



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

Case Reference : **MAN/00FA/LRM/2016/0004**

Property : **110 Boulevard Hull HU3 2UE**

Applicant : **Assethold Limited**

Respondent : **110 Boulevard RTM Company Limited**

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

Tribunal Members : **Mr John Murray LLB
Ms. Aisling Ramshaw**

Date of Decision : **04 January 2017**

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

DETERMINATION

1. The application for permission to appeal is dismissed.

REASONS FOR DETERMINATION

2. The Applicant applied on 21 November 2016 for permission to appeal the determination of the Tribunal dated 26 October 2016.
3. The Applicant appeals the determination on the basis that
 - (a) The Tribunal wrongly interpreted or applied the law, and
 - (b) The Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect.
4. Specifically, the Applicant asserts that the Tribunal
 - (a) Wrongly applied the relevant case law by determining that the test to be applied by the Tribunal (considering what prejudice might be suffered by the Landlord or Tenants) by failing to serve notice at the address of the Flat was incorrect.
 - (b) The Applicant submits that following the Court of Appeal decision *Natt v Osmas* [2014] EWCA Civ 1520, the question for the court to consider is whether the notice complies with the requirement of the statute; if the answer is no, then consideration needs to be given to the statutory scheme as a whole, and the importance of the failing in light of that statutory scheme. The Applicant asserts that on that basis, the circumstances of the party, and the question of prejudice, is not relevant.
 - (c) The Applicant submits that the Tribunal made its determination with respect to the issue of prejudice, and not upon the importance to the statutory scheme of inclusion of all members in the acquisition process.
5. The Applicant asserts that the evidence was insufficient to prove service of the Claim Notice upon Mr. Stephen Rainford-Blackett, the Lessee of Flats 1 and 5. There was no direct evidence as to who had provided email addresses that was used for service to the Respondent, and the submissions as to who the organiser of the process were too vague, referring only to the fact that the organiser was female.
6. The Applicant states that they were unaware of service by email until reference was made to it within the statement of reply to their statement of case,

and that they did indeed dispute that claim notices were sent by email, contrary to the Tribunal's finding at paragraph 20 of the determination.

DECISION

7. The Tribunal notes that the Applicant did indeed dispute that the Claim Notices were served by email, in the absence of any proof of receipt and that the finding of the Tribunal that the Applicant did not dispute the service of Claim Notices by email at paragraph 20 is flawed. The Tribunal therefore determines that it should review its decision under Rule 55(1) of the First tier Tribunal (Property Chamber) Rules 2013.
8. There is no requirement in the statutory scheme to serve by post, or to prove receipt of notices. The requirement is that a copy of the Claim notice must be given in writing to each Lessee.
9. The Tribunal is satisfied, on the balance of probabilities that copies of the Claim notice were sent by email to all parties. The Applicant stated at paragraph 2 of their submissions that the organiser was Bridget Marian O Donnell, the (only) female lessee who was responsible for liaising with other lessees, securing their agreement to form the company, form the company and serve notices. Any subsequent reference to the organiser refers to "her".
10. The Tribunal is consequently satisfied that the requirements of the statutory scheme were in fact complied with; if any of the Notices were not received no prejudice would be suffered as the leaseholder in question is a member of the Right to Manage Company and it is likely that he would have become a member with only one aim in mind - to acquire the right to manage. Consequently even if the statutory requirements had not been met for this lessee there would have been no prejudice towards him, and the overall purposes of the statutory scheme (the protection of lessees) has been met.

Costs

25. The Tribunal in its determination of 26 October indicated it was minded to order the Respondent to pay costs. The Tribunal is satisfied that on the information available to it at the time the Applicant was entitled to challenge service of the Claim notice. Consequently no order for costs will be made in relation to these proceedings.