

363



**Leasehold Valuation Tribunal**

**Case Reference** : CAM/26UJ/LRM/2013/0011

**Property** : 1-12A and 14-25 Penn Place,  
Northway,  
Rickmansworth,  
Herts. WD3 1QA

**Applicant** : Penn Place (Rickmansworth) RTM  
Co. Ltd.

**Respondent** : Peverel Om Limited

**Date of Application** : 12<sup>th</sup> April 2013

**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

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**DECISION**

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1. This Application fails and the Applicant is therefore not entitled to acquire the right to manage the property.

**Reasons**

**Introduction**

2. The Applicant is a right to manage company (“an RTM”) whose objects are, amongst other things, to manage “1-25 Penn Place, Northway, Rickmansworth...”. Such RTM served a Claim Notice dated 8<sup>th</sup> January 2013 seeking an automatic right to manage the property and giving the 15<sup>th</sup> February 2013 as the date by which a Counter-Notice must be served.
3. There is a dispute about whether a Counter-Notice was served in time. However, the main allegation by the Respondent is that the landlord, Proxima GR Properties Ltd. was not served with the Claim Notice. If that is correct, then any failure to serve of a Counter-Notice becomes irrelevant.

### **Procedure**

4. 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 23<sup>rd</sup> April 2013 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 10<sup>th</sup> June 2013 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
5. A bundle of documents was sent to the Tribunal but this did not include a copy of the application or the directions order. It also did not include a copy of the Respondent's further statement which is not dated but was enclosed with a letter from the Peverel Property Management dated 30<sup>th</sup> May. Whilst there was no provision within the directions order for such a statement to be filed and it would generally have been omitted from consideration, the fact is that it contained rebuttal evidence which the Tribunal did consider.

### **The Law**

6. Section 79(6) of the 2002 Act says that a Claim Notice must be served on the landlord.

### **Analysis**

7. The landlord is Proxima GR Properties Ltd. as is clear from the Land Registry copy title entries produced by the Respondent and dated 10<sup>th</sup> May 2013. The Claim Notice is addressed to OM Property Management Ltd. and to the Respondent but not to the landlord.
8. As evidence that the Applicant was aware of this, the Respondent produced a copy letter which confirms that an earlier Claim Notice was served correctly but was subsequently withdrawn.
9. The Applicant's response to this is to say that the registered proprietor is in fact the Respondent. Copies of title entries at the Land Registry are produced. All the title entries produced by the Applicant are of the various leasehold titles and the one which contains the name of the Respondent as owner is dated 14<sup>th</sup> June 2012 at pages 118-123 in the bundle. This is the leasehold title of the common parts, not the freehold title, as alleged.

### **Conclusions**

10. As the Claim Notice was not served on the landlord, this application must fail. The fact that a Counter-Notice may not have been served is irrelevant. If, for example, the reason why there was no Counter-Notice was because the landlord had no knowledge of the Claim Notice, such Claim Notice could have no effect. Any other result would circumvent the legislation.

11. If it assists the parties, the Tribunal considers that the Counter-Notice was not served in time, even if it accepted that it was posted on the 14<sup>th</sup> February 2013. A Counter-Notice must be 'given' by the due date. Part 6 of the **Civil Procedure Rules 1998** makes it clear that the general rule is that a document served by first class post is deemed to have been served or 'given' on the second day after posting.
12. Even if that is wrong the facts in this case are similar to those in *Calladine Smith v Saveorder Ltd* [2001] EWHC 2501 (Ch). The Tribunal is of the view that the Applicant did not receive the Counter-Notice in February and it would be deemed not to have been served.
13. Further, the Tribunal notes that the Respondent seeks to introduce a ground for opposition which is not in the Counter-Notice namely that the building is not a self contained building. Whilst this issue has not been considered in detail, it is doubted whether this ground would have been considered because of the county court decision in *Bishopgate Foundation v Curtis* [2004] 46 EG 152 and the Court of Appeal decision in *Cawthorne and others v Hamdan* [2007] EWCA Civ 6, both of which are enfranchisement cases but both of which indicate that following service of a valid Counter-Notice, it is not open to the landlord to start raising other issues at a later date.

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**Bruce Edgington**  
**President**  
**11<sup>th</sup> June 2013**