FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/OOBS/LRM/2019/0003**
Property	**:**	**Redfern House, Harrytown, Romiley, Stockport, SK6 3BS**
Applicant	**:**	**Redfern House RTM Company Limited**
Representative	**:**	**Mayfield Law Limited**
Respondent	**:**	**Proxima GR Properties Limited**
Representative	**:**	**Estates & Management Limited**
Type of Application	**:**	**Commonhold & Leasehold Reform Act 2002-Section 84(3)**
Tribunal Members	**:**	**Judge J. Oliver** **Tribunal Member P. Mountain (Valuer)**
Date of Determination	**:**	**24th July 2109**
Date of Decision	**:**	**19th August 2019**

DECISION

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Decision

1. The First Claim Notice dated 7th January 2019 is invalid.
2. The Second Claim Notice dated 8th February 2019 is valid.

Application

3. This is an application by Redfern House RTM Company Limited ("the Applicant") for a determination that, on a relevant date, it was entitled to acquire the Right to Manage Redfern House, Harrytown, Romiley, Stockport ("the Property") pursuant to section 84(3) of the Commonhold & Leasehold Reform Act 2002 ('the Act").
4. Proxima GR Properties Limited is the freeholder of the Property ("the Respondent").
5. Directions for the application were issued on 12th April 2019, providing for the filing of statements and bundles and for the matter to be determined without an inspection or a hearing.
6. The application was listed for 24th July 2019.

Background

7. The Applicant is the RTM Co incorporated on 16th November 2018 to acquire the Right to Manage the Property.
8. On 7th January 2019 the Applicant served upon the Respondent a Claim Notice ("the First Claim Notice") pursuant to Section 79 of the Act. This stated the Respondent had until 10th February 2019 to serve a counter-notice and that it intended to acquire the right to manage on 10th April 2019.
9. On 7th February 2019 the Respondent served a counter-notice ("the First Counter-notice), pursuant to section 84 of the Act, stating the Applicant was not entitled to acquire the right to manage. It was said that, contrary to section 80(7) of the Act, the First Claim Notice provided for the Applicant to acquire the right to manage on a date less than 3 months after the date specified foe the service of the Counter-Notice.
10. On 8th February 2019, the Applicant served a further Claim Notice ("the Second Claim Notice"). This stated any counter-notice must be served no later than 15th March and the Applicant intended to acquire the right to manage on 16th June 2019.
11. On 13th March 2018 the Respondent served a further counter-notice ("the Second Counter-notice). This stated the Applicant was not able to acquire the Right to Manage, because, contrary to section 81(3) of the Act, the Second Claim Notice had been served while the First Claim Notice remained in effect.
12. The Applicant thereafter referred the matter to the Tribunal for determination.

The Law

13. Chapter 1 of the Act sets out the provisions relating to the rights of a RTM company to acquire the right to manage premises as defined by the Act. It is not intended to replicate those provisions within this decision.

Applicant's submissions

14. Ms Margarita Madjirska-Mossop of Mayfield Law represents the Applicant.
15. In response to the Respondent's argument the First Claim Notice is not invalid (and consequently the Second Claim Notice is also invalid) it is argued that not every failure to comply with a statutory procedure will invalidate it and the Tribunal must consider whether the First Claim Notice is either "wholly valid" or "wholly invalid". If it determines it is wholly invalid, is that a bar to the service of the Second Claim Notice?
16. The Tribunal is referred to ***Elim Court RTM Co Ltd v Avon Freeholds Ltd.*** In summary, it is said this shows that where statute confers a right on a private person and the issue is non-compliance with any statutory requirements, such as to prevent a person acquiring that right, then the issue is whether the notice is either wholly valid, or wholly invalid. The test in this determination is objective.
17. The Applicant accepts the First Claim Notice to contain an error. However, it is said the Act makes "*no express provision for the consequence of any failure to comply with the requirements of s.80(7) save that s.81 expressly provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of s.80.*" The Applicant therefore argues that the Respondent has failed to prove the First Claim Notice to be wholly invalid and it must therefore be valid. The Applicant was entitled to acquire the right to manage on 7th January 2019.
18. In the alternative, should the Tribunal find the First Claim Notice to be wholly invalid, there is no bar to the service of the Second Claim Notice.
19. In respect of the Second Claim Notice, the Applicant refers the Tribunal to Paragraph 26-61 in the Tanfield Chambers on "Service Charges and Management (4th Edition):

"*Commonhold and Leasehold Reform Act 2002 s.81(4) provides that where a claim notice is given, it continues in force until withdrawn, or deemed withdrawn, or ceases to have effect. Section 81(3) provides that while the claim notice continues in force, no subsequent claim notice can be given which specifies the same premises or any premises containing or contained in those premises.*
However, it was held in Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freehold Co Ltd [2007] EWHC 1776 (Ch) if a notice under Leasehold and Reform Housing and Urban Development Act 1993 s.13 was ineffective, it did not have to be "withdrawn" by the tenant and that a second s.13 notice could immediately be served.

