in regard to earlier cases that there was a distinction between those involving the 2002 Act on the one hand and those on the other hand involving claims under the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") in that under the 2002 Act, if no counter notice is served, there is no right to a hearing and thus a court may only determine validity of a claim notice, if a counter notice is served.
6. In its statement in reply dated 18th February 2015, the Applicant referred to the first claim notice served in August 2014, to which the Respondent had served a counter notice in September 2014 asserting that the Applicant was not entitled to exercise the right to manage. The Applicant stated that upon receipt of the first counter notice, the Applicant's agent accepted it was invalid and then arranged for a second claim notice, being the subject of these proceedings, to be served in October 2014, with the errors which had invalidated the first claim notice, corrected. The Applicant further asserted that the first claim notice was clearly invalid and accepted as such by the Applicant, following receipt of the first counter notice. The Applicant denies that the first claim notice continues in force pursuant to section 81(3) of the 2002 Act, asserting that it was clearly invalid and relying on paragraph 44 of the decision in *Alleyn Court RTM Co Ltd v Abou-Hamdan [2012] UKUT 74* and asserting that the errors in the first claim notice would have been obvious on the face of it and such as clearly to invalidate it. The Applicant also referred to the decision in

Gurmeet Kaur Natt, Malkit Singh Natt v Zulfigar Osman, Shahida Ali [2014] EWCA 1520, being a case involving a claim under section 13 of the 1993 Act, and suggesting that the findings in that case regarding invalidity of the claim notice were analogous to the right to manage under the 2002 Act. The Applicant also sought to distinguish the *Plintal* case (see paragraph 5 above) as a matter involving determination of costs, and asserted that the saving provisions of section 81(1) of the 2002 would not assist to prevent the first claim notice from being invalid and that the reference in that sub-section to “inaccuracy”, related only to typing errors and similar. The Applicant submitted, by reference to the decision in *Avon* (see paragraph 5 above) that the first claim notice cannot logically continue in force if it had no legal effect in the first place; the Applicant submitted that whilst in *Avon* both parties had agreed the first claim notice was invalid, similarities could be drawn with the present case, as the first counter notice had been served “*confirming the Respondent considered it was invalid*”.

Consideration

7. The Tribunal, has taken into account all the written representations and such case papers as have been provided and to which it has been specifically referred. The Tribunal notes the provisions of section 81(4) of the 2002 Act regarding a claim notice continuing in force unless withdrawn or deemed to be withdrawn, or ceasing to have effect, in either case by reason of the provisions of Chapter 1 of Part 2 of the 2002 Act. The Tribunal further notes that the first counter notice served in September 2014, stated that the Applicant “*was not entitled to exercise the right to manage*” for various reasons including alleged breaches of section 79(7) (date of posting to qualifying tenants) and 80(3)(a) and 80(3)(b) (failure to set out full names of qualifying tenants). Accordingly, the Tribunal accepts the view of the Respondent, that the first claim notice was valid on the face of it; the fact that the Respondent served a counter notice in response to that notice, is inconsistent with the view put forward by the Applicant that the first claim notice was wholly invalid and of no legal effect. Whilst the Applicant may have regarded the first claim notice as being invalid, no evidence has been provided that the Respondent expressly agreed with such view. If the first claim notice had been wholly invalid then there would have been no need for the Respondent to serve any counter notice. In addition, the Tribunal notes that Section 81(3) precludes a subsequent claim notice being served, so long as an earlier claim notice remains in force. Section 81(4) provides that a claim notice continues in force unless it is withdrawn or deemed to be withdrawn, or ceased to have effect by reason of any other provision of Chapter 1. No evidence has been adduced to the effect that the first claim notice had been expressly withdrawn; nor that it was deemed to be withdrawn by virtue of the provisions of Chapter 1. The Applicant suggests the first claim notice was clearly invalid, as it were by implication, but has provided no clear or compelling evidence to the effect that such notice was withdrawn by virtue of provisions in

Chapter 1, or specifically that it ceased to have effect by reason of any other provision of Chapter 1.

8. The Applicant suggests that the errors in the first claim notice would have been obvious on the face of it to the Respondent; the Tribunal however does not accept that the first claim notice was so fundamentally flawed as to make it a complete nullity and the Respondent, when drafting the first counter notice pursuant to section 84(2)(b), was only required to allege by reason of provisions in Chapter 1, that the RTM Company was not entitled to acquire the right to manage. The Tribunal has taken into account the case law referred to by both parties but concludes on balance that the first claim notice was neither withdrawn, nor ceased to have effect pursuant to section 81(4). Accordingly, the effect of section 81(3) is that there was in the present case, an earlier claim notice remaining in force, such that no subsequent claim notice could be given. In the circumstances it has not been necessary to consider the second ground put forward by the Respondent in regard to the different description of the Property in the Articles of Association of the RTM Company. Consequently the Tribunal determines in regard to the claim notice dated 6th October 2014, that the Applicant was not on the relevant date entitled to acquire the right to manage the Property.
9. The Tribunal made its` decision accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.