



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

Case reference : LON/00AC/LRM/2023/0026

Property : 9 Henry Road, Barnet, EN4 8BL

Applicant : 9 Henry Road RTM Company Limited

Representative : RTMF Services Limited

Respondent : Chancery Lane Investments Limited

Representative : Paul Simon in house lawyer

Type of application : Right to manage

Tribunal member : Judge Dutton

Date of decision : 14 February 2024

DECISION

Decisions of the Tribunal

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, and the Applicant will acquire such right within three months after this determination becomes final. The reasons for my decision are set out below.

The application

1. This was an application to acquire the right to manage 9 Henry Road, Barnet, EN4 8BL ("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The Respondent freeholder has served a counter-notice asserting that the

Applicant RTM company was not on the relevant date entitled to acquire the right to manage.

2. The application was made to the Tribunal on 15 June 2023. Subsequently directions were issued on 19 September 2023 and amended on 19 October 2023. The directions provided that the matter be determined on the papers and was considered by me on 14 February 2024 on the basis of the papers before, comprising a bundle of some 202 pages. The bundle included, inter alia, the application the RTM company details, the Notice of Claim and Counter Notice, tribunal directions and the parties' statements of case and responses.
3. The relevant provisions of the Act are referred to in the decision below.
4. In its counter-notice, the Respondent raised an allegation that s74(1) of the Act and section 8(2) of the Right to Manage (Prescribed Particulars and Forms)(England) Regulations (the Regulations) 2010 had not been complied with.
5. Subsequently, in a Statement of Claim the Respondent added an allegation that s78(1) had not been complied with, there being some doubt as to the status of Charles Lillie M Limited (CLML), the registered proprietor of flat 9a and a Mr Nicholas Andreas Panayiotou, who appears to be a director of CLML. I have noted the contents of this statement of case and the witness statement of Paul Simon, the in-house solicitor for the Respondent.
6. The Applicant responded on 1 December 2023, the Respondent replied to this statement on 4 January 2024, adding an allegation that the Claim Form had not been signed appropriately and challenging the status of CLML and Mr Panayiotou. In a reply from the Applicants dated 8 January 2024 the signature issue is addressed by reference to the Court of Appeal case of Elim Court RTM Co.Ltd. v Avon Freeholds Ltd [2017]EWCA Civ 89. The membership issue is also addressed by reference to a First Tier Tribunal case, for which permission to appeal was sought and refused.

The Tribunal's decision

7. It is perhaps helpful to set out some of the chronology of events from the documents before me. I have used the numbering in the bundle submitted by the Applicant which contains the Respondent's statements and documents.
 - On 17 March 2023 CLML completed an RTM consent form confirming that it was a qualifying tenant and wished to become a member of the RTM company (see p 167)

- On 29 March 2023 9 Henry Road RTM Company Limited (the Company) was incorporated.
 - A copy of the Company register is included in the papers (see p 169) showing that at the 3 April 2023 Mr Panayiotou had been removed as a director and replaced by CLML
 - On 5 April 2023 the Claim Notice was issued seeking to acquire the right to manage the premises on 22 August 2023. The Claim Notice named the four leaseholders of the flats that formed the premises, namely CLML (flat 9a); Christine Harding (flat b); Sarah Flynn (flat c) and Len Callis (flat d), all of whom were members of the Company.
 - A counter notice was served on 12 May 2023 citing failings with s74(1) and that the Regulations had not been complied with, although no specifics are given. This has subsequently been expanded as referred to above.
8. The first issue raised as a reason the Company cannot acquire the right to manage is by reference to s74(1). This says: *74 (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.*
9. For my part I do not see the issue here. The Claim Notice lists the four leaseholders as members of the Company and as being qualifying tenants. There were only four leaseholders so even if one is doubtful the provisions of s79 (5) would apply. I do not see any issue with regard to s8(2) of the Regulations as in my finding the four leaseholders were at the relevant date members of the Company and qualifying tenants.
10. In the Respondent’s statement of case reference is then made to the provisions of s78(1) alleging that notice had to been given to each qualifying tenant. Reference is made to the Companies Registry papers which show at pages 62 onwards the date of incorporation (29 March 2023) and the directors at that time. What it does not do, as I do not think this was known to the Respondents at the time, is to show the change in Members on 3 April 2023, which supports the application for membership made by CLML on 17 March 2023. This of course all took place before the Claim Notice was issued. By reason of s78(1)(b) the service of a Notice of Invitation was not required on CLML as it had, by 17 March 2023 agreed to become a member of the Company. I do not see this is a valid complaint on the part of the Respondent. I attach section 78(1) which says as follows:

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.

11. Not content with these allegations seeking to prevent the Company from acquiring the right to manage by the Reply the Respondent sought to raise additional issues. One was that the Claim Notice had not been signed in accordance with Schedule 2 to the Regulations.
12. In response the Applicant relies on the Court of Appeal decision in *Elim Court RTM Co Ltd v Avon Freeholds*, with extracts of the judgment of LJ Lewison being quoted at page 199 of the bundle. It is clear to me that Mr Bignell had the authority of the Company to sign on its behalf, just as he has completed the Statements in this case. I therefore reject this objection.
13. The next allegation is that CLML was not a Company member and should therefore have been served with an Invitation to Participate. The point concerning the registered office is not in my finding a good one. The form completed at page 167 is an internal form. It is for the Company to decide if it accepts the application. By 3 March 2023 CLML is shown as a member of the Company and I do not accept that the Respondent can go behind that position. I note that the Respondent relies on beliefs, see p185, paragraph 12 and paragraph 21 not the evidence then available to it, and much supposition. S 78(1)(b) would, I find apply. Further the First-Tier tribunal findings in case LON/00AJ/LRM/2022/0007, supported by the Upper Tribunal when refusing permission to appeal, is a decision with which I agree.

Summary

14. Overall, I determine 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.
15. 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

16. 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.”

17. 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.

Name: Judge Dutton

Date: 14 February 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).