



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case Reference** : **LON/00BK/LRM/2019/0025**

**Property** : **Spire House, Lancaster Gate,  
London W2 3NP**

**Applicant** : **Spire House RTM Co Ltd**

**Representative** : **Foot Anstey LLP**

**Respondents** : **1)Eastern Pyramid Group Corporation  
SA  
2)The Vicar of the Vicarage and the New  
Parish of Christ Church Paddington and  
His Successors of Ecclesiastical  
Commission  
3)The London Diocesan Fund**

**Representative** : **Watson Farley & Williams LLP**

**Type of Application** : **Right to Manage**

**Tribunal** : **Judge Nicol  
Mr CP Gowman MCIEH MCM**

**Date of Decision** : **30<sup>th</sup> October 2019**

---

**DECISION**

---

The Tribunal has determined that the Applicant is entitled to exercise the Right to Manage.

Relevant legislation is set out in an Appendix to this decision.

## **The Tribunal's reasons**

1. The subject property is an unusual building in three parts:
  - (a) The only original part of the building is a church tower and spire dating from the 1850s.
  - (b) The remainder of the original building was demolished and replaced in 1982 with 23 flats on 6 floors, accessed via the church tower and with a car park underneath.
  - (c) Thirdly, next to the church tower is an enclosed garden.
2. The First Respondent is the freeholder of the flats and the lessee of the other two parts. The Second Respondent is the freeholder of the garden and the Third Respondent is the freeholder of the church tower.
3. The parties have exchanged the following notices:
  - 18<sup>th</sup> March 2019: the Applicant sent a claim notice seeking to exercise the right to manage the building in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (“the Act”).
  - 29<sup>th</sup> April 2019: the First Respondent sent a counter-notice alleging non-compliance with sections 78(1), 79(2) and 79(5) of the Act.
  - 18<sup>th</sup> June 2019: the Applicant sent a second claim notice.
  - 24<sup>th</sup> July 2019: the First Respondent sent a counter-notice alleging non-compliance with the same 3 sub-sections of the Act and section 81(3) in addition.
4. The Applicant then applied to the Tribunal for a determination that they were entitled to exercise the right to manage. The Respondent’s skeleton argument, served the day before the final hearing, limited the dispute to one issue. The First Respondent disputes that the Applicant is entitled to exercise the right to manage on the basis that, at the date of the second claim notice, the first one remained in force. Under section 81(3), the Applicant would be precluded from giving a claim notice while there was another already in force.
5. The Applicant had 3 arguments in response:
  - (a) The first claim notice was withdrawn in compliance with section 86 of the Act by letter dated 17<sup>th</sup> June 2019.
  - (b) Alternatively, if the letter of 17<sup>th</sup> June 2019 did not operate to withdraw the first claim notice, that notice was invalid and of no effect for non-compliance with sections 79(5) and 80(3) of the Act.
  - (c) Further alternatively, the First Respondent is estopped from denying that the first claim notice was invalid by reason of the non-compliance with section 79(5) because they asserted invalidity on that basis in their first Counter-Notice.
6. In the Tribunal’s view, the first of the Applicant’s 3 arguments would be the simplest to argue and, if upheld, determinative of the application as a whole. Therefore, the parties were invited to make their submissions on that issue alone. After taking time for consideration, the Tribunal did determine the

application on the basis of this argument and so the other two were not considered.

7. On 17<sup>th</sup> June 2019 the Applicant's solicitors wrote letters to each of the Respondents and to the First Respondent's solicitors. The letters to the First Respondent and their solicitors started with the paragraph,

Following receipt of your counter-notice, the decision had been made to reserve the Notice of Claim and to restart the process from this stage relying on the existing Notices of Participation.

