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**HM Courts
& Tribunals
Service**

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

Case reference : **CHI/00MS/LRM/2015/0003**

Property : **Empress Heights, College Street,
Southampton SO14 3LA**

Applicant : **Empress Heights RTM Company
Limited**

Representative : **Chamonix Estates (managing
agents)**

Respondent : **E & J Ground Rents No 5 Limited
(landlord)**

Representative : **None**

Type of application : **An application for a determination
as to whether the applicant is
entitled to acquire the right to
manage (under Part 2 of the
Commonhold and Leasehold
Reform Act 2002)**

Tribunal : **Judge James Driscoll**

**Date of determination
and venue** : **With the agreement of the parties
the tribunal considered its decision
on the basis of the papers filed and
without an oral hearing.**

Date of decision : **28 May, 2015**

DECISION

The decision summarised

1. On the relevant date the applicant RTM company was entitled to acquire the right to manage the subject premises. (The 'relevant date' is the date on which the claim notice was given - see: section 79(1)).

Introduction

2. This is an application by an RTM company which seeks on behalf of its members (who are leaseholders of flats in the premises) a determination that it was entitled on the relevant date to acquire the right to manage.
3. The applicant is an RTM company incorporated on behalf of participating leaseholders of flats in the subject premises to take over management of the premises. The respondent is the owner of the premises and the landlord under the leases.
4. The relevant statutory provisions are contained in Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') and in various sets of regulations which have been made under these provisions ('the regulations'). Under the Act, a majority of leaseholders are entitled to take over the management of the premises from the landlord. The right to manage is a no-fault based right. Provided the building qualifies under the Act, the leaseholders may take over management of the building whether the landlord agrees to this or not. However, in order to make a valid claim, there are various procedural matters that the participating leaseholders must first attend to.

5. Before exercising the RTM, the participating leaseholders must incorporate an RTM company, a company limited by guarantee with a constitution prescribed by regulations made under the Act. All leaseholders are entitled to be members of the company (as is the landlord). Matters such as which buildings qualify, the proportion of leaseholders who should support the application, and which leaseholders qualify to participate are, broadly speaking, the same as they are for the collective right to enfranchise accorded by Part I of the Leasehold Reform, Housing and Urban Development Act 1993.
6. RTM is initiated by the company giving a claim notice to the landlord. Although the RTM is a no-fault based right landlords have the right in certain circumstances to object to the claim by giving a counter-notice to the company. Landlords may do this, for example, if they consider that the building does not qualify, or that the company has failed to follow the correct procedures. Where such a counter-notice is given, the company must (if it wishes to proceed) apply to this tribunal for a determination as to whether it is entitled to acquire the landlord's management functions under the RTM.
7. In this case, the premises consists of one block with 5 commercial units on the ground floor and 97 flats held long residential leases.

The claim

8. In a claim notice dated 18 November 2014 the applicant gave notice of its intention to acquire the RTM. In a counter-notice dated 18 December 2014 the landlord challenged the claim denying that the applicant was entitled to acquire the RTM.
9. Accordingly, the applicant applied to this tribunal (under section 84(3)) for a determination that it was on the relevant date entitled to acquire the

right to manage. This application was dated 23 January 2015. Directions were given by the tribunal on 9 February, 2015.

10. One of the directions stated that the application would be determined on the consideration of the papers filed in accordance with the directions without an oral hearing (in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013) unless one of the parties notified the tribunal that it wanted it considered at an oral hearing.

The submissions

11. Neither party having sought an oral hearing I considered the application on the basis of the papers filed. A bundle was prepared by those advising the applicant. It included a copy of the tribunal application, a specimen residential lease, a copy of the certificate of incorporation of the applicant, a copy of its memorandum and articles of association, copies of the claim notice and the counter-notice, a copy of the directions and copies of the statements made by the parties.

