



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

Case Reference : **MAN/30UH/LRM/2019/0001**

Property : **48 Sandylands Promenade,
Morecambe LA3 1DW**

Applicant : **48 Sandylands Promenade RTM Co. Ltd.**
Representative : **Ratcliffe & Bibby Solicitors**

Respondent : **Brigante Properties Ltd.**
Representative : **Estates & Management Ltd.**

Type of Application : **under s.84(3) and s.88(4) of the Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **Judge P Forster
Ms J A Jacobs MRICS**

Date of Determination : **7 June 2019**

Date of Decision : **18 June 2019**

DECISION

Decision

1. The applicant has acquired the right to manage 48 Sandylands Promenade, Morecambe, LA3 1DW.

Introduction

2. This is an application by 48 Sandylands Promenade RTM Company Ltd. (“the applicant”) for a determination under s.84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that it is entitled to acquire the right to manage the property known as 48 Sandylands Promenade, Morecambe, LA3 1DW (“the property”).
3. The respondent landlord, Brigante Properties Ltd. contends that the applicant is not so entitled because of alleged defects in the notice inviting participation and in the claim notice.
4. Pursuant to directions given on 7 March 2019 and in the absence of any objection from the parties, the application is to be determined without a hearing. The applicant’s case is set out in its application and statement of case with supporting documents. The respondent’s case is set out in its statement of case with its supporting documents.

The respondent’s case

5. The respondent’s case is that contrary to s.78(1)(a) and (b), the applicant failed to give a valid notice to each person who at the time when the notice was given was a qualifying tenant of a flat contained in the premises but who neither was nor had agreed to become a member of the right to manage company.
6. Further, the applicant failed to specify the names and addresses of the qualifying tenants in the form prescribed for the purpose. Reference was made to Carlton House Southsea RTM Company Ltd. v Sinclair Gardens Investments (Kensington) Ltd. (CHI/00MR/LRM/2016/0014) to support the respondent’s case that this is a defect which is not capable of remedy.
7. The respondent relied on the applicant’s admission that it failed to give a claim notice to each person who on the relevant date was a qualifying tenant of the premises in breach of s.79(8) of the Act.
8. Contrary to s.80(7) the applicant inserted an incorrect date in the notice of claim, namely that the date when it intended to acquire the right to manage the premises was 3 February 2019 when the correct date was in fact 3 March 2019. The respondent cited the case of Windermere Court Kenley RTM Company Ltd. v Sinclair Gardens Investments (Kensington) Ltd. (LON/00AH/LRM/2013/0029).
9. In summary, the applicant failed to comply with s.78(1)(a) and (b); s.79(8) and s.80(7).
10. The respondent asks for costs under s.88 of the Act.

The applicant's case

11. The applicant refers to Flat 2 which is registered in the names of David Savage and Jane Elizabeth Mary Savage. Mr Savage is a member of the right to manage company. His wife died in January 2013, but she is still on the registered title. The applicant admits that she was not served with a notice of invitation to participate and by extension on none of any other qualifying tenants who were not members of the management company. The applicant also admits that the claim notice was not served on the qualifying tenants.
12. The applicant submits that those failures should not be fatal to the notice. It seeks to rely on the decision in Elim Court RTM Company Ltd v Avon Freeholds Ltd. [2017] EWCA Civ 89 where it was held that defects in the notice do not necessarily invalidate the notice.
13. The applicant also relied on the decision in Sinclair Gardens Investments (Kensington) Ltd. v Avon Freeholds Ltd. [2017] EWCA Civ 89 which held that minor procedural discrepancies should not be fatal to the claim.
14. In respect of s.80(7), the applicant relies on s.81(1) which provides that “*a claim notice is not invalidated by any inaccuracy in the particulars required by or by virtue of section 80*”. The applicant submitted that no prejudice had been caused to the respondent.

The Law

15. The relevant law is set out in Part 2, Chapter 1 of the Act and is not repeated here.

DECISION

16. We will consider each of the respondent's objections in turn.
17. The statutory requirements for invitation notices are to be found in s.78 of the Act and in The Right to Manage (prescribed Particulars and Forms) (England) Regulations 2010. Before submitting a claim to manage any premises, a right to manage company must give notice to each qualifying tenant of a flat in those premises who neither is, nor has agreed to become, a member of the company [s.78(1) of the Act]. There is a prescribed form for an invitation notice [Schedule 1 to the 2010 Regulations].
18. In its statement of case, the applicant accepts that it did not serve the notice of invitation on Mrs Savage. The applicant made no further submissions on this point. Whether the property was held by Mr and Mrs Savage as joint tenants or tenant's in common is unknown or who now holds the beneficial interest in the flat. No evidence was advanced that her personal representatives were served with the notice.

