



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

Case Reference : CHI/00MR/LRM/2016/0014

Property : Carlton House, 1-6 Western Parade, Southsea PO5 3ED

Applicant : Carlton House Southsea RTM Company Limited

Representative : Glanvilles LLP

Respondent : Sinclair Gardens Investments (Kensington) Ltd

Representative : WH Matthews & Co

Type of Application : Entitlement to acquire the Right to Manage

Tribunal Members : Judge A Johns QC

Date of Decision : 9 March 2017

PAPER DETERMINATION

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1. This is an application by Carlton House Southsea RTM Company Ltd (“the RTM Company”) for a determination under s.84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that it is entitled to acquire the right to manage property known as Carlton House, 1-6 Western Parade, Southsea PO5 3ED (“the Property”).
2. The respondent landlord, Sinclair Gardens Investments (Kensington) Ltd (“the Landlord”), contends that the RTM Company is not so entitled by reason of alleged defects in the notice inviting participation and in the claim notice. The Landlord also questions whether there was in fact service of the notice inviting participation on one of the qualifying tenants, namely a Sarah Ford of Flat 39.
3. Pursuant to directions given on 13 December 2016 and in the absence of any objection from the parties, this case is to be determined without a hearing. The RTM Company’s case has been set out in its application with supporting documents including a statement seeking costs, in a Reply dated 24 January 2017 and in a Further Reply dated 17 February 2017. The Landlord relies on its statement of case dated 27 December 2016 and its ‘Respondent’s Response’ dated 1 February 2017. The Tribunal has had careful regard to all these in arriving at this decision.
4. If any of the Landlord’s objections to the claim is correct, then this application fails.
5. At the forefront of those objections is the RTM Company’s failure to include as part of the form of the notice inviting participation the name and address of the qualifying tenant on whom such notice was served.
6. The notice inviting participation is dated 7 September 2016. After its heading it reads as follows:
“To the flat owner
Of Carlton House 1-6 Western Parade, Southsea, Hants PO5 3ED”
7. The notice does not therefore state either the name or the address, save for identifying the block of flats, of the intended recipient. But does that invalidate the notice?
8. The RTM Company says that that question should be answered in the negative for 2 reasons: First, there is no statutory requirement for a notice inviting participation to include the name and address of the tenant on whom it is to be served. Second, a reasonable reader would in any event understand that the intended recipient was the registered proprietor of the leasehold interest in the flat.
9. Examining each of those reasons in turn, the statutory requirements for notices inviting participation are to be found in s.78 of the Act and in The Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010 (“the Regulations”).

10. Section 78 of the Act provides in full 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) A notice of invitation to participate must either—

(a) be accompanied by a copy of the [articles of association] of the RTM company, or

(b) include a statement about inspection and copying of the [articles of association] 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] 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] 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.”

11. The Regulations make further provision for the form and content of notices inviting participation by regulations 3 and 8 as well as Schedule 1. Regulations 3 and 8 are, so far as material, in these terms:

3.— Additional content of notice of invitation to participate

(1) A notice of invitation to participate shall contain, in addition to the statements and information referred to in section 78(2)(a) to (c) of the 2002 Act (notice inviting participation), the particulars mentioned in paragraph (2).