In Avon Freeholds Ltd v Regent Court RTM Co Ltd the Upper Tribunal confirmed that the same would apply to a claim notice served under Commonhold and Leasehold Reform Act 2002 s.79 which was invalid. It therefore seems the operation of s.81(3) and s.81(4) is limited to cases where a claim notice is valid in form and validly served on all necessary recipients and has not deemed withdrawn or ceased to have effect under some other provisions of the Act."

20. Consequently the Applicant avers, in the alternative, that if the First Claim Notice is ineffective, there is no bar to the service of the Second Claim Notice.
21. The Applicant reaffirms its arguments by reference to ***Avon Freeholds Ltd v Regents Court RTM Co. Ltd [2013] UKUT 0213 (LC)*** where the parties agreed the first claim notice was invalid but whether it could still prevent the service of a second claim notice. There, it was determined by an LVT that the first notice was no bar to the service of the second. On appeal, the Upper Tribunal agreed with the LVT. The Applicant refers to the decision at paragraph 63:

"*The Tribunal considers the first notice was no bar to the [second] under section 81(3). Firstly, it finds the decision in Sinclair Gardens to be more persuasive and more directly on point. Secondly, it considers that although it might be said that an invalid claim notice has an effect, in that it can trigger costs under section 88, that effect is only temporal in time and does not continue. For example if a notice was given ant then withdrawn it would not continue to have force, but would still entitle a landlord [to] costs under section 88. The fact that there is an outstanding costs issue because of what has happened in the past, it does not mean that the notice continues in force. The Tribunal considers that the term 'in force' must mean that it has a present impact (or the potential to have one) on events."*

22. The Applicant refers to ***Plintal SA v 36-48A Edgewood Drive RTM Co Ltd LRX/16/2007,*** as relied upon by the Respondent below. It is submitted that when similar arguments to those in ***Plintal SA*** were raised in ***Avon Freeholds*** they were rejected. In the Upper Tribunal's judgment it was said:
" There is, I think nothing in the Tribunal's decision in Plintal SA to undermine the LVT's conclusions in this case. In Plintal SA the Tribunal held that, even if a notice was invalid and therefore no longer effective as a notice, its continuing existence as a matter of fact could not be denied. It could not be treated as never being given. Despite it being invalid and ineffective, it could still be referred to as a claim notice-for example, when an application for costs was being considered. The LVT clearly understood this concept".
23. The Applicant argues this confirms that if the First Claim Notice is invalid, or ineffective it does not continue in effect and therefore does not have to be withdrawn.

24. The Applicant referred the Tribunal to ***Alleyn Court RTM Co Ltd v Abou-Hamdan [2012] UKUT 74 (LC)*** where it was said:

"in the decision of the court in 9 Cornwall Crescent and Sinclair Gardens Investments v Poets Chase the Tribunal found support for the proposition that an invalid notice does not need to be withdrawn".

Respondent's submissions

25. The Respondent submits the First Claim Notice did not comply with sections 79 and 80 of the Act. It stated the Respondent had until 10th February 2019 to serve a counter-notice and the Applicant intended to acquire the right to manage on 10th April 2019. The latter date is less than three months after the date specified for the service of the counter-notice. Consequently, the counter-notice, dated the 7th February 2019 ("the First Counter-notice), stated the Applicant was not entitled to acquire the right to manage for this reason.
26. When the Second Claim Notice was served the Respondent served a further counter-notice ("the Second Counter-notice). The Second Counter-notice stated the Applicant was not entitled to acquire the right to manage because the First Claim Notice had not been withdrawn.
27. The Respondent refers the Tribunal to the letter accompanying the Second Claim Notice that made no reference to the withdrawal of the First Claim Notice. The letter said the "*error was obvious from the face of the document and the objection was not disputed"*.
28. The Respondent submits that, by virtue of s81 of the Act, the Second Claim Notice cannot be effective. S.81(3) & (4) of the Act provide that no further claim notice can be served "*so long as the earlier claim notice continues in force."* S.81(4) further states a claim notice continues in force until it has either been withdrawn or ceases to have effect for other reasons contained within the Act.
29. The Respondent refers the Tribunal to ***Plintal*** where the Upper Tribunal said:

