



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/12UE/LRM/2018/0008**

Property : **Dilleys Court,
The Walks,
Princess Street,
Huntingdon,
PE29 3PT**

Applicant : **Dilleys Court (Huntingdon) RTM Co.
Ltd.**

Represented by **Leeds Day, solicitors**

Respondents : **(1) Clegg Developments Ltd.
(2) The Walks Huntingdon (No.3)
Management Co. Ltd.
(3) Abacus Land 4 Ltd**

Represented by **(1) and (2) did not participate
(3) Womble Bond Dickinson (UK) LLP**

Date of Application : **10th December 2018**

Type of Application : **For an Order that the Applicant is
entitled to acquire the right to manage
the property (Section 84(3)
Commonhold and Leasehold Reform
Act 2002 (“the 2002 Act”))**

The Tribunal : **Bruce Edgington (lawyer chair)
Mary Hardman FRICS IRRV (Hons)**

DECISION

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1. This Application succeeds and the Applicant therefore acquires the right to manage the property as set out in Section 90(4) of the 2002 Act.

Reasons

Introduction

2. The Respondents clearly accept that the Applicant is a right to manage company (“RTM”). Such RTM gave the Respondents Claim Notices on or about the 13th September 2018 seeking an automatic right to manage the property. A Counter-notice dated 11th October 2018 was served on behalf of Abacus Land 4 Ltd. denying the right to acquire the right to manage.

It alleged (1) it is not clear to the Respondent whether the RTM's members listed in the Notice were actually members at the relevant time and (2) no copies of the Notice of Invitation to Participate had been produced.

3. Neither of the other Respondents served a Counter-notice and it is now too late to do so.
4. In its statement of case within these proceedings, the 3rd Respondent says that the right to manage should not be allowed. Objection (1) above has been withdrawn. With regard to objection (2) it is pointed out that the tenant of flat 21, Gwynn Edwards, appears to have been sent his Notice of Invitation to Participate to 'The Officers Mess, RAF Shawbury, Shrewsbury SY4 4DZ' rather than the address on the title which is the address of the flat. It is claimed that the Notice has therefore been incorrectly service and the Claim Notice is therefore invalid. No authority is set out for this assertion.
5. This latter question appears to be the only one in issue.

Procedure

6. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties and (b) an oral hearing would be held if either party requested one. No such request was received.

The Law

7. Subsection 78(1) of the 2002 Act says that if, on the relevant date, a qualifying tenant is not a member of the RTM or has not agreed to become a member, that person must be served with a Notice of Invitation to Participate.

Discussion

8. There have been a number of decided cases over the years since the 2002 Act came into force dealing with whether there should be strict compliance with the provisions of the 2002 Act. In **Triplerose Ltd v Mill House RTM Co. Ltd.** [2016] UKUT 80 (LC), the Deputy President of the Upper Tribunal observed "*small and apparently insignificant defects in notices, or failures of strict compliance, are relied on again and again by landlords seeking to stave off claims to acquire the right to manage and to avoid the resulting losses of control and of other benefits*". The 3rd Respondent refers the Tribunal to the earlier case of **Gateway Property Holdings Ltd. v 6-10 Montrose Gardens RTM Co. Ltd.** [2011] UKUT 349 (LC) which seems to be an example of the sort of case the Deputy President was referring to.
9. It is therefore somewhat of a surprise to the Tribunal that neither participating party in this case, both of whom appear to be represented by lawyers, have mentioned the Court of Appeal case of **Elim Court RTM**

Co. Ltd. v Avon Freeholds Ltd. [2017] EWCA Civ 89 which deals specifically with the importance of procedural technicalities in right to manage cases. This followed the ground breaking case of **Natt v Osman** [2014] EWCA Civ 1520 which looked generally at the need to comply with strict statutory requirements.

10. In giving the lead judgment of the unanimous decision in **Elim Court**, Lord Justice Lewison sets out the law and then refers at some length to sections of the consultation paper leading to the 2002 Act, so that the court could ascertain the intention behind the legislation and try to interpret what was in the minds of the legislators, so that it could, in turn, decide whether very strict compliance with the technicalities was intended.
11. There were 3 technicalities which had not been complied with in that case and both the FtT and the Upper Tribunal said that the RTM could not take over management of the building in question. Those technicalities were:
 - (a) Notices of Invitation to Participate did not comply with subsection 78(5)(b) of the 2002 Act because the RTM's Articles of Association were not said to be available for inspection on a Saturday or a Sunday or both.
 - (b) The Claim Notice was said to be invalid because it was not signed in accordance with section 44 of the **Companies Act 2006**. In fact the court did express the view that there was probably no defect.
 - (c) No Claim Notice had been given to an intermediate landlord of one of the flats.
12. For reasons which were set out in detail, the court decided that none of the defects was serious enough to prevent the RTM taking over management.

Conclusion

13. The alleged defect in this case is not the same as in the **Elim Court** case. However the questions raised were whether any procedural defect posed any real injustice and/or was it in the minds of the legislators that any defect was fatal? In this case there were 24 flats on long leases and the requirement was for qualifying tenants of at least one half of the flats to have been members of the RTM. Far more than half were members in this case.
14. Notices of Invitation to Participate had to be served on all tenants who were not members "*at least 14 days before*" the Claim Notice was served (subsection 79(2) of the 2002 Act). In this case, the 3rd Respondent actually says, in its submission, that "*there may be a reason for the Notice being served at the alternative address and....will not object if the Respondents wish to write to the Tribunal to clarify this discrete point*". This is not understood as it is, of course, the Applicant who served that Notice of Invitation to Participate.

15. In fact there has been no such further submission from the Applicant. However, there is no evidence whatsoever from the 3rd Respondent to suggest that the Notice of Invitation to Participate did not reach Mr. Edwards. The Tribunal therefore has no hesitation in saying that in this case, if there was a defect in procedure, it is of insufficient seriousness to warrant holding up the transfer of management.
16. It is also of significance to note the comment of Lord Justice Lewison at the end of his judgment when he said:

“I have drawn attention to the Government’s policy that the procedures should be as simple as possible to reduce the potential for challenge by an obstructive landlord. That policy has not been implemented by the current procedures which still contain traps for the unwary. This is, we were told, the third attempt by the RTM company to acquire the right to manage Elim Court. The Government may wish to consider simplifying the procedure further, or to grant the FTT a power to relieve against a failure to comply with the requirements if it is just and equitable to do so. Otherwise I fear that objections based on technical points which are of no significant consequence to the objector will continue to bedevil the acquisition of the right to manage”.

.....
Bruce Edgington
Regional Judge
14th March 2019

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this amended decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.