



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

Case reference : **LON/00AY/LRM/2023/0003**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **49 Hackford Road, London SW9 0RE**

Applicant : **49 Hackford Road RTM Company Limited**

Representative : **RTMF Services Limited (Ref: 49HUX)**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of application : **Application in relation to the denial of the (No-Fault) Right to Manage**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **30 May 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines the applicant is entitled to acquire the Right to Manage the premises situate at 49 Hackford Road, London SW9 0RE at the relevant date being three months after the date of the tribunal's determination.
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The application

1. The Applicant seeks a determination pursuant to section 84(3) of the commonhold and Leasehold Reform Act 2002 ('the 2002 Act') for a decision that, on the relevant date, the applicant RTM company was entitled to acquire the Right to Manage premises known as 49 Hackford road, London SW9 0RE ('the premises').

Background

2. In the counter-notice dated 14 November 2022 in answer to the claim notice dated 7 October 2022, the respondent disputed the claim by reason of section 74(1) of the 2002 Act, stating that on the relevant date the company register of its members included persons who were not qualifying tenants in relation to the premises.

The issue

3. The only issue for the tribunal to decide was whether or not the inclusion of a non-qualifying tenant in the company disqualified the applicant from acquiring the Right to Manage.

The hearing

4. As neither party requested an oral hearing the tribunal determined the application on the bundle of documents provided by the applicant comprising 81 (electronic) pages.

The tribunal's decision

4. The tribunal finds the applicant acquired the Right to Manage the subject premises with effect from the relevant date.

The tribunal's reasons

5. The tribunal finds the copy of the register of members provided to the respondent on 14 November 2022 included the non-qualifying tenant of the first floor flat Maya Catherine Elizabeth Fooks (Flat 2) having been registered as a member on 10/10/2022 and subsequently removed with effect from 05/04/2022. However, at the relevant time the Register also included the names of the qualifying tenants of the ground and second namely, Eduardo Pagliarulo and Gavin Charlesworth (Ground Floor Flat - Flat 1) and Peter Hartley Walsh (Second Floor Flat – Flat 3), all of whom were registered with effect from 31/08/2022.
6. The respondent asserted the late entry of Maya Fooks suggest that the Register has not been kept in accordance with sections 112 and 113 of the Companies Act 2006 which state:

Section 112

(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.

Section 113

(1) Every company must keep a register of its members.

(2) There must be entered in the register—

(a) the names and addresses of the members,

*(b) the date on which each person was registered as a member,
and*

(c) the date at which any person ceased to be a member.”

7. However, the respondent does not identify why Maya Fooks' membership of the company on 20/10/2022 as a non-qualifying tenant invalidates the Register and/or invalidates the applicant's Right to Manage. The tribunal finds the names and date of membership of the requisite number of the qualifying tenants (Flats 1 and 3), as of 31/08/2022 were recorded on the Register and that this information was also recorded on the Schedule accompany the Claim Notice members.
8. The tribunal accepts there was a delay between Maya Fooks acquisition of title of the First Floor Flat on 8 July 2022 and its subsequent registration, requiring the applicant to serve a Notice of Invitation to participate sent to the previous leaseholders of the First Floor Flat on 2 September 2022.

9. However, the tribunal finds the premature inclusion of Maya Fooks as a member of the applicant company, albeit as a non-qualifying tenant does not invalidate the applicant's Claim Notice or the Right to Manage the subject premises. It is accepted by the applicant that RTM membership is a statutory entitlement to qualifying tenants and as at 7 October 2022 (the date of the Claim Notice), Maya Fooks was not registered as the tenant of Flat 2 at the Land Registry until 20/10/2022 and therefore not recorded on the Schedule as either a qualifying tenant or a member of the RTM company. The tribunal finds the Notice of Claim complied with the requirements of the 2002 Act in so far that on the relevant date the Schedule of membership of the RTM company included the qualifying tenants of two of the three flats in the premises.
10. In conclusion, the tribunal determines the applicant has a Right to Manage the premises with effect from the relevant date being three months after the date of the tribunal's determination.

Name: Judge Tagliavini

Date: 30 May 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).