



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

Case reference : **LON/00BJ/LRM/2022/0044**

HMCTS : **P: PAPER REMOTE**

Property : **Radius Development, North Side of
Osiers Road, Wandsworth,
London, SW18**

Applicant : **Radius RTM Co Ltd**

Representative : **Bretherton LLP**

Respondent : **Gateway Property Management Ltd**

Representative : **Wallace LLP**

Type of application : **Right to manage**

Tribunal member : **Judge Robert Latham**

**Date and Venue of
Hearing** : **20 February 2023 at
10 Alfred Place, WC1E 7LR**

Date of decision : **20 February 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected 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 in a remote hearing. Neither party requested an oral hearing. The Applicant has provided a Bundle of Documents which extends to 293 pages.

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant complied with the statutory requirement to serve a Notice to Claim a Right to Acquire the Right to Manage as required by section 78 of the Commonhold and Leasehold Reform Act 2002.
- (2) The Tribunal determines that on 2 January 2023, the Applicant was 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.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 25 October 2022, the Applicant issued this application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage ("RTM") in relation to premises known as Radius Development, North Side of Osiers Road, Wandsworth, London, SW18 ("the Premises"). The Premises are defined as "The Radius Development, which is located on the north side of Osiers Road, London, SW18, including (but not limited to) various flats and commercial units located at 5, 7, 23-31 (odd and inclusive) Osiers Road and 1-7 (inclusive) Knightly Walk, London SW18, and the carpark and plantroom at basement level".
2. By a Claim Notice, dated 30 August 2022, the Applicant gave notice that it intended to acquire the Right to Manage the Premises on 2 January 2023.
3. By a Counter Notice, dated 30 September 2022, the Respondent freeholder disputed the claim, alleging that the Applicant "was not entitled to acquire the Right to Manage the Premises specified in the Claim Notice because each person required to be given a notice inviting participation had not been given such a notice at least 14 days before 31st August 2022".
4. On 23 June 2021, the Tribunal gave Directions. The Procedural Judge identified the issue to be decided, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage ("RTM") of the premises. The Judge was satisfied that this matter could be determined on the papers. Neither party has requested an oral hearing. The Judge directed that the application form

and the supporting documentation should stand as the Applicant's Statement of Case.

5. Pursuant to the Directions, the parties have filed the following:
 - (i) The Respondent's Statement of Case, drafted by Mr Simon Serota, a partner in Wallace LLP (at p.104-107).
 - (ii) The Applicant's Reply drafted by Mr Anthony Radevsky, Counsel (at p.285-291).
 - (iii) A Bundle of Documents (291 pages).
6. In its Statement of Case, the Respondent opposes the RTM application on the following ground:

"Those qualifying tenants who applied for membership prior to the amendment of the Applicant's Articles are not to be regarded as persons who had agreed to become members of the Applicant and accordingly are qualifying tenants to whom Notice Inviting Participation should have been given".

The Law

7. Chapter 1 of Part 2 of the 2002 Act provides for an RTM company to acquire the right to manage premises to which the Chapter applies if the following conditions are satisfied:
 - (i) The premises must be a self-contained building or part of a building, with or without appurtenant property which contains two or more flats held by qualifying tenants (section 72).
 - (ii) The RTM company must be a company limited by guarantee whose objects include the acquisition and exercise of the right to manage the premises in question (section 73(2)).
 - (iii) At the date of service of the claim notice the members of the RTM company must be at least two in number and must be qualifying tenants of at least half of the flats in the premises (section 79(4)-(5)).
 - (iv) At least 14 days before serving the claim notice the RTM company must have served a notice of invitation to participate on all qualifying tenants who are not members of the RTM company and have not agreed to become a member (section 78(1)).
 - (v) A claim notice must be served on the landlord under a lease of the whole or part of the premises, any third party to such a lease, and any appointed manager (section 79(6)).

(vi) By section 84(1) a person who receives a claim notice may give a counter notice disputing the RTM company's entitlement to acquire the right to manage the premises.

8. Section 78 provides (emphasis added):

"8 Notice inviting participation

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

(2) A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—

(a) state that the RTM company intends to acquire the right to manage the premises,

(b) state the names of the members of the RTM company,

(c) invite the recipients of the notice to become members of the company, and

(d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

(a) be accompanied by a copy of the articles of association of the RTM company, or

(b) include a statement about inspection and copying of the articles of association of the RTM company.

(5) A statement under subsection (4)(b) must—

(a) specify a place (in England or Wales) at which the articles of association may be inspected,

(b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,

(c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the articles of association may be ordered, and

(d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section."

The Facts

9. On 18 December 2021, the Applicant RTM Company was incorporated (p.10). Three of the qualifying tenants were subscribers of the RTM Company (p.108-110). Between April and May 2022, 76 further qualifying tenants applied to be members of the RTM Company (see p.87-176). However, they were not registered as members of the RTM Company until 26 July 2002.

10. On 15 July 2022, a Special Resolution was passed to amend the Articles of Association. The amendment related to the definition of "the Premises".

