SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00ML/2004/0004

Re: 23 Albert Road, Brighton, E. Sussex, BN1 3RN

BETWEEN:

Mr M. Stirling & Mr K. Andersen
23 Albert Road RTM Company Limited

("The Applicants")

and

Oasis Properties Limited

("the Respondents")

IN THE MATTER OF AN APPLICATION UNDER SECTION 84 (3)
COMMONHOLD AND LEASEHOLD REFORM ACT 2002
(No fault Right to Manage Application)

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Chairman)
Mr J.N. Cleverton FRICS
Mr A.O. Mackay FRICS

Hearing: 12th October 2004

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. Background to the Application

On 7th April 2004 the RTM Company served on the Landlords a Claim Notice under Section 70/80 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Claim Notice contained a number of errors but more importantly omitted the Notes contained at the end of the Notice. The form of the Claim Notice is set out in Schedule 2 to the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2003 SI 2003 No. 1998 ("the 2003 Regulations"). On 5th May 2004 the Landlords served a Counter-Notice as required by Section 84 of the 2002 Act. The grounds on which the Landlords claimed that the RTM Company was not entitled to acquire the right to manage were as follows:

(a) The Claim Notice did not state, in relation to each person who is both the qualifying tenant of a flat contained in the Premises and a member of the Company, the date on which their leases were entered into in accordance with Section 80(4)(a) of the 2002 Act
(b) The Claim Notice did not contain a statement that a person who receives the Notice but does not fully understand its purpose is advised to seek professional help in accordance with section 4(d) of the 2003 Regulations
(c) The Claim Notice did not contain the information provided in the notes to the form set out in Schedule 2 of the 2003 Regulations as required by Section 4(e) of those Regulations.

The RTM Company made an Application to the Tribunal on 2nd July 2004 and in the letter of Application attempted to rectify the errors and omissions by including some of the incorrect items and omissions in their letter of Application. Unfortunately some of the incorrect information was still not corrected in that the dates of the Leases remained incorrect. The letter of Application included the Notes required by the 2003 Regulations in an attempt to cure the defect in the Claim Notice.

Subsequently, in a Statement prepared by the Landlords Solicitors, and subsequently at the Hearing, certain points were conceded as not being fatal to the validity of the Claim Notice. This left the only remaining point to be decided by the Tribunal as follows:

> "Was the omission of the Notes to the form of Claim Notice as set out in Schedule to the 2003 Regulations fatal to the validity of the Claim Notice, and hence denied the RTM Company of the right to manage."

The Applicants accepted that the Claim Notice did not contain the prescribed information, but maintained that they had attempted to cure the defect by including it after the Claim Notice had been served. The Landlords argued that the omission of the notes invalidates the Claim Notice, and hence the RTM Company is not entitled to acquire the right to manage. Whilst Claim Notices are not invalidated by an **inaccuracy** in any of the particulars, the Landlords argued that this saving does not apply to **omissions**.

2. Inspection

Immediately prior to the Hearing the Tribunal briefly inspected the property to satisfy itself that the property complied in all respects with Section 72 of the 2002 Act. Sub-section (1) of that Section required the property to be a self-contained building or part of a building with or without appurtenant property, it should contain two or more flats held by qualifying tenants and the total number of flats held by such tenants is not less than two-thirds of the total number of flats contain in the property. Sub-section (2) confirms the property is a self-contained building if it is structurally detached. Sub-section (3) confirms a building is self-contained if it constitutes a vertical division of the building, the structure of the building is such that it could be redeveloped independently of the rest of the building and subsection (4) (which relates to the provision of relevant services) applies to it.

The Tribunal concluded at its inspection that the Building was indeed self-contained and was an old Victorian Building divided into four flats. It determined without difficulty that the property complied with Section 72 of the 2002 Act.

3. Hearing

A Hearing took place at Hove Town Hall, Hove. The RTM Company was represented by Mr Stirling and Mr Kimber, who were both Lessees of Flats in the Property and both members of the RTM Company. Another of the Lessees and members of the RTM Company, Mr K. Andersen, who was not present at the Hearing, had made a written application to the Tribunal to be joined as a party to the proceedings. In the absence of any objection, the Tribunal agreed to him to be joined as a party to the proceedings.

The Landlords were represented by Mr Jeremy Donegan, Solicitor and Partner in the firm of Osler Donegan Taylor, of Brighton.

