405

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LRM/2014/0013**
Property	:	**Settlers Court, 17 Newport Avenue, London E14 2DG**
Applicant	:	**Settlers Court RTM Company Limited**
Representative	:	**Urang Property Management**
Respondent	:	**(1) Proxima GR Properties Limited (2) OM Property Management Limited**
Representative	:	**Estates and Management Limited on behalf of the First Respondent**
Type of Application	:	**Section 84(3) Right to Manage**
Tribunal Judge	:	**S Carrott LLB**
Date of Decision	:	**8 August 2014**

DECISION

Decision

The Applicant RTM Company is entitled to acquire the Right to Manage.

Background

1. This is an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ('the Act') by the Applicant, Settlers Court RTM Company Limited, for a determination that it was on the relevant date entitled to acquire the right to manage the premises Settlers Court, 17 Newport Avenue, Poplar, London E14 2DG.

2. The parties have requested that this application be dealt with on consideration of the documents and without an oral hearing.

3. By a notice of claim dated 19 February 2014, the Applicant claimed a right to manage in respect of the above premises in accordance with Chapter 1 of Part 2 of the Act.

4. By a counter notice dated 31 March 2014, the First Respondent disputed the claim on the following grounds –

   (1) In breach of section 78 of the Act, notices of invitation to participate were not served on the qualifying tenants of Flat 8, Flat 37, Flat 38 and Flat 65 and that those qualifying tenants had not agreed to become a member of the RTM. With regard to the remaining qualifying tenants, the First Respondent had seen no evidence of the form of the notice of invitation to participate and no evidence of service.

   (2) In breach of section 79 and section 111 of the Act, a copy of the claim notice was not given to each person who on the relevant date was the qualifying tenant of a flat contained in the premises and in particular the qualifying tenants of the four flats mentioned above, the First Respondent having seen no evidence of service on the remaining qualifying tenants.

5. The present application was received by the Tribunal on 2 June 2014.

6. In accordance with the directions of the Tribunal which were issued on 18 June 2014, the Tribunal has received a ,Statement of Case from the First Respondent dated 2 July 2014 and a Supplemental Statement by the Applicant dated 14 July 2014.

7. No written submissions have been received from the Second Respondent.

The First Respondent's Submissions

8. The First Respondent submits that the in breach of section 78 of the Commonhold and Leasehold Reform Act 2002 notices of invitation have not been served on persons who were at the time when the notice was given –

   (a) the qualifying tenant of a flat contained in the premises and

   (b) neither were nor had agreed to become a member of the RTM company.

9. In particular no notice of invitation was served on the qualifying tenants of the Flats 8, 37, 38 and 65 and that the First Respondent has seen no evidence of the form of the notice of invitation to participate and no evidence of service.

10. The First Respondent relies upon the decision of the Upper Tribunal in **Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKUT 0213 (LC)** and submits that service of a notice of invitation to participate on those tenants who have not joined the RTM company is a statutory pre-condition for service of a valid claim notice. Whilst conceding that the **Avon Freeholds Ltd** case is helpful to the Applicant in so far as it emphasises that substantial compliance with the statutory requirements will suffice and directs the tribunal consider the effect upon the failure to serve notice on the qualifying tenant and any prejudice, the First Respondent submits that the test is subjective and therefore must be dealt with on a case by case basis. The First Respondent does not however point to any prejudice actual or inferred.

11. The First Respondent claims that there has also been a breach of sections 79 and 111 of the Act in that *it appears* that a copy of the claim notice has not been served on any of four flats mentioned above and that the First Respondent has not seen evidence that it has been served on any of the remaining tenants.

The Applicant's Submissions

12. The Applicant explains that as a matter of fact the four qualifying tenants alleged by the First Respondent not to have been served were in fact served with the notice of invitation and subsequently became members of the Applicant RTM Company. What then happened was that the leaseholders then sold their flats. There was no prejudice to the new leaseholders who were advised that the outgoing leaseholders were members of the Applicant RTM Company and had or were serving a claim notice and that the new leaseholders have now in any event received the claim notice.

13. The Applicant states that the new owners have in fact been asked whether or not they wish to become members of the RTM and so there is no prejudice.

14. The Applicant has also produced email correspondence with the First Respondent's agent and representative where not only the issues raised in the counter notice are discussed but also the evidence which the Applicant relies upon including copy form of the notices served are fully is fully set out In particular the email correspondence also shows that the new leaseholders were served with copies of the claim notice which is not disputed by the First Respondent.

Reasons for the Decision

15. The evidence before the Tribunal demonstrated that the Applicant had not only served notice of intention to participate upon all of the qualifying tenants at the relevant time but also that those qualifying tenants whom the First Respondent alleged were not served were in fact served because they signed up to become members of the RTM. In addition the new leaseholders had not only been served with a copy of the claim notice but also had been invited to become members of the Applicant RTM.

16. It was not sufficient for the First Respondent to merely put the Applicant to proof of service of the notice of invitation to participate or the claim form. A mere allegation that the relevant notices *may* not have been served was not sufficient to prevent the Applicant from acquiring the right to manage. If such an allegation was to be maintained then there was at the very least an evidential burden on the Respondent to produce some evidence or material before the Tribunal that could give rise to this suggestion. No such material or evidence was adduced in the present case and indeed the mere assertion that the Applicant *may* not have complied with the requisite provisions as to service did not discharge that evidential burden.

17. Moreover section 78(1) of the Act requires the RTM to give notice of invitation to participate to each person ***who at the time when the notice is given*** **is** the qualifying tenant of a flat contained in the premise, but neither is nor has agreed to become a member of the RTM company. On the evidence before the Tribunal, this is precisely what the Applicant did.

18. Likewise under section 79 the claim notice must be given to each person who ***is on the relevant date*** (which by virtue of section 79(1) is the date on which the notice of claim is given) a qualifying tenant of a flat contained in the premises.

19. The provisions as to service are contained in section 111 of the Act and provides amongst other things that any notice must be in writing and may be served by post to an address last furnished to the RTM and if there is no such address the last furnished to the landlord or if a different addressed has been specified as the address for service, the address so specified. No evidence or material has been adduced by the First Respondent to show that the Applicant has not complied with this

provision and the material adduced by the Applicant shows that it has indeed complied with section 111 of the Act.

20. The decision in **Avon Freeholds Ltd v Regent Court RTM Co Ltd [2013] UKUT 0213 (LC)** does not assist the First Respondent. In the present case there has been full compliance. But even if the Tribunal is wrong about this, given all the steps taken by the Applicant RTM company in this case to ensure that the new leaseholders are fully informed as to their rights, it is clear that not only would there be substantial compliance but also in those circumstances there is in fact no evidence to demonstrate prejudice whether actual or inferred.

21. Certainly whilst the First Respondent has raised the spectre of prejudice, it has failed to adduce any evidence or material as to prejudice whether actual or inferred.

22. Accordingly it is clear on the facts of the present case that the Applicant RTM Company is entitled to acquire the Right to Manage.

Tribunal Judge: S Carrott LLB

Date: 8 August 2014