



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

Case reference : **LON/00BJ/LRM/2023/0009**

HMCTS Code : **Hybrid: In Person/V: CVPREMOTE**

Property : **31 Putney Hill, London SW15 6BG; 42
and 43 Carlton Drive, London, SW15
2DG**

Applicant : **Carlton Gate (Putney) RTM Company
Limited**

Representative : **Jacqueline Samuels, Samuel & Co**

Respondent : **Carlton Gate Limited**

Representative : **Clyde & Co, Solicitors**

Type of application : **Right to manage**

Tribunal member : **Judge Robert Latham
Rachael Kershaw BSc**

**Date and Venue of
Hearing** : **19 June 2023 at
10 Alfred Place, WC1E 7LR**

Date of decision : **26 June 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a hybrid hearing. The Tribunal listed this case as a face-to-face hearing. However, the Respondent applied to join remotely and joined by CVPREMOTE. The parties have provided a bundle of documents which extends to 210 pages.

Decisions of the Tribunal

- (1) The Tribunal determines that the buildings known as 31 Putney Hill, London, SW15 6BG; and 42 and 43 Carlton Drive, London, SW15 2DG are a self-contained building for the purposes of section 72(1) of the Commonhold and Leasehold Reform Act 2002.
- (2) The Tribunal determines that on 31 March 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 £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 9 February 2023, 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 a building in which there are three units, namely 31 Putney Hill, London, SW15 6BG; and 42 and 43 Carlton Drive, London, SW15 2DG ("the Premises").
2. On 16 November 2022, the Applicant served its Claim Notice pursuant to section 79 of the Act stating that it intended to acquire the RTM the Premises on 31 March 2023.
3. By Counter-notices dated 22 and 28 December 2022, the Respondent freeholder disputed the claim, alleging that the Applicant had failed to establish compliance with sections 72(1) and 79(2) of the Act. The Applicant has not raised the issue as to whether it was open to the Respondent to service two Counter-notices. The Respondent challenges the RTM on two grounds:
 - (i) Issue 1: The Applicant failed to serve a Notice inviting Participation on a relevant qualifying tenant, namely the lessee of Apartment 6, 42 Carlton Drive ("Apartment 6"). Thus, the Applicant had not complied with section 79(2) in that the Applicant was not entitled to serve a Notice of Claim as it had not given a Notice of Invitation to Participate to this qualifying tenant.
 - (ii) Issue 2: Each of the units should be treated as separate buildings. The Respondent seeks to argue that the Premises constitute more than one self-contained building and/or more than self-contained part of a

building. The Premises are therefore not "premises" to which the RTM provisions apply.

4. On 22 February 2022, 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 RTM of the Premises. The Judge was satisfied that this matter could be determined on the papers. Neither party requested an oral hearing. Pursuant to these Directions:
 - (i) On 23 March 2023, Respondent filed its Statement of Case (at p.47-184).
 - (ii) On 23 April, the Applicant filed its Supplementary Case (p.185-193).
 - (iii) On 4 May, the Respondent filed its Reply (p.194-205).
5. The Applicant has filed a Bundle of Documents which extends to 210 pages. This includes the lease Apartment 1, 31 Putney Hill (at p.144-176).
6. On 7 June, a Procedural Judge reviewed the papers and concluded that an inspection was required to determine whether the premises over which the RTM is claimed is a single or three buildings. The case was therefore set down for a hearing on Monday, 19 June, with an inspection to be carried out at 10.00.
7. On Friday, 16 June, applied for an adjournment on the ground that their Counsel was not available at such short notice. Judge Latham refused this application. He was satisfied that the Applicant was entitled to have its RTM application determined without delay. Full written representations had been made and the parties had been content to have the matter determined on the papers.
8. The Respondent later requested that the oral hearing be converted to a hybrid hearing, so the Respondent could join remotely. The Tribunal agreed to this.

