



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

Case reference : **LON/00BJ/LRM/2023/0042**

Property : **226 Upper Richmond Road, London,
SW15 6TG**

Applicant : **226 URR RTM Limited**

Representative : **Philip Sissons (Counsel)**

Respondent : **Heavenly Homes London Limited**

Representative : **Faisel Sadiq (Counsel)**

Type of application : **Right to manage**

Tribunal member : **Judge Robert Latham
Richard Waterhouse FRICS**

**Date and Venue of
Hearing** : **27 March 2024 at
10 Alfred Place, WC1E 7LR**

Date of decision : **29 April 2024**

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that on 4 December 2023, the Applicant was not entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act as there were not the requisite number of qualifying tenants who were members of the RTM Company on the relevant date when the Claim Notice was given.
- (2) Either party may apply to the Tribunal for further Directions in respect of costs, whether pursuant to the Act or the Tribunal Rules.

The Application

1. On 19 October 2023, 226 URR RTM Limited (“URR”) issued this application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage (“RTM”) in relation to 226 Upper Richmond Road, London, SW15 6TG (“the Premises”).
2. On 1 August 2023, the Applicant served its Claim Notice pursuant to section 79 of the Act stating that it intended to acquire the RTM the Premises on 4 December 2023.
3. On 31 August 2023, the Respondent freeholder served a Counter-notice disputed the claim, alleging that the Applicant had failed to establish compliance with sections 72(6) and 79(5) of the Act.
4. On 31 October 2023, 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.
5. On 27 November 2023, the Respondent filed its Statement of Case. It identified two grounds for opposing the application:
 - (i) that the Premises are non-qualifying premises as the non-residential parts exceed 25% of the total internal floor area of the Building so that, pursuant to section 72(6) and Schedule 6, paragraph 1 of the Act, the Premises do not qualify;
 - (ii) that on the relevant date, the members of URR did not include a number of qualifying tenants of flats which was at least one half of the total number of flats in the Premises.
6. The parties have filed a Bundle of Documents extending to 717 pages. There is an unnecessary amount of duplication and no adequate index. It has proved extremely difficult for the tribunal to navigate. The Tribunal makes reference to this Bundle in its decision.

The Hearing

7. Mr Philip Sissons, Counsel, appeared for the Applicant, instructed by Gaby Hardwicke Solicitors. He was accompanied by Mr Tristan Mutimer (the lessee of Flat 14), Mr Benj Dolties MRICS (his surveyor), and Ms Louise Burns (trainee solicitor).
8. Mr Faisal Sadiq, Counsel, appeared for the Respondent, instructed by Fladgate LLP Solicitors. He was accompanied by Ms Nish Suhail (trainee solicitor).

9. On the eve of the hearing, the Respondent conceded that the premises are qualifying premises pursuant to section 72(6) and Schedule 6, paragraph 1 of the Act. The sole issue is therefore whether on the relevant date, the members of URR included a number of qualifying tenants of flats which was at least one half of the total number of flats in the Premises.
10. It is common ground that as at the relevant date, URR had ten members and that there are 14 flats in the Premises. However, in respect of four of the qualifying flats (Flats 5, 6, 9 and 10), only one of two joint tenants was a member of the RTM Company. The Respondent contends that in consequence, the “qualifying tenant” of these four flats was not a member, since all of the joint tenants must be a member for the “qualifying tenant” to be a member. There were therefore only six qualifying tenants who were members of URR and the 50% threshold was not met.
11. Despite the fact that the Act has been on the statute book for 24 years, there is no binding authority on this point. The parties referred the Tribunal to the First-tier Tribunal decision (Judge Robert Latham and Rachel Kershaw BSc) in *Carlton Gate (Putney) RTM Co Limited v Carlton Gate Ltd* (LON/00BJ/LRM/2023/0009). However, in *Carlton Gate*, it was irrelevant whether Apartment 6 (the flat occupied by joint tenants) was treated a “qualifying tenant” of the RTM Company in computing the 50% threshold. There were 27 flats, and 20 other qualifying tenants were members of the RTM. The issue was rather whether the manner in which the RTM had treated Apartment 6 as a “qualifying tenant” nullified the statutory process. The Respondent contends that this decision was wrongly decided.
12. Both Counsel argued this important point of principle more fully and have relied upon a wider range of authorities than considered in *Carlton Gate*. Both Counsel have provided Skeleton Arguments. The Tribunal is grateful for the assistance that they provided. The Tribunal granted Counsel permission to file further written submission in response to some of the issue raised during the course of the hearing. On 12 April, both Counsel filed further submissions:
 - (i) The Applicant focuses on the issue of ostensible authority and attached two authorities and an extract from Chitty on Contracts (35th Edition). Mr Sissons reminds the Tribunal that is primary submission is that membership of one of two joint tenants is sufficient to constitute “the qualifying tenant” of a flat.
 - (ii) The Respondent argues that the concepts of trust law or ostensible authority in agency are not relevant. The concept of the membership of a RTM should rather be resolved by applying the company law concept of membership. He provides a further Authorities Bundle extending to 44 pages.

