



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

Case reference : **LON/00AR/LRM/2022/0017**

Property : **Flats 1-10 Greyfriars House,
54 Butts Green Road,
Hornchurch, RM11 2JN**

Applicant : **Greyfriars House RTM Co. Ltd**

Representative : **Kristian A Sullivan SAC (dip) LAW**

Respondent : **MDB Properties Ltd**

Representative : **-**

Type of application : **For an Order that the Applicant is
entitled to acquire the right to
manage the property (Section 84(3))**

Tribunal members : **Judge Bruce Edgington**

Date of decision : **16 August 2022**

DECISION

1. This Application succeeds and the Applicant therefore acquires the right to manage the property as set out in Section 90(4) of the 2002 Act.
2. The Respondent is ordered to reimburse the application fee of £100 to the Applicant by 4.00 pm on the 13th September 2022.

Reasons

Introduction

3. The Respondent clearly accepts that the Applicant is a right to manage company (“RTM”). Such RTM gave the Respondent a Claim Notice seeking an automatic right to manage the property. A Counter-notice dated 21st February 2022 was served apparently by the Respondent denying the right to acquire the right to manage. It alleged that the Claim Notice was dated 19th January 2021 which was before the Applicant company had been formed. Thus, it was alleged, the Applicant cannot acquire the right to manage as it did not exist when the Claim Notice was served.
4. In the Tribunal’s directions order dated 5th May 2022, it was decided that the single issue to be determined was “*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*”.

Procedure

5. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days’ 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 and (b) an oral hearing would be considered if either party requested one. No such request was received.

The Law

6. It is clear that if the Respondent’s submission that the Claim Notice was served before the Applicant was formed is correct then this application must fail. However, the Applicant says that the date given at the end of the Claim Notice i.e. 19th January 2021 was a mistake. The correct date was 19th January 2022 and the following words are recorded at the beginning of the Notice:

*“Posted as recorded mail on 19th January 2022
Deemed as Served on 24th January 2022”*

7. The Applicant has produced a copy of the case of **Pease v Carter** [2020] EWCA Civ 175. It is a Court of Appeal case and the lead judgment was given by Lord Justice Arnold. The case involved

proceedings for possession of a residential property under section 8 of the Housing Act 1988. Notices of proceedings dated 7th November 2018 were served saying that court proceedings would not begin until after ‘26th November 2017’.

8. The district judge held that the error obviously a typographical error and gave the landlord leave to amend the notices and dispense with service. The Circuit Judge held that the error meant that the notices were invalid. The case was appealed partly on the basis that the facts raised an important point of principle concerning the service of legal notices.
9. The lead judgement, which was simply endorsed by Lords Justice Floyd and Underhill, went through a number of previous decisions, some of which related to the Housing Act 1988 but some of which were cases dealing with the general point as to whether unintended errors could or should affect the validity of legal notices given.
10. The conclusion reached was that the notices were valid. Having set out the purpose of giving dates in a notice seeking possession, the court went on to say:

“52. In other words, the purpose of the requirement for at least two weeks’ notice is to give the tenant time to take steps to deal with the threatened proceedings e.g. by trying to pay off arrears of rent, taking advice, obtaining representation and/or seeking alternative accommodation.

53. Did the Notices serve that purpose? Given that the date of 26th November 2017 was an obvious typographical error and that a reasonable recipient would have understood that the intended date was 26th November 2018, I consider that the Notices did serve the statutory purpose of giving the Tenants at least two weeks’ warning of the commencement of proceedings. (In the event, proceedings were not commenced until a further month had elapsed, but in my view that is an irrelevant consideration because the Landlord might have commenced proceedings on 27 November 2018.) Accordingly, the Notices were valid.”

Conclusion

11. I consider that the Court of Appeal decision is relevant and that I must take it into account. In this case, the Applicant, through it’s representative, did write to the Respondent on the 28th February 2022 after receipt of the counter notice giving clear notice of the fact that the date at the end of the Claim Notice was an error and should have been 19th January 2022 and not 2021. The Respondent was referred to the case of **Pease** as referred to above.

12. It is clear that the Respondent received the Claim Notice in 2022 and did find out, as is the case, that the Applicant was formed on the 15th October 2021. I find that any reasonable recipient would have understood that the intended date for the Claim Notice was 19th January 2022.
13. I also take the somewhat unusual step of ordering the Respondent to reimburse the Applicant for the application fee of £100 within 28 days from the date hereof. The Applicant has made its position throughout very clear and the Respondent has chosen not to deal with probability of an error or the case of **Pease**.



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Judge Bruce Edgington
16th August 2022

ANNEX - RIGHTS OF APPEAL

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to London.RAP@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.