



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

Case Reference : **MAN/00FF/LRM/2016/0005**

Property : **Terrys Mews, Bishopthorpe Road, York YO23 1PG**

Applicant : **Terrys Mews RTM Company Ltd.**

Represented by : **Canonbury Management**

Respondent : **Proxima GR Properties Ltd.**

Represented by : **Estates and Management Ltd.**

Type of Application : **Commonhold & Leasehold Reform Act 2002 – Section 84(3)**

Tribunal Members : **Mr J A Platt FRICS (Chairman)**
Mr P Forster

Date of Decision : **3rd October 2016**

DECISION

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DECISION

The Applicant has not acquired the right to manage Terrys Mews, Bishopthorpe Road, York, YO23 1PG.

Application

1. By its application dated 21 June 2016 Terrys Mews RTM Company Ltd. (“the Applicant”) seeks a determination that it was, on the relevant date, entitled to acquire the right to manage Terrys Mews, Bishopthorpe Road, York, YO23 1PG (“the Property”) under Part II, Chapter I of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The Applicant named Proxima GR Properties Ltd. (“the Respondent”) as its landlord in the application.
2. The Applicant is represented by Canonbury Management. The Respondent is represented by Estates and Management Ltd.

Background

3. The Applicant was incorporated on 25 April 2016 with a view to taking over the management of the Property. It is not disputed that it is a “Right to Manage” company for the purposes of the Act. The Applicant, by its representative, served notices dated 25 April 2016 (“Participation Notices”) on persons who were qualifying tenants but who were not members of the Applicant, pursuant to section 78(1) of the Act.
4. The Applicant served a Notice of Claim dated 13 May 2016 (“the Notice”) on the Respondent and on FirstPort Property Services Ltd. (“FirstPort”) stating the Applicant’s intention to acquire the right to manage under section 79 of the Act. The Notice stated that the Respondent must give a counter-notice, objecting to the claim not later than 17 June 2016.

Procedure

5. The Tribunal determined that this was a case which could be decided on a consideration of the papers without a hearing and so directed on 5 July 2016. In accordance with Rule 31 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 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 31 August 2016, and
 - (b) a hearing would be held if either party requested one before that date.

Neither party requested a hearing. Both parties submitted written representations which were considered by the Tribunal.

The Issues

6. The Respondent raised two issues for consideration by the Tribunal: -
 - 6.1 The Notice of Invitation to Participate did not contain such other particulars as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority; in breach of section 78(2)(d) of the Act, and
 - 6.2 The Notice of Invitation to Participate did not comply with the requirements for a form of Notice of Invitation as prescribed in the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010: in breach of Section 78(3) of the Act.

The Law.

7. The relevant law is set out in sections 78, to 82 and section 84 of the Act as follows :-

“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) ...
- (5) ...
- (6) ...

(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.

“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.

8. “ 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.

9. **“81. Claim notice: supplementary**

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies –
 - (a) the premises, or
 - (b) any premises containing or contained in the premises, may be given so long as the earlier claim notice continues in force.
- (4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously –
 - (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
 - (b) ceased to have effect by reason of any other provision of this Chapter.

10. **“84. Counter-notices**

- (1) ...
- (2) ...
- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection 2(b) the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.”

The Tribunal's Conclusions

11. The Tribunal considered first whether it had jurisdiction.
12. Section 84(4) of the Act states that the application must be made "*not later than the end of the period of two months beginning on which the counter-notice was given*". The counter-notice is dated 8 June 2016 and the application was received on 24 June 2016. The Tribunal, therefore, decided that it had jurisdiction to consider the matter.
13. The Tribunal then turned to the Respondent's objections at paragraph 6. The Respondent asserts that the Applicant's Notice of Invitation to Participate is invalid because it does not contain the details of the named manager under the lease; Peverel OM Limited (now FirstPort). The Respondent cites the Upper Tribunal decision in *Triplerose Limited v Mill House RTM Company Limited* [2016] UKUT 0080(LC) in support of their assertion that this is a significant omission and is not an inaccuracy which could be saved by Section 78(7).
14. The Applicant asserts that it did not include details of FirstPort because they are not mentioned in the lease and when searching for Peverel OM Ltd at Companies House no such company by that name exists. The Applicant was, therefore, not to know that Peverel OM Ltd was synonymous with FirstPort. The Applicant asserts that the lease should have been amended by the Respondent to include the details of FirstPort.
15. In response to the Applicant's statement of case, the Respondent submitted a further statement including details of the relevant company records at Companies House. They included screenshots showing that FirstPort Property Services Limited and Peverel OM Limited have the same company number (which matches the company number detailed in the lease). It is the same company which has changed its name and hence FirstPort is a party to the lease and there was no need for any deed of variation.
16. The Tribunal accepted the Respondent's argument. FirstPort Property Services Limited and Peverel OM Limited are one and the same company, and it is a party to the lease.
17. The Tribunal notes that the Applicant's statement of case is inconsistent with its own actions. The Applicant, through its representatives, served a Claim Notice on First Port Property Services Limited on 13 May 2016 (i.e. before receiving the Respondent's counter-notice or statement of case) yet asserts within its subsequent statement of case dated 22 August 2016 that it was not to know that Peverel OM Ltd was synonymous with FirstPort.
17. The Applicant has not included FirstPort within the Application and the Tribunal are, therefore, unaware if they have served their own counter-notice; although the Respondent states that they believe they have.

18. Having regard to the Upper Tribunal decision in *Triplerose* (ibid), the Tribunal determines that the omission of FirstPort Property Service Limited from the Notice of Invitation to Participate is a significant omission which cannot be saved by Section 78(7). There was no inaccuracy of the particulars but rather a wholesale omission of a prescribed element of the Notice.
19. The Tribunal, therefore, determines that the Applicant has not acquired the Right to Manage.