The Law

13. 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:
 - (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.
14. Section 72 specifies the qualifying rules in respect of the "premises" to which the RTM applies. The Respondent now concedes that these requirements are satisfied.
15. Section 73 specifies the requirements for a RTM Company. Section 73(2) provides:
 - “(2) A company is a RTM company in relation to premises if—
 - (a) it is a private company limited by guarantee, and
 - (b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.”

16. Section 74 provides for the membership and regulation of RTM companies (emphasis added):

“(1) The persons who are entitled to be members of a company which is a RTM company in relation to premises are—

(a) qualifying tenants of flats contained in the premises,
and

(b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.

(2) The appropriate national authority shall make regulations about the content and form of the articles of association of RTM companies.

(3) A RTM company may adopt provisions of the regulations for its articles.

(4) The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.

(5) A provision of the articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.

(6) The regulations have effect in relation to articles —

(a) irrespective of the date of the articles, but

(b) subject to any transitional provisions of the regulations.

(7) Section 20 of the Companies Act 2006 (default application of model articles) does not apply to a RTM company.”

17. Section 75 defines "qualifying tenants" for the purposes of the Act (emphasis added):

“(1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.

(2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

(3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.

(4) Subsection (2) does not apply where—

(a) the lease was granted by sub-demise out of a superior lease other than a long lease,

(b) the grant was made in breach of the terms of the superior lease, and

(c) there has been no waiver of the breach by the superior landlord.

(5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.

(6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.

(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.”

18. Section 78 requires a RTM Company to give an Notice Inviting Participation “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.

19. Section 79 provides for a claim to acquire the RTM any premises is made by giving a Claim Notice to the landlord. The following provisions are relevant to this application:

“(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.”

20. Section 112 is the definitions section. Section 112(5) provides:

“(5) Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or to the tenant or qualifying tenant is (unless the context otherwise requires) a reference to both or all of the persons who jointly constitute the landlord or the tenant or qualifying tenant, as the case may require.”

21. Section 112 of the Companies Act 2006 provides:

“(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.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.”

The Model Articles of Association

22. The RTM Companies (Model Articles) (England) Regulations 2009/2767 specify the requirements of the articles of association for a RTM Company. Regulation 2(1) provides that “the articles of association of a RTM company shall take the form, and include the provisions, set out in the Schedule to these Regulations”. URR’s Articles of Association, which adopt the model Articles of Association, are at p.69-92.
23. Article 26 of the model Articles of Association makes provision for “Becoming a member” (emphasis added):

(1) Every person who is entitled to be, and who wishes to become, a member of the company shall deliver to the company an application for membership executed by him in the following form (or in a form as near to the following form as circumstances allow or in any other form which is usual or which the directors may approve:)

To the Board of [name of company] I, [name] of [address] am a qualifying tenant of [address of flat] and wish to become a member of [name of company] subject to the provisions of the Articles of Association of the company and to any rules made under those Articles. I agree to pay the company an amount of up to £1 if the company is wound up while I am a member or for

up to 12 months after I have ceased to become a member. Signed
Dated

(2) No person shall be admitted to membership of the company unless that person, whether alone or jointly with others, is—

(a) a qualifying tenant of a flat contained in the Premises as specified in section 75 of the 2002 Act; or

(b) from the date upon which the company acquires the right to manage the Premises pursuant to the 2002 Act, a landlord under a lease of the whole or any part of the Premises.

(3) Membership of the company shall not be transferable.

(4) A person who, together with another or others, is to be regarded as jointly being the qualifying tenant of a flat, or as jointly constituting the landlord under a lease of the whole or any part of the Premises, shall, once admitted, be regarded as jointly being a member of the company in respect of that flat or lease (as the case may be).

