



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

Case reference : **LON/00AU/LRM/2022/0030**

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

Property : **478–482 Hornsey Road, London N19 4EF**

Applicant : **478-482 Hornsey Road (RTM Company) Limited**

Representative : **The Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of application : **In relation to the denial of the right to manage**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb**

Venue : **Remote**

Date of decision : **15 November 2022**

DECISION

Covid-19 pandemic: description of hearing: This has been a remote paper hearing {P: Paper Remote}, which had not been objected to by the parties. The documents the Tribunal referred to are in a single bundle comprising 217-pages submitted jointly by the parties.

Determination

1. The Tribunal has determined the right to manage Claim Notice served on the Freeholder on 28th April 2022 is valid.
2. The application fee paid to Tribunal amounting to £100 be reimbursed by the Respondent within 28 days of the date of this decision.

Application

3. This is an application relating to a right to manage Claim Notice served pursuant to Chapter 1, Commonhold & Leasehold Reform Act 2002 (**'the 2002 Act'**) seeking rights to manage 478-482 Hornsey Road, London N19 4EF (**"the Property"**).

Background

4. The Applicant, the *478-482 Hornsey Road (RTM Company) Limited* (**'RTM Company'**) made an application dated 15 July 2022 to seek a determination that on the relevant date, the RTM Company was entitled to acquire the right to manage the Property.
 5. The Property comprises a recently constructed block of twelve self-contained apartments each sold on long leases.
 6. The RTM Company issued a Notice of Invitation (NOI) to Qualifying Tenants to participate in the RTM Company, dated 15 December 2021. The RTM Company issued a Notice of Claim dated 28 April 2022 on Assethold Limited (**'the Respondent'**). Appended to the Notice of Claim were copies of the Memorandum & Articles of Association and Certificate of Incorporation of the RTM Company.
 7. The Freeholder's agent served a Counter Notice dated 1 June 2022. This alleged the Notice served by the RTM Company was invalid, because:
 - i. The RTM Company had not given notice of the claim to acquire the right to manage the property on each qualifying person as required by the Act.
 - ii. The Notice of Invitation to participate was not given to each qualified tenant as required by the Act.
 8. The RTM Company made an application to the Tribunal on 15 July 2022 for this matter to be Determined.
 9. Directions dated 2 August 2022 were issued by the Tribunal. These identified a single issue to be decided, namely, whether on the date on which the Notice of Claim was served the RTM Company was entitled to acquire the right to manage the premises specified in the Notice.
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10. The Directions identify failures alleged in section 78(1) of the 2002 Act.

Legislation

The relevant legislation is as follows:

Commonhold and Leasehold Reform Act 2002

Section 78(1):

(1) Before making a claim to acquire the right to manage any premises an 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.

Section 79(2):

(2) The claim 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.

The Facts

11. The issue is whether a Notice of Invitation ('NOI') to participate in the right to manage company was given to one of the two joint registered proprietors of the leasehold interest in flats 10-12. These are shown as Selcroft Trustees Limited and Selcroft Limited. There is no dispute that Selcroft Limited was given a jointly addressed NOI.
 12. The Tribunal are told that Selcroft Trust Limited and Selcroft Limited are Associated Companies. The evidence submitted to the Tribunal confirm they have the same registered office which is Anglo Dal House, Edgware and the same sole Director Mr Meir Posen.
 13. Mr Meir Posen is also the person declared as the individual with significant control of both companies in the Companies House register.
 14. It is accepted by both parties that the NOI was jointly addressed to Selcroft Trustees Limited and Selcroft Limited at the registered office, Anglo Dal House. The Respondent points the Tribunal to the failure of the Applicant to address the covering letter included with the NOI to Selcroft Trustee Limited at the registered address.
 15. It is the contention of Assethold that for this reason the joint registered proprietor Selcroft Trustees Limited did not receive a copy of the NOI. They claim
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this was a fatal error in the statutory process as defined in section 78(1) and 79(2) of the 2002 Act.

16. The Respondents say in their statement of reply that there is no evidence provided to support the assumption that the NOI was given to Selcroft Trustees Limited. They emphasise the burden of proof of delivery rests with the Applicant.
17. The Applicant's rely on the close association of Selcroft Limited and Selcroft Trustees Limited to justify their assertion that both registered proprietors were aware of the notice of invitation to take part in the right to manage application.
18. They also emphasise that the sole Director Mr Meir Posen is known to the Respondent and may have association with other properties held by the freeholder.
19. They claim there is overwhelming evidence that the NOI given by Recorded Delivery to Selcroft Limited was received by Selcroft Trustees Limited and that the RTM Company has duly acquired the right to manage.

Discussion and conclusion

20. The Tribunal notes that it is agreed between the parties that a jointly addressed NOI was delivered to Selcroft Limited by recorded delivery. The applicant acknowledges that the covering letter sent with the jointly addressed NOI was not addressed to Selcroft Trustees Limited only to Selcroft Limited. The Respondent argues this failure to jointly address the covering letter invalidates the claim procedure because a qualifying tenant was not advised of the RTM claim and they were not given the NOI.
 21. Having considered the submissions there is much evidence provided to Tribunal of an association between Selcroft Limited and Selcroft Trustees Limited. There is prima facie evidence that the person with significant control of both companies is Mr Meir Posen. They have the same registered office. Mr Posen is the person named as the individual with a controlling interest in the Companies at Companies House.
 22. It is not disputed that Mr Posen, the sole Director of both Selcroft Limited and Selcroft Trustees Limited received a copy of the NOI. Any reasonable and diligent person would identify on reading the NOI delivered by registered post to Selcroft Limited was jointly addressed to Selcroft Trustees Limited. The Tribunal note that there is no witness statement from Mr Posen that tells them he did not receive the NOI or he did not understand on receipt of the NOI it was being given to both registered proprietors under a single covering letter.
 23. The Tribunal note the comments made by the Respondent about the burden of proof of delivery but in these particular circumstances they conclude that on the balance of probabilities the jointly addressed NOI was given to the relevant parties in accordance with the statutory procedure through the delivery of the covering letter to Selcroft Limited.
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24. It is for this reason that the Tribunal conclude that the failure to jointly address a covering letter to Selcroft Limited and Selcroft Trustees Limited is not a fatal flaw in the statutory procedure. They conclude that the RTM Company satisfy the requirements of Section 78(1) and 78(2) and the Tribunal therefore determines the Notice is valid.

Costs

25. In its application, the Applicant applies for a refund of the fees of £100 that he had paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In the light of our decision, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

Name: Ian Holdsworth **Date:** 15 November 2022
Valuer Chairman

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).

ANNEX – RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.