



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

Case Reference : **LON/00BH/LRM/2022/0042**

HMCTS : **V: CVPREMOTE**

Property : **1-9 Planetree Path, London , E17 7FW**

Applicants : **1-9 Planetree Path RTM Company Limited**

Respondent : **Helpfavour Limited**

Type of Application : **Application to determine Right to Acquire**

Tribunal Members : **Judge Shepherd
Christopher Gowman MCIEH**

Date of Decision : **18th May 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 V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

1. This is an application relating to No Fault Right to Manage. The Application is made pursuant to Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (The Act) and specifically s.84(3) seeking a determination from the Tribunal that on the relevant date the RTM company was entitled to acquire the Right to Manage. The Applicants are 1-9 Planetree Path RTM Company Limited (“The Applicants”), their representative was Paul Cleaver of Urang Property Management Limited. The Application relates to premises at 1-9 Planetree Path, Walthamstow, London (“The premises”). The freeholder of the premises is Helpfavour Limited (“The Respondents”) who were represented by Benjamin Hammond of Compton Group.
2. The Applicants were incorporated under the Companies Act 2006 on 12th April 2022. A claim notice pursuant to s.84 of the Act was sent to the Respondents dated 8th July 2022. In the notice the Applicants claim the Right to Manage. In the claim notice the leaseholders named who are both qualifying tenants and members of the Company are:

Benjamin Dallas- Flat 1

Anna Milne – Flat 2

Kieran Olden and Louise Jobard- Flat 5

Mert Gurten- Flat 7

Onwate Dagogo – Flat 8

William Black and Peter Lockwood – Flat 9

3. On 11th August 2022 the Respondents served a counternotice denying the Right to Manage relying particularly on a failure to comply with s.78(1) of the Act and s.79(5) of the Act.

The Respondents objections

4. The Respondents' argument was that on 8th July 2022, the date when the claim notice was given ("the relevant date") the membership of the Applicant company did not include qualifying tenants of flats in the premises who held half or more than half of the total number of flats in the premises. This is a requirement of the Act.
5. A qualifying tenant is a tenant of the flat under a long lease – s.75(2) of the Act. If there are joint tenants they are jointly the qualifying tenant. To be a qualifying tenant the person must be registered as the proprietor of the Flat so that the legal estate has vested in them pursuant to s.58(1) of the Land Registration Act 2002.
6. Section 79(5) of the Act requires that at the relevant date the RTM company must include a number of qualifying tenants contained in the premises which is not less than half of the total number of flats.
7. Under the RTM Companies (Model Articles) (England) Regulations 2009 ("The Regulations") Art 26 every person who is entitled to and who wishes to become a member of the company is required to make an application in the prescribed form or *as near as circumstances allow*. The directors then having been satisfied as to a person's application will register that person as a member of the company. The regulations require directors to take decisions collectively

either by a majority at a meeting (unless there is only one director) or unanimously when there is a common agreed view (Arts 12 and 13).

8. As identified above when the company was incorporated there were five members. Ordinarily all would have become members of the company by virtue of the incorporation pursuant to s 112(1) of the Companies Act 2006. The Respondents say however that neither Mr Dallas nor Mr Lockwood were qualifying tenants at the incorporation date so their membership of the company ceased with immediate effect by operation of Art 27(1) of the regulations which states that a member who is not a qualifying tenant ceases to be a member of the company. In addition, the Respondents complain that the register of members was inaccurate.
9. The Respondents say that at the relevant date Mr Dallas was not the registered owner of his premises and was therefore not a qualifying tenant, neither by the operation of Art 27(1) was he a member of the company. – see *Orchard Court RTM Company Limited v Hexagon Property Company Limited* (LON/00BH/LRM/2014/0023) and *90 Markhouse Road RTM Company Limited v Assethold Limited* (LON/00BH/LRM/2022/0015).
10. Mr Olden and Ms Jobard completed an application for membership of the company on 18th May 2022. The register records then as admitted to membership on the same day. The Respondents challenge the fact that there is no record of the decisions made to admit them to membership. They also challenge generally the form of the applications which were not in accordance with the prescribed form.
11. Mr Lockwood and Mr Black applied to become members of the company according to the records on a date before the company was incorporated. The Respondents say there was no legal person to which an application could be made.

12. The Respondents accept that the remaining leaseholders, Ms Milne, Mr Gurten and Mr Dagogo were qualifying tenants and members of the company on the relevant date but together they represented fewer than half of the nine flats and s79(5) of the Act was not satisfied at the relevant date.

