



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

Case Reference : **BIR/00GG/LRM/2019/0002**

Property : **Hampton House, 60 Shropshire Street,
Market Drayton, Shropshire TF9 3DG**

Applicant : **Hampton House Management
RTM Company Limited**

Representative : **Konstantinos Hatzikatis**

Respondent : **RG Securities (No.2) Limited**

Representative : **Jane Talbot
instructed by Pier Legal Services**

Type of Application : **Right to Manage
Commonhold and Leasehold Reform Act 2002**

Hearing : **10th October 2019
Centre City Tower, Birmingham**

Tribunal : **Judge D Jackson
Mr V Chadha MRICS**

Date of Decision : **18 October 2019**

DECISION

Background

1. Hampton House is a Georgian property in Market Drayton which was converted into 4 flats in 2006/7. Attached to the Property by way of an adjoining wall with Flat 2 is a further residential unit known as “The Coach House”
2. The Respondent is the freeholder of the Property (described simply as 60 Shropshire Street, Market Drayton) registered at HM Land Registry under Title number SL170797. The Property is subject to five long residential leases (all for 125 years) as set out in the Schedule of notices of leases to the freehold title.
3. The Applicant was incorporated on 26th February 2019 (company number 11848300) by the leaseholders as a vehicle for the purposes of exercising their Right to Manage.
4. The Qualifying Tenants and Members of the RTM Company are:

Flat 1 (SL183254) – Dexter Beekmeyer
Flat 2 (SL186353) – Belinda Jane Sprigg
Flat 3 (SL183222) – Abdul Ahamat
Flat 4 (SL182831) – Dexter Beekmeyer
Coach House (SL183353) – Andrew Bye

5. On 25th March 2019 the Applicant gave Notice of Invitation to Participate in Right to Manage. However, at that time only Messrs Beekmeyer, Ahamat and Bye were Members of the RTM Company. They believed that the leaseholder of Flat 2 was James Murray Bennett whom they had been unable to locate. Accordingly Notice of Invitation to Participate was served upon him in the belief that he was the long leaseholder of Flat 2.
6. However, had the Applicants followed up entry No.5 in the Schedule of notices of leases they would have known that Belinda Jane Sprigg was on 8th July 2016 entered as the registered proprietor of the leasehold interest in Flat 2 under Title number SL186353. In consequence of the failure by the Applicant to properly search Land Registry entries no Notice of Invitation to Participate was served on Belinda Jane Sprigg who was not, at that time, a Member of the RTM Company.
7. On 10th April 2019 the Applicant on behalf of Messrs Beekmeyer, Ahamat and Bye as Qualifying Tenants and Members of the Company served Claim Notice dated 9th April 2019 specifying, at paragraph 6, the relevant date on which the RTM Company intends to acquire the right to manage as 12th August 2019.
8. On 9th May 2019 the Respondent gave a Counter Notice. The single ground on which it was alleged that the Applicant was not entitled to acquire the right to manage the Property was given as:

“The company has failed to serve Notice to Participate on Belinda Jane Sprigg”

9. On 8th July the Tribunal received application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 for a determination that on the relevant date the Applicant was entitled to acquire the right to manage the Property.
10. On 11th July the Tribunal issued Directions.
11. The Tribunal has considered Skeleton Argument dated 1st July 2019 and Bundle of documents (pages 1 -423) on behalf of the Applicant, Statement of Case for the Respondent dated 8th August 2019 and Reply from the Applicant dated 14th August 2019. The Tribunal has also considered Respondent’s Position prepared by Mrs Talbot dated 9th October 2019.

12. This application was heard on 10th October 2019. Mr Hatzikatis represented the Applicant and called Mr Beekmeyer to give evidence. The Respondent was represented by Mrs Talbot.

Applicant's Case

13. The submission that the Applicant was unaware that James Murray Bennett had sold Flat 2 to Belinda Jane Sprigg is simply unsustainable. A search of the Schedule on notices of leases to the freehold title would have disclosed that Belinda Jane Sprigg acquired Flat 2 on 8th July 2016. The Tribunal finds it inexplicable that such a basic search was not carried out.
14. The submission that Part 1 of the Landlord and Tenant Act 1987 applies to the sale by Mr Bennett to Belinda Sprigg is misconceived. The right of first refusal only applies to disposals by a landlord or intermediate landlord of the qualifying tenants of flats as defined in section 2 of the 1987 Act.
15. The submission made in relation to section 106 of the 2002 Act is also wholly misconceived. There is no agreement here excluding or modifying the right to manage.
16. This is not a case where there are inaccuracies in the Claim notice which can be cured by section 81 of the 2002 Act.

Respondent's Case

17. The Respondent's case by contrast is commendably clear.
18. Section 78 (1) of the 2002 Act provides:

“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 a qualifying tenant of a flat contained in the premises, but
b) neither is nor has agreed to become a member of the RTM company.”

19. The Tribunal finds that as at 25th March 2019, when the notices under section 78(1) were given, Belinda Jane Spriggs was the Qualifying Tenant of Flat 2 but was not, nor had she agreed to become a member of the RTM company.
20. Section 79 makes provision in relation to Notice of claim to acquire right. Section 79(2) provides:

“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.”

21. Accordingly, the Claim Notice dated 9th April 2019 is potentially invalid because no Notice to Participate had been given to Belinda Jane Spriggs.
22. However, that conclusion is subject to the decision of the Court of Appeal in **Elim Court RTM Company Ltd v Avon Freeholds Ltd** [2017] EWCA Civ 89 which appears not to have been considered at all by the Respondent in its Statement of Case.

