



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

Case Reference : CHI/00HB/LRM/2014/0025

Property : 77 Nags Head Hill, St George,
Bristol BS5 8BF

Applicant : 77 Nags Hill RTM Company Limited

Representative : Atlantis Property

Respondent : Hazelvine Limited

Representative : Allsquare Legal Limited

Type of Application : Application in relation to the denial of the
Right to Manage

Tribunal Member : Mr D Banfield FRICS

**Date and Place of
Hearing** : 12 March 2015 on the papers

Date of Decision : 12 March 2015

DECISION

Summary Decision

That the Right to Manage Company was not entitled to acquire the Right to Manage the subject premises on the date stated in the Notice.

Background

1. The Tribunal has received an application under Section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”).
2. By a claim notice dated 30th October 2014 the Applicant gave notice that it intended to acquire the Right to Manage the premises on 1st March 2015.
3. By counter-notice dated 26th November 2014 Hazelvine Limited disputed the claim alleging that the Applicant had failed to establish compliance with Sections 79, 72 and 80 of the Act.
4. Directions were made on 30 December 2014 setting out a timetable for the determination of the matter and indicating that it would be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing. No objection has been received and the matter has therefore been so determined.
5. In a letter dated 28 January 2015 from Allsquare Law as representatives of Hazelvine Limited it was stated that the Applicants had failed to serve a notice on the landlord in accordance with S.79 (6)(a) of the Act.
6. In the enclosed Respondent’s Statement Qdime Limited was said to be the landlord whereas Hazelvine Limited was the management company named within the lease.
7. Allsquare Law asked that to avoid unnecessary costs the matter of service of notices be determined as a preliminary matter and Further Directions were made on 11 February 2015 to that effect.

The Law

8. Commonhold and Leasehold Reform Act 2002

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.

(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.

Evidence

9. In the Statement of Case on behalf of the Respondent it was said that the landlord was Qdime Limited and Hazelvine Limited was the management company named in the lease. Hazelvine Limited received notice of the claim dated 30 October 2014 and a counter notice was served on 26 November 2014. No claim notice was received by Qdime Limited.
10. By not serving a notice on the landlord (Qdime Limited) the Applicant has not satisfied the requirements of Section 79(6) (a) of the Act and as such the application must fail.
11. In a statement dated 17 February 2015 Atlantis Estates on behalf of the Applicant said that notices were served on both Hazelvine Limited and Qdime Limited on 30 October 2014 and that a counter notice was received from Hazelvine.
12. In support of their contention that a notice was served on Qdime Limited they attach page 1 of a notice addressed to Qdime Limited, a Certificate of Service dated 30 October 2014 stating that a document was served by first class post on Qdime Limited and a Notice of Invitation to Participate in which Qdime Limited are referred to as the Freeholder. They further note that Qdime Limited and Hazelvine Limited have the same registered address and share some directors.
13. In reply the Respondent’s representative refers to the application form to the Tribunal in which Hazelvine is referred to as Landlord rather than Qdime Limited, that a signed notice addressed to Qdime Limited has not been produced and that evidence that could have been

produced by use of the tracking facility referred to on the Certificate of Service had not been submitted.

Decision

14. The application form to the Tribunal named Hazelvine as Landlord and made no reference to Qdime Limited. Attached to the application were copies of the notice and counter notice relating to Hazelvine Limited only. No signed copy of a Notice addressed to Qdime Limited has been produced and evidence that may have confirmed that service had been effected has not been made available.
15. On the balance of probabilities we find that notice has not been served on the Freeholder and as such the application does not satisfy the requirements of Section 79(6) (a) of the Act and must therefore fail.
16. By determining this preliminary matter in favour of the Respondent it necessarily follows that the decision on the substantive issue must also find for the Respondent in that the Right to Manage Company was not entitled to acquire the Right to Manage the subject premises on the date stated in the Notice.

D Banfield FRICS
12 March 2015

RIGHTS OF APPEAL

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.