



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

Case Reference : **LON/00AN/LRM/2016/0022**

Property : **170 Hammersmith Grove , London
W6 7HF**

Applicants : **170 Hammersmith Grove Ltd
Company**

Representative : **James Middleton and Suellen
Dainty**

Respondent : **Barry David Ashton and Judith Tan**

Representative : **None**

Type of Application : **Application for a decision that the
Applicants have acquired the Right to
Manage pursuant to Chapter 1 of The
Right to Manage pursuant to The
Commonhold Leasehold Reform Act
2002**

Tribunal Members : **Judge Daley
Mr R Shaw FRICS**

**Date and venue of
paper determination** : **12 April 2017 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **24 April 2017**

DECISION

Decisions of the Tribunal

- (1) The Tribunal have determined that the Applicant having failed to comply with Section 79 and 80 in respect of the Notice of Claim has not acquired the right to manage.

The application and Background

- (2) The Applicant pursuant to an application dated 16 November 2016 sought a determination that the Right to Manage Company had acquired the Right to manage the premises known as **170 Hammersmith Grove , London W6 7HF** (“the Premises”).
- (3) Directions were given firstly on 12 December 2016, and subsequently on 23 February 2017.
- (4) The directions dated 12 December 2016, noted that the applicants had been unable to serve a claim notice in writing on the joint freeholders, although the applicants stated that they have left voice messages.
- (5) In the Directions the Tribunal noted that “ *...The Tribunal must strike a balance between the interests of the landlord in receiving notice in writing of the claim and the costs and delays of the applicants in being required to engage a tracing agent...*”
- (6) The Directions provided that the applicants must write to the freeholders care of the land registry requesting the land registry to forward a copy of the application, notice to participate and “these directions”.
- (7) In the directions dated 23 February 2017 the Tribunal noted that the applicants by a claim notice dated 23 November 2016 gave notice that it intended to acquire the right to manage although no date was given as to when the applicant was entitled to acquire the right to manage.
- (8) The Tribunal of 23 February 2017 determined the following single issue-: “*Whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the premises specified in the notice.*”
- (9) It was noted that it was not in dispute that Mr Barry Ashton had received the relevant notices.

(10) The relevant legal provisions are set out in the Appendix to this decision.

(11) The Tribunal has had sight of the application and the attachments including copies of letters sent to the leaseholders, and the freeholder, the memorandum and articles of association, the application and an outline of the reasons for wishing to apply for the Right to Manage. The Tribunal has also had sight of the Respondent's objections to the right to manage.

Section 79 and 80 of the Commonhold and Leasehold Reform Act 2002 ("CLRA 2002") states:- Section 79 (1) – "A claim to acquire the right to manage any premises is made by giving notice of the claim 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" and (6) The claim notice must be served on each person who on the relevant date is

(a) a landlord under a lease of the whole or any part of the premises,

(b) a party to such a lease otherwise than as landlord or tenant or

(c) appointed as manager of the premises under Part 2 of the Landlord and Tenant Act 1987."

Section 80 states that the claim notice must comply with the following requirements it must specify the premises, the name of each person, and also must specify the date by which each person may respond giving a counter notice and importantly must specify the date not less than three months after the response date on which the company intends to acquire the right to manage.

(12) The Tribunal decided that prior to considering the objections of the respondent that it was appropriate to consider whether the applicant had served notice, as required by CLRA 2002.

(13) ***The Tribunal's decision on the Claim Notice***

(14) The Tribunal having considered the claim notice were aware that this notice did not comply with the formal requirements of section 80 in that the notice was informally drafted.

(15) The contents of the notice were as follows:- "*With regard to our earlier letter dated 7 November, 2016 James Middleton and I would now like to give notice of our claim to acquire the right to manage 170 Hammersmith Grove...*" Copies of the memorandum and articles of association of the company were enclosed. The notice concluded by stating "... *Again if you*

have any queries at all, or wish to become a company shareholder, please do not hesitate to contact me at the above address..."

(16) The Tribunal are mindful that section 80 (8) and (9) also provides that the notice may be required to contain other particulars referred to by the appropriate national authority or with regulations made. Reference being made to the Right to Manage (Prescribed Particulars and Forms) Regulations 2003.