11. In the original articles, the Premises were defined as:

"the premises known as The Radius Development (Land on the North side of Osiers Road and also, known as 3, 5 and 6 Knightley Walk and 5 and, 23 Osiers Road), London, SW18 1HD), United Kingdom".

12. The amended articles read:

"the premises known as The Radius Development, which is located on the north side of Osiers Road, London SW18, including (but not limited to) various flats and commercial units located at 5, 7, 23-31 (odd and inclusive) Osiers Road and 1-7 (inclusive) Knightley Walk, London, SW18 1HD, and the carpark and plant room at basement level".

13. The Claim Notice was served on 30 August 2022. The Premises includes 161 flats. The Claim Notice gave details of the 88 qualifying tenants who were members of the RTM Company. The Claim Notice defines the Premises in respect of which the RTM is claimed as:

"Radius Development, which is located on the north side of Osiers Road, London SW18, including (but not limited to) various flats and commercial units located at 5, 7, 23-31 (odd and inclusive) Osiers Road and 1-7 (inclusive) Knightley Walk, London, SW18 1HD, and the carpark and plant room at basement level which premises is shown red on the attached plan and includes so much of those areas shown coloured green and so much of the ramp down shown coloured green and cross hatched black as form part of the structure of the premises, together with appurtenant property shown coloured green on the plan (including , but not limited to, the forecourt and garden area, but excluding any part of the structure of the premises".

14. The Register of Members was drawn up on 25 July 2022, shortly before the Notices Inviting Participation were given. The Applicant gave Notices Inviting Participation on all the qualifying tenants who had not been registered as members of the RTM Company.

The Tribunal's Determination

15. The Respondent opposes the RTM application on the following ground:

"Those qualifying tenants who applied for membership prior to the amendment of the Applicant's Articles are not to be regarded as persons who had agreed to become members of the Applicant and accordingly are qualifying tenants to whom Notice Inviting Participation should have been given".

16. The Respondent notes that any amendment to a Company's Articles is a serious matter requiring a special resolution. The application for membership of the Applicant company states a wish on the part of the qualifying tenant to become a member of the Company "Subject to the provisions of the Articles of Association of the Company". The Respondent argues that the Company of which those qualifying tenants had applied for membership, had different objects and different Articles of Association to the Company which gave the Claim Notice. Those qualifying tenants who had applied for membership of the Applicant were unaware of the amendment to the Articles and accordingly cannot be regarded as persons who had agreed to become members of the Company which gave the Claim Notice and those qualifying tenants should have been given Notice Inviting Participation as required by section 78 of the Act.

17. The Applicant contends that the fallacy of the Respondent's argument is its statement that The Company of which those qualifying tenants had applied for membership, had different objects and different Articles of Association to the Company which gave the Claim Notice. This suggests that they are different companies. They are not. The fact that there has been a small alteration to the Articles is immaterial. Its objects are the same.
18. The Tribunal agrees with the Applicant. the Articles prescribed for RTM Companies leave only three matters capable of variation, namely the name of the Company, its Registered Office and the definition of the premises in respect of which the Company seeks to acquire the RTM. At all material times, there has been only one legal entity, namely "Radius RTM Co Ltd".
19. Between April and May 2022, 76 qualifying tenants had applied to be members of Radius RTM Co Ltd, On 25 July 2022, these 76 tenants were registered as members of Radius RTM Co Ltd. On 30 August 2022, the Applicant served its Claim Notice. By this date, these 76 qualifying tenants had become members of Radius RTM Co Ltd. By section 78(1) of the Act, there was no requirement for the Applicant to have given them a Notice Inviting Participation as they were members of the RTM Company.
20. The Tribunal does not consider the amendment to the Articles to be material. The critical issue in any RTM Claim is how the premises are defined in the Claim Notice. At this date it is essential that all the qualifying tenants must either (a) be or agreed to be a member of the RTM Company or (b) have received a Notice inviting Participation.
21. The Tribunal does not consider that there was any defect in the procedure. However, if I am wrong on this, any defect was minor and would not invalidate the claim. The Applicant relies on *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] QB 571. The Court of Appeal noted that the Government's policy was that the RTM procedures should be as simple as possible to reduce the potential for challenge by obstructive landlords on purely technical grounds and that the legislation should be construed having regard to this legislative intent. Lewison LJ stated (at [65]):

"It might also be questioned what difference it makes to the landlord (who is the only person objecting) whether or not a potential member of the RTM company has or has not had the opportunity to inspect the articles of association provided that, when the claim notice was served, there were in fact sufficient qualifying tenants who were members of the RTM company to make it eligible to claim the right to manage. Section 81(2) of the Act gives a steer in that direction. It is quite unrealistic to view a landlord who fiercely resists the acquisition of the right to

manage as being in some way the guardian angel of the qualifying tenants."

22. There is no suggestion that any of the qualifying tenants have been misled or that they no longer wish to participate in the RTM. The Respondent is seeking to set itself up as a guardian angel of the qualifying tenants, merely to defeat their RTM claim.

Costs

23. 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.

Conclusion

24. 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.
25. 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.”

Judge Robert Latham
20 February 2023

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).