



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

Case reference : **LON/00AH/LRM/2019/0014**

Property : **58 Mitcham Road Croydon Surrey
CR0 3RG**

Applicant : **58 Mitcham Road (Croydon) RTM
Company Limited**

Representative : **Prime Property Management**

Respondent : **Assehold Limited**

Representative : **Scott Cohen; Solicitors**

Type of application : **Right to manage**

Tribunal member : **Judge Professor Robert Abbey
Mr C. Gowman BSc MCIEH**

Date of decision : **6th August 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.

The application

1. This was an application to acquire the right to manage **58 Mitcham Road Croydon Surrey CRO 3RG** (“the premises”) under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The Respondent freeholder has served a counter-notice disputing the claim alleging that the applicant had failed to establish compliance with various sections of the Act.
2. The property contains just two flats. The flat on the ground and basement floors is 58 Mitcham Road and the owners of the flat are Pascal Apeti Aholou and Maria Teresa Alvarez. (The property is leasehold for a term of 125 years from and including 14 September 2015 and is registered at the Land Registry under title number SGL763859). The flat on the first and second floors is 58a Mitcham Road and is owned by Ashu Priya, (The property is leasehold for a term of 125 years from and including 14 September 2015 and is registered at the Land Registry under title number SGL763861).

The law

3. The relevant provisions of the Act in particular mentioned by the respondent are set out in the appendix to this decision. Rights of appeal are set out in the annex to this decision.

The counter-notice

4. In its counter-notice, the Respondent raised alleged issues or breaches in regard to sections 78(1), 79(2), 79(3), 79(8), 80(3), 80(8) and 80(9) of the Act. Having considered the copy deeds, letters, emails and documents in the two bundles, (one from each party), the tribunal has made the following decisions.

The issues or alleged breaches

5. With regard to s.79(3), membership, the respondent asserts that no register of members has been provided. The respondent also asserts that Maria Alvarez was not a subscriber to the company. With regard to sections 78(1) and 79(2) the respondent asserts that Ms Alvarez “who was not a subscriber but may have been incorrectly noted as a member did not receive the benefit of a notice inviting participation as required” by statute.
6. With regard to s.79(8) the respondent says that there is no evidence of service of the claim notice on the qualifying tenants. With regard to sections 80 (3), 80 (8) and 80 (9) the respondent asserts that there may be errors within the notice as the respondent says it incorrectly names Ms Alvarez as a member and by doing so breaches sections 80 (8) and 80 (9) of the Act.

7. In response the applicant observed that the claim notice had been correctly and lawfully served on the landlord and consequently the applicant is entitled to acquire the right to manage. More specifically and in response to the point regarding membership the applicant says that all qualifying tenants are members of the RTM company and a copy of the register of members was disclosed to the tribunal to confirm this assertion. Secondly and in response to the point about Ms Alvarez the applicant confirmed that she was not a subscriber but that she joined the company shortly afterwards. A copy of her signed application was also disclosed to the Tribunal. This was on 19 April 2019. The claim notice was dated 23 April 2019.
8. Regarding the issue relating to the notice on invitation to participate, the applicant says that all qualifying tenants have agreed to be members and as such no notices of invitation to participate are required to be served. The applicant also confirms that the claim notice was served on all the qualifying tenants. A Mr Stephen Wiles submitted a witness statement to the Tribunal to confirm this. He did so saying “I act for Prime Management (PS) Ltd, the company secretary of 58 Mitcham Road (Croydon) RTM Company Limited.” He thus confirmed that claim notices were given to all the qualifying tenants.

The Tribunal's decision

9. The Tribunal is mindful of the following decisions. First in the Upper Tribunal *Assethold Limited V 110 Boulevard RTM Company Limited* [2017] UKUT 316 (LC) and secondly in the Court of Appeal *Elim Court RTM Company Ltd v Avon Freeholds Limited* [2017] EWCA Civ 89. These cases were concerned with issues very much in line with those raised in this case. In *Assethold* a quote is included from *Elim* stating that: -

“In para 57 and 58 he (Lewison LJ) approved the following passage:

Finally, it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of the statute or contract, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties.”

10. In *Elim* Lewison LJ observed: -

“I have drawn attention to the Government's policy that the procedures should be as simple as possible to reduce the potential for challenge by an obstructive landlord. That policy has not been implemented by the current procedures which still

contain traps for the unwary. This is, we were told, the third attempt by the RTM company to acquire the right to manage Elim Court. The Government may wish to consider simplifying the procedure further, or to grant the FTT a power to relieve against a failure to comply with the requirements if it is just and equitable to do so. Otherwise I fear that objections based on technical points which are of no significant consequence to the objector will continue to bedevil the acquisition of the right to manage.”

11. Taking into account all these factors the Tribunal determines the notice of invitation to participate is valid. It does so as it is persuaded by the evidence of the applicant more particularly set out in the paragraphs above. The Tribunal accepts that all the issues raised by the respondent fall by the wayside in the light of the evidence and documentation issued by the applicant. All qualifying tenants are members of the RTM company. Ms Maria Alvarez is clearly involved in the company and was so prior to the issuing of the claim notice. All qualifying tenants have agreed to be members of the company and so this deals with the issue around notices of invitation. Finally, the Tribunal notes and accepts that the claim notice was served on all qualifying tenants.

Summary

12. Overall, the Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.
13. Therefore, in accordance with section 90(4) within three months after this determination becomes final the Applicant will acquire the right to manage these premises. According to section 84(7):

“(7) A determination on an application under subsection (3) becomes final—

(a) if not appealed against, at the end of the period for bringing an appeal, or

(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”

Costs

14. Section 88(3) of the Act states:

“(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an

application by the company for a determination that it is entitled to acquire the right to manage the premises.”

15. In the light of the Tribunal’s decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

Name: Judge Professor Robert
Abbey

Date: 6th August 2019

ANNEX

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

APPENDIX

Commonhold and Leasehold Reform Act 2002

78 Notice inviting participation

(1) 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 the qualifying tenant of a flat contained in the premises, but

(b) neither is nor has agreed to become a member of the RTM company.

(2) A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—

(a) state that the RTM company intends to acquire the right to manage the premises,

(b) state the names of the members of the RTM company,

(c) invite the recipients of the notice to become members of the company, and

(d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

(a) be accompanied by a copy of the articles of association of the RTM company, or

(b) include a statement about inspection and copying of the articles of association of the RTM company.

(5) A statement under subsection (4)(b) must—

(a) specify a place (in England or Wales) at which the articles of association may be inspected,

(b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,

(c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the articles of association may be ordered, and

(d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) 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.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

80 Contents of claim notice

(1) The claim notice must comply with the following requirements.

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both—

(a) the qualifying tenant of a flat contained in the premises, and

(b) a member of the RTM company,

and the address of his flat.

- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
- (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.