



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

Case Reference : **CHI/00HB/LRM/2017/0002**

Property : **Taurus House, Union road, Bristol,
BS2 0FN**

Applicant : **Taurus House RTM Company
Limited**

Representative : **RTMF Services Limited**

Respondent : **Adriactic Land 4 Limited**

Representative : **Bond Dickinson LLP, Solicitors**

Type of Application : **Relating to (No Fault) Right to
Manage**

Tribunal Members : **Judge I Mohabir**

Date of Decision : **22 May 2017**

DECISION

Introduction

1. This is an application made by the Applicant for a determination that it is entitled to acquire the Right to Manage the property known as Taurus House, Union road, Bristol, BS2 0FN (“the property”) under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”).
2. By a Notice of Claim dated 24 November 2016, the Applicant exercised the right to acquire the Right to Manage the property. The notice was signed by Mr Nick Bignell with the “*authority of the company*”.
3. By a counter notice dated 20 December 2017, the Respondent asserted that the claim notice was invalid for three reasons. These are:
 - (a) it has not been signed by an authorised member of officer of the Applicant as required by section 80(9) of the Act and Regulation 8(2) and Schedule 2 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (“the Regulations”).
 - (b) that the Applicant did not on the relevant date have a membership which includes a number of qualifying tenants which is not less than one half of the total number of flats contained in the premises as required by section 79(5) of the Act.
 - (c) that the Respondent had not been provided with copies of the Notices of Invitation to Participate.
4. On 20 February 2017, the Applicant made this application seeking a determination that it is entitled to acquire the Right to manage the property. This issue turns on the validity of the claim notice served by the Applicant. Each of the challenges made by the Respondent are dealt with below.

Decision

5. The Tribunal's determination took place on 22 May 2017 and was based solely on the statements of case and other documentary evidence filed by the parties in accordance with the Tribunal's Directions. There was no oral hearing and there was no requirement for the Tribunal to inspect the property.

Signature on Claim Notice

6. In his witness statement dated 19 April 2017 and supported by a statement of truth, Mr Bignell stated that the Applicant's representative, RTMF Services Ltd ("RTMF"), was appointed as the Corporate Secretary of the Applicant company. Mr Bignell is an employee of RTMF.
7. In his witness statement also dated 19 April 2017 and supported by a statement of truth, the founding Director of the Applicant, Mr Andrew Bruce, stated that RTMF and its staff were given full authority to act on behalf of the Applicant in all matters related to the right to manage claim and to sign notices.
8. The Respondent contends that it is not arguing that Mr Bignell was not capable of signing the Claim Notice, instead it simply puts the Applicant to proof that he had actual authority to do so.
9. Section 80(9) of the Act provides that any claim notice must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations.
10. Regulation 8(2) provides that claim notices shall be in the form set out in Schedule 2 of the 2010 Regulations. Part 2 of Schedule 2 requires the claim notice to be "*signed by authority of the company*" and that the signature is to be that of an authorised member or officer.

11. It is common ground that at the time the claim notice was served by the Applicant, RTMF had been appointed as the Company Secretary and that Mr Bignell was an employee of RTMF.
12. It is not entirely clear in what capacity Mr Bignell signed the claim notice. It could not be in his personal capacity because he was neither a member nor officer of the Applicant company. Therefore, Mr Bignell could only have signed the claim notice on behalf of RTMF in its capacity as the Applicant's Company Secretary, which the Respondent appears to accept he was entitled to do. However, there was no evidence before the Tribunal of RTMF granting Mr Bignell such authority.
13. It follows that the only basis on which Mr Bignell could have signed the claim notice was as an authorised employee of RTMF. His authority to do so is expressly dealt with at paragraph 2 of the witness statement of Mr Bruce, which was confirmed in subsequent correspondence between the parties.
14. The very same point was considered by the Court of Appeal in ***Elim Court RTM Company Ltd v Avon Freeholds Ltd*** [2017] EWCA Civ 89 at paragraph 68 where Lewison LJ said:

“If I am wrong about the signature issue, I would have no hesitation in saying that the consequences of non-compliance are not fatal to the validity of the notice if the claim notice is signed by someone who is actually authorised by the RTM company to sign it. As I have said, there is no requirement for signature in the Act itself, nor is there any such explicit requirement in the forms Regulations. I do not accept that if there is an inferential requirement contained within the rubric of the prescribed form Parliament must have intended a failure to comply precisely with that requirement would invalidate the notice”.

15. The Tribunal repeats and relies on the same reasoning here and was satisfied that Mr Bignell had been expressly authorised by the Applicant to sign the claim notice on its behalf and, in any event, if the Tribunal is wrong about this it is not fatal to the notice because no express sanction

is contained in the Act or the Regulations for the reasons set out above. Accordingly, this challenge by the Respondent fails.

Number of Qualifying Tenants

16. This challenge does not appear to be pursued by the Respondent, as it is not dealt with at all in its statement of case. Nevertheless, the counter notice puts the matter in issue and the Tribunal is required to deal with it.

17. The Tribunal accepted the evidence set out in the Applicant's statement of case that at the time the claim notice was served, its membership was comprised of 100% of the flats contained in the property. This is corroborated by the list of registered members annexed to the statement of case. The Tribunal, therefore, found that section 79(5) of the Act had been satisfied and this challenge by the Respondent also fails.

Failure to Provide Respondent with Notice to Participate

18. Again, this challenge does not appear to be pursued by the Respondent, as it is not dealt with at all in its statement of case. However, this challenge fails because there is no requirement in section 78 of the Act that requires the Applicant to provide the Respondent with a copy of the Notices of Invitation. The only requirement in relation to service of this notice is found in section 78(1) of the Act. This limits service to the qualifying tenant of a flat in the premises who is neither a member or has agreed to be a member of the RTM company.

19. Accordingly, the Tribunal concluded that the Claim Notice served by the Applicant dated 24 November 2016 is valid and that the Applicant is entitled to acquire the Right to Manage the property 3 months after the date of this decision pursuant to section 90(4) of the Act.

Judge I Mohabir
22 May 2017

Appeals

1. Any party 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 which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. 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
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.