(5) Applications for membership by persons who are to be regarded as jointly being the qualifying tenant of a flat, or who jointly constitute the landlord under a lease of the whole or any part of the Premises, shall state the names and addresses of all others who are jointly interested with them, and the order in which they wish to appear on the register of members (or, if an election under section 128B of the Companies Act 2006 is in force in respect of the company, in the register kept by the registrar under section 1080 of that Act) in respect of such flat or lease (as the case may be.)

(6) The directors shall, upon being satisfied as to a person's application and entitlement to membership, register such person as a member of the company.”

24. Article 27 provides for “Ceasing to be a member”. Paragraph 1 provides that “a member who at any time fails to satisfy the requirements for membership set out in article 26 shall cease to be a member of the company with immediate effect”. The following provisions apply where a flat is held by joint tenants whom the Act regards as “jointly being the qualifying tenant of the flat”:

“(2) If a member (or joint member) dies or becomes bankrupt, his personal representatives or trustee in bankruptcy will be entitled to be registered as a member (or joint member as the case may be) upon notice in writing to the company.”

“(4) If, for any reason—

(a) a person who is not a member of the company becomes a qualifying tenant or landlord jointly with persons who are members of the company, but fails to apply for membership within 28 days, or

(b) a member who is a qualifying tenant or landlord jointly with such persons dies or becomes bankrupt and his personal representatives or trustee in bankruptcy do not apply for membership within 56 days, or

(c) a member who is a qualifying tenant or landlord jointly with such persons resigns from membership pursuant to article 27(3),

those persons shall, unless they are otherwise entitled to be members of the company by reason of their interest in some other flat or lease, also cease to be members of the company with immediate effect. All such persons shall, however, be entitled to re-apply for membership in accordance with article 26.”

25. Article 33 makes provision for the voting at General Meetings. Article 33(4) provides:

“In the case of any persons who are to be regarded as jointly being members of the company, any such person may exercise the voting rights to which such members are jointly entitled, but where more than one such person tenders a vote, whether in person or by proxy, the vote of the senior shall be accepted to the exclusion of the votes of the others, and seniority shall be determined by the order in which the names of such persons appear in the register of members (or, if an election under section 128B of the Companies Act 2006 is in force in respect of the company, in the register kept by the registrar under section 1080 of that Act) in respect of the flat or lease (as the case may be) in which they are interested.”

The Facts

26. The Premises consist commercial and residential property. There are fourteen residential flats held under 999-year leases (there is no Flat 13). At the material times, the relevant “qualifying tenants” were:

- (i) Flat 1: Stefan Finch;
- (ii) Flat 2: Sarah Jane Clarke;
- (iii) Flat 3: Heavenly Developments Limited;
- (iv) Flat 4: Heavenly Developments Limited;

- (v) Flat 5: Alexander Edward Carter Ridout and Benita Jane Ridout;
- (vi) Flat 6: Christian Facchini and Ilaria Dorigatti;
- (vii) Flat 7: Michael Osilama;
- (viii) Flat 8: Graux Properties Limited;
- (ix) Flat 9: Tryfon Vainas and Saiqa Sayed-Vainas;
- (x) Flat 10: Kadri Muhiddin and Veronique Muhiddin;
- (xi) Flat 11: Mauro Cadeddu;
- (xi) Flat 12: Heavenly Developments Limited;
- (xiii) Flat 14: Tristan Craig Mutimer; and
- (xiv) Flat 15: Heavenly Developments Limited.

It is to be noted that Flats 3, 4, 12, and 15, are held by a company that is linked to the Respondent.

27. On 20 June 2023, URR was incorporated by the Registrar of Companies under the Companies Act 2006 (p.64). On 16 June 2023 (at p.66), the following had agreed to be subscribers to the Memorandum of Association and further agreed to become a member of URR upon it being incorporated: (i) Stefan Finch; (ii) Christian Facchini; (iii) Michael Osilama; (iv) Veronique Muhiddin; and (v) Tristan Craig Mutimer.

28. The Register of Members is at p.592-597. Where a member is a joint tenant, "JT" appears against their name. Upon URR being incorporated, the following were registered as members of the Company:

- (i) Flat 1: Stefan Finch (p.593);
- (ii) Flat 6: Christian Facchini (JT) (p.592);
- (iii) Flat 7: Michael Osilama (p.594);
- (iv) Flat 10: Veronique Muhiddin (JT) (p.593);
- (v) Flat 14: Tristan Craig Mutimer (p.592).

