HHH

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/26UC/LRM/2014/0008**
Property	:	**1-14 & 15-65 The Spires, Seldon Hill, Hemel Hempstead, HP2 4FS**
Applicant	:	**The Spires RTM Co. Ltd**
Respondents	:	**(1) Proxima GR Properties Ltd. (2) OM Property Management Ltd.**
Date of Application	:	**2nd June 2014**
Type of Application	:	**For an Order that the Applicant is 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**

DECISION

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1. OM Property Management Ltd. is added as 2nd Respondent to this application.

2. This Application succeeds and the Applicant therefore acquires the right to manage the property as at the 29th October 2014.

Reasons

Introduction

3. OM Property Management Ltd. has requested party status. The original application lodged with the Tribunal named Proxima GR Properties Ltd. as landlord and, thus, a Respondent. Attached to the application form was a short schedule naming Peverel Property Management ("Peverel") as an additional Respondent and it described their relationship with the property as 'manager'.

4. As a manager is not one of those described in section 79(6) as a person upon whom a Claim Notice should be served save for a manager appointed by this Tribunal, which was not the case with this manager, Peverel was not named as a Respondent.

5. It now seems that Peverel was acting as agent for OM Property Management Ltd. Peverel's 'legal consultant' has said in a letter dated 23rd July 2014 that OM Property Management "*is the named Manager in the leases of the premises*". No copy of any lease has ever been produced to the Tribunal and just naming someone as manager does not mean that they are a party. It also appears that the company concerned is OM Property Management Ltd.

6. In fact the parties seem to have assumed that OM Property Management Ltd. is a Respondent and they have served evidence and submissions. In the circumstances and in order to avoid delay, they will therefore be named as 2nd Respondent.

7. The Respondents accept that the Applicant is a right to manage company ("RTM"). Such RTM served the Respondents with a Claim Notice on the 26th February 2014 seeking an automatic right to manage the property and giving the 7th April 2014 as the date by which any counter-notice must be served. On the 4th April 2014, both Respondents served Counter-Notices.

Procedure

8. The Tribunal decided that this case could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 29th July 2014 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

Discussion

9. The 1st Respondent's Counter-Notice alleges 2 grounds for opposition i.e. (a) that the premises are not a self contained building or part of a building and (b) that a Claim Notice was not served on Metropolitan Housing Trust Ltd. and they "*cannot be sure copies of the Claim Notice have been served upon all qualifying tenants*".

10. By a letter dated 8th May 2014, the 1st Respondent's agent wrote to the Applicant withdrawing (b). In its submissions dated 25th June 2014, it seeks to resile from this by referring to the list of persons upon whom notices were served as being "*not sufficient proof of service to comply with the act*" and "*the Applicant has not served and/or has not provided proof of service of claim notices on any or all of the qualifying tenants*".

11. The 2nd Respondent's Counter-Notice makes the same allegations. Its submissions dated 25th June are also very similar although these say specifically that the claim notice has not been served on Metropolitan Housing Trust Ltd. which is said to be the landlord of 1-14 The Spires. Presumably this intended to refer to being an intermediate landlord.

12. By letter dated 23rd July 2014, Peverel, on behalf of the 2nd Respondent has sought to file further submissions without permission and without any direction permitting them to do so. These submissions are

different. They simply say (a) that section 78 (1) has not been complied with because there is no evidence that the owner of flat 65 was served with a Notice of Invitation to Participate and of the 32 such Notices that were sent, 19 were not sent to the flats (b) that in respect of flats 32, 39, 45 and 54 either or both the Notice of Invitation to Participate and the copy Claim Notice were sent to the wrong recipients and (c) that copy Claim Notices were sent to the flats in only 23 out of 61 cases.

13. Neither Respondent mentions the case of **Assethold Ltd. V 14 Stansfield Road RTM Co. Ltd.**[2012] UKUT 262 (LC); LRX/180/2011. That was a decision of the then President of the Upper Tribunal. He noted the very technical matters raised in that case and dismissed them. As to an alleged defect in the members register, the President said, at paragraph 21 "*...a defect in the register would not be sufficient to show that section 79(5) was not complied with, and indeed it could be insufficient even to raise a doubt as to compliance*".