Elim Court

23. In **Elim Court** Lewison LJ considered **Natt v Osman** [2014] EWCA Civ 1520 and held that an RTM claim notice fell within the second of the two categories identified by Etherton C in that case:

“(2) those cases in which the statute confers a property or similar right on a private person and the issue is whether or not non-compliance with the statutory requirement precludes that person from acquiring the right in question.” [**Natt v Osman** at [31]]”

“Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid.” [**Natt v Osman** at [34]]”

24. However, in **Elim Court** Lewison LJ made it clear that “it does not follow that if a case falls within the second category every defect in a notice or in the procedure, however, trivial invalidates the notice” [56] and see also [59].
25. The Court of Appeal in **Elim Court** considered three issues. Issue (iii) concerned the question of validity of a claim where no claim notice had been given to an intermediate landlord. Lewison LJ held:

“It cannot therefore be said that giving a claim notice to everyone entitled to receive it is necessarily an essential feature of the statutory scheme” [71]

“I would hold that a failure to serve a claim on the intermediate landlord with no management responsibilities (as defined) does not invalidate the notice” [74]

26. There is considerable force in Mrs Talbot’s submissions that the position of an intermediate landlord (with no management responsibilities) is different to that of a Qualifying Tenant. In **Triplerose Ltd v Mill House RTM Co Ltd** [2016] UKUT 0080 (LC) the Deputy President held:

“I am satisfied that as a matter of construction of the statutory scheme the inclusion of the notes in the prescribed form is essential to the validity of a notice of invitation to participate. It follows that the documents served on the qualifying tenants which omitted the notes in their entirety were not notices of invitation to participate compliant with section 78. As a result the RTM company was prohibited by section 79(2) from giving a claim notice seeking to acquire the right to manage. The claim for a determination that the RTM Company had acquired a right to manage must therefore be dismissed.” [47]

27. The decision in **Triplerose v Mill House** was considered by the Court of Appeal in **Elim Court**. Nothing in the judgement of the Court of Appeal suggests that the decision of the Upper Tribunal in relation to service on qualifying tenants was wrongly decided. Accordingly, we find that failure to serve a Notice of Participation on Belinda Jane Sprigg is, subject to what is said below in relation to waiver, fatal to the validity of the Claim Notice.

Waiver

28. We set out in full paragraph 75 of **Elim Court**:

“There was some discussion, in the course of the hearing, of the possibility that a failure to serve a claim notice on a person entitled to receive one might be a procedural defect which that person could waive *ex post facto*. I would provisionally reject Mr Bates' argument that the right to serve a counter-notice is given to landlords as a class with the result that none of them could waive a failure to serve. First, the right to receive a claim notice is given to each landlord individually. Second, each landlord individually must decide whether or not to serve a counter-notice. Third, in general a person who has the benefit of a statutory right may renounce it, unless there is a public interest in that right which precludes him from doing so. Fourth, section 106 contains limited and targeted prohibitions on contracting out, which do not apply to landlords. My view is, however, provisional because (a) we did not have full argument on the topic and (b) in any event this point does not arise on the facts of this case and is not within the ambit of this appeal.”

29. The Counter Notice was served on 9th May 2019. Aware of the potential consequences of not having served the leaseholder of Flat 2, on 14th May 2019 the Applicant sought to remedy matters and served a Notice of Invitation to Participate on Belinda Jane Sprigg (Applicant's Bundle pages 87-92)
30. This it would appear spurred Belinda Jane Sprigg into action. On 28th May 2019 she made application to become a member of the RTM Company (page 102 -Applicant's Bundle) and on 6th June 2019 she made a Witness Statement (page 97) witnessed by Mr Hatzikatis in the following terms:

“All leaseholders agree to an RTM, even though I received a late notice. We believe that a cancellation of RTM due to a delay is unfair and unreasonable, as the RTM company is for the benefit of all the tenants and not of the landlord”.

31. We find that Belinda Jane Sprigg has waived her right to receive a copy of the Notice to Participate *ex post facto*. We can see no public interest in precluding her from doing so. Indeed, the public interest is best served in avoiding “objections based on technical points which are of no significant consequence to the objector [and which] will continue to bedevil the acquisition of the right to manage” (**Elim Court** [77]).
32. Section 106 of the 2002 does not preclude Belinda Jane Sprigg from her decision to renounce her statutory rights. The provisions of section 106 contain limited and targeted prohibitions on contracting out which only relate to “any agreement relating to a lease” and are not applicable in these circumstances.
33. The Tribunal reminds itself that the views expressed on waiver by Lewison LJ are obiter dicta and expressed to be provisional in the absence of full argument on the point.
34. We find that Belinda Jane Sprigg has waived and renounced her right to be served with a Notice to Participate. Accordingly, the failure to serve a Notice to Participate on Belinda Jane Sprigg does not invalidate the Claim Notice of 9th April 2019. It follows that the Applicant was on the relevant date entitled to acquire the right to manage the Property.

Rule 13 Costs

35. In Skeleton Argument dated 1st July 2019 the Applicant applies for costs under Rule 13 in the sum of £10,430. That application is summarily refused. The costs of Tribunal hearing are solely attributable to the inexplicable failure of the Applicant to search the Schedule of notices of leases to the freehold title. Had the Applicant done so these proceedings would undoubtedly have been avoided.
36. However, lest the Respondent on reading the foregoing paragraph be prompted to make its own application for Rule 13 costs we would remind the parties of the terms of Rule 13. The Tribunal can only consider unreasonable conduct in bringing or conducting proceedings. The egregious conduct of the Applicant occurred before the commencement of proceedings and is not therefor a matter to be considered under Rule 13(1)(b).

Decision

37. Pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 the Tribunal determines that the Applicant RTM Company was on the relevant date entitled to acquire the right to manage the Property.

D Jackson
Judge of the First-tier Tribunal

A party may appeal this Order to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.