



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

Case Reference : **LON/00AY/LRM/2020/0019**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **Norwich House, 9-19 Streatham High Road, London SW16 1DG and 1DX**

Applicant : **Norwich House (Streatham) RTM Company Limited**

Representative : **Sterling Estate Management (Philip Sherreard)**

Respondent : **Sunbel Development Limited**

Representative : **Shakespeare Martineau LLP (Tara Godwin)**

Type of Application : **Application for determination of entitlement to acquire right to manage**

Tribunal Members : **Judge Robert Latham
Marina Krisco BSc FRICS**

Date of Determination : **20 January 2021**

DECISION

Description of hearing

This has been a remote hearing on the papers to which the parties have consented. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was agreed that all issues could be determined in a remote hearing. The documents to which we have been referred are in a series of electronic bundles, the contents of which we have noted.

Decision of the tribunal

The Tribunal determines that on the relevant date the Applicant was entitled to acquire the right to manage Norwich House, 9-19 Streatham High Road, London SW16 1DG and 1DX including the appurtenant property coloured green on the plan attached to the Claim Notice A pursuant to section 84(5)(a) of the Act. The Applicant will acquire such right within three months after this determination becomes final.

Introduction

1. On 8 July 2020, the Applicant sent to the tribunal an application pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that, on the relevant date, it was entitled to acquire the Right to Manage ("RTM") Norwich House, 9-19 Streatham High Road, London SW16 1DG and 1DX ("the Property"). The application bundle extended to 88 pages. It included the following:

(i) Four Claim Notices, dated 14 May 2020. These notices were served on behalf of the Applicant by Sterling Estates Management ("SEM"). There are two versions, "Claim Notice A" and "Claim Notice B". Claim Notice "A" claimed the RTM the Property and included not just the self-contained building but also the appurtenant property coloured green on the attached plan. Claim Notice B was served, without prejudice, should it be found that the Applicant was not entitled to claim the Right to Manage commercial premises. The Notices were served on both Sunbel Development Limited, the Respondent landlord, and Stilton Limited which has a head lease of the commercial units. The Applicant claimed the RTM from 28 September 2020. The Schedule specified the 56 leaseholders who are both qualifying tenants and members of the Applicant Company.

(ii) Four Counter Notices, dated 23 June 2020. Shakespeare Martineau LLP served these notices on behalf of both the Respondent and Stilton Limited. The Respondent contended that the Applicant had failed to establish compliance with section 78 (1) to (6), 79 (2) and 79(3) of the Act.

- (iii) A letter dated 3 July 2020, in which SEM respond to each of the points raised in the Counter Notices. The Respondent was invited to withdraw its Counter Notice, in default of which the Applicant would apply to this Tribunal
2. The Tribunal is only concerned with the Claim Notice A which SEM served on the Respondent.
 3. On 16 September, the Tribunal gave Directions:
 - (i) The Application Form and the documents enclosed therewith are to stand as the Applicant's Case.
 - (ii) On 9 October, the Respondent served its Statement in Reply to the application (8 pages). Their Bundle extends to 328 pages. Its main submissions relate to the proceedings which are pending in the County Court and its contention that SEM has been acting in breach of its fiduciary duty to it, by acting for the Applicant in its RTM application.
 - (iii) On 23 October, the Applicant served their Reply (13 pages). Their Bundle extends to 630 pages. It includes all the Notices of Invitation to Participate and Applications for Membership; the Memorandum and Articles of Association of the Applicant Company; the Register of Members and a letter from the Respondent Company directors.