(2) The particulars referred to in paragraph (1) are—

- (a) the RTM company's registered number, the address of its registered office and the names of its directors and if applicable, secretary;
- (b) the names of the landlord and any third party;
- (c) a statement that, subject to the exclusions mentioned in sub-paragraph (e), if the right to manage is acquired by the RTM company, the company will be responsible for—
 - (i) the discharge of the landlord's duties under the lease; and
 - (ii) the exercise of his powers under the lease, with respect to services, repairs, maintenance, improvements, insurance and management;
- (d) a statement that, subject to the exclusion mentioned in sub-paragraph (e)(ii), if the right to manage is acquired by the RTM company, the company may enforce untransferred tenant covenants;
- (e) a statement that, if the right to manage is acquired by the RTM company, the company will not be responsible for the discharge of the landlord's duties or the exercise of his powers under the lease—
 - (i) with respect to a matter concerning only a part of the premises consisting of a flat or other unit not subject to a lease held by a qualifying tenant³; or
 - (ii) relating to re-entry or forfeiture;
- (f) a statement that, if the right to manage is acquired by the RTM company, the company will have functions under the statutory provisions referred to in Schedule 7 to the 2002 Act;
- (g) a statement that the RTM company intends or, as the case may be, does not intend, to appoint a managing agent; and—
 - (i) if it does so intend, a statement—
 - (aa) of the name and address of the proposed managing agent (if known); and
 - (bb) if it be the case, that the person is the landlord's managing agent; or
 - (ii) if it does not so intend, the qualifications or experience (if any) of the existing members of the RTM company in relation to the management of residential property;
- (h) a statement that, where the RTM company gives a claim notice, a person who is or has been a member of the company may be liable for costs incurred by the landlord and others in consequence of the notice;
- (i) a statement that, if the recipient of the notice (of invitation to participate) does not fully understand its purpose or implications, he is advised to seek professional help; and
- (j) the information provided in the notes to the form set out in Schedule 1 to these Regulations.

8.— Form of notices

(1) Notices of invitation to participate shall be in the form set out in Schedule 1 to these Regulations.”

12. The form set out in Schedule 1 to the Regulations begins, after its heading, in this way:

“To [name and address] (see note 1 below)”.

13. And Note 1 reads as follows: “The notice inviting participation must be sent to each person who is at the time the notice is given a qualifying tenant of a flat in the premises but who is not already, and has not agreed to become, a

member of the company. A qualifying tenant is defined in s.75 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).”

14. Given those statutory provisions, in my judgment there is a requirement that a notice inviting participation include the name and address of the person on whom it is to be served.
15. I reach that conclusion for these reasons:
 - 15.1 Section 78(3) of the Act makes clear that a notice of invitation to participate must, as well as containing the matters required by s.78 and such particulars as may be required by regulations, also “*comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.*”
 - 15.2 The Regulations do contain, by paragraph 8(1), a requirement as to the form of notices of invitation to participate, namely that they shall be in the form set out in Schedule 1 to these Regulations.
 - 15.3 That form provides for the name and address of the recipient to be specified.
16. Subject to the point about the reasonable reader (which I deal with below), the RTM Company did not appear, from its statements of case, to be contending that the notice would be valid despite a failure to meet such requirement, whether by regarding such requirement as merely ancillary or by characterizing the failure as an inaccuracy in particulars benefiting from the saving provision in s.78(7). The RTM Company was right to take that course.
17. As the Upper Tribunal (Lands Chamber) spelled out in the relatively recent decision in *Triplerose Ltd v Mill House RTM Co Ltd* [2016] UKUT 0080 (LC), the notice of invitation to participate is of critical importance to the statutory scheme under which the right to manage may be acquired and that if there is any doubt or uncertainty about the procedural integrity of a right to manage claim, significant problems may arise in the management of premises.
18. Inclusion of the name and address of the intended recipient of the notice of invitation to participate gives certainty to the recipient and all other interested parties as to whom this notice of critical importance is being given. It is a requirement which maximizes the chances of the notice reaching the right person and of the landlord being readily satisfied that it has or has not done so.
19. Given all that, I would not regard the requirement as one that could be regarded as merely ancillary so that a failure to meet it did not invalidate the notice.
20. Nor, in my judgment, can the notice in this case be saved by s.78(7). That is for two reasons.
21. First, the requirement which has not been met is as to the form of the notice. That seems to me distinct from the requirements which the statutory provisions identify as relating to the particulars to be contained in a notice inviting participation. So s.78(2)(d) of the Act requires that a notice contain

“such other particulars” as may be required by regulations. There is then a separate provision, namely s.78(3), which requires that a notice *“also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made”*. The Regulations draw the same distinction. Regulation 3 is concerned with required particulars whereas Regulation 8 is concerned with the prescribed form. That there must be included the name and address of the recipient is a feature of the prescribed form, not a matter dictated by the requirements as to particulars. The saving provision in s.78(7) relates only to any inaccuracy *“in any of the particulars”*.

