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

Case Reference : **MAN/OOCJ/LRM/2013/0017**

Property : **Kristan Court, Fernwood Road, Jesmond
Newcastle NE2 1TJ**

**Applicant
Representative** : **Kristan Court RTM Company Limited
Clarke Mairs LLP**

**Respondents
Representative** : **George Pearce, Sylvia Pearce & Gavin Millar
Alan Hall Solicitor**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Section 84(3)**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of determination : **13 January 2014**

DECISION

Application

1. Kristan Court RTM Company Limited apply for a determination under Paragraph 84(3) of the Commonhold and Leasehold Reform Act 2002 (the Act) that it was entitled to acquire the right to manage Kristan Court, Fernwood Road, Jesmond, Newcastle NE2 1TJ as registered with Freehold Title under Title Number TY170565 (the Property) on 26 June 2013.

Background

2. The Property comprises a building of 8 flats let for a term of 999 years from 1 January 1986.
3. The Applicant is a company formed to acquire the right to manage the Property.
4. Following invitation to the Lessees of all flats to participate in the right to manage and notice to them under Section 78 of the Act a claim notice under Section 79 of the Act was served on the Respondents on 1 July 2013.
5. The claim notice required any counter notice to be given no later than 9 August 2013. By letter dated 2 August 2013, received 6 August 2013 the Respondents' solicitor served a counter notice and by letter dated 7 August 2013 received 8 August 2013 served a 2nd counter notice.
6. The 2nd counter notice dated 2 August 2013 alleges that by reason of the provision of Chapter 1 of Part 2 of the Act on 26 June 2013 the Applicant was not entitled to acquire the right to manage.
7. The application was made to the Tribunal on 1 October 2013. In accordance with directions made by a Tribunal Judge on 22 October 2013 both parties have provided written submissions and evidence. Neither requested an oral hearing of the application.
8. The Tribunal convened on 13 January 2014 without the parties to make its determination.

The Law

9. The relevant law is found in Sections 71 to 113 in Chapter 1 of Part 2 of the Act.
10. Section 74 sets out the persons entitled to be members of a right to manage company. Section 75 specifies who is a qualifying tenant of a flat within the relevant premises. Section 78 makes provision for the notice that must be given by an RTM company to each person who is a qualifying Tenant.
11. Section 79(6) states that 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. The relevant date is stated by Section 79(1) as: "The date on which notice of the claim is given."
12. Section 84 provides for the service of a counter notice alleging that the RTM company was not entitled to acquire the right to manage. Section 84(3) enables an RTM company that has been given such a counter notice to apply to the Tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

Evidence and Submissions

13. The parties' submissions are analysed and considered under the separate issue headings below along with the Tribunal's individual conclusions.

Service on Landlord

14. The date of the Applicant Company's claim notice was 26 June 2013. An office copy of the Freehold Title dated 2 December 2013 shows that the Freehold Title was registered with Title Absolute with Proprietors George Robin Pearce, Sylvia Margaret Pearce and Gavin Emslie Millar. There is a restriction against a disposition by a sole Proprietor and a caution in favour Jeffrey Peter Cawson. The Register shows that the Proprietors were registered on 3 December 1985.
15. The Respondents state that GR Pearce was made bankrupt in 1992 and the caution is in favour of his original Trustee in Bankruptcy. It is submitted that the interest in the Property passed to the Trustee. The Respondents also state GE Millar died on 7 March 1994.
16. The Applicant submits that the registered Proprietors remain as stated and no notice has been given of any change in ownership of the Freehold Title. It is denied that the legal title vests in the Trustee in Bankruptcy. Reference is made to Land Registry Practice Guide. It is denied that GE Millar's death is relevant to the exercise of the right to manage nor has any notice of change of ownership been given.

Conclusion

17. We find that the RTM company is entitled to rely upon the accuracy of the Proprietorship Register at the date of service of the notice. It is the obligation of any person wishing to register a Proprietary interest to do so. The service of the notice was upon the registered owners and fulfil the requirements of the Act.

Failure to register assignments

18. The Lease of each flat requires notice of assignment to be given within 1 calendar month. The Respondents wrongly refer to this as a requirement to give notice "To all Lessees solicitor." It is in fact to the Lessors solicitor. On that basis it is submitted that the Tenants of 1, 3 and 8 Kristan Court should not be included in the "Count of Tenants who can form in sufficient numbers of not less than 2/3 of the total number of Tenants to make the claim...."
19. The Applicant denies this is relevant and refers to Section 75(2) of the Act which does not set out an exclusion for any failure to comply with the terms of the Lease.

Conclusion

20. It is not stated that steps had been taken in respect of the alleged breach of Lease covenant. Further, having regard to the wording of that covenant within the Lease we find it does not have the effect of nullifying the "Assignee's" interest and disqualifying them from the conditions set out in the Act for becoming a qualifying Tenant. This does not render the claim ineffective.

Failure to pay ground rent

Conclusion

21. For similar reasons to paragraph 20 we do not find this relevant.

Specification of grounds within the counter notice

22. The Applicant refers to Section 84(2)(b) of the Act and submits that in breach of requirement neither the 1st or 2nd counter notice specifies a provision of the Act upon which it relies. On that basis a valid counter notice has not been served.

23. The Respondents do not comment on this issue.

Conclusion

24. Although we have considered the grounds set out within the Respondents' submissions they were not set out within the counter notices and we conclude that neither counter notice complied with the requirements of the Act and was effective to deny the right to manage claim.

Tribunal's conclusions

25. For the reasons above we find the claim notice is valid.

Order

26. The Tribunal determines that the Applicant was entitled to acquire the right to manage the Property on the relevant date, 26 June 2013.