

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

For

THE LONDON RENT ASSESSMENT PANEL

PROPERTY: FAIR ACRES BROMLEY KENT

APPLICANTS: FAIR ACRES RTM COMPANY LIMITED

RESPONDENT: FAIR ACRES MANAGEMENT LIMITED

Background:

1. This is an application by Fair Acres RTM Company Limited under S. 84(3) of the Commonhold & Leasehold Reform Act 2002 ("the Act"), for an order that the RTM company is to acquire the right to manage the property at Fair Acres, Bromley Kent.
2. The Respondent, Fair Acres Management Limited opposed the application. The Applicant and respondent agreed that the matter should be dealt with by way of written representations and the Tribunal directed that the application should be dealt with without a hearing. The Applicant was represented by Mr. J. Graham and the Respondent by Messrs T.S.S. Law.
3. The Applicant served a notice of claim in accordance with S. 79 of the 2002 Act on 11th July 2006. The claim notice was accompanied by a list of qualifying tenants who all occupied their premises under the terms of long leases for various terms.
4. The Respondent served a counter-notice on 11 August 2006 alleging that the Applicant was not entitled to acquire the right to manage by reason of Sections 78(1), (2), (3), (4) and (5) and Sections 79(2), (6) and (8) of the Act. The Respondents objected on the grounds that:-
 - Not all qualifying tenants were served with a Notice of Invitation to Participate in accordance with S.78(1) of the Act;
 - There were members of the RTM company who were not Qualifying Tenants, constituting a breach of s.74(1) of the Act;
 - Not all landlords were served with a copy of the Claim Notice in accordance with S.79(6) of the Act; and
 - As at the date of the Counter Notice, not all Qualifying Tenants had been served with a copy of the Claim Notice in breach of s.79 (8) of the Act.

The Law:

5. S.84 of the Act states;-

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either -

- (a) Admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or*
- (b) Alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,*

And containing 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.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises..

Submissions:

- 6. The Respondent in its statement of case highlights various deficiencies with the Notices of Claim, in that not all qualifying tenants as evidence by Office Copy Entries were served with Notices to Participate. In addition, the Respondent states that the Applicant admits that it did not serve a Claim Notice on the freeholder of the development, Hasley Limited. Finally, the Respondent claims that Claim Notices were not served on all qualifying tenants prior to the service of the Counter Notice.
- 7. The Applicant submits that the initial Claim Notices did contain some errors as the Applicant was unable to obtain information from the Respondent concerning all of the names of the leaseholders of the units and therefore prepared its own list. The Applicant relies on S. 78(7) and S. 81 (8) of the Act as saving these deficiencies, in that 'these sections provide that notice of invitation to participate and claim notices are not invalidated by any inaccuracy in any of the particulars required by or by virtue of these sections'
- 8. The Applicant refers to the 14 alleged errors in the claim notices, and stated that only six of which concern tenants who were members of the RTM

company. The Applicant goes on to say that, in two of these six cases, the error is due to the death of a spouse of a qualifying tenant and the fact that the Land Registry not been informed, therefore the Office Copy Entries relied on by the Respondent were incorrect. The Applicant then refers to the total number of members of the RTM Company, excluding these six 'errors' as being 110 and that these represent more than 50% of the 210 units in the development. Therefore, that in the view of the Applicant the RTM had the Right to Manage in any event whether or not these six were included in the numbers of tenants who were members of the RTM Company on the relevant date.

- 9 The Applicant continues by saying that whilst the Respondent has identified 14 mis-matches between the Office Copy Entries and the list of Qualifying Tenants, 6 of the leaseholders included in the 14 have now joined the RTM Company. The Applicant also considers that these errors can be corrected under S. 78(7) of the Ac, and cites the same provision as saving them where the Respondent claims a breach of S.74 (1) of the Act has taken place - i.e. that members of the RTM Company were not qualifying tenants, and that corrections to the register of members may be made. The Applicant also claims that the Respondent has not been disadvantaged by any of these 'errors' in the Notices. The Respondent has made no comment on any disadvantage caused.
10. In response to the allegation that Notice of Claim was not served on every landlord, the Applicant claims that there is only one landlord in this case, namely Fair Acres Management Limited and that Halsey Limited is not a landlord for the purposes of the Act, because it has no responsibility for the service charge trust fund and would not be affected by any change in the control of that fund to the RTM Company. If this is wrong, the Applicant relies on the fact that both Halsey Limited and Fair Acres Management Limited share the same sole director in Mr. Chowaw Lieblich, and that as Fair Acres Management Limited were given a Notice of Claim, Halsey Limited had also received notification.
11. Finally, the Applicant admits that not all Qualifying Tenants had been served with a copy of the Claim Notice prior to the date of the Counter-Notice, but that this was rectified by 13th November 2006. The Applicant relies on the wording of the Act which states '*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*'. The Applicant believes that the Act remains silent on when copies of Notices of Claim should be served on the Qualifying Tenants. The Applicant states again, that neither the Qualifying Tenants nor the landlord have been disadvantaged by the late service of the Notices. The Applicant also states that since the service of the Notice of Claim more tenants have applied to become members of the RTM Company.

