



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

Case Reference : LON/OOAJ/LSC/2016/0001

Property : Sutherland House, Sutherland Road, London W13 0DZ

Applicant : Sutherland House (Ealing) RTM Company Limited

Representative : Mrs S Russell

Respondent : Rylex Properties Limited

Representative : Mr. M Rosco, counsel

Type of Application : No fault right to manage application

Tribunal Members : Judge Tagliavini
Mr H Geddes RIBA

Date and venue of hearing : 10 Alfred Place, London WC1E 7LR
14 July 2016

Date of Decision : 14 July 2016

DECISION

1. The tribunal determines that the Notice of Claim dated 25 September 2015 is invalid, and therefore the Applicant was not entitled to acquire the right to manage the subject property. The tribunal dismisses the Applicant's application.
2. The tribunal determines that the Applicant is to pay the Respondent's costs of £3812.40 including VAT.

The application

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that, on the relevant date, the Applicant RTM company was entitled to acquire the right to manage the subject premises.

The hearing

2. The Applicant was represented by Mrs Russell the leaseholder of Flat 6 of the subject property. The Respondent was represented by Mr. M Roscoe of counsel.

The background

3. The property which is the subject of this application comprises 8 flats, Flats 7 and 8 having been constructed in 2013/14 as an addition to Flats numbered 1 to 6.
4. No inspection of the premises was necessary as the dispute between the parties concerned a legal point of interpretation only.

The issues

5. At the start of the hearing the parties identified the relevant issues for determination as follows:

Whether on the date the Applicant's notice of Claim dated 25/09/15 was given, the Applicant was entitled to acquired a right to manage, notwithstanding a preliminary notice of intention to participate had not been served on the lessees of Flats 7 and 8?

The Applicant's case

6. The Applicant accepted that the notice of invitation to participate dated 9 September 2015 had not been served on the lessees of Flats 7 and 8 directly for the following reasons;
 - (i) the identities of the lessees of Flats 7 and 8 were unknown at the date of the Notice;
 - (ii) the Applicant was unaware of the sale of the long leaseholds of Flats 7 and 8 in August until 20 October 2015;
 - (iii) the Respondent should have passed on the notice of invitation to participate dated 9 September 2015 and served on the Respondent's managing agent for the attention of Mr. S Bignall, as the director of the Respondent company and the father of the lessees of Flats 7 and 8;
 - (iv) despite checking the Land Registry Office Copy entries and making enquiries of the managing agent and the estate agent up until the beginning of September 2015, the Applicant was not informed the leases of Flats 7 and 8 had been assigned.

7. Mrs Russell relied on the cases of *Avon Freeholds Limited v Regent Court RTM Co Limited* [2013] UKUT 0213 (LC) and *Natt v Osman & Ali* [2014] EWCA 1520 Civ in support of her submission that the tribunal should have regard to the intention of Parliament and give effect to the notice of claim as the majority (6/8) lessees had indicated their intention to acquire the leasehold. Therefore the lack of any notice of invitation to participate, being sent to the lessees of Flats 7 and 8 made no difference.

The Respondent's case

8. The Respondent submitted that the case law made it clear that the tribunal should follow the statutory requirements of the Act. Therefore in the absence of a notice of invitation to participate being served on all the qualifying tenants, namely the lessees of Flats 7 and 8 pursuant to section 78 of the Act, the notice of claim, must be regarded as invalid; *Triplerose limited v Mill house RTM Company Limited* [2016] UKUT 80 (LC) and *Gateway Property Holdings Limited v Ross Wharf RTM Company Ltd* [2016] UKUT 0097 (LC) relied upon.

The tribunal's determination

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determines as follows
10. The tribunal accepts the Respondent's submissions and finds that in the absence of compliance with the statutory requirements i.e. the failure to serve a notice of invitation to participate on all qualifying lessees, the notice of claim is invalid. The tribunal finds that a failure to comply with the statutory requirements is capable of remedy by the immediate service of a fresh notice. The tribunal finds that the purposes of the legislation is to both provide a no fault acquisition of the right to manage which is to be balanced against the statutory protections it affords the landlords and relevant lessees.

Costs

11. The Respondent sought its costs of and incidental to the application in the sum of £6372.00 including VAT. The respondent relied upon rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (as amended) and asserted that the Applicant had acted unreasonably in bringing this application and had unreasonably persisted in pursuing it to a full hearing. The Applicant acted unreasonably as the solicitor for the Respondent had alerted it of the subject defect; invited the /applicant to serve a fresh notice and delayed in taking any substantive steps in preparation for the hearing until forced to do so by the Applicant.
12. In opposition to this application, it was asserted that the Applicant believed it was right in its arguments, that the costs were exorbitant and felt it right for the leaseholders to have brought this application.
13. The tribunal determines that the Applicant has persisted unreasonably to pursue these proceedings despite being made aware of the defect and the straightforward remedy that could have avoided this application being made or pursued unnecessarily. However, the tribunal finds that the costs of the Respondent are too high to be considered reasonable. Therefore the tribunal reduces the hourly rate to £175 from the £250 claimed in order to acknowledge that part of the preparatory work would have been straightforward in part and more complex in others.
14. The tribunal finds that having expressly been invited to inform the tribunal of a revised time estimate, the parties failed to do. In this instance the tribunal could reasonably expect the solicitor for the Respondent to have been aware that the initial time estimate of the tribunal of a 1-day hearing was excessive, and sought to have reduced it

to the more realistic 1/2 day hearing that has been held Therefore the tribunal reduces the fees payable to counsel to reflect this.

15. Therefore, the tribunal directs the Applicant to pay the Respondent costs in the sum of 3812.40 (including VAT).

Signed: Judge LM Tagliavini

Dated: 14 July 2015