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

Case Reference : CHI/21UC/LRM/2014/0022

Property : Flats 1-21, Monterey Wharf,
Phoenix Drive, Eastbourne BN23 5PJ

Applicant : Monterey Wharf RTM Company
Limited

Representative : James B Bennett and Co, solicitors

Respondents : (1) Holding and Management Solitaire
Limited
Turville Estates (UK) Limited (1)
(2) Fairhold Trois GR Limited

Representative : Estates and Management Limited

Type of Application : Objection to Right to Manage

Tribunal Members : Judge D Agnew

**Date and venue of
Hearing** : 30th December 2014
Paper determination

**Date of
Decision** : 31st December 2014

DECISION AND REASONS

Decision

1. The Tribunal determines that as at the relevant date, namely 29th July 2014, the Applicant was entitled to acquire the right to manage Flats 1-21 Monterey Wharf, Phoenix Drive, Eastbourne BN23 5PJ ("the Premises") under the Commonhold and Leasehold Reform Act 2002 ("the Act").

Reasons

Background

2. On 16th October 2014 the Applicant applied to the Tribunal for a determination under section 84(3) of the Act that on 29th July 2014 it was entitled to acquire the right to manage the Premises.
3. Directions were issued by the Tribunal on 28th October 2014 providing for statements of case to be submitted by the parties and for the case to be determined upon the basis of those written submissions rather than by an oral hearing, unless any party objected within 28 days. No party did object and statements of case were duly filed.

The Respondent's case

4. The Respondent's objections to the Applicant being entitled to acquire the right to manage the Premises were set out in the counter-notice served under section 84 of the Act and amplified in the statement of case filed on behalf of both Respondents and dated 18th November 2014.
5. The objections were threefold. First, it was claimed that no evidence had been adduced that a notice of invitation to participate in the RTM company as required under section 78 of the Act had been given to those who were qualifying tenants but who neither were nor had agreed to become members of the RTM company. Secondly, it was alleged that a copy of the claim notice had not been given to all qualifying tenants as required by section 79(8) of the Act. In particular, Stephen Christopher Spelman and Brenda Lee Blea-Spelman were registered proprietors of flat 5 at the Premises as evidenced by the registration of their title at the Land Registry but they had not been served with either notice of invitation to participate or a copy of the claim notice. Thirdly, no evidence had been adduced that the claim notice had been served on all relevant parties as required by section 79(6) of the Act.

The Applicant's case

6. The statement of case on behalf of the Applicant was given by Graeme Stewart Bennett, solicitor and partner in the firm of James B Bennett and Co. A statement of truth was included. His evidence in respect of the Respondents' objections to the entitlement to acquire the right to manage the Premises was as follows:-
 - a) he produced a copy of the register of members of the Applicant company and he confirmed that on 14th January 2014 he wrote to each one of the

residents of Flats 1-12 and 14-21 Monterey Wharf (there being no number 13) with a notice of invitation to participate in the RTM company. All the residents were qualifying tenants. All qualifying tenants became members of the RTM company.

b) with regard to flat 5, his evidence was that the Spelmans sold their flat to Beverley Jane Nemet on 15th June 2014. The Spelmans resigned from the RTM Company and Mrs Nemet was registered as a member as from 16th June 2014. A copy of Mrs Nemet's solicitor's notice of transfer was supplied and the company's register of members duly recorded the change of membership. Consequently, at the date when the claim notice was given, namely, 29th July 2014, Mrs Nemet had had the lease of flat 5 assigned to her and she was the lessee thereunder albeit that her title had not yet been registered at the Land Registry. The claim notice erroneously stated that the qualifying tenants and members of the company in respect of flat 5 were Nicholas Nemet and Beverley Nemet although no point has been taken that Nicholas Nemet has been wrongly included in schedule 1 to the notice. The point that has been taken is that the Spelmans, as registered proprietors of flat 5 at the time the claim notice was given should have been given a copy of the claim notice. It is not suggested by the Applicant's solicitors that the Spelmans were given a copy of the claim notice. The question the Tribunal has to determine, therefore, is whether the Spelmans, Mrs Nemet or perhaps both should have been given a copy of the claim notice.

7. With regard to the third ground of objection, namely that there is no evidence that all relevant parties were served with the claim notice, the persons to be served were the landlord, other parties to the lease and any manager appointed by the Tribunal under the landlord and Tenant Act 1987. The claim notice is addressed to the landlord and to both possible management companies for whom Estates and Management Limited act. There is no evidence that any manager has been appointed under the 1987 Act and no evidence that the landlord has not received service of the claim notice.

The law

8. The law relevant to this application is contained in sections 71, 75, 78, 79 and 84 of the Act. These sections are set out in the Appendix to this decision.

The determination

9. The Tribunal is satisfied that in providing a statement of case containing a statement of truth that notices of invitation to participate were sent by Mr Bennett to all the qualifying tenants, in circumstances where no evidence of any kind has been produced by the Respondents to gainsay this and where the company's register of members shows that all lessees did become members of the company, the notices of invitation to participate were duly given to the qualifying tenants in compliance with section 78(1) of the Act. Even if that were not the case, the fact that all lessees did become members of the company disposes of the point.

10. The Tribunal finds that it was correct for the Applicant to give a copy of the claim notice to Mrs Nemet rather than to the Spelmans. The Tribunal is aware that in certain circumstances it is the entry on the register at the Land Registry which is the only determinant as to ownership of land. However, the circumstances in this case are that the RTM company knows, because notice has been given, that an assignment of a lease to a qualifying tenant has taken place, that the assignors have resigned from membership of the RTM company and the assignee has requested to become, and has been registered as a member in their stead. It would be bizarre in the extreme to find that, nevertheless, a copy of the claim notice should have been given to those who no longer have any interest in the property as opposed to those who have every interest in knowing who it is being proposed should manage their block.
11. A “qualifying tenant” as defined in section 75(2) of the Act is the “tenant of a flat under a long lease”. Mrs Nemet was, at the time the claim notice served, such a tenant in actual fact, even though her title was yet to be registered at the Land Registry. Registration can take several weeks to effect. In the Tribunal’s view it would be wrong to consider that in the intervening period Mrs Nemet was not a “tenant under a long lease” or that she was not a qualifying tenant. Furthermore, it may well be the case that the RTM company would have no knowledge of the previous owners’ new address to enable a copy of the claim notice to be sent to them.
12. The claim notice was addressed to the landlord and to the two possible management companies, both of whom were represented by Estates and Management Limited. There was no Tribunal appointed manager who needed to be served. The Respondent has produced no evidence that any relevant person has not been served with the claim form and in circumstances where the Applicant’s case has been verified by a solicitor who has signed a statement of truth and there is no evidence to the contrary the Tribunal accepts that all relevant persons were served with the claim notice.

Dated the 30th day of December 2014

Judge D. Agnew

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

SCHEDULE

71(1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).

(2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.

78(1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice was given –

- (a) is the qualifying tenant of a flat contained in the premises, but
- (b) neither is nor has agreed to become a member of the RTM company.

79(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”), and in this Chapter the “relevant date”, in relation to the any claim to acquire the right to manage, means the date on which notice of the claim is given.

79(6) The claim notice must be given to each person who on the relevant date is –

- (a) landlord under a lease of the whole or any part of the premises,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987..... to act in relation to the premises, or any premises containing or contained in the premises.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

84(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in sub-section 2(b) [i.e. alleging that by reason of a specified provision of the Chapter the RTM company is not entitled to acquire the right to manage] the company may apply to a [First-tier Tribunal (Property Chamber)] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.