516

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LRM/20156/0011**
Property	:	**The Close, Muswell Avenue, London N10 2ED**
Applicants	:	**The Close RTM Company Ltd**
Representative	:	**Lasse Johnsen, director**
Respondent	:	**Townsmede Properties Limited**
Representative	:	**Hamlins LLP**
Type of Application	:	**Application relating to (No Fault) Right to Manage**
Tribunal Members	:	**Judge T Cowen**
Date of Decision	:	**11 May 2015**

DECISION

Decision of the tribunal

1. **The tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the Property.**

The application

1. The Applicant seeks under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") a determination that it was on the relevant date entitled to acquire the right to manage the Property.

2. The first set of issues for the tribunal turn on whether the Applicant's notice dated 30 January 2015 was valid within the requirements of section 80 of the 2002 Act, in particular:

   (i) Whether it is in the form set out in Schedule 2 to the The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the 2010 Regulations") in terms of the signature of Lasse Johnsen; and

   (ii) Whether the Applicant had served a Notice of Participation within the meaning of section 78 of the 2002 Act so as to satisfy section 79(2) of the 2002 Act.

3. If the Tribunal decides that the notice of 30 January 2015 was valid, then it is necessary to turn to the second set of issues which concern the validity of the Respondent's counter-notice under section 84, in particular:

   (i) Whether it is appropriately dated; and

   (ii) Whether its validity is effected by the misspelling of the Respondent's name "Townsmede" as "Townsmeade".

4. The application to the tribunal was dated 8 March 2015 and directions were given this matter on 19 March 2015.

5. In the directions, the Tribunal decided that the case was suitable for determination without a hearing and invited the parties to ask for a hearing, if they so wished, within 28 days. Neither party expressed a wish for a hearing. I have therefore decided this matter without a hearing.

The background

6. The Property contains 24 residential units of which 18 are demised on long leaseholds. The Applicant was incorporated as a RTM Company on 14 October 2014. Fourteen of the leaseholders are members of the Applicant. They are all qualifying tenants.

7. The Respondent is the freehold owner of the Property.

8. On 30 January 2015, the Applicant served on the Respondent a notice purporting to be a notice of claim under section 79 of the 2002 Act. The only material part of that notice is the signature section which contains a handwritten signature followed by the words "Lasse L. Johnsen Director".

9. Under cover of a letter dated 26 February 2015, the Respondent served a document headed "Counter-notice" in which it challenged the validity of the Applicant's notice on the grounds that (i) the notice was not properly executed by the Applicant company and (ii) the Respondent had not received a copy of the Notice of Participation.

The Respondent's case

10. Since this is effectively a challenge by the Respondent to the validity of the Applicant's notice, it makes more sense to start by outlining the Respondent's case. In summary, the Respondent says:

    (a) The notice was not executed so as to comply with section 44 Companies Act 2006

    (b) It was therefore invalid under s80(9) of CLRA 2002. The Respondent relies on *Elim Court RT v A1 Freeholds Ltd* [2014] UKUT 0397.

    (c) There is nothing in the notice to suggest that Mr Johnsen has the authority to sign on behalf of the company or that he was in fact signing on behalf of the company.

    (d) There is no evidence of service of the requisite notice of participation.

11. On the counter-notice issue, the Respondent (i) concedes that the counter-notice itself is not dated but argues that the date on the covering letter to the counter-notice means that the counter-notice is appropriately dated and (ii) concedes that the Respondent's name is misspelt on the counter-notice and covering letter but argues that the misspelling does not invalidate the notice, because the name of the

company is still identifiable. The Respondent relies upon *Assethold v 15 Yonge Park* [2011] UKUT 379 in that regard.

12. In the directions of 19 March 2015, the Respondent was directed to file and serve its submissions by 7 April 2015. On 2 April 2015, the Respondent's solicitors wrote a letter which said:

> "We write to confirm that, without prejudice to our client's contention the Notice of Claim dated 30 January 2015 is not valid, our client will not be objecting to the application"

13. No other submissions have been received from the Respondent. It is not entirely clear what the letter of 2 April 2015 is trying to say. The phrase "without prejudice" indicates that the Respondent wishes to maintain its contention that the notice of claim is not valid. In that case, it is not clear what purpose is served by their not otherwise objecting to the application. The validity of the notice is an issue which goes to the heart of the dispute between the parties. I cannot determine whether the Applicant has acquired the right to manage without deciding the validity of the notice. It may be that they meant to say "notwithstanding" or "despite" "our client's contention", but they did not say that.

14. In the circumstances, I am not satisfied that the Respondent has unequivocally consented to the application. I shall therefore determine the application as if the Respondent was still objecting.

The Applicant's case

15. The Applicant also relies on the decision in the *Elim Court* case, but contends that its application to the facts of this case would lead to the conclusion that the signature, and therefore the notice, is valid.

16. The Applicant asserts that the Respondent was not entitled to be served with a Notice of Participation and states that Notices of Participation were served on all requisite parties on 14 December 2014.

17. The Applicant challenges the counter-notice on the grounds stated above.

Reasons for the Tribunal's decision

The Notice

18. I am satisfied, on the basis of the evidence I have seen, that the Applicant has served notices of participation on each required person at

least 14 days before the notice of claim. The sole remaining issue on the validity of the notice of claim is therefore the issue of the signature.

19. Section 80 of the 2002 Act provides that a claim notice must include the provision of details of the qualifying tenants who are members of the RTM company, particulars of their leases and a statement of the grounds on which it is claimed that the premises are premises to which the Chapter applies. It also provides that additional requirements may be introduced by regulations. Section 80(8) and (9) provide as follows:

> "(8) It 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.
>
> (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made."