The Inspection

9. The Tribunal inspected the premises on the morning of the hearing. The following were present: Ms Jacqueline Samuels (Solicitor for the Applicant), Mr Philip Evans (the lessee of Apartment 1, No.43) and Mr Avram Balabanovik (lessee of Apartment 9, No,43). The Tribunal inspected the exterior of the premises and Mr Balabanovik's flat.
10. The Premises have three postal addresses and two postcodes. For the purposes of Section 72(1) of the Act, the Tribunal needed to consider what constitutes "a self-contained building". It was quite apparent from the inspection that the relevant "self-contained building" is the L shaped building that includes the three units at 31 Putney Hill and both 42 and

43 Carlton Drive. The three units are structurally attached to each other, but are detached from any other building. The building, comprising the three units, constitutes the "Premises" in respect of which the RTM is claimed. An external wall surrounds these three units. The three units seem to have a common flat roof, albeit that the Respondent asserts that there are three sections in respect of which separate guarantees have been issued.

11. The Premises contain three self-contained units. The building is a single attached structure with three separate entrances. This was originally a council block which was built in 1959. The photos of the Premises in their original condition are at p.51-52.
12. In 2015, the Premises were acquired by the Respondent who refurbished the building. Two additional floors were added. A lift was installed for each of the three entrances. The lessees share a common garden. There is also a single access lift, a single bicycle store, a single bin store and a single satellite dish. Each unit has its own supply of gas, electricity and water.
13. Section 72(1) of the Act applies to "premises" if they consist of "a self-contained building" or "part of a building". The inspection made it plain to the Tribunal that the "Premises" in respect of which the RTM is claimed constitute the "self-contained building". RTM applications could be made in respect of each of the three units as "part of a building". However, it is for the RTM applicant to define the "premises" over which they seek to acquire the RTM.

The Hearing

14. Ms Samuels appeared in person for the Applicant. None of the tenants attended.
15. The Respondent joined remotely. The Respondent was represented by Mr Chris Addison (Counsel). He was accompanied by Stephen Lintott, from his instruction solicitor at Clyde and Co, Solicitors. Mr Chris Whittingham also attended. Mr Whittingham is a representative of the Domis Property Group, who control the Respondent Company.
16. Mr Addison applied for the application to be adjourned pending the determination by the Court of Appeal of the appeal in *Assethold Limited v Eveline Road RTM Company Limited ("Eveline Road")*, is reported at [2023] UKUT 26 (LC). This is an important decision of Mr Justice Edwin Johnson, the Chamber President. On 3 March 2023, the Judge granted permission to appeal. However, he noted, the facts of the case were unlikely to be replicated widely elsewhere. The Judge further questioned whether the appeal had any real prospect of success. We refused this application as we were satisfied that the Applicant is entitled to have its RTM application determined without delay. We are further satisfied that our decision on Issue 2 turns on the wording of the statute. Our decision

would be the same even were the Court of Appeal to allow the appeal in *Eveline Road*.

The Law

17. Chapter 1 of Part 2 of the Act provides for an RTM company to acquire the right to manage premises to which the Chapter applies if the following conditions are satisfied (emphasis added):

(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.

18. Section 72 specified the qualifying rules in respect of the "premises" to which the RTM applies (emphasis added):

“(1) This Chapter applies to premises if—

(a) they consist of a self-contained building or part of a building, with or without appurtenant property,

(b) they contain two or more flats held by qualifying tenants, and

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

(2) A building is a self-contained building if it is structurally detached.

(3) A part of a building is a self-contained part of the building if—

(a) it constitutes a vertical division of the building,

(b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and

(c) subsection (4) applies in relation to it.

(4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—

(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or

(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.

(5) Relevant services are services provided by means of pipes, cables or other fixed installations.

(6) Schedule 6 (premises excepted from this Chapter) has effect.”

19. Section 75 defines "qualifying tenants" for the purposes of the Act. Section 75(5) provides that no flat has more than one qualifying tenant at any one time. Section 75(7) provides for joint tenancies:

"(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat."

20. Section 78 provides for the Notice inviting Participation (emphasis added):

(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.

.....

(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."

21. Section 79 makes provision for the service of the Notice to Claim to acquire the RTM.

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date” in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) The claim notice 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.

.....