12. First, I considered the claim and counter-claim notices. The claim notice was given under section 79 of the Act. A claim must include the matters prescribed by section 80. The counter-notice simply alleges that ‘..by reason of subsection (9) of section 80....the company was not entitled to acquire the right to manage the premises...’ (paragraph 1 of the counter- notice).

13. Section 80(9) of the Act, which, after specifying in detail what is required in the claim notice, adds ‘And is must comply with such requirements about the form of the claim notices as may be prescribed by regulations so made’.

14. What the counter-notice did not do was to specify in which respect or respects the claim notice failed to comply with the requirements of section 80(9) of the Act.

15. As directed the parties exchanged statements. The landlord's statement, which is dated 23 February 2015, refers to the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010, as they were amended by the Transfer of Tribunal Functions Order. This amendment changed the reference in note 1 to the prescribed from 'leasehold valuation tribunal' to 'tribunal' and this change came into effect on 1 July 2013.

16. As the claim notice referred to 'leasehold valuation tribunal' the notice of claim did not comply with the requirements as prescribed by the regulations. As a result, argues the landlord, the applicant was not entitled to acquire the right to manage the premises.

17. In reply the applicant (in a statement dated 4 March 2015) states that apart from the inclusion of two words 'Leasehold Valuation' that the applicant has met the qualifying criteria and has served the appropriate notices in line with the legislation and '..in the spirit of the legislation'. It suggested that there is no other valid reason for the counter-claim other than to 'inconvenience' the applicant.

Reasons for my decision

18. Having considered all of the papers I have decided that the landlord's challenge to the claim is not justified and as a result the applicant was entitled to acquire the right to manage on the relevant date. I reached this decision for the following reasons.

19. Before setting out the reasons, and in order to put the landlord's challenge into context, it is instructive to note the issues that are not in dispute. The landlord does not challenge the claim that the subject premises are premises to which the Act applies (with the requisite number of flats held on qualifying leases) (see: section 72). Nor does the landlord claim that although the premises are in mixed residential and commercial use that they are excluded from the RTM as a result of the operation of paragraph 1 of schedule 6 to the Act.

20. The landlord does not allege that the applicant failed to comply with the participation notice requirements in section 78. Nor does it challenge the way in which the claim notice was drafted, or the manner in which it was given (as prescribed by sections 79 and 80) save for mistake that was made by including the words 'leasehold valuation' as a footnote to the form prescribed in the regulations.

21. It is also worth noting that 52 of the qualifying 97 leaseholders opted to become members of the applicant company and that at the date of the application to this tribunal 59 of the leaseholders were members of the company.

22. It is against this background that the substance of the landlord's challenge to the RTM application is to be considered. Section 81(1) states that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80. I conclude that the reference to the 'leasehold valuation' tribunal in a footnote to a form specified in the regulations is an inaccuracy which, applying section 80(1) of the Act, does not invalidate the notice.

23. This disposes of the matter but for the avoidance of doubt I would add that the error is a minor error. No one involved in the claim, the applicant, the participating leaseholders, the non-participating

leaseholders or the landlord, has been prejudiced (or misled) in any way by this minor error in the claim notice. And I repeat the point that the landlord does not challenge the claim that the premises are premises to which the Act applies and that the participation notice requirements were complied with. It is clear that a majority of the residential leaseholders have decided to exercise the right to take over the management of their block and that they have followed the various procedural steps required by the Act.

24. I note also that the counter-notice failed to specify the specific ground on which the landlord denied that the applicant was entitled to acquire the right to manage. This only emerged later when the landlord prepared a statement as directed by the tribunal.

25. To summarise, I conclude that on the relevant date the applicant RTM company was entitled to acquire the right to manage the subject premises. (The 'relevant date' is the date on which the claim notice was given - see: section 79(1)).

26. Finally, I note that under section 88 of the Act, the applicant is not liable for any costs incurred before this tribunal as I have allowed the application.

James Driscoll, 28 May 2015

Appeals

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.