20. The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the 2010 Regulations") have prescribed additional content for claim notices and the form which they must take. Regulation 8(2) specifies that claim notices "shall be in the form set out in Schedule 2 to these Regulations". Schedule 2 provides a form of claim notice which concludes with the following provisions for signature:

"Signed by authority of the company.

[Signature of authorised member or officer]
"

21. The signature section of the notice in the present case appears as follows:

"Sincerely,

[Handwritten signature]

Lasse L Johnsen
Director

22. This matter was considered by the Deputy President of the Upper Tribunal in the *Elim Court* case in a number of conjoined appeals. In a simplified form, the facts in the cases before him were that:

(i) In each case, the company secretary of the RTM Company was another company (known as "Federation Ltd");

(ii) Dudley Joyner was a director of Federation Ltd;

(iii) The notice of claim forms were from the RTM Company

(iv) Dudley Joyner had signed the notice of claim forms under the words "signed by authority of the company" and then added words which stated his own directorship of Federation Limited.

23. The freeholder's contention in each of the signature issue appeals was that the signature by a company had to comply with the rules for companies executing documents under section 44 of the Companies Act 2006. The freeholders argued that the signatures did not comply with that requirement and therefore the notices were invalid.

24. Section 44 of the Companies Act 2006 provides that in order for a document to be validly executed by a company, it must be signed (a) by two authorised signatories or (b) by one director whose signature is witnessed and attested.

25. The Upper Tribunal decided that section 44 of the Companies Act 2006 did apply to notices under section 79 of the 2002 Act and that in each of the cases before him, the signature did not comply with section 44 of the 2006 Act.

26. The signature of Lasse L Johnsen in the notice dated 30 January 2015 in the present case also fails to comply with section 44 of the 2006 Act.

27. The Upper Tribunal in *Elim Court* went on to consider whether the signatures were in fact an attempt by the company to execute the document (which would fail for non-compliance with section 44 as above) or rather were the signature of Mr Joyner as an individual signing as agent for the company. The Upper Tribunal came to the conclusion that the description of Mr Joyner as "director" was a piece of information which was descriptive of Mr Joyner himself rather than an indication that he was purporting to sign as the company. At paragraph 56 of the decision, the Deputy President said as follows:

> If the signature was that of the secretarial company there would have been no need for Mr Joyner to give his own name or to state that he was a director of that company. An informed reader of the claim notice would also know that Mr Joyner's signature alone could not be the signature of the secretarial company and would understand it to be the signature of Mr Joyner himself. Section 44 not having been complied with the claim notices must either be treated as valid, by virtue of Mr Joyner's signature and the authority he held to sign on behalf of the RTM companies, or they must be treated as waste paper. **I am satisfied that the**

requirement that a claim notice must be signed by someone who in fact had the authority of the company and was an authorised member or officer was satisfied in these circumstances.

28. I have highlighted the last section in bold. It seems to me that the Upper Tribunal has set a very low test for compliance with the requirement that the notice must be signed by someone authorised by the company, so as to achieve the purpose of indicating to the recipient of the notice that the document genuinely emanates from the will of the RTM Company itself.

29. In the present case, there are significant differences with the notices in the *Elim Court* case. The words ""signed by authority of the company" do not appear and in fact it does not say expressly anywhere on the document that it is from the Applicant company. It is signed by Lasse L Johnsen as "director" without saying what Lasse L Johnsen is a director of.

30. Despite these differences, I have come to the conclusion that the notice is valid. Applying the low hurdle set by the Upper Tribunal and taking into account the words highlighted in bold above, I think that the following features are decisive:

(i) I am satisfied that Lasse L Johnsen was genuinely authorised by the Applicant (by a resolution passed the previous day) to sign the notice on its behalf.

(ii) The notice contains sufficient information to communicate to the recipient that it is from the Applicant company. In particular the Applicant's name appears at the top and bottom of each page.

(iii) Lasse L Johnsen has signed as an individual and the word "director" is merely descriptive information about him.

(iv) It is clear from the context of the notice and the signature than he is signing as agent for the Applicant Company.

31. I have therefore decided that the notice is valid.

The Counter-notice

32. The Applicant's arguments concerning the validity of the counter-notice are not sound. I agree with the submissions of the Respondent on this issue.

33. Section 84(2) of the 2002 Act requires that the counter-notice should state whether the freeholder admits the claim and contain "such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority."

34. Schedule 3 to the 2010 Regulations provides a form of counter-notice which includes towards the end the words "[Insert date]".

35. In addition, when interpreting the notice, I bear in mind the test in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 in the case of a error in a notice, namely whether the reasonable recipient of the notice would be in any doubt as to what was intended. In my judgment, the counter-notice is valid (despite the alleged errors) because a reasonable recipient would know:

    (a) that the date on the covering letter to the notice (26.02.15) was the date of the notice and that the omission to insert the date after the word "date:" on the form itself was an obvious error. In any event, it may be argued that dating the notice by means of the accompanying letter is still "appropriately dated" within the meaning of the regulations.

    (b) that the extra letter "a" in the name of the landlord company was a spelling error and that there was no doubt in the mind of the reasonable recipient in these circumstances who the notice was from.

36. For all the above reasons, I have reached the conclusion which is set out at the start of this decision.

37. The Applicant has also asked for an order under section 20C of the Landlord and Tenant Act 1985 and for an order reimbursing its costs of about £44.

38. The Tribunal does not have jurisdiction to make an order under section 20C in this application because the Applicant itself is not a tenant. I have decided not to make an order for the Applicant's costs to be reimbursed, because under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the Tribunal may only make such an order if a person has acted unreasonably in bringing defending or conducting proceedings. I do not think the Respondent has behaved unreasonably in any of those respects.

Chair Judge T Cowen **Date** 11 May 2015