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

The Decision in *Eveline Road*

22. The Property subject to the RTM application stood at one end of a terrace of properties which front on to Eveline Road. The Property comprised four flats. There were two adjacent ground floor flats (A and C), and two first and second floor maisonettes above (B and D). Flats A and C each had an area of yard or garden immediately to their rear. Beyond that there were further areas of garden which were enjoyed with respectively,

each of Flats B and D. Access to these areas of rear garden was obtained by a side gate from the path leading down the east side of the Property.

23. Assethold appealed against the decision of the FTT on two grounds:
- (i) The FTT were wrong to decide that the Property comprised a single building. The Property in fact comprises two sets of qualifying premises. Each of the parts is a set of qualifying premises.
 - (ii) One RTM company cannot make RTM claims in respect of two sets of qualifying premises. The RTM company can only make a claim in respect of one set of qualifying premises; see *Broomfield*. RTM claims by the same RTM company in respect of more than one set of qualifying premises are not possible.
24. At [49] – [50], Johnson J noted the importance of the distinction between a "self-contained building" and a "self-contained part of a building". In the current case, the only self-contained building was the whole terrace. Therefore, the Property and its parts could only fall within the terms of s.72 if they were a "self-contained part of a building". A self-contained part of a building is defined in s.72(3). Premises comprised a self-contained part of a building if they satisfied the requirements in s.72(3)(a) to s.72(3)(c). Johnson J went on to conclude that there was nothing to exclude from s.72(3), a self-contained part of a building which itself contained a self-contained part or parts of the building.
25. At [114], Johnson J reached the following conclusions:
- "(1) The reference to a self-contained part of a building in Section 72 is not confined to a self-contained part of a building which does not itself include a self-contained part or self-contained parts of the same building.
 - (2) A self-contained part of a building, as defined in Section 72, includes both (i) a self-contained part of that building which does not include a self-contained part or parts of the same building and (ii) a self-contained part of that building which does include a self-contained part or parts of the same building.
 - (3) In the case of a self-contained part of a building, the right to make an RTM claim is not confined to a self-contained part of the building which is not capable of further sub-division into self-contained parts.
 - (4) In the present case, the RTM Company was entitled to make the RTM Claim in relation to the Property, notwithstanding that the Property is comprised of two parts, namely the Parts, which

are each also self-contained parts of the Terrace within the meaning of Section 72.

26. It is to be noted that Johnson J was only considering what premises consisted of "part of a building". He was satisfied that the "self-contained building" was the whole terrace. It was the terrace that had the common external walls. In the current case, it is quite apparent that the "self-contained building" comprises the Premises in respect of which the RTM is claimed.

Issue 1

27. Issue 1 turns on whether the Applicant has complied with the relevant statutory steps with regard to Apartment 6. Nora Hakim and Mona Hakim are the joint tenants. They are sisters and live together. They are therefore to be treated as the "qualifying tenant" of the flat. The relevant facts are as follows:

(i) On 15 June 2022, the Applicant RTM Company was incorporated. Mona Hakim was one of the subscribers of the Company (see p.13). Article 26(2)(a) of the prescribed Articles of Association restrict membership of the Company to a person "whether alone or jointly with others" is a "qualifying tenant of a flat contained in the Premises". Mona Hakim was therefore a subscriber by reason of her status as a "qualifying tenant" of Apartment 6, of which she was a joint tenant with her sister, Nora Hakim.

(ii) On 29 July 2022, the Applicant served the Notice of Invitation to Participate on the relevant qualifying tenants of the flats contained in the Premises. Such a notice is only required where the qualifying tenant "neither is nor has agreed to become a member of the RTM company" (section 78(2)). The Respondent contends that the Applicant should have served a Notice on Nora Hakim and Mona Hakim as "the qualifying tenant" of Apartment 6. The Applicant contends that there was no requirement to serve such a Notice as Mona Hakim, a qualifying tenant of Apartment 6, was a member of the RTM company. However, as a matter of precaution, the Applicant served a Notice on Nora Hakim (at p.79). Ms Samuels stated that it would have been inappropriate to serve it jointly on Nora Hakim and Mona Hakim as Mona Hakim was a member of the RTM company.