It is to be noted that these qualifying tenants became members of the URR by reason of their status as subscribers to the Memorandum of Association. They did not need to apply to be members pursuant to Article 26 of the Articles of Association.

29. On 6 July 2023, the Applicant gave the requisite Notice of Invitation to Participate as required by section 78 of the Act. The Applicant was required to give to each person who at the time the notice was given (a) was the qualifying tenant of a flat contained in the premises, but (b) neither was nor had agreed to become a member of the RTM company. The Tribunal understands that a Notice Inviting Participation was given to the "qualifying tenant" of Flats 2, 3, 4, 5, 8, 9, 11, 12 and 15. The Notice of Invitation to Participate which was given to Heavenly Homes Limited in respect of Flat 3 is at p.8-11. A Notice was not given to the "qualifying tenant" of either Flat 6 and 10 as one of the two joint tenants was a member of URR.

30. On 20 July 2023, the following additional “qualifying tenants” were registered as members the URR:

- (vi) Flat 2: Sarah Jane Clarke (p.595);
- (vii) Flat 5: Alexander Edward Carter Ridout (JT) (p.595);
- (viii) Flat 8: Graux Properties Limited (p.594);
- (ix) Flat 9: Saiqa Sayed-Vainas (JT) (p.596);
- (x) Flat 11: Mauro Cadeddu (p.596).

31. The Applicant has not provided the Tribunal with any of the applications for membership which had been duly executed pursuant to Article 26(1) of the Articles of Association. The applications for membership by Mr Ridout and Ms Sayed-Vainas would have needed to comply with Article 26(5) and “state the names and addresses of all others who are jointly interested with them, and the order in which they wish to appear on the register of members” in respect of their flats. Had they done this, the Tribunal would have expected their joint tenants also to have been recorded on the register of members.

32. On 1 August 2023, the Applicant served its Claim Notice. On this date, section 79(5) of the Act required that “the membership of the RTM company must ... 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”. The minimum number of qualifying tenants who were members of the URR was seven. The Applicant contend that 10 qualifying tenants were members of the URR. It is to be noted that this is all the qualifying flats, save for those hold by Heavenly Developments Limited.

33. The Respondent contends that the application must fail as there were only six members. Four of the flats were occupied by joint tenants and only one of the two joint tenants were members of the URR. The following flats were held by joint tenants, and only one of the two joint tenants had been registered as members of the URR (the member is highlighted in bold):

(i) Flat 5: **Alexander Edward Carter Ridout** and Benita Jane Ridout;

(ii) Flat 6: **Christian Facchini** and Ilaria Dorigatti;

(iii) Flat 9: Tryfon Vainas and **Saiqa Sayed-Vainas**;

(iv) Flat 10: Kadri Muhiddin and **Veronique Muhiddin**;

34. On 14 December 2023 (at p.588), Ms Dorigatti, and on 15 December (at p.587) Mr Vainas applied to be members of URR. On 18 December 2023 (at p.597), their names were recorded on the Register of

Members. Mr Sissons relied on this in support of his submission that in applying for membership, both Mr Facchini and Ms Sayed-Vainas had done on behalf of their fellow joint tenant. However, the Tribunal notes that neither of these applications complied with Article 26(5) in that neither stated the name and address of the other joint tenant or the order in which they wished to appear on the register of members. This latter requirement is important as it determines which of the two joint tenants is entitled to vote when both attend a General Meeting (see Article 33(4) at [25] above).

The Submissions of the Parties

35. Both Counsel started their submissions by referring to the following statement of principle from the opinion of Lord Browns-Wilkinson in *Hammersmith LBC v Monk* [1992] 1 AC 478 at p.492C:

“In property law, a transfer of land to two or more persons jointly operates so as to make them, vis a vis the outside world, one single owner. ‘Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single owner;’ Megarry and Wade, *The Law of Real Property*, 5th ed. (1984), p. 417.”

