



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

Case reference : **LON/00AU/LRM/2021/0001**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **131 Petherton Road, London N5 2RS**

Applicant : **131 Petherton Road RTM Company Limited**

Representative : **RTMF Services Limited**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of application : **Right to manage**

Tribunal members : **Judge N Rushton QC
Mr S Johnson MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **19 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 128 pages, the contents of which we have noted.

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.
- (2) The Tribunal orders under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent shall reimburse to the Applicant the application fee of £100 within 28 days of the date this Decision is received by the parties.

The application

1. This was an application to acquire the right to manage 131 Petherton Road, London N5 2RS ("**the premises**") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("**the Act**").
2. The premises comprise 5 flats held on long leases. HM Land Registry entries within the bundle record that the leaseholders of those flats ("**the Tenants**") were at all material times:
 - (i) Flat 1 – Katherine Anglea Ekers and Nicholas Edward Jones;
 - (ii) Flat 2 – Michael Sean Burnham;
 - (iii) Flat 3 – Alexandros Foutris;
 - (iv) Flat 4 – Russell George Kilikita;
 - (v) Flat 5 – Wing-Hei Choi and Wing-Yin Choi.
3. There is no dispute that the Tenants are all qualifying tenants within s.75 of the Act.
4. The Applicant served a claim notice on 27 October 2020 on all the Tenants, at the five flats, and on the Respondent. It has produced a bulk

certificate of posting confirming the same. Subject to any issues as to the validity of the notice, the relevant date for the purposes of s.79(1) of the Act is therefore 27 October 2020.

5. The claim notice stated that all of the Tenants were both qualifying tenants and members of the Applicant Company. The notice also provided details of their addresses and leases.
6. The Respondent freeholder has served a counter-notice dated 2 December 2020 asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.
7. The Applicant issued an application on 5 January 2021 for a determination pursuant to section 84(3) of the Act that on the relevant date it was entitled to acquire the Right to Manage.
8. Directions were issued by Judge Hamilton-Farey on 18 February 2021, which have essentially been complied with by the parties.

The law

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

The counter-notice

10. In its counter-notice, the Respondent contended (without further particulars) that the claim notice did not correctly provide the information required by section 80(3) of the Act. Having considered the documents in the bundle, the tribunal has made the following decision.

Respondent's objections

11. In its statement of case of 26 March 2021 the Respondent has asserted that documents produced by the Applicant in correspondence "raise a case to answer" as to whether parties have been correctly included as members of the Applicant company.
12. It objects that even though the Applicant has produced a copy of the register of members held at the company register office which names all of the Tenants and has been signed on behalf of the company secretary, documentation produced by the Applicant does not evidence that (with the exception of Mr Russell Kilikita, flat 4) the correct application process for membership was followed. The Respondent does acknowledge that the register is prima facie evidence of membership.

13. The Respondent's objection is based on the fact that the copies of the forms by which the tenants of flats 1, 3 and 5 consented to become members were completed digitally, whereas Mr Kilikita completed and signed a paper form. Copies of all the forms are in the bundle. The digital forms did not include a signature box. The name, address and email boxes were completed, although the date of birth and nationality boxes were not. In addition, in relation to flat 5, only one of the co-owners, Wing-Hei Choi, was named.
14. The Respondent also complains that the tenants (apart from Mr Burnham) did not follow the process for applying to become members set out in the Articles of Association of the Applicant.
15. Consequently the Respondent also objects that the claim notice may incorrectly name persons as members, contrary to s.80(3) of the Act.

The Tribunal's decision

16. There is no dispute that Mr Burnham (flat 2) was an original subscriber to the Applicant company. Accordingly, by section 112(1) of the Companies Act 2006 ("**the 2006 Act**") he was deemed to have become a member upon its incorporation on 12 September 2020.
17. In its statement of case of 8 April 2021 the Applicant states that a certified copy of the register of members was provided to the Respondent's solicitors on 12 November 2020. A copy has been produced to the Tribunal. This recorded all of the Tenants as being members. They were all entered as such on 16 September 2020, save for Mr Kilikita who was entered on 27 October 2020.
18. By section 127 of the 2006 Act the register is prima facie evidence of any matter directed or authorised to be included in it, which includes the identity of its members and the dates they joined.
19. In a witness statement dated 6 April 2021 Mr Burnham, who is a director of the Applicant, confirms that all of the other tenants applied for membership of the Applicant in a form approved by the directors, pursuant to Article 26(1) of the Applicant's Articles. Article 26 provides that a person may apply to become a member in any form which the directors approve.
20. The tribunal accordingly accepts that the other tenants applied to become members of the Applicant in a form approved by its directors, and so became members. It concludes therefore that the prima facie evidence of the register has not been displaced by any other evidence.
21. As to Wing-Yin Choi, the Tribunal notes that it has a witness statement from Wing-Hei Choi stating that the consent which she gave was also

given on behalf of her sister Wing-Yin Choi, but no statement or other evidence has been provided by Wing-Yin Choi confirming this, as the Respondent points out in its Statement in Reply of 20 April 2021. However, the digital consent form completed by Wing-Hei Choi states *“I have consulted all other joint owners of my flat (if applicable) and they all consent to the terms of the consent form”*.

22. In the absence of any positive evidence to the contrary, the Tribunal therefore accepts the register of members as prima facie evidence that Wing-Yin Choi is also a member of the Applicant company.
23. The Tribunal accordingly concludes that the claim notice correctly stated the full names of all persons who were both qualifying tenants and member of the Applicant company.
24. In any event, insofar as the claim notice inaccurately included any person who was not in fact a qualifying tenant and member, by s.81(1) this will not have invalidated the claim notice.
25. On the relevant date the membership of the Applicant accordingly included a number of qualifying tenants which was not less than one half of the total number of flats in the premises, as required by s.79(5) of the Act.

Summary

26. Accordingly, 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.
27. 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

28. 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.”

29. 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.
30. In its Statement of Case, the Applicant has applied for the reimbursement of the application fee of £100 and any hearing fee of £200, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
31. The Tribunal considers that the Respondent should reasonably have been satisfied upon receipt of the signed copy of the register of members on 12 November 2020 that all of the Tenants were members of the Applicant and so the claim notice was valid. In any event, the Respondent was or ought to have been aware of the effect of s.81(1) in relation to any inaccuracy in the particulars in the claim notice. It considers therefore that the Respondent did not act reasonably in serving a counter-notice challenging the validity of the claim notice on the grounds that it did.
32. Accordingly the Tribunal orders that the Respondent shall reimburse the Applicant the application fee of £100. Since the matter was determined on paper, no hearing fee was payable.

Name: Judge N Rushton QC

Date: 19 May 2021

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).