19. The statutory requirements for the claim notice are to be found in s.79 of the Act and in the 2010 Regulations. The right to manage company must give the claim notice to each qualifying tenant of a flat [s.79(8)]. There is a prescribed form for an invitation notice [Schedule 2 to the 2010 Regulations].
20. The applicant's solicitors in their email sent at 11:34 on 29 November 2018 conceded that "*service of the claim notice upon the qualifying tenants was omitted*".
21. The respondent opposes the application on the grounds that neither the invitation notice nor the claim notice was served on all the qualifying tenants. That fact is not in dispute.
22. The applicant refers us to Sinclair Gardens Investments (Kensington) Ltd. where an invitation notice was not served on one of the qualifying tenants and it was held that did not invalidate the claim on the basis that the landlord had not been prejudiced by the failure. We are also referred to the Court of Appeal's decision in Elim Court RTM Company Ltd v Avon Freeholds Ltd. In that case it was held that the failure of a right to manage company to serve a notice of claim on an intermediate landlord did not invalidate the right to manage claim and further, there was no prejudice to the respondent arising out of the failure to serve the qualifying tenants with the notice of claim.
23. We agree with the applicant's argument on this point and find that it is not the case that a failure to comply with a procedural requirement has the consequences of nullifying all subsequent steps in the process. The purpose of requiring an invitation notice and a notice of claim to be served on a qualifying tenant is to ensure that the interest of that tenant is protected and enable them to participate in the process. In the present case, Mrs Savage is dead and Mr Savage who is a member of the right to manage company is aware of the proceedings. The omission to serve Mrs Savage was inadvertent. It was not argued that the respondent had suffered any prejudice and we conclude that the respondent was not prejudiced in any way by the applicant's failure to serve Mrs Savage.
24. Further, in respect of the failure under s.78(1), the respondent argues that the invitation notice did not include the prescribed information, namely the names and addresses of the qualifying tenants. We have not seen an invitation notice although of course there should be one, and we cannot be sure that such a document exists.
25. The respondent refers us to a First-tier Tribunal decision in Carlton House Southsea RTM Company Ltd. v Sinclair Gardens Investments (Kensington) Ltd. which deals with the right to manage company's failure to include in the invitation notice the name and addresses of qualifying tenants. It was held that given the statutory provisions there was a requirement to include the name and address of the person on whom the notice was to be served and that was a failure to comply with the form of the notice rather than any inaccuracy in the particulars which were provided in it. The tribunal found that the saving

provision in s.78(7) did not apply. S.78(7) provides that, “*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*”. The tribunal held that the omission of the information was a failure

26. We are not bound by the decision in the Carlton House Southsea case, but we take note of it. We are reluctant to follow that decision and apply it to an invitation notice that was certainly not served and may never have been drafted. We are persuaded that a failure to comply with a procedural requirement should not have the consequence of nullifying all subsequent steps in the process. We take the view that the purpose of the legislation is to provide a “no fault right to manage” and in the absence of any prejudice to the respondent we find that the omission of the names and addresses does not invalidate the invitation notice.
27. S.80 of the Act is about the contents of the claim notice. Under s.80(6) “*the notice must specify a date not earlier than one month after the relevant date by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84*”. Under s.80(7) of the Act the notice “*must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises*”. In the present case, the claim notice stated that a counter notice must be given not later than 3 December 2018. The applicant stated incorrectly that it intended to acquire the right to manage the premises on 3 February 2018. The earliest date under s.8(7) was 3 March 2019.
28. The appellant accepts that there are errors in the claim notice but relies on s.81(1) which provides that “*a claim notice is not invalidated by any inaccuracy in the particulars required by or by virtue of section 80*”. The respondent’s answer to that is to rely on Windermere Court Kenley RTM Company Ltd. v Sinclair Gardens Investments (Kensington) Ltd. That case concerned the application of the corresponding date rule and did not address s.81(1). The legislation is intended to be “no fault right to manage” and does not lay pitfalls in front of parties who wish to acquire the right. The Act must be followed, and we find that the claim notice is saved from invalidity by s.81(1).
29. For these reasons, we allow the application and find that the applicant has acquired the right to manage the premises.

Costs

30. Under s.88 of the Act, a right to manage company is liable for the reasonable costs incurred by a landlord or others engaged in the process in consequence of a claim notice. That will apply in the present case. The applicant put itself in the position where there could be challenges to the procedures. If it had served the notices, included the required information and inserted the correct date this application would not have been necessary. Costs incurred by the respondent in these proceedings must have been reasonably incurred and fall to be recovered from the applicant under s.88.

31. We may make an order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 if a person has acted unreasonably in bringing or conducting the proceedings. In the present case it was reasonable for the applicant to bring the proceedings, indeed the applicant's application has succeeded. Both parties have behaved reasonably and responsibly throughout the proceedings and there is no submission to contrary. In these circumstances we do not make any order for costs.

Judge P Forster
7 June 2019