FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/LRM/2019/0004**
Premises	**:**	**Portunus Building, 6 Gernon Road, London E3 5FG**
Applicant	**:**	**Portunus Building (London) RTM Company Limited**
Representative	**:**	**Prime Property Management**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors**
Type of Application	**:**	**S84(3) Commonhold and Leasehold Reform Act 2002 (the Act) – determination whether the applicant has acquired the right to manage**
Tribunal Members	**:**	**Judge John Hewitt** **Mrs Sarah Redmond MRICS**
Date and venue of Determination	**:**	**19 March 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**20 March 2019**

DECISION

The issues before the tribunal and its decisions

1. The single issue before the tribunal was whether the applicant was, on the relevant date, entitled to acquire the right to manage the subject premises.

2. The decision of the tribunal is that the applicant was, on the relevant date, entitled to acquire the right to manage the subject premises.

   Accordingly, the acquisition date of the right to manage is the date specified in accordance with the provisions of s90 of the Act.

3. The reasons for this decision are set out below.

Procedural background

4. The Premises comprise a block of self-contained flats which have been sold off on long leases. The respondent is the landlord. A majority of qualifying lessees promoted the formation of the applicant company with a view to acquiring the right to manage conferred in Part 2 of Chapter 1 of the Act.

5. By a claim notice dated 2 November 2018 given pursuant to s79 of the Act the applicant sought to acquire the right to manage the premises on 15 March 2019.

6. By a counter-notice dated 6 December 2018 given pursuant to s84 of the Act the respondent alleged that the applicant was not entitled to acquire the right to manage the specified premises for a number of reasons, including non-compliance with:

   Ss 78(1), 79(2) and (3), (8), 80(3), (4), (8) and (9) of the Act.

   Rather unhelpfully the counter-notice was in generic form and in several instances it was either incomplete or it did not provide any details explaining clearly the reasons why it was alleged the statutory requirements had not been met.

7. On 23 January 2019 the tribunal received an application from the applicant pursuant to s80(3) of the Act. Directions were given on 24 January 2019. The parties were notified of the intention of the tribunal to determine the application on the papers to be provided by the parties and without an oral hearing, unless either party requested an oral hearing. The tribunal has not received any such request.

8. The tribunal had before it:

   8.1 The application form – to stand as the applicant's opening statement of case;

   8.2 The respondent's statement of case in answer dated 11 February 2019; and

8.3 The applicant's statement of case in reply dated 25 February 2019.

The issues raised by the respondent and the applicant's response to them and the tribunal's position on them

9. The issues raised by the respondent in its statement of case are:

9.1 The applicant failed to respond to letters from the respondent's solicitors dated 5, 12 and 19 November 2018 and 25, 28 and 30 January 2019 in which they sought numerous documents and pieces of information concerning steps taken by the applicant as part of the RTM process;

Applicant's response:
It was not in the interests of the applicant to correspond with the solicitors because irrespective of the answers given or materials supplied the respondent would have served a counter-notice in any event denying that the applicant had acquired the right to manage and compliance with the requests would have only served to increase the costs payable pursuant to s88 of the Act.

Tribunal's position
The respondent has not cited any statutory provision or other authority which obliges a RTM company to provide the materials and information which the respondent sought.

In those circumstances and given the history of experience of the applicant's representatives in dealing with RTM applications concerning the respondent, we cannot say that it was unreasonable for the applicant to take the line that it did.

Further, some of the information sought by the respondent was a matter of public record or was obtainable by the exercise of a right which the respondent chose not to pursue. An example includes the right granted by s116 Companies Act 2006 to inspect the register of members.

Thus, we cannot conclude that the failure to respond to the correspondence of itself in some way precludes the applicant from acquiring the right to manage.

9.2 The respondent queried whether a notice of invitation to participate had been given to the lessee of flat 2.

Applicant's response
The applicant appended a copy of the notice to its statement of case in reply and asserted that the notice was given to the lessee concerned.

Tribunal's position

The copy notice appears to be in order. The respondent did not advance any positive or even prima facie case that such notice was not given; it simply noted that the lessee of flat 2 was not stated to be a member of the applicant.

We find that the notice of invitation to participate was given to the lessee of flat 2.

9.3 The respondent complained that the register of members was not provided.

Applicant's response
The applicant appended a copy of the current register of members to its statement of case in reply.

Tribunal's position
We have already commented on the lack of a positive obligation on the applicant to provide a copy of the register and the apparent failure of the respondent to exercise its statutory right to inspect the register.

We find that the decision of the applicant not to provide a copy of the register at an earlier stage of the RTM process does not preclude the applicant from acquiring the right to manage.

9.4 The respondent complained that the applicant did not provide evidence of service of the claim form on the qualifying lessees. So far as we can tell from the papers the respondent has not advanced any positive or even prima facie case that such notice was not given to those entitled to it.

Applicant's response
The applicant appended a witness statement made by Mr Stephen Wiles dated 25 February 2019 to its statement of case in reply. The gist of that statement was to the effect that such notices were posted to those entitled to them.

Tribunal's position
The respondent has not provided any evidence to suggest that the claim notice was not given to those lessees entitled to it.

We would have preferred that the witness statement of Mr Wiles was endorsed with a statement of truth, but the absence of such a statement is not fatal. We are satisfied that Mr Wiles has some experience with the RTM process and of the procedural requirements to be complied with. In the absence of any evidence to the contrary, we find we can accept Mr Wiles' evidence. Thus, we find the claim notice was given to those entitled to it.

9.5 As to requirements of the claim notice the respondent complained first that there 'may' be errors in it in that CS Development UK Ltd and Carol Holt are incorrectly named as members of the applicant company.

Applicant's response
The applicant relies upon the register of members it has appended to its statement of case which records that on 15 October 2018 both CS Developments Ltd and Carol Holt became members of the company.

Tribunal's position
The register of members put before us certainly supports the above contention of the applicant. There is no evidence before us that that position is not or might not be correct.

We therefore find as a fact that the register before us is correct in what it purports to record.

9.6 The second complaint was the claim notice contained two errors of detail:

9.6.1 The date of the lease of flat 4 was given as 17 Dec 2013 whereas it is in fact dated 7 January 2014; and

9.6.2 The terms of flats 1,6,7,9 and 12 were recorded as terms of 125 years from 1 Jan 201**2** whereas in fact the terms were 125 years from 1 Jan 201**5**

The respondent submitted that such errors evidence a failure to comply with the particulars and requirements of s80(8) and (9) of the Act.

Applicant's response
The errors mentioned are admitted. They submit they are minor and of no consequence to the validity of the claim notice. They rely upon s81(1) of the Act. That section provides: "*A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.*"

The applicant cited the Court of Appeal decision in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 in support of its case, and in particular the observation made by Sir Kim Lewison in paragraph 77 of his judgment.

Tribunal's position
We prefer the arguments advanced on behalf of the applicant. The errors are minor. There is no suggestion by the respondent that the errors misled or prejudiced the respondent in any way. The respondent exhibited to its statement of case in answer, a copy of the register of the freehold interest. The Charges Register

includes a Schedule of notices of leases registered against the freehold interest. We infer this document was readily available to the respondent so that it was able to check the position if there was any doubt or concern.

We find that these minor errors are excused by s81(1) such that they do not invalidate the claim notice.

Conclusion

10. In the event and for the reasons given above we determine that on the relevant date the applicant was entitled to acquire the right to manage the subject premises.

Judge John Hewitt
20 March 2019

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

3. 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.

4. 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.