



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

Case Reference : **MAN/00CA/LRM/2019/0009**

Property : **49 Promenade, Southport PR9 0DX**

Applicant : **49 Promenade RTM Company Limited**

Respondents : **Mr David Baker and Mr Stephen Baker**

Type of Application : **Commonhold and Leasehold Reform Act
2002 (the “Act”) - Section 85(2)**

Tribunal Members : **Judge W.L. Brown
Mr I R Harris MBE FRICS**

Date of Determination : **23 April 2021**

Date of Decision : **7 May 2021**

DECISION

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Decision

Pursuant to section 85(2) of the Commonhold and Leasehold Reform Act 2002, the Tribunal orders that the Applicant is to acquire the right to manage the Property without being required to serve a claim notice under section 79.

In accordance with section 90(6) of the Act, the Tribunal determines that the date of acquisition is 14 days from the date of this Order.

Background

1. By Application dated 10 October 2019 (the “Application”) the Applicant made an application relating to (no fault) right to manage claim in respect of the Property.
2. Directions were made by the Tribunal on 29 January 2019.
3. From a statement dated 10 October 2019 by Susan Bonson, Director of the Applicant, in support of the Application and a statement dated 7 February 2020 by Christopher Mason, Solicitor for the Applicant, it was stated as follows:
 - 3.1 the Property is divided into six leasehold titles;
 - 3.2 the six leaseholders are the directors of the Applicant and the members are Susan Bonson and Margaret Elizabeth Lambert-Martin;
 - 3.3 there are no other tenants who are required to receive notice of participation under section 78 of the Act;
 - 3.4 the freehold title is registered in the joint names of David Baker and Stephen Baker;
 - 3.5 Notice in Form RTM1 was given to each qualifying tenant;
 - 3.6 Notice to the Respondents, as freehold owners, pursuant to section 79 of the Act was dispatched initially under cover of letter dated 13 September 2018 to the known address for them. The letter was returned by Royal Mail marked “no such address”. The Applicant’s solicitors made enquiries of Land Registry and Royal Mail, including to trace the Respondents from the trading name appearing on a Transfer of the Property dated 15 August 1997, Mandeville Investments. A further letter dispatching the claim form to an alternative address traced for the Respondents was returned by Royal Mail marked “addressee gone away”.
 - 3.7 the Applicants’ attempts to contact Messrs Baker by letter had therefore been unsuccessful
4. There was provided to the Tribunal the following:
 - 4.1 the Applicant’s incorporation documents;
 - 4.2 Land Registry documents relating to the freehold and leasehold titles;
 - 4.3 evidence of undelivered letters and of a postcode enquiry of Royal Mail.

The Law

Section 85 of the Act states:

- “1) *This section applies where a RTM company wishing to acquire the right to manage premises—*
- (a) complies with subsection (4) or (5) of section 79, and*
 - (b) would not have been precluded from giving a valid notice under that section with respect to the premises,*
- but cannot find, or ascertain the identity of, any of the persons to whom the claim notice would be required to be given by subsection (6) of that section.*
- (2) The RTM company may apply to the appropriate tribunal for an order that the company is to acquire the right to manage the premises.*
- (3) Such an order may be made only if the company has given notice of the application to each person who is the qualifying tenant of a flat contained in the premises.*
-”*

Reasons

5. Having regard to the documentary evidence provided by the Applicant, the Tribunal was satisfied that proper steps had been taken by the Applicant to ascertain the identity of the landlord of the Property and serve upon them the appropriate notice under section 79 of the Act, but the attempts had not been successful.
6. In the circumstances, the Tribunal considered that it was reasonable to make an order that the Applicant is to acquire the right to manage the Property without being required to serve a claim notice under section 79.
7. The Tribunal further considered that the date of acquisition should be 14 days from the date of this Order.

L Brown
Tribunal Judge
7 May 2021