



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

**Case Reference** : **MAN/OOBY/LRM/2021/0007**

**Property** : **53 Rossett Road, Crosby, Liverpool, L23 3AN**

**Applicant** : **53 Rossett Road Crosby Management  
Company Limited**

**Respondent** : **Ground Rent Trading (Liverpool) Limited**

**Type of Application** : **under s.84(3) and s.88(4) of the Commonhold  
and Leasehold Reform Act 2002**

**Tribunal Members** : **Judge P Forster  
Mr C R Snowball MRICS**

**Date of Decision** : **19 July 2022**

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**DECISION**

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## **Decision**

The Applicant does not have the right to manage 53 Rossett Road, Crosby, Liverpool, L23 3AN.

## **Introduction**

1. This is an application by 53 Rossett Road Crosby Management Company Limited (“the Applicant”) for a determination under s.84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that it is entitled to acquire the right to manage the property known as 53 Rossett Road, Crosby, Liverpool, L23 3AN (“the Property”).
2. The landlord, Ground Rent Trading (Liverpool) Ltd. (“the Respondent”) contends that the Applicant is not so entitled because of alleged defects in the claim notice.
3. Pursuant to directions given by the Tribunal the parties submitted statements of case and the documents on which they sought to rely. The hearing was held by video on 19 July 2022. The Applicant was represented by Mr Devine and the Respondent by Mr Simon.

## **The Respondent’s case**

4. The Respondent’s case as set out in its statement of case is that when the Applicant was incorporated on 5 May 2021 it adopted standard articles of association for a private company limited by guarantee. These are not the articles prescribed by the RTM Companies (Model Articles) (England) Regulations 2009. The Respondent submits that when the Applicant claimed the right to manage the Property it was not a properly constituted right to manage company and did not meet the requirements of s.73(2) of the Commonhold and Leasehold Reform Act 2002.
5. Further, the Applicant only had one director when the minimum number was two as provided by article 11 of the Applicant’s articles of association.

## **The Applicant’s case**

6. The Applicant’s case in response to the Respondent’s submissions is that by a special resolution it adopted the prescribed model articles at a general meeting thus complying with s.73(2) of the Act. Notice of the resolution and a copy of the new articles of association were sent to Companies House. At the time of the notice of claim, the Appellant was a properly constituted right to manage company.
7. There are two directors of the Appellant company, both called Michael John Devine, but born in 1953 and 1986 respectively.

## **The Law**

8. The relevant law is set out in Part 2, Chapter 1 of the Act and is not repeated here.

## **DECISION**

9 . On the evidence, the Tribunal finds that after the Applicant acquired the leasehold interest in Flat 1 there was some form of consultation with the other leaseholders about acquiring the right to manage the Property. The Tribunal has not seen the invitation notices nor is it directly concerned with whether the Applicant complied with the statutory requirements in s.78 of the Act and with the Right to Manage (prescribed Particulars and Forms) (England) Regulations 2010. However, it is clear on the evidence that the invitation process, in whatever form it took, was carried out before the Applicant was incorporated. S.78 of the Act provides that it is the RTM company that must give notice inviting participation before it makes a claim. Mr Devine said that the company was formed after it was established that there was sufficient interest to proceed.

10. The issue about the number of directors is resolved by the Applicant's explanation that there are two directors both called Michael John Devine.

11. The Applicant's evidence is that after the Company was incorporated on 5 May 2021, Mr Devine junior was appointed as a director on 8 June 2021 and the articles of association were changed by a special resolution on 9 June 2021. The Applicant only provided relevant dates at the hearing in response to questions from the Respondent and the Tribunal.

12. The original articles of association required fourteen days' notice to be given of a general meeting. Mr Devine's evidence is that he gave oral notice and put a copy of a written notice on a noticeboard on 9 June 2021 the same day as the special resolution was passed to adopt the new articles of association. The process adopted was clearly flawed and invalidates the resolution.

13. There is some doubt about the date when it is claimed that the new articles were adopted. Although Mr Devine claims that a copy of the special resolution and the new articles were sent to Companies House immediately after 9 June 2021, the articles were not registered at Companies House until 5 July 2022. The Tribunal does not accept Mr Devine's claim in the absence of documentary evidence that they were mislaid by Companies House and had to be resent in July 2022.

14. The version of the articles of association registered at Companies House are defective. They cite the Companies Acts 1985 and 1989 and not the Companies Act 2006, important particulars such as the registered office address and the Applicant's name in the interpretation clause are left blank.

15. The Tribunal finds that the Applicant did not meet the requirements of s.73(2) of the 2002 Act because its articles of association were not in the prescribed form as required by the 2009 Regulations.

#### Costs

16. Under s.88 of the Act, a right to manage company is liable for the reasonable costs incurred by a landlord or others engaged in the process in consequence of a claim notice. This applies in the present case. The Applicant put itself in the position where there could be challenges to the procedures.
17. Costs incurred by the Respondent in these proceedings must have been reasonably incurred and fall to be recovered from the Applicant under s.88.
18. The Respondent wishes to claim its costs from the Applicant. By 4pm on 9 September 2022, the Respondent should submit a detailed claim for costs and by 4pm on 30 September 2022 the Applicant should file its response. The Tribunal will then consider whether to make an order for costs and if so in what amount.

**Judge P Forster**

**19 July 2022**

### RIGHT OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.