

LON/00BF/LRM/2004/0010

IN THE LEASEHOLD VALUATION TRIBUNAL

BETWEEN:

K. A. L. M. RTM COMPANY LIMITED

Applicant

AND

SINCLAIR GARDENS INVESTMENTS (KENSINGTON LTD)

Respondents

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

TRIBUNAL:

Mr Julian Deaner LLB MPhil

BACKGROUND

K. A. L. M. Company Limited (the Applicant) is a right to manage (RTM) Company incorporated on 16 April 2004. The members are the three lessees of 38 St James Road, Sutton, Surrey (the premises), a house divided into three flats, namely Kate Evans and Mark Pearce of Flat 1, Leeona Pedley of Flat 3 and Anna Szpek of Flat 2. On 7 September 2004 the Applicants issued a Claim Notice to Sinclair Gardens Investments (Kensington) Limited (the Respondents), the landlord of the premises, claiming the right to manage the premises under the provisions of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (the Act). On 7 October 2004 the Respondents by their solicitors and duly authorised agents P Chevalier & Co issued a Counter Notice alleging that the Applicants were not entitled to acquire the right to manage the premises. On 7 December 2004 the Applicants applied to the Tribunal for a determination that they were entitled to acquire the right to manage the premises. On 20 December 2004 the Tribunal directed that the application be dealt with without a hearing and on the basis of consideration of documents and written representations.

THE LAW

Section 79 (1) of the Act provides that a claim to acquire the right to manage any premises is made by giving a claim notice. Section 79 (8) states that "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". Section 80 provides for the contents of the claim notice. Section 80(7) provides that "it must specify a date, at least three months after that specified under subsection 6 on which the RTM Company intends to acquire the right to manage the premises. Section 80(9) provides that the claim notice "must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made". The form of Claim Notice is prescribed by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003. (the Regulations).

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.

THE RESPONDENT'S SUBMISSIONS

The Respondents referred to a letter from the Applicants dated 14 September to the effect that the only claim notice that had been served was the one served on the Respondents and therefore Section 79(2) had not been complied with.

They referred to the date in the Notice of Claim which was 12 October 2004, the date in the Notice of claim under Section 80(7) which was 12 January 2005 and argued that Section 80(7) had not been complied with since the Section 80(7) date was not at least three months after the Section 80(6) date.

They also referred to the omission of notes to the prescribed form as being an incurable defect not validated by Section 81(1) of the Act.

In support of their argument that Section 80(7) had not been complied with they produced authorities which included Halsburys, and the Civil Procedures Rules to the effect that where a period of time is prescribed as the period within which an Act is to be done the day of the date or event is to be excluded in the computation of the period.

The wording of Regulations to the effect that claim notices shall be in the form set out in Schedule 2 to these regulations differed significantly from Regulations relating to notices under the Leasehold Reform Act 1967 which were less strict and could allow validity of a form omitting the relevant notes. The fact that one party might not be prejudiced by the omission of the notes should not be a factor since there was no provision to this effect in the Act.

THE APPLICANT'S SUBMISSIONS

The Applicants contended that they had served a claim notice in accordance with the provisions of Section 79(8). This reference in a letter to the landlords related only to the provisions of Section 79(6). They had complied with Section 79(8).

They contended that the date specified in Clause 6 of the claim notice (12 January 2005) was at least three months after the date specified in Clause 5 (12 October 2004).

They claimed that the claim Notice complied with the requirements of the Regulations as to the form and content of the claim notice. This contained all relevant information and dates such that of the Respondents were not prejudiced.

DECISION

The Tribunal noted that the Respondents had not challenged the Applicants claim that they had satisfied the requirements of the Act in that the building qualified, the RTM Company complied with legislative requirements and the members of the RTM Company represented half the flats in the building (Section 79(5)). The Tribunal accepted the Applicant's evidence that they had served the tenants with copies of notices in accordance with Section 79(8) of the Act.

They noted the Respondents arguments that there had been non compliance with Section 80(7) and 80(8). However they considered Section 81(1) was sufficiently widely drawn to allow them to take the view that any inaccuracy within the category alleged by the Respondents did not invalidate the notice.

The Tribunal accordingly determined that the Applicants were entitled to acquire the Right to Manage the Premises. They did not accept the

Applicants submission that the landlord's Counter-Notice was frivolous and vexatious and declined to make an order awarding costs against the Respondent.

CHAIRMAN.....*John Dew*

DATE.....*18th March 2005*