36. Both Counsel also relied on the following passage from the current edition of Megarry and Wade at 12-006 which refers to “unity of interest” of joint tenants: “The interest of each joint tenant is the same in extent, nature and duration, for in theory of law they hold just one estate”. This principle is reflected in section 112(5) of the Act (see [20] above).
37. Mr Sissons, for the Applicant, relies on section 75(7) of the Act (see [17] above), which provides that where a flat is let to joint tenants, joint tenants shall ... be regarded as jointly being the qualifying tenant of the flat”. It follows that where A and B are joint tenants of flat X, then flat X has only one “qualifying tenant” for the purposes of calculating the membership of an RTM Company. Accordingly, in the current case, there were 14 qualifying tenants and, on the relevant date, URR had 10 members, all of whom were “qualifying tenants”. The requirements were therefore satisfied.
38. Mr Sissons goes on to argue that joint tenants are treated in law as a single owner. If the A and B are, against everyone else, a single owner, it follows that membership of A in their capacity as a qualifying tenant, is equivalent to membership by both. He argues that there is a distinction to be drawn between the internal governance of a trust (i.e. the rights of the beneficiaries against their trustees and between the trustees) and external relations between a trustee(s) and a third party. As regards the former, the unilateral exercise of powers by a trustee may in some circumstances amount to a breach of trust. Thus, in *Pile v Pile* [2022]

EWHC 2036, F and S were brothers and joint tenants under an agricultural tenancy. F served a notice to quit and S argued that this was a breach of trust. The court held that where the property was held on a bare trust arising from joint ownership, the service of a notice to quit did not amount to a breach of trust.

39. On the other hand, in *Procter v Procter* [2022] EWHC 1202, another case concerning a notice to quit served by one of two joint tenants under an agricultural tenancy, it was held that the service of the notice was a breach of trust. In both cases, the notice to quit was considered to be valid, though in *Procter*, it was also held that the court was entitled to rescind the notice on the basis that it had been served in breach of trust.

40. Mr Sissons argues that so far as external relations are concerned, a third party acting in good faith is not concerned to inquire into the authority for or propriety of any action by the trustee (or trustees). He relies on the judgment of Lewison L.J. in *Steachelin v ACLBDD Holdings Ltd* [2019] EWCA Civ 817; [2019] 3 All ER 429 (at [106]):

“In my judgment it is important to distinguish between the internal governance of a trust, and external legal relations between a trustee or trustees and a third party dealing in good faith with a trustee or trustees. Article III (E) is there for the protection of persons dealing with the trustees. Such persons are not required to inquire into the authority for or propriety of any action by the Trustees. The purpose behind such a provision is that a person dealing with the trustees is entitled to take decisions at face value.”

41. Mr Sissons accepts that this decision was based on the particular provisions of the express deed of trust which was at issue in that case. In the current case, there are no deeds of trust. However, he submits that the same conclusion should follow in assessing whether the RTM Company dealing with one of the two joint tenants (as trustee) is entitled to assume that they have authority to act on behalf of the other.

42. If the position were otherwise, Mr Sissons suggests that a RTM company would be placed in the invidious position of having to investigate in every case of joint ownership whether any requirements governing the exercise of the trustees' authority had been met. That would impose a significant administrative burden on RTM companies, particularly given the timescales involved in the notice procedure.

43. During the hearing, the Judge Latham raised the issue of ostensible authority. Would a RTM be able to act on the assumption that one joint tenant had ostensible authority to act on behalf of the other? The Tribunal had in mind two decisions. In *Turley v Panton* (1975) 29 P&CR 397, the Court of Appeal held that a reference to a rent tribunal

had to be made by all joint tenants acting together. However, in *R v Rent Officer for Camden, ex p Felix* (1988) 21 HLR 34, Hutchison J concluded that in the second of three cases, where only one of five joint tenants had signed the application to a Rent Officer, that the evidence clearly showed that all of the joint tenants had authorised the signatory to the application to make the application on their behalf. The signatory was acting as agent for the five joint tenants, and a valid application had been made. Hutchison J made this finding on the following evidence: In his affidavit Mr. Curry had stated:

"In about November/December 1985 Hilary, Andrea, Stephen, Lucinda and I discussed between us whether we should apply to register a fair rent in respect of the flat. Eventually we decided that we should and it was agreed that Hilary would complete the necessary paperwork."

All the other joint tenants confirmed the truth of this evidence. The Judge concluded (at p.41): "In my view, one could not have a clearer case of agency".

44. In his further written submissions, Mr Sissons readily relies on the principle of agency as his alternative position. There is no evidence that the four joint tenants had the express authority of their fellow joint tenant to apply for membership at the time that the application was made. However, he relies on the doctrine of ostensible authority and refers the Tribunal to [22-066] of Chitty on Contracts:

"Where a person by words or conduct represents to a third party that another has authority to act on their behalf that person may be bound by the acts of that other as if those acts had in fact been authorised."