14. At the end of the judgment, when dismissing the landlord's appeal, the President remarked:-

> "*It is not sufficient for a landlord who has served a counter-notice to say that it puts the RTM company to 'strict proof' of compliance with a particular provision of the Act and then to sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to proof does not create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied.*"

Conclusions

15. As far as the first point raised by the 1st Respondent is concerned, the case of **Ninety Broomfield Road RTM Co. Ltd. v Triplerose** [2013] UKUT 0606 (LC) has resolved the issue as to whether an RTM company can take over the management of more than one self contained building or part of a building. The 1st Respondent's submission is that "*...the current law is unclear and likely to change*" because permission has been given to appeal that decision to the Court of Appeal.

16. The current law is very clear i.e. that one RTM company can manage more than one self contained building or part of a building. The fact that a decision is being appealed does not make the law unclear and the fact that an appeal is to be heard does not mean that the law is likely to change.

17. As to the other submissions, it is noted that the assertions that the wrong people have been served is supported by only one piece of evidence i.e. copy Land Registry entries relating to 'plot 26', the long leasehold interest of which was registered in the names of Anthony Wilson Denton and Theresa Ann Denton on the 19th January 2014. The Claim Notices were served on 26th February 2014. As the point

about Notices of Invitation to Participate had not been raised before, it is not known when they were served. However, it had to be at least 14 days before then (section 79(2)) and as this appears to have been a 2nd Claim Notice, the strong likelihood is that this assertion is wrong as Mr. and Mrs. Denton were not the leaseholders at the relevant time.

18. As to whether tenants had given the Applicant alternative addresses for service, there is simply no evidence. As has been said, the subject Claim Notices do not appear to have been the first ones to be served and it is therefore more likely than not that the tenants would have known of the existence of the Applicant. If that is the case, then it is logical that the Applicant would have served the notices at the addresses they were given.

19. The conclusion reached by the Respondents that the application cannot succeed because there is no proof of compliance with the 2002 Act places the wrong emphasis on these cases. The Upper Tribunal in **Avon Freeholds Ltd. v Regent Court RTM Co. Ltd.** [2013] UKUT 0213 (LC), (per the President, Sir Keith Bloomsbury), determined that the provision requiring service of a Notice of Invitation to Participate on every qualifying tenant was not mandatory, despite what is in the 2002 Act. In that case, there was clear evidence that a non participating qualifying tenant had not been served with a Notice of Invitation to Participate and, in fact, had no knowledge of it. It had not even been served at the relevant flat.

20. Sir Keith's conclusion, at paragraph 56 of his decision, was to adopt a submission by counsel for the RTM when she said that "*Parliament cannot have intended that in circumstances such as these the whole of the right to manage process will be defeated by the RTM company failing to comply fully with the provisions for giving notice of invitation to participate....there has been – to adopt the expression used by Lord Woolf in* ***R v Immigration Appeal Tribunal, ex parte Jeyeanthan*** *[1999] 3 AER 231 – 'substantial compliance' with the statutory requirements, and the consequences of non-compliance in this case were not such as to justify denying the respondent the right to manage the premises*".

Conclusions

21. The opposition to this application amounts, in terms, to an allegation that the Applicant has not proved compliance with the 2002 Act. Assertions have been made about the wrong people being served at the wrong addresses very late in the day with scant evidence to support such assertions. There is certainly no positive evidence to say that the qualifying tenants have not actually received any of the Notices or copy Notices concerned. Furthermore, once the Applicant has taken over management any qualifying tenant can apply to be a member in any event.

22. The Respondent has not put forward any ground for objection which it can use to persuade the Tribunal that, on the balance of probabilities, the Applicant has not substantially complied with the relevant parts of the 2002 Act as ameliorated by the clear 'steer' given by the President in the case of **Avon Freeholds** and the application therefore succeeds.

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Bruce Edgington
Regional Judge
29th July 2014