Determination of the Preliminary Issue

4. On 27 October, the Respondent applied to the tribunal requesting a 'stay' of the proceedings and for an oral hearing at which its application could be heard. On 20 November, the tribunal agreed to list the Respondent's application for a video hearing and for it to be dealt with as a preliminary issue. On 2 December 2020, the Tribunal (Judge Korn and Stephen Mason FRICS) heard this application. Both parties were represented by Counsel, the Respondent by Leading Counsel. On 18 December, the tribunal issued its decision refusing a stay.
5. Originally, the Respondent had two grounds for applying for the stay. The first was that it did not yet have sufficient information from the Applicant to be in a position to deal with the substantive RTM application. By the time of the hearing, it accepted that it now had the relevant information. The second ground was that there are matters which need to be resolved in the county court, before this tribunal could determine the Applicant's RTM application. This application should be stayed, pending the determination of these proceedings. The Tribunal rejected this contention.
6. At the end of the hearing, the parties were invited to make proposals regarding further directions in this case. The Applicant contended that

if the application for a 'stay' was refused, the tribunal should proceed to make a determination that the Applicant is entitled to acquire the RTM on the relevant date. This contention was made on the basis that the Respondent had not raised any other issues. The Respondent submitted that it could not agree the RTM application whilst its 'stay' application was outstanding.

7. Having refused the application for the stay, the Tribunal gave further Directions for the determination of the RTM application:

- (i) The tribunal would make a final determination on the RTM application during the week beginning 18 January 2021 on the basis of the existing written representations. Both parties had indicated that they are content for the matter to proceed without a hearing.

- (ii) If either party changed its mind and decided that it wanted an oral hearing, that party was directed to inform the tribunal in writing as soon as possible. The Tribunal noted that it did not consider an oral hearing to be necessary. Neither party has requested an oral hearing.

- (iii) The Respondent was invited to consider whether it still wished to challenge the Applicant's entitlement to acquire the RTM. The Respondent has not accepted this invitation.

- (iv) The parties were directed to liaise with the Case Officer to ensure that the tribunal has all the papers needed for its determination. Neither party has asked the tribunal to consider any additional documentation. We are satisfied that we have all the documents required to determine the application. The electronic bundles exceed 1,070 pages.

Our Determination

8. We are satisfied that the Applicant was entitled to acquire RTM the Property on the relevant date pursuant to section 84(5)(a) of the Act. The Applicant will acquire such right within three months after this determination becomes final.

9. In its Counter Notice, the Respondent disputed the RTM on the following grounds:

- (i) The Applicant failed to serve on the Respondent all the relevant Notices Inviting Participation and evidence that it has complied with the procedures specified in section 78 (1) to (6) of the Act. The Applicant responded that it was under no obligation to do so. However. It has now provided all the relevant material.

- (ii) The Applicant had failed to comply with section 73(2), 78 and/or 79 (1), (2) and/or (3) because SEM was acting in breach of its fiduciary duties towards the Respondent and owed a continuing duty of confidentiality. This contention was rejected by the Tribunal in its determination of the preliminary issue. It found that any contractual relationship between the Respondent and SEM had determined before the Claim Notices were served. The Applicant has made a number of additional points in response: (a) Section 73(2) – the establishment of the RTM Company is a purely formal step; (b) Section 78 – the giving of the Notice inviting participation is again a formal step which has been satisfied; (c) Section 79 (1) to (3) – the Claim Notice has been properly served.
10. The Respondent's Statement in Reply largely relates to the issues determined in the determination of the preliminary issue. It addresses the background to the litigation in the Central London County Court between the Respondent and a number of associated companies and SEM.
11. In its Reply, the Applicant notes that the Respondent has failed to raise any substantive grounds for contending that the Applicant has failed to following the procedures required by the Act. At no point in its Statement in Reply has the Respondent asserted that the Claim Notices were invalid or that the Applicant is not entitled to acquire the RTM. This Tribunal agrees. We have been provided with a mass of documentation. This satisfies us that the Applicant has followed the specified procedures and is entitled to acquire the RTM.
12. The Respondent has criticised SEM, its former managing agents, for acting for the Applicant in these proceedings. When the Applicant RTM Company acquire the right to manage, it will have a complete discretion as to whom it appoints to manage the block.

Judge Robert Latham
20 January 2021

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason

for not complying with the 28 day time limit; the tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- D. 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.