



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

<b>Case Reference</b>	:	LON/00AF/LRM/2021/0032
<b>Property</b>	:	South Park Court
<b>Applicant</b>	:	SOUTH PARK COURT (BECKENHAM) RTM COMPANY LIMITED
<b>Representative</b>	:	Mr Wiles
<b>Respondent</b>	:	JASHRAJ LLP
<b>Representative</b>	:	Mr de la Piquerie
<b>Type of Application</b>	:	Application concerning RTM
<b>Tribunal Members</b>	:	Judge Shepherd Steve Wheeler MCIEH
<b>Date of Determination</b>	:	24 <sup>th</sup> May 2022

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**Determination**

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1. This dispute is between South Park Court (Beckenham) RTM Co Ltd (“The Applicant”) and Jashraj LLP (“The respondents”). The dispute concerns service and there was an issue of fact to be decided by the Tribunal on a balance of probabilities – namely whether the Applicant had complied with the necessary requirements to entitle them to have the Right to Manage.

2. The Applicant applied for a determination under section 84(3) of the Commonhold and Leasehold Reform Act 2002 that they were entitled to acquire the Right to Manage on 28 April 2021. The Respondent opposes this application on the basis primarily of a failure of service.
  
3. The premises concerned in the application are South Park Court, Park Road, Beckenham BR3 1PH (“The premises”). The premises contain 33 flats which are let on long leases. The Applicant was incorporated on 9 September 2020. On 3 October 2020 the Applicant served a notice to participate. On 30 November 2020 the Applicant served a claim notice. On 30 December 2020 the Respondent served a counter notice. On 11 January 2021 the Applicant served a notice withdrawing the first claim notice. On 13 January 2021 the Applicant served a second notice to participate. On 18 February 2021 the Applicant served a second claim notice. On 19 March 2021 the Respondent served a second counter notice. On 30 March 2021 the Applicant served a notice withdrawing the Second claim notice. On 28 April 2021 the Applicant served a third claim notice stating that on 1 September 2021 the Applicant intended to acquire the right to manage the premises. On 28 May 2021 the Respondent served a third counter notice and on 6 July 2021 the Applicant issued the present application.
  
4. In their counter notice the Respondent says that the purported notices of invitation to participate given by the company dated 3 October 2020 and 13 January 2021 were not given to all qualifying tenants who were not members of the company and had not agreed to become a member of the same. It is said that the first notice was not given to the qualifying tenants of flats for 3, 7, 25, 26, 29 and 30 and the second notice was not given to the qualifying tenants of flats 25 and 29. It is also said that the notice of claim was not served on the owners of flats 25 and 29. There are other challenges within the counter notice but it was the service issue that was central in the Tribunal hearing.

5. The Applicant was represented by Stephen Wiles and the Respondent by Paul de la Piquerie. In his skeleton argument Mr de la Piquerie cited the law on service contained within Service Charges and Management law and practice (Tanfield Chambers fourth edition). He also cited the case of *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 (para.26-04). which was a case about whether a failure to serve a notice was fatal to the claim. Further the passages cited from Tanfield were dealing predominantly with the situation in which there had been a failure of notice. Whilst it is undoubtedly the Applicant's obligation to prove service if it is alleged that service has not taken place before the authorities cited by the Respondent's counsel come into play it is necessary for the Tribunal to decide on the facts whether the service took place or not.

### **The requirements of the Act**

6. Section 78 of the Act states the following:

#### ***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 [articles of association]<sup>1</sup> of the RTM company, or

(b) include a statement about inspection and copying of the [articles of association]<sup>1</sup> of the RTM company.

(5) A statement under subsection (4)(b) must—

(a) specify a place (in England or Wales) at which the [articles of association]<sup>1</sup> 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 [articles of association]<sup>1</sup> 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.

7. Section 79 states the following

### **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 [...]1 tribunal or court by which he was appointed.*

8. S.80 of the Act states the following:

**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.*

## The evidence

9. The Respondent relied on a witness statement of Sapana Patel the property manager for the premises, Sophie Albery the owner of flat four at the premises, Nicola Robinson the tenant of flat 26, Neil Moore the owner of flat 29 and various documents referred to in the witness statements. The respondents made various complaints. They say that the first notice to participate was not served upon flats 3, 4, 7, 25,26 and 29 and 30 and the second notice was not served upon flats 25 and 29. In relation to the notice of claim the same allegations are made. The Respondent initially raised issues as to the membership of the company although these were not pursued at the hearing. The Respondent also put the Applicants to proof that they had satisfied sections 80(3) and (4). The primary issues for the tribunal centred on service and whether the Applicant could prove that the notices served were signed.
  
