



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

Case Reference : LON/00AY/LEE/2014/0002
LON/00AY/LCP/2014/0006

Property : 98 Christchurch Road, London
SW2 3DF

Applicant : 98 Christchurch Road RTM
Company Limited

Representative :

Respondent : Primeview Developments Limited

Representative : Anthony Tse, Solicitors

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Dr Helen Carr
Mr Michael Cartwright

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 6th June 2014

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Applicant is not entitled to acquire the Right to Manage of 98 Christchurch Road London SW2 3DF.
- (2) The Tribunal determines that costs charged by the Respondent's solicitor should be reduced by £916.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') makes provision for RTM companies, the members of which are qualifying tenants of premises to which the provisions apply, to acquire the right to manage the premises. A landlord who is given a notice claiming the right to manage an RTM company may give the company a counter-notice alleging that the company is not entitled to acquire the right to manage the premises (section 84(2)), and the RTM company may then apply to the LVT for a determination that it was on the relevant date entitled to acquire such right (section 84(3)).
2. By a claim notice dated 14th February 2014 the Applicant, 98 Christchurch Road RTM Company limited, an RTM Company, gave notice to Respondent, Primeview Developments Limited, the freehold owner of 98 Christchurch Road, the premises which are the subject of this determination, that it intended to acquire the Right to Manage the premises.
3. By a counter-notice dated 28th March 2014 the Respondent disputed the claim alleging that by reason of section 72 of the Act the Applicant was not entitled to acquire the Right to Manage the premises.
4. The Applicant has therefore applied to the Tribunal pursuant to section 84 of the Commonhold and Leasehold Reform Act 2002 for a determination that it was, on the relevant date, entitled to acquire the Right to Manage 4 Hyde Park Mansions. The Applicant also asks the tribunal to determine the reasonable costs of the Respondent in relation to a claim notice dated 13th November 2012.
5. In addition the Respondent has made an application to the tribunal for a determination of its reasonable costs in relation to the claim notice dated 14th February 2014.

6. On 14th April 2014 the LVT issued directions in this matter and determined (i) that the matters raised in the two applications be dealt with together (ii) that the matter be decided on the basis of written representations alone and without an oral hearing unless either party requested an oral hearing. Neither party made any such request and therefore the matter is being determined without an oral hearing on the basis of the papers provided by the parties.

The issues

7. The tribunal has identified the relevant issues for determination as follows:
 - (i) Whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the premises specified in the notice.
 - (ii) Are the Respondents costs reasonable and payable by the Applicant.

The law

8. Sections 71 – 94 of the Act set out the statutory framework for the acquisition of the Right to Manage. The relevant sections for the purposes of this determination are s.72(1), s.79 (3) and (8) and s. 80 (3), (8) and (9). For the convenience of the parties the salient provisions are set out below.
9. Section 72(1) provides that the right to manage applies to premises if –
 - (i) they consist of a self-contained building or part of a building, with or without appurtenant property
 - (ii) they contain two or more flats held by qualifying tenants, and
 - (iii) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
10. Section 79 (3) provides that the claim notice must be given by a RTM company which complies with subsection (4) and (5). Section 79(4) provides that 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. Subsection (5) of s.79 provides that 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.

11. Subsection (8) of section 79 provides that 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.
12. Section 80 concerns the contents of the claim notice. Subsection (3) provides that the notice must state the full name of each person who is both the qualifying tenant of a flat contained in the premises, and a member of the RTM company such particulars of his lease as are sufficient to indentify it, including the date on which it was entered into, the term for which it was granted, and the address of his flat. Subsection (8) provides that the claim notice must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority. Subsection (9) provides that in addition it must comply with such requirements (if any) about the form of the claim notices as may be prescribed by regulations so made.

Arguments in connection with the notice of claim

13. The Respondent's arguments are set out in its statement of case. It argues that the claim notice is defective because the flat addresses of each tenant has not been provided. Both the 'qualifying tenants' listed at numbers 1 and 3 of part 1 of the schedule have not provided their flat addresses.
14. The Respondent relies on paragraph 12 of the determination in the case of *Moskovitz, Moskovitz and Riech v 75 Worple Road RTM Company Limited* [2010] UKUT 393. This paragraph determines that the word 'inaccuracy' in section 81(1) should be given a narrow meaning and only covers matters such as obvious typing errors in the claim notice where it would be facetious for the landlord to argue the notice was invalid as a result.
15. The Applicant argues that it has not failed to comply with the statutory requirements and encloses an email from its solicitor stating that the notice is statutorily compliant.

The tribunal's decision

16. The tribunal determines that the notice of claim is defective because of the failure to provide the flat addresses of all of the qualifying tenants listed on the claim notice.

Reasons for the tribunal's decision

17. The flat addresses are a necessary requirement for the freeholder to determine the validity of the notice of claim. The failure to provide the addresses therefore renders the notice defective.

Reasonableness of costs

18. The Applicant argues that the costs in relation to the both RTM claims are vastly inflated, in particular it argues that
- (i) Over an hour to read a notice is ludicrous
 - (ii) Taking two hours to research the law and consider leases is absurd
 - (iii) The charge of over 30 minutes to draft a counter notice is ludicrous
 - (iv) Much of the work is a repeat of work undertaken in 2012.
 - (v) The objections to both claims are spurious
19. The Applicant also notes that the Respondent's solicitor is an inhouse solicitor.
20. The Applicant also states that it believes that the reason for rejection of the original 2012 RTM claim was not valid and the counter notice to be vexatious and without foundation. It therefore argues that any costs associated with drafting it are not valid.
21. The Respondent's solicitor argument in summary is that the Responded has a substantive interest in the building and its management and maintenance is of high importance to the Respondent. It therefore requires of its solicitor thorough investigation that the tenants have strictly complied with each and every requirement of the Act.
22. The Respondent's solicitor also argues that the Applicant has failed to provide any sufficient reasoning or objective observations to support its claim that the costs claimed in respect of work undertaken by the solicitor are unreasonable.
23. The Respondent makes some specific responses to the Applicant's argument including that each individual case must be taken on its own merits, that it is unreasonable to assert that legal practitioners would memorise particular details of leases. More generally the Respondent's solicitor asserts the reasonableness of his charges.

24. The Respondent makes the point that regardless of the Applicant's opinion of its response to the 2012 claim, the Respondent is entitled to its costs in connection with that claim.

The tribunal's decision

25. The tribunal determines that the amount payable in respect of legal costs should be reduced by £916.
26. In particular
- (i) The charges of 29th November 2012 in connection with the consideration of the claim notice and associated documents of £274.80 should be removed as this work should be subsumed into the charge of £458 for research law and considering leases etc
 - (ii) the charges of 10th March 2014 of £183.20 for considering the claim notice and associated documents should be removed from the charges as this work is subsumed into the charge of £458 for considering regulations leases etc.
 - (iii) the charges of 16th April 2014 of £458.00 for reviewing the responses from the Applicant should be removed from the charges as this work is subsumed into the charges for preparing responses to documentation provided by the Applicant

Reasons for the tribunal's decision

27. The tribunal shares the concerns of the Applicant that some of the charges reflect duplicated work and has therefore reduced those charges accordingly.
28. Otherwise the charges stand.

Name: Helen Carr

Date: 6th June 2014