

Right to Manage – Eastern Pyramid Group Corporation SA v Spire House RTM Company Limited

The right to manage is simple in concept but unfortunately complex in its application as there are a lot of procedural hurdles that participating flat owners can fall at and this can lead to litigation as of course their landlord needs to be sure whether management will validly vest. Consequently there are a huge number of cases taken by landlords challenging the validity of claims which some might find surprising.

The case of Eastern Pyramid Group Corporation SA v Spire House RTM Company Limited is the latest in a long line. It has clarified whether a breach of the statutory framework is fatal to a claim being valid.

In this case the RTM company gave a claim notice seeking to exercise the right to manage in respect of a block of 23 flats laid out over six floors. The landlord gave a counter notice challenging its validity. Consequently the RTM company then purported to withdraw that claim notice and serve another. The landlord challenged the effectiveness of the second notice on the basis, among other things, that the first notice hadn't been validly withdrawn at the time it was given so preventing the second claim notice from being valid as there can only be one live claim at any one time.

Having failed before the First-tier Tribunal and the Upper Tribunal the landlord appealed to the court of appeal. The issue that remained to be determined was whether the notice of withdrawal of the first claim notice was valid despite it only having been given to the landlord by the time the second claim notice had been given. The reason the landlord could take a point here was that the relevant section (86) required that the notice of withdrawal be given to the qualifying tenants of the flats in the building in addition to the landlord and this only occurred the day after the second claim notice had been given.

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The landlord's position was that the notice of withdrawal couldn't be effective until all the qualifying tenants were served so that strict compliance with the relevant section was required.

This was rejected; the Court of Appeal determined that where there has been a failure to comply with a statutory requirement then the right way to analyse a case concerning private rights such as these is to determine the legislative intention as to the consequences of non-compliance in the light of the statutory scheme as a whole (following *Elim Court RTM Co Limited v Avon Freehold Limited* [2017] EWCA Civ 89 which at paragraph 52 cited *Natt v Osmond* [2014] EWCA Civ 1250).

Every defect however trivial does not invalidate the step in question necessarily. It is for the court to decide whether the step is wholly valid or not. Prejudice in a generic sense may be relevant.

The "fundamental question is the role and importance of the relevant step in the context of the procedure as a whole" (paragraph 39) and "the legislator can be taken to have assumed that the courts would take a realistic and pragmatic approach in determining the significance of different steps in a procedural scheme laid down by statute. A result which is impractical or unrealistic is unlikely to be what was intended" (paragraph 40).

APPLICATION IN THIS CASE

Applying those principles to the issue in hand while a failure to give a notice of withdrawal to the landlord would be fatal, the reality was that it was being given to the qualifying tenants for their information only; Once the right to manage procedure reaches the stage of service of a claim notice the qualifying tenants' position is subordinated to that of the RTM company as is

shown by them receiving any copies of the claim notice when served (section 79). It does not have an effect on any decision they must make or action they must take. Service a day late as in this case wouldn't make any practical difference to anyone.

It was also relevant that there was no provision in the Act whereby the date on which the qualifying tenants are given notice of withdrawal is to be communicated to the landlord. In this case the landlord only knew as a consequence of the proceedings taken by it.

In conclusion this case and those before emphasise the importance of taking care to comply with all of the statutory requirements precisely so as to close off the risk of a negative counter notice being given and proceedings ensuing at significant cost to the qualifying tenants.

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