8. The Tribunal has no doubt that the Applicant intended that this letter should constitute notification under section 86 of the Act that the first claim notice was being withdrawn but, somewhat inadvisedly, it did not say so in those words. Mr Upton, counsel for the First Respondent, conceded, correctly in the Tribunal's view, that there are no formal requirements for a notice of withdrawal and submitted that the issue was whether the letter unambiguously communicated that the claim notice in question had been withdrawn.

9. Mr Upton pointed to the summary of the principles derived from *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 at paragraph 40 of *Lay v Ackerman* [2004] EWCA Civ 184; [2004] HLR 40:

The correct approach on the basis of the decision and reasoning in *Mannai* is as follows. One must first consider whether there was a mistake in the information contained in the notice ... If there was such a mistake, one must then consider how, in the light of the mistake, a reasonable person in the position of the recipient would have understood the notice in the circumstances of the particular case. Finally one must consider whether, as a result, the notice would have been understood as conveying the information required by the contractual, statutory or common law provision pursuant to which it was served.

10. Ms Muir, counsel for the Applicant, concurred that this accurately summarised the relevant test.

11. There is a mistake in the letter of 17<sup>th</sup> June 2019. The Applicant's solicitors meant to say "re-serve" the Notice of Claim. The First Respondent claims that they understood this word to be "reserve" and that the phrase "reserve the Notice of Claim" meant that the Applicant was reserving their right to rely on that Notice.

12. Taken in isolation, the Tribunal does not understand the phrase "reserve the Notice of Claim". The Applicant's explanation that there is a hyphen missing makes it comprehensible but it is certainly not obvious on first reading that there is a missing hyphen. While the First Respondent's interpretation is a possible one, the language is jarring and leads to the question why a lawyer intending to convey that they were reserving their position would not use more typical or clearer language, such as stating that the service of the second notice of claim is "without prejudice" to the first. At most, the phrase is ambiguous but

it is noteworthy that the First Respondent did not seek any clarification in the 5 weeks between receiving the letter and serving their Counter-Notice.

13. The answer as to why the First Respondent did not seek clarification may lie in the fact that the phrase “reserve the Notice of Claim” would never have been read in isolation. The question is not what this phrase conveys but what the whole letter, taken in context, conveys. On that, the Tribunal is satisfied that the First Respondent would have been left in no doubt that the Applicant was withdrawing the first notice.
14. The context includes the following matters:
  - (a) In the same sentence, the Applicant’s solicitors stated that the process was being “restarted” (notably, also without a hyphen). The First Respondent knew that the process could not be restarted without withdrawing the first notice. The Applicant had lost a previous attempt to acquire the right to manage through the Tribunal in 2015 and admitted that their first claim notice in this instance was defective so it was possible that the Applicant could have made another error. However, they would also have learned from their mistakes, including noting that the First Respondent would rely on them in order to resist losing the right to manage. The likelihood of their omitting a step which was crucial and relatively clear would have been significantly lower.
  - (b) The Applicant had no criticism of or objection to the first Counter-Notice or the grounds of challenge set out within it.
  - (c) The second notice of claim, sent with the letter of 17<sup>th</sup> June 2019, corrected errors identified by the Applicant and was clearly different to the first.
  - (d) There was no apparent reason for retaining the right to rely on the first notice. Aside from the need for a notice of withdrawal, there is no restriction in this statutory scheme on serving a new notice. Also, the Applicant was already liable for the First Respondent’s costs on the first notice under section 88 of the Act and could not alter that by reserving their position on the notice itself.
  - (e) Even if the First Respondent misunderstood the position as at the date of the letter of 17<sup>th</sup> June 2019, by the time they served their Counter-Notice, they knew that the Applicant had exceeded the time limit for applying to the Tribunal in reliance on the first notice and so had no intention of further relying on that notice.
15. Mr Upton raised a new point in his skeleton argument. He pointed to the requirement in section 86(2) that the withdrawal notice had to be served on various other parties and asserted that such notice was not effective to withdraw a claim notice unless and until all relevant people had been served. The Applicant sent a slightly differently worded letter to the other Respondents and Mr Upton asserted that this produced further grounds for arguing that withdrawal had not been communicated. Further, the letters to the qualifying tenants, as well as being differently worded, were served a day later and Mr Upton submitted that, as a result, the first notice had not been withdrawn as at the date of the second notice the day previously.
16. The Tribunal has no hesitation in rejecting Mr Upton’s submission. Section 86 does not contain such a limitation. What matters is that his client received