(17) The Tribunal has considered whether in all the circumstances it may waive the requirements and notwithstanding the objections of the respondent, (which for the avoidance of doubt are not procedural) grant the right to manage.

The effect of the errors in the claim notice

(18) The Tribunal has considered *RTM Asset hold –v- Yonge Park* where HHJ Walden-Smith, whose judgment concerned Section 81 which states:- A claim notice is not invalidated by any inaccuracy in any particulars required by or by virtue of section 80. In which it was held: "*17. In my judgment section 81(1) is capable of applying to any of the details, or particulars, required by any of the sub-sections 80(2) to (8) of the 2002 Act. Regulation 4(c) of the Right to Manage Regulations expressly provides that the claim notice must include a statement that the notice is not invalidated by any inaccuracy in any of the particulars (my emphasis) required by section 80(2) to (7). In my judgment, section 81(1) could save a claim notice from being invalid if there is an "inaccuracy" in any of the particulars set out in any of the subsections 80(2) to 80(8).* HHJ Walden-Smith's judgment continues (at paras 18 - 20):

18. *However, section 80 sets out mandatory requirements of what must be included in the claim form. A failure to provide those details would clearly prevent the claim form from being valid, otherwise there would be no purpose in the statute providing that those inclusion of those details is a mandatory requirement. If, for example, the claim form did not include the name and registered office of the RTM Company it would be invalid. All that section 81(1) does is save the claim notice from invalidity if there is an "inaccuracy" in those mandatory details. So, for example, if there was a spelling or typing error in the name or registered office of the RTM company then that would be, in my judgment, an "inaccuracy" that section 81(1) would bite upon so that the claim notice would be saved from invalidity.*
19. *Providing the wrong name or the wrong registered office of the RTM company is not, in my judgment, an "inaccuracy". It is a failure to provide the mandatory information required*

by section 80. As *Stuart-Smith LJ* said in *Cadogan v Morris*: “the expression inaccuracy is hardly appropriate to be used in what must be specified or stated [in subparagraph (c-f) of section 43(3)]”.

20. In my judgment, a failure to provide the information required in paragraphs 80(2) to 80(8) results in the claim notice being invalid. Section 81(1) cannot save it from invalidity. All that section 81(1) does is save from invalidity a claim notice that has an “inaccuracy” or “lack of exactness” in those particulars. This interpretation is consistent with the reasoning of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749.”

(19) The Tribunal has also considered the decision of the Upper Tribunal-: in *Triple Rose Limited and Mill House RTM Company Limited: LRX/64/2015* in which Martin Rodgers QC stated-: “Two of the issues in this appeal raise once again the proper approach which should be taken by tribunals to any departure from the statutory procedure for the acquisition of the right to manage. Small and apparently insignificant defects in notices, or failures of strict compliance, are relied on again and again by landlords seeking to stave off claims to acquire the right to manage and to avoid the resulting losses of control and of other benefits. First-tier tribunals are often naturally sympathetic to RTM companies whose claims are met by highly technical points of no practical significance, but for the reason identified in paragraph 12 above, tribunals should be slow to relax the need for full compliance. The statutory procedures are not difficult to comply with, and can easily be repeated if not properly implemented. It is preferable for tribunals to reject defective claims at an early stage rather than to see them rejected at an appeal or for some interested third party later to dispute that the right to manage has ever successfully been acquired.”

The Decision of the Tribunal on whether the error in the notice invalid the claim

(20) The Tribunal considers that the Applicant has failed to comply with the requirements under section 80 of CLRA 2002, the issue is whether the Tribunal could waive this requirement. In considering the discretion of the Tribunal to waive the requirements, the Tribunal had regard to *Sinclair Gardens (Investments) Ltd v. Oak Investments RTM Company Ltd LRX/52/2004* in which George Bartlett QC, then president of the Land’s Tribunal considered how the Tribunal should approach, when considering the issue of whether compliance is capable of being waived.

(21) It is clear in the decision of *Oak Investments* that at the Land’s Tribunal the President of the Land’s Tribunal rejected what was referred to as the “Conventional approach” of categorising the procedural requirement as directory or mandatory, that is the effect of the wording “must” in relation to the contents of the claim notice and adopted the approach referring to Lord Woolf’s decision in *R-v- Immigration Appeal Tribunal, ex parte Jeyanthan*

(1999), (in which the question of non-compliance with a procedural requirement was considered.)

