



HM Courts
& Tribunals
Service

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LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/22UN/LRM/2011/0006

Property : 1-11 Bay View Court,
Stour Road,
Harwich,
Essex CO12 3GS

Applicant : Bay View Court RTM Co. Ltd.

Respondent : Chancery Lane Investments Ltd.

Date of Application : 10th November 2011

Type of Application : For an Order that the Applicant was, on
the relevant date, entitled to acquire the
right to manage the property (Section
84(3) Commonhold and Leasehold
Reform Act 2002 ("the 2002 Act"))

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

1. This Application succeeds and the Applicant is therefore entitled to acquire the right to manage the property from the 23rd April 2012.
2. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent landlord from recovering its costs of representation in these proceedings from the lessees in any future service charge demand.

Reasons

Introduction

3. The Applicant is a Right to Manage Company ("RTM"). According to the copy Memorandum and Articles of Association produced to the Tribunal, the "*objects for which the Company is established are to acquire and exercise in accordance with the 2002 Act the right to manage the premises.*" The premises are defined as being the property i.e. 1-11 Bay View Court, Stour Road, Harwich.
4. The Tribunal finds that on the 30th August 2011 the Applicant served a claim notice on the Respondent seeking the automatic right to manage the property giving 'not later than' 7th October 2011 for the service of a

counter notice. A counter-notice dated 4th October 2011 was served denying the right to manage. It alleges "...that, by reason of Section 74(1), 78(1), 79(5) and 80(6) of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 The Bay View Court RTM Company Limited ("the company") was not entitled (sic) to acquire the right to manage the premises..."

5. These various Sections of the 2002 Act relate, respectively, to defining qualifying tenants; to serving a notice inviting participation; to qualifying tenants being not less than one half of the total and to the fact that the Claim Notice must specify a date by which a counter-notice must be served. It is evidenced, as stated above, that the claim notice does specify a date by which any counter-notice must be served and it is not earlier than one month from the date on which the claim notice was given in accordance with the statutory provision.
6. The claim notice certainly seems to be served on behalf of a majority of the qualifying tenants i.e. 8 out of 11. There is no copy of any notice inviting participation in the papers produced.

Procedure

7. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in a directions order dated 17th November 2011 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 23rd January 2012 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
8. In the same directions order, the Respondent was ordered to file a statement of reply to the application "*stating exactly why the Respondent does not consider that the Applicant is entitled to manage and setting out its evidence to support its contention. Bearing in mind the provisions of Section 84(2) of the 2002 Act that the counter-notice shall refer to a specified provision to say why the Applicant is not entitled to manage, the statement shall explain why the counter-notice is so unhelpfully vague.*" No statement was filed.

The Law

9. Section 72 of the 2002 Act states that the right to manage provisions apply to premises which consist of a self contained building where the number of flats held by qualifying tenants is not less than two thirds of the total. This property is said to be a single building containing 11 flats and 8 qualifying tenants are members of the RTM.
10. Before a claim notice is served, the RTM must invite all other qualifying tenants in the building to be members of the company. In this case

the no such notices of invitation have been produced. The counter-notice makes reference to the subsection dealing with this but does not make any specific assertion or accusation that there has been a failure to serve any such notice. Furthermore, there is a schedule in the bundle submitted for the Tribunal which provides some evidence that the other lessees have been approached because it says that there was no response from no. 1 Bay View Court and the lessees of nos. 4 and 10 did not want to participate. This would account for the total of 11 flats.

11. The claim notice has been served and it appears to comply with Section 80 of the 2002 Act in terms of content.

The Applicant's Submissions

12. The Applicant says that the Respondent has served a counter-notice without 'any substantial or meritorious grounds' and, accordingly, any costs incurred by the Respondent in these proceedings should not be claimable from the lessees in any future service charge demand.

The Respondent's Submissions

13. There have been none apart from the counter-notice itself and so there is no explanation as to why, specifically, it contends that the Applicant is not entitled to acquire the right to manage.

Conclusions

14. The Tribunal is inclined to agree with the Applicant's comments about the behaviour of the Respondent. On the face of it, the service of a counter-notice appears to have been a quite cynical device to delay the RTM taking over management.
15. Whilst no copy of the notices of invitation to participate have been produced, the Tribunal finds, on the balance of probabilities, that the RTM has complied with the statutory requirements and has the right to manage from the 23rd April 2012 i.e. 3 months from this determination (Section 90(4) of the 2002 Act).
16. The point about the Respondent's costs of representation in these proceedings is well made and the Tribunal does make the order requested under Section 20C of the 1985 Act.

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Bruce Edgington
Chair
23rd January 2012