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

Case reference : CAM/22UH/LRM/2013/0021

Property : 1-176 (excluding 104) Woodland Gr.
Centre Drive,
Epping,
Essex CM16 4NE

Applicant : Woodland Grove RTM Co. Ltd.

Respondent : Realgate Ltd.

Date of Application : 13th September 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 15 Claim Notices on or about the 18th June 2013 seeking an automatic right to manage the property. On the 19th July 2013, the Respondent freehold owner’s agents served 15 Counter-notices raising a number of issues. Those have now been refined down to:-
 - (a) The Notice of Invitation to Participate is not in the correct form as prescribed by the relevant regulations as it does not mention Woodland Grove (Epping) Management Co. Ltd. (“the management company”), a party to the relevant leases at paragraph 4.
 - (b) The Notices of Invitation to Participate were not served on all qualifying tenants who were not already members of the RTM
 - (c) The Claim Notices were not served on the management company

- (d) Copies of the Claim Notices were not served on each qualifying tenant
- (e) The Respondent has not received a copy of the register of members in the correct statutory form

Procedure

3. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' 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 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

4. Section 78 of the 2002 Act says that Notices Inviting Participation must be served in the prescribed form and contain such particulars as may be prescribed by regulation. 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*".
5. Section 78 also 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.
6. Section 79 of the 2002 Act says that a copy of the Claim Notice must be served on each person who has to be given a Notice of Invitation to Participate and to any party to the leases who is not the landlord.

Discussion

7. Dealing firstly with the **Notice of Invitation to Participate**, the Respondent gave a list of those it suspected as not having been served. The Applicant has produced evidence of service save for Flat 32 and Flat 76 (see below).
8. The form of the notice is in accordance with the regulations. It is true that the management company is not mentioned but this is a particular. As the management company would have no interest in the Notice of Invitation to Participate and the recipients would know that it was a party to the leases, there can be no prejudice arising from the omission of that particular. This is relevant because of the comments made by the Court of Appeal in **Speedwell Estates v Dalziel** [2001] EWCA Civ 1277 and **Cresswell v Duke of Westminster** [1985] WL 312209 where the court differentiated between omissions which were of such importance as to be fatal flaws as opposed to omissions which did not prejudice anyone and could be fairly described as inaccuracies which were capable of being overlooked within the context of similarly worded 'saving' provisions.
9. The Respondent produced a list of persons it suspected of not having been served with a copy of the **Claim Notice**. The Applicant has produced evidence of service on all those on the list together with the management company which actually acknowledged receipt.

10. The Respondent has not indicated what it means by a copy register of members in 'the correct statutory form' and there is no requirement in the 2002 Act for such a form to be produced. The Applicant has produced a copy of the Register of Members.

Conclusions

11. Thus there is only one procedural defect which has been identified and proven i.e. the failure to serve the Notice of Invitation to Participate on all qualifying tenants who were not members of the RTM.
12. These 2 were, as stated, in respect of Flats 32 and 76. The tenant of Flat 32, according to the proprietorship register in the copy Land Registry entries supplied at page 63 in the bundle, is E.O.R Boiler and Heating Engineers Ltd. The 'evidence' of service is a letter dated 18th March 2013 at page 100 in the bundle from Ms. C O'Riordan asking to become a member of the RTM. The Applicant's statement at page 88 says that Ms. C O'Reardon (sic) had been served with the notice "*as the Agent for and on behalf of the Tenant*".
13. As far as Flat 76 is concerned, the tenant is Gregory Lawrence according to the Land Registry entry at page 69 in the bundle. The evidence of service is at page 103 which is a copy of the Notice addressed to Mrs. R Lawrence. The Applicant's statement says that service was effected on Mrs. Lawrence "*as the Agent for and on behalf of the Tenant*".
14. The Applicant has not provided any evidence to suggest that these 'agents' were true lawful representatives of the tenants. Even if they had, the obligation is to serve the qualifying tenant.
15. The problem faced by the Applicant is that although this may seem to be a very technical matter where perhaps no injustice would be served by overlooking the procedural defect, the plain fact of the matter is that service on all qualifying tenants who are not members is a mandatory provision which must be complied with. It is not one of those failures which can be 'saved' by section 78(7) or any other saving provision in the 2002 Act.

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Bruce Edgington
Regional Judge
30th April 2014