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

Case references : **CAM/00KG/LRM/2013/0026**

Property : **214-242 Vert House,
Falcon Avenue,
Grays,
Essex RM17 6SE**

Applicant : **Vert House RTM Company Ltd.**

Respondent : **Sinclair Gardens Investments
(Kensington) Ltd.**

Date of Application : **7th November 2013**

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 : **Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS**

DECISION

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1. This Application fails and the Applicant therefore does not acquire the right to manage the property.

Reasons

Introduction

2. The Respondent accepts that the Applicant is a right to manage company (“RTM”). Such RTM served the Respondent with a Claim Notice on the 30th August 2013 seeking an automatic right to manage the property and giving the 7th October 2013 as the date by which any counter-notice must be served. On the 3rd October 2013, the Respondent freehold owner’s solicitors served a counter-notice.
3. The counter-notice raised 4 issues i.e.
 - (a) The Notices Inviting Participation were not in the prescribed form and were not served on all the qualifying tenants. This has subsequently been clarified to mean (i) the notice states that the

- Applicant intends to manage “24-242 Vert House” rather than 214-242 Vert House (ii) the notice does not give specific periods for inspection of the Memorandum and Articles of Association in the 7 days following service and (iii) no notice was served on Steven Huckle, a tenant of flat 226, or Ruzhdi Bici, a tenant of flat 238
- (b) Insufficient qualifying tenants are members of the Applicant. Again, this has been subsequently clarified to mean that the Claim Notice records that 15 out of 29 tenants are members of the Applicant whereas in fact only 14 are members which means that it is below the 50% threshold of membership. In particular one tenant is A J Bush Ltd. whereas the member of the company from that flat (226) is Mr. A J Bush
- (c) The Claim Notice does not give each member of the Applicant and does not comply with the **Transfer of Functions Order 2013**. As to the first part, this has been clarified to mean that A J Bush Ltd. is not a member and that the tenant of flat 219 is Abideen & Sharifah Akinloye whereas the company member is only Abideen Akinloye. As to the Transfer of Functions Order, the notice refers to the Leasehold Valuation Tribunal as opposed to this Tribunal.
- (d) The premises in the Memorandum & Articles of Association of the Applicant are not the premises in the Claim Notice. Again, this has been clarified to mean that the property in the Memorandum & Articles is 214-242 Vert House whereas the property in the Notice of Invitation to Participate is 24-242 Vert House. It therefore appears that the Respondent made a mistake in the counter-notice as the Claim Notice appears to be correct in this regard.

4. The Applicant’s case is quite straightforward. It admits the facts alleged but says that any defect is saved by the saving provisions in the 2002 Act and/or the matters complained of are so trivial that no-one could have been misled and, in effect, the Respondent is ‘clutching at straws’.

Procedure

5. The Tribunal decided that this case could be determined on a consideration of the papers without an oral hearing. 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 on or after 20th January 2014 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

6. Section 78 of the 2002 Act says that before making a claim, a Notice of Invitation to Participate must be served on qualifying tenants who are not members of the RTM and that the notice shall comply with the Regulations. Section 78 (7) says that such notice “*is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section*”.
7. Section 80 says that “*A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80*”. In essence, both these sections are referring to the inaccuracy of

any particular required by either the 2002 Act or by supplementary regulations

8. The **Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010** set out what has to be in a Notice of Invitation to Participate. Regulation 8(1) states that the notice must be in the form set out in Schedule 1 to the regulations and 3(2)(j) states that the notice must include the information in the notes in Schedule 1 to the regulations. The Respondent has correctly referred to the Transfer of Functions Order (above).
9. Sub-sections 78(4) and (5) of the 2002 Act and Clause 2 of the form say that either the RTM's Articles of Association accompany the form or they can be inspected at a named location between specified times. The notes say that "*specified times must be periods of at least 2 hours on each of at least 3 days (including a Saturday or Sunday or both)*".
10. Section 72(1)(a) of the 2002 Act says, in effect, and for the purposes of the dispute in this case, that the RTM provisions apply to "*premises if they consist of a self contained building or part of a building, with or without appurtenant property*".
11. Section 78(2) says that the notice of invitation to participate must state that the RTM intends to acquire the right to manage "*the premises...*".