10. The Applicant stated in their statement of case that notices were served on flats 3, 4, 7, 25, 26, 29 and 30 on 3 October 2020 and they provided copies of the notices. They state that as a result of objections by the Respondent and in an effort to avoid tribunal proceedings they followed up the service of 3 October 2020 notices with further notices dated 13 January 2021 which were served by hand. They rely on the witness statement of Georgia Bayn who did not attend the hearing. Notwithstanding the service by hand the Respondent maintained that notices were not served on flats 25 and 29.
  
11. Stephen Wiles gave evidence on behalf of the Applicant and also represented the Applicant's case. He is a director of Prime Management who administered the RTM application on behalf of the Applicant. He stated that notices were sent them by first class post unless an escalated method e.g. recorded or hand delivery was justified. In her witness statement George Fayn stated that on Friday, 15 January 2020 she attended South Park Court to deliver some notices of invitation to participate by hand she says that she delivered the notices by

sliding them under the door of the relevant flats. She says that she was supposed to deliver a notice to flat 18 but was unable to do so as the main door was locked.

12. For the Respondent Sapana Patel raised the point that none of the notices provided as evidenced by the Applicant were signed. He also identified a discrepancy in Georgia Fayn's evidence. If she was unable to enter the block to serve flat 18 then she would not have also been able to serve flat 25 because they were in the same block.
13. In their further submissions the Applicant stated that the documents served are copies and therefore they are not signed originals. They further stated that if delivery by Georgia Fayn in relation to flat 25 was challenged then notwithstanding non-service on this occasion all notices were served by first class post.
14. In her statement Sophie Albery of flat 4 said that she did receive a notice of invitation to participate on 13 January 2021 which was hand-delivered and a copy of the letter dated 30 March 2021 which was hand-delivered. She denies receipt of the previous documents sent by post. She did not attend the tribunal hearing and so her evidence could not be tested. Evidence was also given by Nicola Robinson of flat 26. She said that she received the notice of invitation to participate dated 13 January 2021. Neil Moore gave evidence in the form of a witness statement. He is the registered proprietor of flat 29 although his address was given as an address in Singapore. He denied receipt of documents. He did not attend the tribunal hearing and therefore his evidence could not be tested.
15. In cross-examination Mr Wiles was asked who had actually sent the letters by post. He said a member of his staff had done this but he did not know which one. He said the post is franked and then collected and sent by ordinary post. There is no record kept of documents sent. He was confident however that the correct process would have been followed. It transpired during Mr Wiles'



evidence that the two leaseholders of flats 25 and 29 were in effect absent landlords.

16. In his submissions Mr de la Piquerie stated that it was for the tribunal to determine on a balance of probabilities if service of the notices had taken place. He said that there were no copies of the signed notices, Mr Wiles did not know who posted them and there was no internal record, and the tribunal had been shown nothing to demonstrate that the letters had been posted. He said there was no answer to the query about flats 18 and 25 and whether Georgia Fayn could have served both flats when they are in the same block. In relation to the record and history of notices he said that this demonstrated failures on the part of the Applicant that the Tribunal should take into account. In response Mr Wiles said that he had provided evidence of how the notices were served. He said he could also have produced evidence of the people who had received the notices indeed the Respondent had failed to provide this evidence. In truth there were only two properties that it was purported had not been served these being Flats 25 and 29 which are both absentee owners. Neither had attended the hearing therefore their evidence was not tested.

## **Determination**

17. The process for claiming the Right to Manage is challenging. It involves a number of steps that have to be taken. The Applicant in the present case had gone through a number of false starts largely due to issues raised by the Respondent at each stage. The question for the tribunal is whether on a balance of probabilities notices were served when the Applicant says they were served by post.

18. In the Tribunal's view it is not fair for the Respondent to expect the Applicant to produce signed copies of the notices. When a large mail out takes place it

would be onerous to keep copies of signed documents. It is in any event extremely unlikely that the notices were unsigned.

19. The tribunal were unimpressed by the fact that the Respondent failed to bring key witnesses to the hearing. In particular the owners of flats 25 and 29 who denied service. They are absentee owners and one of them lives in Singapore. It is by no means a given that they could rely on whoever is occupying their properties to pass on the notices to them.

20. Mr Wiles appeared at some stages defensive in his evidence but on the whole the Tribunal found him to be an honest witness. He was plainly trying to assist the Tribunal. He was honest in conceding the fact that Georgia Fayn's evidence was inconsistent with regard to service. He was right to point out that the Respondent had not provided evidence of the lessees that had received the notices. The corollary of identifying the two leaseholders who had not received the notices is that the other leaseholders had received the notices.

21. On a balance of probabilities and considering the evidence given by witnesses for the Applicant and the Respondent the Tribunal finds that all notices required under the Right to Manage process were served by post. The Respondent failed to raise sufficient doubt to weigh the matter in their favour .

22. The Tribunal would however stress to Mr Wiles and his company that in future they should keep more detailed and accurate records of all correspondence in order to avoid further challenges.

**Judge Shepherd**

**24<sup>th</sup> May 2022**

## ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.