

477



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

Case Reference : LON/00BH/LRM/2014/0023

Property : Orchard Court, 239B Shernhall Street,
London E17 9EB

Applicant : Orchard Court RTM Company Limited

Representative : Leasehold Doctors, 27 Knoclaid Road,
Liverpool, L13 8DB

Respondent : Mr Harjit Singh

Representative : Hexagon Property Company Limited

Type of Application : Application in Relation to the Denial of the
Right to Manage

Tribunal Members : Judge Shaw

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 11 December 2014

DECISION

Introduction

1. This case involves an application made pursuant to Section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“The Act”). The Application comes about because the Applicant in this case, Orchard Court RTM Company Limited (“The Applicant”) has served a Claim Notice exercising its Right to Manage the property, that is to say Orchard Court, 239B Shernhall Street, London E17 9EB (“The Property”). The property is divided into 8 flats and in the usual way notice of the claim referred to above was served upon the Freehold owner, in this case Mr Harjit Singh (“The Respondent”). Agents on behalf of the Respondent have served 4 Counter-Notices pursuant to Section 84 of the Act taking various points as to the validity of the Claim Notice served by the Applicant. It is for that reason that an Application to the Tribunal has been made to determine whether or not the Claim Notice was indeed valid and indeed whether or not the Applicant has a right to manage the block.
2. Directions were given by the Tribunal on 23rd October 2014. It was noted in the Directions that the Respondent has denied that the Applicant has the Right to Manage in reliance upon Sections 75(2) 79(2) and 79(5) of the Act. In the Directions given the Tribunal identified only one issue for determination, namely whether on the date on which the Notice of Claim was given the Applicant was entitled to acquire the Right to Manage the premises specified in the Notice. The Tribunal directed that the case did not require a Case Management Hearing and that a paper determination was the most proportionate way of dealing with the matter. Directions were given in familiar form for both parties to expand their cases in statements so as to put the Tribunal in a position to make a proper determination.
3. The Respondent has indeed expanded its case in the form of a statement by Mr Qalab Ali dated 21st November 2014 and appearing at pages 9 to

12 of the bundle prepared by the Applicant. It is proposed to take the points raised in that statement in turn, with a view to making a determination in respect of this matter.

4. The first point taken on behalf of the Respondent is in respect to Section 79(2) of the Act and is to the effect that:

“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”.

5. The Respondent has stated that he has *“reason to believe”* that not all the Lessees were given Notice of Invitation to participate. In particular, in relation to one of the relevant Leaseholders, a Company called Let’s Talk UK Limited, the Notice was sent to the property address (that is, the flat owned by that Company in the property) rather than to the Company’s registered address (which the Respondent notes can be obtained by way of a search at Companies House or at the Land Registry).

6. No assertion is made that the Company did not in fact receive the Notice, merely that a failure to serve at the registered address of the Company is for some reason a failure to comply with the terms of the Act.

7. The Applicant has responded to this point in its own statement at page 7 of the bundle. In dealing with this point the Applicant relies on Section 111(5) of the Act which provides that:-

“A Company which is a RTM Company in relation to premises may give a Notice under this chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England & Wales at which he wishes to be given any such Notice.”

8. The Applicant makes the point that the Company concerned has not given Notice to the effect that it wishes to be served at any address other

than the property address itself and the Act makes specific provision in this regard. In taking this objection the Respondent has not asserted or given any evidence to the effect that the Company has given Notice that it wishes to be served at some other address. In the circumstances the Tribunal finds that the Applicant is entitled to rely on the provision referred to, and that this point is determined in favour of the Applicant.

9. The next, perhaps more substantial, point taken on behalf of the Respondent is under the Provisions of Section 79(5) of the Act. That Provision is to the effect that:-

“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.”

10. The point being taken here, as understood by the Tribunal, is that one of the qualifying tenants relied upon as being a member of the RTM Company is Jennifer Campbell. The point taken in respect of Jennifer Campbell is that her flat, that is to say Flat 8, has been repossessed by Mortgagees and therefore she cannot come within the definition of a “qualifying tenant” for the purposes of the Act. A further point is taken that having carried out a Company Search on the Applicant only two subscribers were there listed.