22. Second, even if the name and address of the recipient can be regarded as “particulars” for the purposes of s.78(7), the failure to include any such name and address is not, in my judgment, an inaccuracy. The decided cases distinguish between failures to provide information on the one hand and inaccuracies in information provided on the other – see for example para.14 of the decision in *Assethold Ltd v 14 Stansfield Road RTM Company Limited* [2012] UKUT 262 (LC). Saving provisions such as s.78(7) apply only to the latter. This is a case of the former type, namely a failure to provide information.
23. As to the RTM Company’s argument that a reasonable reader would in any event understand that the intended recipient was the registered proprietor of the leasehold interest in the flat, such seems to rely on the principles in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749. But those principles do not, in my judgment, assist the RTM Company. They are concerned with the meaning of a notice which contains an obvious mistake. They do not excuse failure to comply with requirements as to the form of a notice; a point vividly made by Lord Hoffman’s observation in that case that *“If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper ...”*. The failure here is one as to the form of the notice.
24. It follows from the above that the application must be dismissed. The RTM Company is not entitled to acquire the right to manage the Property.
25. As the parties have submitted written argument on the Landlord’s other objections, I should make clear what view I would have taken of those. In my judgment those objections would not, in my judgment, have succeeded in defeating the RTM Company’s claim.
26. The defects in the claim notice relied upon by the Landlord arise by reason of s.80(3) of the Act. Section 80 provides for the contents of a claim notice.

“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.”

27. The claim notice in this case was dated 24 October 2016. Part I of the Schedule to the claim notice was a table containing the full names and addresses of persons who are both qualifying tenants and members of the RTM Company. That table contains entries for 38 flats at the Property.
28. The Landlord has identified that the entry for Flat 6 represents an error in that whereas it names Anthony Paul Patrick Holmes, the qualifying tenant of Flat 6 was in fact Mr and Mrs Passmore. The Landlord also points to five other entries where the name given does not correspond exactly to that shown on the register of members and/or office copy entries.
29. The RTM Company accepts that there are errors in the claim notice but relies on s.81(1) of the Act which is in these terms:
“(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.”
30. I agree with the RTM Company that the claim notice is saved from invalidity by s.81(1) of the Act.
31. This is a case of one wrong name in a list of 38 flats and a few other incomplete or mistaken entries in that list. In my judgment, that is to be characterised as an inaccuracy in the particulars required by s.80(3) within the meaning of s.81(1), rather than a failure to provide particulars which would be fatal to the claim notice.
32. I should add that insofar as the Landlord relies on the same error as to Mr Holmes affecting the notice inviting participation, I would regard s.78(7) as providing the same answer; namely to save the notice from invalidity on the basis that such is an inaccuracy in the particulars required.
33. Turning finally to the question whether there was service of the notice inviting participation on Sarah Ford of Flat 39 as a qualifying tenant, I am satisfied

that there was. While not apparent from the list dealing with delivery of the notice, the RTM Company's Reply makes clear at paragraph 14 that such notice was sent to Sarah Ford and it exhibits the relevant email.

34. However, and from the above, the decision of the Tribunal is that the RTM Company is not entitled to acquire the right to manage the Property and so the application is dismissed.
35. The RTM Company seeks the costs of these proceedings under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In support of that application it points to the Landlord's requests for information including copies of the notices of invitation to participate and notes the lack of a statutory obligation on the RTM Company to provide that information. Rule 13(1)(b) permits costs orders to be made only where a person has acted unreasonably in bringing, defending or conducting proceedings. The question is not therefore one of statutory obligation but of reasonableness. It cannot be said that the Landlord has acted unreasonably. The Landlord has been successful in defending the proceedings, and requesting information from the RTM Company from which the Landlord could assess whether the statutory procedure for acquiring the right to manage had been operated correctly was not, in my judgment, unreasonable.
36. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
37. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
38. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
39. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge A Johns QC

Dated 9 March 2017