45. Mr Sadiq, on behalf of the Respondent, rather starts with section 79(5) of the Act (see [19] above). On the relevant date, the number of "qualifying tenants" who were members of URR must have been at least seven. However, where the leasehold interest in a "qualifying flat" is owned jointly, both of the joint tenants must be members of the RTM company. This requirement was not met in respect of Flats 5, 6, 9 and 10. At the material time there were only six "qualifying tenants" who were members of URR.

46. Mr Sadiq relied on the following passage from "Service Charges and Management" (5th Ed) at 23-42:

"Joint tenants qualify jointly. Therefore, all joint tenants must act together to participate in the right to manage."

The editors rely on section 75(7) of the Act in support of the first sentence. However, no authority is provided for the statement of principle in the second sentence.

47. Chapter 23 of "Service Charges and Management", considers the statutory requirements in respect of the Notice of Invitation to Participate. At 24-25, the editors assert:

"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".

48. Again, no authority is provided for the statement. Neither Counsel was willing to support this proposition. It seems apparent that where a "qualifying flat" is held by joint tenants, the "qualifying tenant" is either a member of the RTM Company or is not a member. If the "qualifying tenant" is a member of the RTM Company, there is no need for a Notice of Invitation to Participate to be given. If the "qualifying tenant" is not such member, the Notice must be given to all joint tenants. This is the only approach which seems to be consistent with section 112(5) (see [20] above).

49. Mr Sadiq referred the Tribunal to Article 33(4) of UUR's Articles of Association (see [25] above) and section 75(7) of the Act (see [17] above). He concluded by asserting that all joint tenants must be members of the RTM Company. In the current case, four of the "qualifying tenants" were joint tenancies. In each case, only one of the two joint tenants were members of URR. Therefore, none of these "qualifying tenants" were to be treated as members of URR in computing the 50% threshold required by section 79(5) of the Act.

50. In his further written submissions, Mr Sadiq focuses on the impact of the Companies Act 2006. The concept of membership of the RTM Company in section 79(5) of the Act is to be resolved by applying the company law concept of membership. This concept does not admit of anyone being a member unless they appear in the company's register of members. The law relating to agency and/or trusts does not change this core concept.

51. Section 112 of the Companies Act 2006 provides that membership of a company may be acquired in two ways:

(i) On the company's registration at Companies House, the subscribers to the memorandum of association all become members; or

(ii) A person agrees to be a member of the company and their name appears in the register of members.

52. A person is only a member of a company if they appear in the company's register of members. Albeit that this appears to be apparent from the wording of section 112 of the Companies Act (see [21] above, Mr Sadiq relies upon the judgment of Michael Green QC (sitting as a deputy High Court Judge) in *Axis Football Investments Limited v Power* [2020] EWHC 1171 (Ch) at [43(d)].
53. Mr Sadiq argues that there is no scope for s.79(5) of the Act to be satisfied by one person becoming a member of a company notionally for both themselves and another person. Both joint tenants must be members and both must appear on the Register of Members.
54. Mr Sadiq argues that the benefit of this approach is that it allows for certainty. In the event of any dispute as to the number of "qualifying tenants", one only needs to look at the Register of Members. There is no need to engage in a fact-finding exercise as to whether one joint tenant has applied for membership with the approval of the other.
55. Mr Sadiq notes that the Applicant has adduced no evidence that would enable the Tribunal to conclude that at the time that any of the four joint tenants applied for membership of the RTM Company, they were doing so with the consent of or on behalf of the other joint tenant.

The Tribunal's Determination

56. The Tribunal is satisfied that our starting point is section 79 of the Act and the Notice of Claim to acquire the RTM. Section 79(5) requires that on the date that the Claim Notice is given, the membership of the RTM company must "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" (see [19] above). On that date, at least seven of the qualifying tenants needed to be members of URR.
57. The Claim Notice is at p.37-40. This lists the following as being both qualifying tenants and members of URR: (i) Flat 1: Stefan Finch; (ii) Flat 2: Sarah Clarke; (iii) Flat 5: Alex Ridout; (iv) Flat 6: Christian Facchini; (v) Flat 7: Michael Osilama; (vi) Flat 8: Graux Properties Limited; (vii) Flat 9: Saiqa Sayed-Vainas; (viii) Flat 10: Veronique Marie Muhiddin; (ix) Flat 11: Mauro Cadeddu; and (x) Flat 14: Tristan Craig Mutimer.
58. The fatal error in this notice is that it incorrectly describes the "qualifying tenant" in respect of four of these flats:
 - (i) Flat 5: The "qualifying tenant" was not Alex Ridout, but Alex Ridout and Benita Jane Ridout;
 - (ii) Flat 6: The "qualifying tenant" was not Christian Facchini, but Christian Facchini and Ilaria Dorigatti;