(a) Landlord submissions

Mr Donegan outlined his Clients reasons for objecting to the Claim Notice in that it had omitted the Notes which were required by the 2003 Regulations to be in the Claim Notice. He maintained this was fatal to the validity of the Claim Notice. He referred the Tribunal to the wording of the Section 80 (1) of the 2002 Act which reads "The Claim Notice **must** comply with the following requirements..." and Section 80 (9) reads "And it (the Claim Notice) **must** comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made" He also submitted that Regulation 4 of the 2003 Regulations reads "A claim notice **shall** contain..." and under sub-paragraph (e) of Regulation 4 reads "*shall contain* the information provided in the notes to the form set out in Schedule 2 to these Regulations"

Further in support of his argument he referred the Tribunal to the case of *7 Strathray Gardens Ltd v. Pointstar Shipping & Finance Ltd & Ultratown Ltd*, which was a Decision of the Central London County Court delivered on 12th February 2004.This was a case concerning the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") when the omission of a clause saying that the property was not subject to an estate management scheme, made the Notice invalid. Further Hague on Leasehold Enfranchisement refers to the case of *Mutual Place Property Management ltd v. Blaquiere (1996) 28EGLR 78 CC* where there was an omission of a plan was held not to be an "inaccuracy" but an omission and invalidates the Notice.

(b) RTM Company's submissions

Mr Stirling on behalf of the Company accepted that the notes had been omitted from the Claim Notice, but he had corrected his error by including them later in his letter of Application to the Tribunal. He asked the Tribunal to consider what might be gained by denying the RTM Company the right to manage. In the event of the Tribunal finding the Claim Notice to be invalid due to a technicality, the RTM Company could always serve another correct Notice at some time in the future.

(c) Landlords Costs

Section 89 of the 2002 Act requires the RTM Company to pay the Landlords costs if the Company fails to acquire the right to manage. Mr Donegan had produced a Statement of Costs incurred by his firm during the progress of the matter. These amounted to £2,040.95. He asked the Tribunal to approve the amount. Mr Stirling on behalf of the RTM Company was asked to comment on the details and amount of the Landlords costs. He queried whether the Company was being asked to pay for duplicate letters sent to both the Company and himself. Mr Donegan confirmed that he had only charged for one of the letters he had sent, and not for both of them.

4. Consideration

(a) Following the Hearing the Tribunal retired to consider the matter. It reviewed what it had read and heard. As this was new law there was an absence of any specific decided Case Law precedent for guidance. It reminded itself of the statutory provisions and the wording of the 2002 Act and the 2003 Regulations. The words "must" and "shall" were clear and

unambiguous. It reviewed the narrative extract from Hague on Leasehold Enfranchisement and the limited case law relating to the 1993 Act on the validity of Notices. Whilst the case law did not create a binding precedent on the Tribunal, as the cases concerned the 1993 Act, they were sufficiently relevant to assist the Tribunal in reaching a decision. They confirmed that generally speaking the omission of words in a Notice, which were required by Statute, caused the Notice to be fatally defective. The RTM Company had accepted that the Claim Notice had an omission by failing to include the Notes as required by the 2002 Act and the 2003 Regulations. In the circumstances the Tribunal was able to conclude without too much difficulty that the Claim Notice was defective for those reasons. Accordingly as the Claim Notice was invalid the RTM Company had failed to acquire the right to manage under Chapter 1 of the 2002 Act. In accordance with section 84 (3) of the 2002 Act the Tribunal hereby determines that the RTM Company was not entitled to acquire the right to manage the property on the relevant date. Following on from this, in accordance with Section 84 (6) of the 2002 Act the Claim Notice ceases to have effect.

(b) Landlord costs

After having reached the conclusion that the Claim Notice was invalid, and hence the RTM Company had failed to acquire the right to manage, the Tribunal considered the Statement of Landlords Solicitors costs. These had been calculated on the normal basis at an hourly charging rate of £180 per hour for a Category A Solicitor/Partner in central Brighton. The RTM Company had made no effective challenge to the work done or the hourly charging rate or otherwise. In all the circumstances the amounts seemed fair and reasonable. Accordingly in accordance with Section 89 of the 2002 Act the Tribunal assesses the Landlords costs at the sum of £2,040.95. In accordance with subsection (2) of Section 89 these costs are payable by the RTM Company and under sub-section (3) of that Section each person who is or has been a member of the RTM Company is also liable for those costs (jointly and severally with the RTM Company and each other person who is so liable).

The Tribunal Orders accordingly.

Dated this 15th day of October 2004

(Signed) J.B. Tarling

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John B. Tarling, Solicitor, MCMI
(Chairman)

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