11. It is proposed to deal with the first of these objections under the next head, in respect of which there is some overlap. So far as the absence of Ms. Campbell in the Company’s Register is concerned, the Applicant has dealt with this at page 7 of the bundle. As will be observed at page 42 of the bundle, the person concerned, namely Jennifer Campbell, albeit not a member of the Applicant Company at the time of the date of its incorporation, subsequently became a member following her Application in this regard at page 42 dated 25th June 2014. As will be observed from page 38 in the bundle, the list of members of the Company includes Jennifer Campbell who became a member of the Company on the 28th of

June 2014. The Application to exercise the Right to Manage was made on the 24th of July 2014 upon which date she was already a member of the Company. The tribunal accepts the point made in the Applicant's comments that as far as listed subscribers are concerned, the Memorandum of Association at Companies House only lists subscribed members on the date of incorporation but that does not preclude subsequent members joining, as was the case in this instance. This second point therefore is also determined in favour of the Applicant and against the Respondent.

12. The third point taken on behalf of the Respondent appears at page 11 of the bundle and is an objection also made under Section 79(5) of the Act. The objection in this regard is that on 11th July 2014 (that is to say prior to the making of the claim for the Right to Manage) possession was taken of Jennifer Campbell's flat by Mortgagees. There is some evidence in the bundle at page 15 from Samantha Davidson (a Senior Property Adviser at Savills) to the effect that the Mortgagees or lenders of Ms Campbell took possession on the 11th of July 2014 through a Court appointed Bailiff. The document is not signed, and is in the form of an e-mail that appears to be prima facie evidence to the effect that possession was indeed so taken, and this has not been denied on behalf of the Applicant.
13. The upshot of this is that, in effect, the Respondent challenges the status of Jennifer Campbell as a qualifying tenant, given that her flat was repossessed by Mortgagees prior to the date of the Claim Notice.
14. This point has been the subject of some discussion in a not identical but analogous case, namely, *Choumert Road RTM Company Limited –v- Assethold Limited LON/00BE/LRM/2012/0017*. That case was the subject of an Application for Permission to Appeal and Appeal was refused by the Upper Tribunal (Lands Chamber) on 4th December 2012 (citation LRX/147/2012).

15. In essence, the question is really whether Ms Campbell in this case has lost her status as a qualifying tenant. As is noted at Paragraph 17 of the earlier Decision of the Tribunal referred to above:-

“Section 75(2) of the Act defines a qualifying tenant as the person who is the tenant of the flat under a long Lease. Section 76(2)(a) defines a long Lease as one granted for a term of years certain exceeding 21 years.

Such long Leases are required to be registered at the Land Registry. Section 58 Land registration Act 2002 makes provisions to ensure the conclusiveness of the Register. It provides that upon the entry of a person in the register as the Proprietor of a Legal Estate, that Estate is deemed to be vested in him as a result of registration. A Registered Proprietor does not cease to be Registered Proprietor because Receivers may have been appointed and/or that those Receivers may have taken, or are in the course of taking, steps to enforce rights granted by a Mortgage Deed”.

It may well be that the receivers have a right to effect a disposition of the legal estate.....but unless they do so [the registered proprietor] continues to be the registered proprietor of the legal estate created by the lease, and thus he continues to be the qualifying tenant for the purposes of the Act”

19. This Tribunal takes a similar view in this case (although we are here dealing with mortgagees rather than receivers, nonetheless similar principles apply). The Applicant has produced a copy of title from the Land Registry, taken on 20th June 2014 (page 69 of the bundle) demonstrating that Ms Campbell was the registered proprietor as at 20th June 2014 - that is to say at the time of the Claim Notice on 24th July. She remained the proprietor as at 24th November 2014, when a further check of the Register was made (see page 72 of the bundle) – thus after the date of the asserted taking of possession. She

remained therefore in the view of the Tribunal, a “*qualifying tenant*” for the purposes of the Act. The status of mortgagees in possession is generally that as agent for the borrower, and does not, for the reasons indicated above alter the registered proprietorship of the property.

20. Further support for the above conclusions can be found at Note 9.1 of the Land Registry Practice Guide 36A, which deals with analogous provisions relating to receivers. For the avoidance of doubt, section 58 of the Land Registration Act 2002 deals with the conclusiveness of the Register and provides that:

“If, on the entry of a person in the register as proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of registration.”

21. For each of the above reasons, the Tribunal is satisfied that Ms Campbell retained the status of “qualifying tenant” and this further point is determined in favour of the Applicant.

22. The final objection taken on behalf of the Respondent is that the Applicant is alleged to lack “*the necessary knowledge or expertise to manage such a building which will lead to neglect (sic) management and deliberate underspend of the property.*” This is not a statutory or other ground for invalidating the Claim Notice and is rejected by the Tribunal.

Conclusion

23. For the reasons indicated above, the Tribunal determines that on the relevant date, for the purposes of section 84(3) of the Act, the Applicant was entitled to acquire the right to manage the property specified in the Notice of Claim.

JUDGE SHAW

11th DECEMBER 2014