



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

Case reference : **LON/00AH/LRM/2023/0011**

Property : **49 Penge Road, London SE25 4EJ**

Applicant : **49 Penge Road RTM Company Ltd**

Representative : **The Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Ltd**

Type of application : **Right to Manage**

Tribunal member(s) : **Judge Brandler**

Date of determination : **11 August 2023**

DECISION

Description of the hearing

This has been a remote hearing on the papers. The form of remote hearing was P. An oral hearing was not held because the Applicant confirmed that it would be content for a determination on the papers. The Respondent did not object. The tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which I have been referred are in an electronic bundle prepared by the Applicant of 177 pages, the contents of which have been considered. The decision made is described below.

Decision of the tribunal

- (1) The Applicant was entitled on the relevant date to acquire the right to manage in respect of the Property.**
- (2) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, we order the Respondent to reimburse to the Applicant the application fee of £100.00.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

The application

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that on the relevant date it was entitled to acquire the right to manage the property known as 49 Penge Road, London SE25 4EJ (“the property”).

Background

2. By a claim notice dated 17/01/2023 the Applicant gave notice to Assethold Limited (“the Respondent”) that it intended to acquire the right to manage in relation to the property on 03/06/2023.

3. By a counter notice dated 01/03/2023 the Respondent freeholder disputed the claim alleging that the that the Applicant was not entitled to acquire the right to manage alleging the Applicant had failed to establish compliance with section 78(2) and 79(3) of the Act.

4. On 27/03/2023 the Applicant applied to the tribunal for a determination that it was entitled to acquire the said right on the relevant date.

5. Directions were issued on 27/04/2023. These were amended on 02/05/2023 to extend time for the Respondent’s response. The Directions identified a single issue to be determined, namely whether on the day on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the property specified in the notice.

The issues

6. In its counter notice, the Respondent raised issues under s.78(2) and s.79(3) of the Act, but failed to particularise those issues.

7. Further to the Applicant objecting to the lack of particularisation, the Respondent provided a statement of case on 19/05/2023 in which they argue that a number of the qualifying tenants have not applied to become members of the RTM Company, in particular although one of the joint owners of each of flats 3,5, and 6 were noted as members, the joint owners

of each flat were not. This, the Applicant points out, is because Companies House will not admit joint owners as joint subscriber members.

8. The Respondent further claims that those joint owners had not submitted applications for membership and as such they could not be properly registered as members in accordance with the Company's articles of association and the Companies Act. This argument, the Applicant says is a farce because the joint owners of Flats 3,5 and 6 all wanted to be members from the outset but Companies House would not permit them to be subscriber members. The Applicant confirms having provided the datasheet which lists all those wanting to be Members prior to the formation of the RTM Company, and in addition provided confirmation emails dated 03/02/2023 from those qualifying tenants.

9. The Respondent claims that those confirmation emails postdate the giving of the claim notice and are therefore evidence of the Applicant's failure.

10. The Applicant's response is that those emails clearly state "*hereby confirm that I wanted to be a joint Member... and I provided the relevant ID information for this to be done as shown on the Datasheet provided*". The Applicant states that those emails are merely confirmation that they wanted to be Members of the Company and there can be no doubt, along with all the other information provided, of "*their desire to be Members prior to the company formation and were correctly included on the Register of Membership and as such the process of registration was carried out completely in accordance with the articles of association*" [109].

11. The Tribunal rejects the Respondent's argument. The evidence shows that the joint owners of flats 3,5 and 6 wanted to be members from the outset. They are all named on the Register of Guarantee Company Members and are also listed in First Corporate Company Formation Datasheet. By the articles of association clause 26(1) provides for applications for membership in any form the Directors may approve.

12. The Respondent is therefore arguing that it is entitled to go behind the Companies register.

13. The Applicant has exhibited a decision of the First Tier Tribunal in LON/00AJ/LRM/2022/0048. In that case the Respondent was the same as in this case and sought to resist the application on the basis that the Applicant had not provided evidence of the applications made for Company membership. This application is resisted in a very similar manner. The Tribunal adopts the reasoning in paragraph 9 of that decision.

I can see nothing in the Act which requires the RTM company to provide copies of any membership applications to the Respondent. The membership of the company is, I find a matter for the directors, and they have the power under the articles to accept membership in any form which the directors may approve. As was said in the case involving 10 Wilmot Place RTM Company Limited v Assethold the

Register of Members is evidence of membership of the company. The register shows that the four named persons, the owners of the two flats, were elected to the company on 4 August 2022, well before the Claim Notice was served.

14. The Tribunal does not just follow that decision as a matter of comity but the Respondent sought to appeal that decision and permission was refused. The Upper Tribunal in refusing permission stated

The First-tier Tribunal correctly found that the applicant is not entitled to see membership applications. There is no mention of such an entitlement in section 79 of the Commonhold and Leasehold Reform Act 2002. The applicant is not entitled to delve into the procedural background of the company; the FTT and the applicant must accept its membership as shown on the Companies Register.

15. In relation to the allegation that section 78(2) was not complied with, the Respondent submits that the applicant failed to correctly state the names of the members of the RTM Company in the Notice Inviting Participants. To support this assertion, they rely again on the emails dated 03/02/2023 and state those emails show that such persons did not submit applications for membership until 03/02/2023. That argument has been dealt with above and is rejected by the Tribunal.

FINDINGS

16. The Respondent's objections have no merit.

17. The Applicant has complied with all the requirements under the legislation as evidenced by the detailed submissions and evidence provided.

18. The Applicant was entitled on the relevant date to acquire the right to manage the property.

19. Therefore, 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.”*

COSTS

20. Section 88(3) of the Act states: *“(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”*

21. In the light of the Tribunal's decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

22. I do award the Applicant the costs of the application, namely £100, to be paid by the Respondent within 28 days.

Name: Judge Brandler **Date:** 11th August 2023

ANNEX - 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.

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

78 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 **[F1articles of association]** of the RTM company, or

(b) include a statement about inspection and copying of the **[F1articles 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 **[F1articles 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 **[F1articles 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.

79 Notice of claim to acquire right

(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.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(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.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the **F1**... tribunal or court by which he was appointed.

84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to **[F1**the appropriate tribunal**]** for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(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.

(8) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.