"I do not think that a claim notice, given as required by section 79(4) ceases to be a claim notice for all purposes under the Act if it is later found to be invalid (most obviously, for example, if it fails to comply with the requirements of section 80). It is to be noted that section 81(1) provides: 'A claim notice is not invalidated by any accuracy in any of the particulars required by or by virtue of section 80". This implies that a claim notice could be invalidated for other reasons, but as a matter of language it would not be inappropriate still to refer to it as a claim notice. The LVT would say that it found the claim notice to be invalid, not that it found that the notice given to party X purporting to be a claim notice was not a claim notice at all. Thus, I see no difficulty in reading section 88(1), where it refers to a 'claim notice' as including a claim notice that has been found to be invalid".

Thus, for the purposes of the Second Claim Notice, the First Claim Notice remained a claim notice for the purposes of section 81.

30. The Respondent follows by asking whether the First Claim Notice had been withdrawn and refers the Tribunal to section 86 of the Act. This provides that a RTM company may withdraw a claim notice "*by giving notice to that effect*". Further, section 111 of the Act "giving notice" requires it to be given in writing and sent by post. Here, it is said no such written notice was given.
31. The Respondent argues there has not been any deemed withdrawal of the First Claim Notice by virtue of any of the provisions of the Act and refers the Tribunal to section 87 of the Act. This sets out those circumstances where a notice may be deemed to have been withdrawn and submits none of those apply in this case. Consequently, the First Claim Notice cannot be deemed to have been withdrawn.
32. The Respondent also considers whether the First Claim Notice has ceased to have effect by reason of any other provisions within the Act and submits that it has not.
33. The Respondent examines whether the conduct of the parties could amount to estoppel and refers to ***Avon Freeholds*** where the RTM Co had sent a covering letter with a second claim notice acknowledging there was a problem with the first claim notice. Whilst this was not a formal withdrawal of the original notice, the Respondent said "*In view of the contents of the covering letter, the RTM Co would have been estopped from later changing its position and seeking to rely upon the first claim notice as opposed to the second claim notice*". The Respondent argues this position is different to the current case where there was no admission as to any defect within the First Claim Notice and consequently estoppel does not arise.
34. The Respondent adds it is the policy of the Act to achieve certainty and not to allow a multiplicity of notices. Until a notice is withdrawn, deemed to have been withdrawn, or otherwise ended in accordance with the Act, or by agreement, it continues in force.

Determination

35. The Tribunal has considered the arguments put forward by both parties and determines the first issue is whether the First Claim Notice is invalid. It determines that it is. The First Claim Notice does not comply with the requirements of section 80(6) of the Act. The date for the Applicant to acquire the right to manage, at 10th April 2019 is not "at least" three months after the date given for the service of the counter-notice, this being 10th February 2019.
36. The Tribunal notes ***Elim Court*** where it was said, following reference to ***Natt v Osman [2014] EWCA Civ 1520:***

> *"Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid. One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute".*

Here, the date to be specified within the notice is provided for within section 80(7) and must be of "critical importance". The date is one of the major factors in any claim notice and fixes the date when a RTM Co can acquire the right to manage. It is fundamental to the process. Any defect relating to this must render the First Claim Notice invalid.

37. The Respondent has, effectively conceded the First Claim Notice was ineffective, by the reasons given in the First Counter-notice. The Respondent, in their submissions to the Tribunal states "*the Applicant is now making clear that it accepts the First Counternotice, there is now no dispute"*.
38. The Tribunal notes the Respondent's submissions saying that, at the time the Second Claim Notice was served, the Applicant had not made clear their position regarding the First Claim Notice. The Tribunal has some difficulty in accepting this argument. Whilst the Applicant did not state the First Claim Notice was withdrawn, they had said in their covering letter accompanying the Second Claim Notice that the Respondent's "objection was not disputed". The Tribunal considers this, together with the service of the Second Claim Notice, illustrates the Applicant accepted the First Claim Notice was ineffective by reason of the incorrect date and thus determined to serve a Second Claim Notice.
39. The Tribunal has also considered the Respondent's further argument that the First Claim Notice had not been withdrawn and thus did not comply with the requirements of section 81(4) of the Act. Consequently the Second Claim Notice could not be served. Accordingly the Applicant could not acquire the right to manage under either notice.
40. The Tribunal determines that having found the First Claim Notice to be invalid, this did not prevent the service of the Second Claim Notice. It has considered ***Avon Freeholds*** where it was found that if a first claim notice is invalid, there is no bar to a second claim notice being served. It is not necessary for the first claim notice to be withdrawn. Accordingly the Second Claim Notice is valid.