



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

Case reference : **LON/00AH/LRM/2019/0023**

Property : **18 Lancaster Road, London SE25
4AJ**

Applicant : **18 Lancaster RTM Company
Limited**

Representative : **Leasehold Doctors**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of application : **Right to manage**

Tribunal member(s) : **Judge Daley
Mr J Barlow FRICS JP**

Date of decision : **14 October 2019**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that Applicant RTM Company has acquired the Right to Manage pursuant to their claim notice dated 29 May 2019.
- (2) The Tribunal determines that the claim notice was properly served on the Respondent at its registered office address, and that it gave the Respondent the statutory one month in which to respond;
- (3) The Tribunal determines the notice of invitation to participate is valid for reasons which are set out below.

- (4) 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 18 Lancaster Road, London SE25 4AJ (“the premises”) under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The Respondent freeholder, Assethold Limited has served a counter-notice asserting that the Applicant RTM Company was not on the relevant date entitled to acquire the right to manage.
2. In their counter notice the Respondent disputed the claim alleging that the Applicant had failed to comply with Sections 78(1), 79 (2), 79 (8) and sections 80(8) and 80(9) of the Act.
3. Directions were given by the Tribunal on 21 August 2019 where the sole issue 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.

The law

4. The relevant provisions of the Act are referred to in the decision below.

The counter-notice

5. In its counter-notice, the Respondent raised a number of issues as set out in paragraph 2 above, however in their Statement of Case the Respondent’s rely upon two grounds that is a failure to comply with Section 78(1) that is that the RTM Company must give notice(Notice inviting participation) (“NIP”) to each person who is a qualifying tenant and 79(8) which requires a copy of the Claim Notice to be given to each person who on the relevant date is a qualifying tenant of a flat contained in the premises. Having considered the documents in the bundle, the tribunal has made the following decision.

The Facts

6. The Respondent in paragraph 7 of their statement of case, set out the grounds relied upon in disputing the claim. The Respondent states:-“7. The main point of contention for the Respondent is the Applicant’s failure to serve a NIP upon the correct qualifying tenants of Flat 5-

being ALEX HARDY WILLIAMS AND MARIA JOSE VILLAR QUIJANO. A copy of their registered title is enclosed ...The date of assignment was 3 May 2019.

7. In their Statement of Case, the Respondent further stated that the NIP was sent to Mr Norman Kenneth Parker, who was the predecessor in title, of flat 5. However the flat was sold on 3 May 2019. The Respondent stated that the new leaseholders of flat 5 were the qualifying tenants and that as they were not given a NIP and there is no evidence that they were served with a copy of the Claim Notice the “RTM company was prohibited by s 79(2) from giving a claim notice seeking to acquire the right to manage...” They further state that there is no saving provision for failure to validly serve a NIP as this does not constitute an inaccuracy.
8. The Respondent in their Statement of Case refers to the CA judgment in *Elim Court RTM Company Ltd –v-Avon Freeholds Ltd* [2017] EWCA Civ 89.
9. In reply the Applicant sets out that the NIP and the claim notice was served on Mr Norman Parker. However they relied upon information contained in the Land Registry which did not show the up dated position concerning the leaseholders’ title until 31 May 2019, after the claim date. The Applicant provided a copy of the Land Registry entry which confirms this.
10. On 20 June 2019 the Leaseholders of Flat 5 Mr Alex Williams and Ms Maria Jose Villar Quijano made an application to become members of the Right to Manage Company

The Tribunal's decision

11. The Tribunal in reaching its decision has decided that the Applicant was entitled to rely upon the information contained in the Land Registry as conclusive proof of who was the qualifying tenant up until the date when the entry was updated.
12. The Tribunal consider that this is an unusual situation in that it is clear that the Applicant could not have ascertained that there had been a change of leaseholder of flat 5, unless the Applicant had personal knowledge that the ownership of flat 5 had changed.
13. The Tribunal was assisted by *Elim Court RTM Company Ltd –v-Avon Freeholds Ltd* [2017] EWCA Civ 89. In particular paragraph 77 in which Lewison LJ stated :_ 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...” The Tribunal in reaching this decision has applied a purposeful approach to the legislation.

14. Taking into account all these factors, the Tribunal determines the notice of invitation to participate is valid.

Summary

15. 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.

16. 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

17. 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.”

18. 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 Daley

Date: 21 October 2019

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).