(22) The President of the Land's Tribunal stated:- *"...I suggest that the right approach is to regard the question of whether a requirement is directory or mandatory as only at most a first step. In the majority of cases there are other questions which have to be asked which are more likely to be of greater assistance than the application of the mandatory/directory test...Is the statutory requirement fulfilled if there has been substantial compliance with the requirement and, if so has there been substantial compliance in the case in issue even though there has not been strict compliance...Is the non-compliance capable of being waived, and if so , has it, or can it and it be waived in this particular case...If it is not capable of being waived or is not waived then what is the consequence of the non-compliance..."*

(23)The Tribunal noted that although *Sinclair Gardens (Investments) Ltd v. Oak Investments RTM Company Ltd*, went some way, to consider the question of prejudice to the parties, and the overall effect of an error on the parties, in the opinion of this Tribunal, is that this on its own, does not amount to a freestanding power/discretion of the Tribunal to make an enquiry as to whether there has been prejudice to the landlord, and in the absence of prejudice, then this should automatically result in the make of a finding in the Applicant's favour. (The Tribunal are mindful that the application although a no fault application has set out grounds upon which the right to manage is to be acquired, which amounts to a failure to properly manage the premises.)

(24)The Tribunal considers that the content and format of the claim notice, was so informal that the legal implications and the rights of the freeholder may not have been adequately understood. Further the Tribunal considers that it does not have the discretion to accept the claim notice as a valid claim notice in compliance with the act.

(25) If the Tribunal are wrong on this point, and there is a discretion to consider the relative prejudice to the parties, then the Tribunal in considering all of the circumstances of this case, which include wording of the claim notice, are of the view that from this notice it is unclear that there is a time limit in which the landlord is required to respond, and that the rights to manage will in the absence of a response be transferred on a specific date. Although the freeholder did provide a response, in the Tribunal's opinion this requirement is not a matter which is capable of being waived by this tribunal

Name: Judge Daley

Date:24/04/2017

Appendix of relevant legislation

A summary of the legislation is set out below

The Law

The Act sets out the procedural requirements that a right to manage company must follow before it can acquire the right to manage. The relevant sections for the purposes of this application are ss72 to 84.

Premises subject to the right to manage:

Section 72 defines the premises that may be subject to the right to manage.

Right to manage companies:

Section 73 provides that the right to manage can only be acquired and exercised by a RTM company and the company must be a private company limited by guarantee that includes the acquisition and exercise of the right to manage as one of its objects. The company does not qualify if there is already a RTM company for the premises.

Membership of the company:

Section 74 75 and 76 provide that membership of the RTM company must consist of any qualifying tenant, defined as a residential tenant under a long lease of a flat in the premises and that there can only be one qualifying tenant per flat, no less than half the qualifying tenants (subject to a minimum of two must be members of the company on the date when the company serves the claim notice. From the time that the company acquires the right to manage the premises, any person who is a landlord under a lease of the whole or any part of the premises can be a member of the RTM company.

Notice of invitation to participate:

Section 78 - before making a claim to acquire the right to manage any premises, a RTM company must give notice to all qualifying tenants who are not members of the company inviting them to become members for the purposes of acquiring the right to manage.

Claim Notice:

Section 79 (1) – “A claim to acquire the right to manage any premises is made by giving notice of the claim 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” and (6) The claim notice must be served on each person who on the relevant date is

(a) a landlord under a lease of the whole or any part of the premises,

(b) a party to such a lease otherwise than as landlord or tenant or

(c) appointed as manager of the premises under Part 2 of the Landlord and Tenant Act 1987.”

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.
- 6 22 April 2005

- (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.

S81 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.

S82 Right to obtain information

- (1) A company which is a RTM company in relation to any premises may give to any person a notice requiring him to provide the company with any information—
 - (a) which is in his possession or control, and
 - (b) which the company reasonably requires for ascertaining the particulars required by or by virtue of section 80 to be included in a claim notice for claiming to acquire the right to manage the premises.
- (2) Where the information is recorded in a document in the person's possession or control, the RTM company may give him a notice requiring him—
 - (a) to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and

(b) to supply the company with a copy of the document containing the information in a readily intelligible form on payment of a reasonable

Counter Notice:

Section 84 “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”) under section 80(6) .

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.