notice of withdrawal. There is no doubt the other Respondents and the qualifying tenants know of the attempt to acquire the right to manage but none have sought to express any dissatisfaction with the process. It is not open to the First Respondent in this case to rely on alleged failures of procedure in relation to other parties who have no wish to raise them. The Tribunal is satisfied that, as at 17<sup>th</sup> June 2019, the Applicant had sufficiently conveyed the withdrawal of their first notice to the First Respondent and the fact that the First Respondent learned of possible flaws in how others were notified considerably later (well after service of the Counter-Notice) is not relevant.

17. Ms Muir made the well-founded point that it cannot have been Parliament's intention that the right to manage could be thwarted by the failure to find and serve every single possible person within section 86(2) such as, for example, sureties or guarantors that have long since passed out of the picture.
18. Therefore, looked at as a whole and in context, the Tribunal is satisfied that the Applicant's solicitors' letter of 17<sup>th</sup> June 2019 operated as notification that the first claim notice was withdrawn in accordance with section 86 of the Act. Therefore, the First Respondent's sole ground of challenge falls away and the Applicant may acquire the right to manage.

**Name:** NK Nicol

**Date:** 30<sup>th</sup> October 2019

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Section 78 Notice inviting participation**

- (1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—
  - (a) is the qualifying tenant of a flat contained in the premises, but
  - (b) neither is nor has agreed to become a member of the RTM company.
- (2) A notice given under this section (referred to in this Chapter as a "notice of invitation to participate") must—
  - (a) state that the RTM company intends to acquire the right to manage the premises,
  - (b) state the names of the members of the RTM company,
  - (c) invite the recipients of the notice to become members of the company, and
  - (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.
- (3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.
- (4) A notice of invitation to participate must either—
  - (a) be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
  - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.
- (5) A statement under subsection (4)(b) must—
  - (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
  - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
  - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
  - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

#### **Section 79 Notice of claim to acquire right**

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) 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 and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) 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.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

### **Section 80 Contents of claim notice**

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
  - (a) the qualifying tenant of a flat contained in the premises, and
  - (b) a member of the RTM company,
 and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
  - (a) the date on which it was entered into,
  - (b) the term for which it was granted, and
  - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

- (7) 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.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

### **Section 81 Claim notice: supplementary**

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
  - (a) the premises, or
  - (b) any premises containing or contained in the premises,may be given so long as the earlier claim notice continues in force.
- (4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—
  - (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
  - (b) ceased to have effect by reason of any other provision of this Chapter.

### **Section 86 Withdrawal of claim notice**

- (1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a “notice of withdrawal”).
- (2) A notice of withdrawal must be given to each person who 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,
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, or
  - (d) the qualifying tenant of a flat contained in the premises.

### **Section 87 Deemed withdrawal**

- (1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—
  - (a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or
  - (b) such an application is so made but is subsequently withdrawn, the claim notice is deemed to be withdrawn.
- (2) The withdrawal shall be taken to occur—
  - (a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and



- (b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.
- (3) Subsection (1) does not apply if the person by whom the counter-notice was given has, or the persons by whom the counter-notices were given have, (before the time when the withdrawal would be taken to occur) agreed in writing that the RTM company was on the relevant date entitled to acquire the right to manage the premises.
- (4) The claim notice is deemed to be withdrawn if—
  - (a) a winding-up order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company, or the RTM company enters administration,
  - (b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,
  - (c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
  - (d) the RTM company's name is struck off the register under section 1000, 1001 or 1003 of the Companies Act 2006.