Decision:

12. The Act requires that Notices to Participate must be served on any person who is a qualifying tenant on the relevant date and is not, nor has not agreed to

become a member of the RTM company. A Notice of Claim cannot be served until 14 days after a Notice to Participate has been served.

13. It is admitted by the Applicant that not every Qualifying Tenant received a Notice to Participate prior to the Notice of Claim, and that therefore they have not strictly complied with S. 78 (1) of the Act. However, the Tribunal must look at the consequences of these omissions and whether, they are in fact, saved by S. 78(7) of the Act. The tribunal does not consider that some of the errors cited by the Respondent on the Notices are fatal to the application. It is not challenged that on the relevant date, there were more than 50% of the number of qualifying tenants in the block who were members of the RTM Company. This was unavoidable by the Applicant which was apparently, not provided with the relevant information by the Respondent to enable service of all of the Notices to Participate. Where omissions have occurred, these have been rectified, all Qualifying Tenants had been invited to become members of the Applicant, albeit not prior to the service of the Notice of Claim.
14. The Tribunal considers that it should take a pragmatic view of the situation. No prejudice appears to have been afforded to any Qualifying Tenant, indeed several have joined the Applicant since the service of the Notice of Claim. This, in the view of the Tribunal, is the purpose of the Notice to Participate, to ensure that everyone who qualifies for membership of the Applicant Company would not be precluded from membership. It appears in this instance that no-one has been precluded and everyone has been given an opportunity to join in the proceedings.
15. Turning to the point made by the Respondent that the Landlord, Halsey Limited was not served with a Notice of Claim in breach of S.79 (6) of the Act. The legislation requires 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,
(b) party to such a lease otherwise than as landlord or tenant, or
(c) a manager appointed under Part 2 of the Landlord & Tenant Act 1987...'*

The Tribunal considers that Halsey Limited is a landlord for the purposes of the Act. The Tribunal must therefore consider whether notice was given to Halsey in accordance with S.79(6). The Applicant has provided evidence that the sole Director in both the Landlord and Respondent Companies is the same person and that therefore notice was given to the Landlord via the Respondent.

There is no requirement under the Act for formal 'Service' of the Notice of Claim on the landlord, the Act refers to 'given'. The Tribunal has been informed by the Applicant that the Managing Agent for the Respondent assisted in the formation of the RTM Company initially. The Tribunal is therefore of the view that when the Notice of Claim was given to the Respondent it was also given to the landlord, Halsey, at the same time because the Companies are in the control of the same person.

16. Finally, was a copy of the Notice of Claim validly served on each Qualifying Tenant as required under S. 79(8). The Respondent's view is that this should be done before the date of the Counter-Notice. The Applicant contends that this is not the case and that the legislation is silent as to when a Notice of Claim can be served on qualifying tenants.
17. The Tribunal agrees with the Applicant, S. 79(8) of the Act does not specify when a Notice of Claim must be given to each qualifying tenant, merely that it must be given. The Applicant had served copies of the Notices of Claim on each qualifying tenant by the 13th November 2006, and the Tribunal is therefore satisfied that the requirements of S.79 (8) have been met.

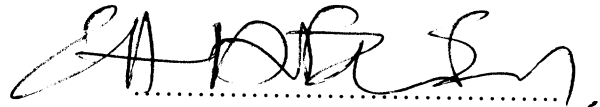
Accordingly the Tribunals determines that, on the relevant date, the Applicant was entitled to exercise the Right to Manage .

Costs:

18. The Respondent seeks its costs under S. 88(1) and S. 88(3) a total of £3,761.15. The Tribunal considers these costs to be excessive for the work involved. The sum of £963.50 for costs under S.88(3) is considered to be excessive in that the Respondent seeks 3 hours @ £200 per hour for drafting and £120 per hour for perusing documents. The Tribunal considers that two hours at £200 should be sufficient for this exercise and therefore awards the sum of £400.00 in respect of S. 88(3).

With respect to S. 88(1) the Tribunal again considers that the time claimed of 13 hours to verify office copy entries is excessive. The Tribunal allows the sum of £639 for obtaining the Office Copy Entries, but considers that a total of 4 hours at £120 per hour would be more appropriate for their perusal and other work dealing with this part of the claim. The Tribunal therefore awards a total of £1,119 for the S. 88(1) costs. All figures above are quoted exclusive of VAT.

Miss A Hamilton-Farey FRICS, FCIArb



Date:

22 December 2006