Discussion

12. The most serious allegation is that the Applicant RTM did not have 50% of the qualifying tenants as members when the Claim Notice was served i.e. on the 'relevant date'. If correct, this must be a fatal flaw. The evidence is that the Members Register states that Mr. A J Bush is the member, that he was the one who applied to be a member and the Land Registry records give A J Bush Ltd. as the tenant. The Applicant's response to this is difficult to follow.
13. It says "*The Respondent clearly accepts that AJ Bush is a member of the Company as per paragraph 4.4 of their Statement of Case. Therefore there can be no dispute that the company did have the required membership on the date the Claim Notice was served*". This submission simply fails to understand that the individual Mr. A J Bush is a completely separate legal 'person' to A J Bush Ltd. As a very crude and stark example, it may be that Mr. A J Bush is not the major shareholder and director of A J Bush Ltd; that person could be someone entirely unknown to Mr. Bush. As to flat 219, there is no evidence to suggest that Sharifah Akinloye was not served with a Notice of Invitation to Participate. Whether that person is prepared to have Abideen Akinloye nominated as the spokesperson of the 'joint tenants' is not known and a determination on that issue is therefore not possible.
14. As to the failure to serve qualifying tenants with a Notice of Invitation to Participate, it seems to be accepted that no notice was served on Steven Huckle, a tenant of flat 226, or Ruzhdi Bici, a tenant of flat 238. Section 75(7) of the 2002 Act says that where there are joint tenants,

they shall “*be regarded as jointly being the qualifying tenant of the flat.*” It is this Tribunal’s view that a Notice of Invitation to Participate must therefore be served on all joint tenants to any individual flat.

15. The Tribunal has seen a copy of a sample Notice of Invitation to Participate which says that the Memorandum & Articles of Association of the RTM “*may be inspected at (an address is then given) between 9.00 am and 5.00 pm (See Note 2 Below)*”. The note referred to just says “*The specified times must be 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*”. In other words, it just follows the prescribed wording without actually giving specified times or days. The Applicant submits that it was meant to be interpreted as being that the Memorandum & Articles could be inspected on any day which means that it complies.
16. These notices are defective and cannot be saved by section 78(7) because there is no ‘inaccuracy’ in the particulars. They simply omit to say what is now being suggested i.e. that the Memorandum & Articles of Association could have been inspected on any day between the hours of 9.00 am and 5.00 pm.
17. As to the address of the premises in the Notice of Invitation to Participate, this is clearly an example of a particular anticipated as a possible example of a “*spelling or typing error*” as suggested in the 2011 case of **Assethold Ltd. v 15 Yonge Park RTM** relied upon by the Respondent. In that case it was an inaccuracy in the address of the registered office of the RTM. Without knowing more about the property and where flats 24-213 might be, or who is the registered freeholder, it is difficult to say whether this is a material inaccuracy in particulars which could be waived. All this Tribunal can say is that 24-242 is a different address to 214-242 and it would probably not be an inaccuracy which would be saved by the 2002 Act.
18. The point made about **Transfer of Functions Order 2013** is not well made. That order was simply a means of creating the First-tier Tribunal, Property Chamber, and it did not change the jurisdiction or composition of the Tribunal dealing with these matters. It simply changed its name.

Conclusions

19. This application must fail for the reasons stated i.e. there were insufficient qualifying tenants as members of the Applicant on the relevant date, the Notices of Invitation to Participate are not in accordance with the 2002 Act or the supporting regulations and they were not served on all the qualifying tenants.

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Bruce Eugington
Regional Judge
20th January 2014