- (iii) Flat 9: The “qualifying tenant” was not Saiqa Sayed-Vainas; but Tryfon Vainas and Saiqa Sayed-Vainas; and
- (iv) Flat 10: The “qualifying tenant” was not Veronique Marie Muhiddin, but Kadri Muhiddin and Veronique Marie Muhiddin.

This error is fatal, because there were only six qualifying tenants who were members of URR on the relevant date.

- 59. This is not a mere technical error in the drafting of the Claim Notice. The Register of Members is at p.592-596. This confirms that neither Benita Jane Ridout, Ilaria Dorigatti, Tryfon Vainas nor Kadri Muhiddin were recorded as members.
- 60. The Tribunal cannot accept Mr Sissons’ argument that it is sufficient for just one of two joint tenants to be members of URR. Section 75(7) specifically provides that where a flat is let to joint tenants, the joint tenants shall be regarded as jointly being the qualifying tenant of the flat. This is reinforced by section 112 (5) which provides that where two persons jointly constitute the “tenant” or “qualifying tenant” any reference to the “tenant” or “qualifying tenant” is a reference to both of the persons who jointly constitute the “tenant” or “qualifying tenant”, as the case may require.
- 61. The Act and the model Articles of Association which are prescribed by the Act, make specific provision for joint tenants:
 - (i) Article 26(5) provides that two joint tenants of a qualifying flat should make a joint application for membership, stating the name and addresses of the two joint tenants and the order in which they wish to appear on the register of members.
 - (ii) Article 26(4) provides that once admitted as members, the two joint tenants shall be regarded as jointly being a member of the company in respect of the qualifying flat;
 - (iii) Article 33(4) provides that if both joint tenants attend a General Meeting, they are to exercise any vote jointly. Where both joint tenants tender a vote, the vote of the senior is to be accepted to the exclusion of the other joint tenant. The seniority is to be determined by the order in which the names of the joint tenants appear in the register of members.
 - (iv) Article 27 contemplates a number of situations where a person may subsequently become a qualify tenant under a joint tenancy. That person must apply to be a member of the RTM Company. Otherwise, the other joint tenant ceases to be a member. Thus, if A and B are joint tenants and B becomes bankrupt, the trustee in bankruptcy must apply for membership within 56 days, otherwise A ceases to be a member.

62. Even were it to be possible for one joint tenant to make an application for membership on behalf of both of them, there is no evidence that any such application was made in this case. The joint tenant making the application would need to specify the order in which two joint tenants wished to appear on the register, the senior member having the deciding voting right. Had such an application been made, the Tribunal would have expected the names of both members to have been recorded on the Register of Members. They were not so recorded.
63. The Tribunal is satisfied that the Register of Members is conclusive as to the membership of URR on the relevant date. When the Claim Notice was given, only six of the “qualifying tenants” were members of URR. It was necessary for both joint tenants in respect of the four “qualifying flats” held under joint tenancies, to be members of URR. They were not so registered. The RTM application must therefore fail.

Tribunal Fees

64. In the light of the decision which we have reached on the merits of the Application, we make no order for the refund of the fees paid by the Applicant.
65. The Respondent indicated that it intended to make an application for its costs pursuant to section 88 of the Act. The Applicant indicated that it was minded to make an application for a penal costs order pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in respect of the issue of whether the premises were “qualifying premises” for the purpose of the Act. The Respondent abandoned this argument on the eve of the hearing. If any application is to be made for a penal costs order, the parties must have regard to the guidance given by the Upper Tribunal in *Willow Court Management v Alexander* [2016] UKUT 290 (LC); [2016] L&TR 34. Either party may apply to the Tribunal for further Directions in respect of costs, whether pursuant to the Act or the Tribunal Rules.

Judge Robert Latham
29 April 2024

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).