13. Mr Hammond for the Respondents stressed that his challenge was not simply to disrupt the Right to Manage. Indeed he had offered his assistance to the Applicants in ensuring they got things right in the future – see email dated 6th February 2023. The Respondent was concerned about the company's capacity to obtain insurance, the risk of the Respondent having to cover for an invalid RTM company and the importance of complying with fire safety requirements under the Building Safety Act 2022 which amongst other things designates liability for the cost of major works.

14. In response to these challenges the Applicants counter that all of the applications were made in accordance or close to accordance with the regulations and the applications were approved by the directors of the company. Mr Dallas had satisfied the directors with his ownership of the premises even though it had not been registered at the relevant time. The delay being blamed on the Land Register backlog.

The hearing

15. Originally this matter was to be dealt with on the papers. Mr Hammond requested a hearing on 8th December 2022. In an email dated 27th January 2023 he asked Paul Cleaver if Mr Dagogo was attending the hearing on 5th April 2023 as he wanted to cross examine him. The reason Mr Dagogo was specifically mentioned was because he signed a letter stating the following:

I reviewed the four Register of Members on behalf of 1-9 Plantree Path RTM Company Limited. I can confirm that these are the approved memberships that the Directors agreed to add to the Register of Members.

16. Mr Cleaver represented the Applicants and Mr Hammond the Respondents. Mr Hammond said there was no evidence of any board meetings to admit membership. In relation to Mr Dallas he said that legal vesting did not take place until it was recorded on the Land Register. He rehearsed his other arguments which are outlined above. He said Mr Cleaver was the Company Secretary and there was no evidence that decision making complied with the Companies Act 2006.

17. Mr Dagogo was asked by the Tribunal if he was willing to answer questions. He said he was and Mr Hammond asked him a series of questions. In the event his evidence did not add to what the Tribunal already knew. Namely that there was no evidence of formal meetings to appoint members. Mr Dagogo did however confirm that all of the members of the company had seen the application forms. Mr Hammond accepted that a board meeting could take place in theory by telephone, email or Whatsapp. The problem was that there was no evidence of any decision making of the type envisaged by the Companies Act or the Regulations.

18. Mr Cleaver said there were emails showing decisions being made but it had not felt appropriate to disclose them because they contained confidential information about tactics and process. He said however that at each step the process was agreed by directors. He said the Applicants had to be given some latitude because they were a small company.

Determination

19. Reluctantly the Tribunal have decided that at the relevant date the Applicants were not entitled to acquire the Right to Manage. We are reluctant in reaching this decision because we accept that this will delay the RTM process. However to some extent at least this has been brought about in any event by the Applicant's failure to accept the deficiencies in their case and refusal to cooperate with Mr Hammond when he made the offer of assisting them in ensuring the claim was watertight. The Tribunal accept Mr Hammond's assurance that he is not seeking simply to derail the process. The Respondents had genuine concerns to ensure that RTM companies are properly constituted.

20. It is important that before acquiring the Right to Manage a company is properly set up. In the present case there was no documentary evidence that members had been properly appointed by directors. There was no evidence of meeting or even an informal meeting. The impression was that Urang were making decisions when this should really be the domain of the directors. Other than Mr Dagogo it was not clear who the other directors were. The Tribunal also accepts the argument in relation to Mr Dallas. It may be that there were delays in registration at the Land Registry but the fact remains that Mr Dallas was not the legal owner at the relevant time although individually this would not be sufficient to remove the right to acquire.

21. There was no record of Mr Olden and Ms Jobard being admitted to membership. Further their applications were not in accordance with the prescribed form – although on its own the latter would not be sufficient to challenge their membership. There must be some flexibility built into the regulations in order to recognize the fact that RTM companies are not ordinary companies. The flexibility comes in the phrase “as near as circumstances allow” which is used in relation to the form of the application.

22. Mr Lockwood and Mr Black applied to become members of the company according to the records on a date before the company was incorporated which is also unsatisfactory.

23. The real problem here however was the failure to demonstrate proper decision making. If there was evidence of proper decision making even in the form of social media messages they should have been disclosed with any privileged sections redacted. In the event the Tribunal were not provided with this evidence and the statement of Mr Dagogo was not sufficient to satisfy us that proper decision making had taken place.

24. Accordingly we decide that the Applicants were not entitled to acquire the RTM at the relevant date. It is hoped that the parties can work together in the future to ensure that the process can be effected properly.

25. At the hearing Mr Hammond raised the issue of costs. If he still wishes to make an application he should file and serve it within 14 days. The Respondent will then have 14 days to respond.

Judge Shepherd

18th May 2023

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.