



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

Case Reference : LON/00BG/LRM/2016/0016 & 0017

Property : Flats 1-36 and 37-67 Arcadia Court, 45
Old Castle Street, London E1 7NY

Applicants : Arcadia Court RTM Co Ltd
Arcadia Court 2 RTM Co Ltd

Representative : CG Naylor

Respondent : JH Watson Property Investment Ltd

Representative : JH Watson Property Management Ltd

Type of Application : Right to Manage

Tribunal : Judge Nicol
Mr MA Mathews FRICS

Date of Decision : 23rd November 2015

DECISION

Decision of the Tribunal

The Tribunal has determined that, on the dates on which the notices of claim were given, each of the Applicants was entitled to acquire the Right to Manage the premises specified in each notice.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. This decision is given in respect of two related cases, each involving part of Arcadia Court and in respect of which there are two separate RTM companies. No comment has been made by any of the parties on the fact that there are two RTM companies rather than one. The issues arising in the two cases are virtually identical and it is expedient to give one decision rather than two.
2. By claim notices, both dated 27th July 2016, the Applicants each sought to exercise the right to manage over their respective parts of Arcadia Court. The Respondent served counter-notices alleging non-compliance with sections 79(5), 78(1) and 79(2) of the Commonhold and Leasehold Reform Act 2002. The Respondent has expanded on their objections in comprehensive and well-argued submissions to the Tribunal and it is to the issues in those submissions to which this decision is directed.

Ground A – Service of Notices of Invitation to Participate

3. As is common in such properties in London, some of the lessees are not resident. The Respondent has expressed concern as to whether the non-resident lessees were properly invited to participate in the acquisition of the right to manage in accordance with section 78 of the Act. In particular, under section 111(5) an RTM company may give a notice to a qualifying tenant at their flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.
4. The Respondent accepts that the Applicants sent the relevant notices to the flats at Arcadia Court but that up to 8 flats in 1-36 and 4 in 37-67 could and should have been sent them to an alternative address available from the Land Register. Their argument is that, although the Applicants had not been notified of an alternative address, they had been “indirectly” notified of just such an alternative address by its availability in a public document.
5. The Tribunal rejects the Respondent’s argument. There is no warrant for distorting the plain statutory wording to allow for the concept of “indirect” notification, or even “direct” notification. Notification by a party requires a positive act by them to bring the relevant information to the notice of the particular party to be notified. The fact that a person may have left alternative addresses in any number of publicly-available places cannot constitute notification in this context.
6. The statutory wording is clear and does not need any embellishment or policy arguments to support the above interpretation. However, to the extent that that is wrong, the Tribunal would also make the following point. The Tribunal understands the point being made by the

Respondent as to the potential prejudice to non-resident lessees if they should fail to receive important notifications but that does not, of itself, suggest that the obligation to address this prejudice lies with the notifier. Rather than creating an onerous obligation on a notifier to conduct indefinite searches for alternative addresses, it is far more expedient to require a lessee to make arrangements for important correspondence to be forwarded to them.

Ground B – Membership of RTM Company

7. In respect of the First Applicant, the Respondent has pointed to a document in which two lessees, Mr Alexander Ferguson (flat 4) and Mr Michael Regester (flat 19), stated that they wished “to continue” to be members of the RTM company. The Respondent asserted that this implied that they were already members of the company at the time when the notices of invitation to participate were sent out but those notices did not list them as members, thus invalidating the notices.
8. In respect of the Second Applicant, the Respondent pointed to a similar document in which the lessees of flat 62, Mr John Sinclair Foley and Mr Marc Alexis Smith, also stated that they wished “to continue” to be members of the RTM company. In this case, the Respondent suggests that they were not members at the time of the claim on the basis that no valid agreement to join the company has been given by these lessees. The Respondent asserts that this brings into question both the validity of the claim notice itself and whether there were a sufficient number of participants at the time of the claim.
9. The documents referred to certainly raise questions. However, the Tribunal is satisfied with the Applicants’ answers, namely that the documents in question were simply mis-worded. The Tribunal is satisfied that each of the lessees in question had adequately expressed their agreement to be members of the relevant company at the relevant time and that the mis-wording did not mislead either party to the agreement that they should be members.

Conclusion

10. In the circumstances, the Tribunal is satisfied that the Respondent’s objections are misconceived and that, on the dates on which the notices of claim were given, each of the Applicants was entitled to acquire the Right to Manage the premises specified in each notice.

Name: NK Nicol

Date: 23rd November 2016

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 78

Notice inviting participation

- (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 is 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.
- (2) A notice given under this section (referred to in this Chapter as a "notice of invitation to participate") must—
 - (a) state that the RTM company intends to acquire the right to manage the premises,
 - (b) state the names of the members of the RTM company,
 - (c) invite the recipients of the notice to become members of the company, and
 - (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.
- (3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.
- (4) A notice of invitation to participate must either—
 - (a) be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
 - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.
- (5) A statement under subsection (4)(b) must—
 - (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
 - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
 - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
 - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

Section 79

Notice of claim to acquire right

- (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 any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (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 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (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.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

Section 111

Notices

- (1) Any notice under this Chapter—
 - (a) must be in writing, and
 - (b) may be sent by post.
- (2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or

any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).

- (3) That address is—
 - (a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or
 - (b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).
- (4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.
- (5) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.