(iii) On 16 November 2022, the Applicant served its Claim Notice (at p.32-37) on the Respondent and the qualifying tenants. The Schedule lists the 21 tenants who are both "qualifying tenants" and "members of the company". Mona Hakim was named as a relevant qualifying tenant of Apartment 6 who was a member of the company. Part 2 of the Schedule gives details of her leasehold interest. This does not refer to her being a joint tenant with Nora Hakim. The Applicant (at p.114) served the Claim Notice jointly on Mona Hakim and Nora Hakim.

(iv) As there are 27 flats at the Premises, the qualifying tenants of at least 14 flats needed to be members of the RTM company on the relevant day. Twenty one qualifying tenants were members of the RTM company. The statutory threshold was therefore met even were the qualifying tenant of Apartment 6 to be excluded.

(v) Ms Samuels informed the Tribunal that Nora Hakim has now applied to be, and has been accepted, as a member of the RTM company.

28. The Respondent argues that the Applicant was not entitled to serve its Claim Notice on 16 November 2022 as it had failed to comply with section 79(2) of the Act. In particular, it had failed to give a Notice of Invitation to Participate to the qualifying tenant of Apartment 6. Whilst it is conceded that a Notice was served on Nora Hakim, the Respondent argues that it should have been given jointly to both Nora Hakim and Mona Hakim, the two joint tenants of Apartment 6.
29. The Tribunal is unable to accept this argument. We do not accept that there was any requirement to serve a Notice of Invitation to Participate on the qualifying tenant of Apartment 6, as the qualifying tenant was a member of the RTM Company. As a matter of trust law, joint tenants must act together. Mona Hakim could only become a member of the RTM company as a "qualifying tenant" of Apartment 6, with the consent of her sister. There is no evidence that Mona Hakim acted unilaterally and in breach of trust.
30. If we are wrong on this, we are satisfied that the giving of the Notice of Invitation on Nora Hakim was sufficient to give Notice to the "qualifying tenant" of Apartment 6. The Respondent's suggestion that the Notice should have been given jointly to both Nora Hakim and Mona Hakim is surprising, given that it is accepted that Mona Hakim was a member of the RTM Company.
31. We note that the following advice is proffered by the Editors of "Service Charges and Management) (5th Ed) (at 24-25)

"In the case of joint lessees, each must be served. If one only has joined the company, the non-member joint tenant must be served."

No authority is provided for the second proposition. If our primary conclusion is wrong and a Notice was required, we are satisfied that the Applicant followed the correct procedure.

32. The Tribunal does not consider that there was any defect in the procedure. However, if we are 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."

33. 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 rather seeking to set itself up as a guardian angel of the qualifying tenants, merely to defeat their RTM claim.

Issue 2

34. This issue turns on whether the Premises in respect of which the RTM is claimed are a "self-contained building". Section 72(2) provides that a building is a self-contained building if it is structurally detached. There is no question but that the Premises are self-contained. The question is rather whether they form a single building. It is apparent to the Tribunal that the three units are all part of the same building. The Premises are structurally attached to each other, but are structurally detached from any other building. This is illustrated by the Land Registry title plan at p.142.
35. It was apparent to the Tribunal that there was a single flat "green" roof. The Respondent suggest that there is a separate guarantee in respect of the three sections of the roof. Even if there were to be three separate sections to the roof, the critical issue is that the three units are structurally attached to each other. They are akin to a terrace of houses, which was the "building" in *Eveline Road*.
36. We reach this decision with no regret. It makes practical sense. We have been provided with the lease for Apartment 1, 31 Putney Hill which is dated 1 December 2016 (at p.144-176). The "Building" is defined as "the buildings on the Estate in which the Demised Premises is located and the 'Building' shall mean the Building and other building on the Estate". The "Estate is defined by reference to the landlords title number 130150 which includes the title plan at p.142. The lessees share a common

garden. There is also a single access lift, a single bicycle store, a single bin store and a single satellite dish. We were told that there was a single insurance policy and the three units are managed by the same contractors.

37. We note that each unit has its own supply of gas, electricity and water. It may have been possible to bring three separate RTM claims in respect of each unit, on the basis that each unit is "part of a building". However, this is not how the Applicant has framed its claim.

Tribunal Fees

38. The Applicant has paid tribunal fees of £300. In the light of our findings, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Conclusion

39. 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.
40. 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
26 June 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).