



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

Case reference : **CAM/00MG/LRM/2023/0006**

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

Property : **46 Newport Road, Woolstone
Milton Keynes MK15 0AA**

Applicant : **46 Newport Road RTM Company
Limited**

Representative : **Philip Bazin, The Leasehold Advice
Centre**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **Application in relation to the denial
of the right to manage**

Tribunal : **Judge David Wyatt**

Date of directions : **29 September 2023**

DECISION

Decision

The Tribunal:

- (1) determines that the Applicant was on the relevant date entitled to acquire the right to manage the Property; and
- (2) orders the Respondent to pay £100 to the Applicant to reimburse the tribunal application fee paid by them.

Reasons

Application

1. The Applicant RTM company (registration number 14518753) applied to the tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the “Act”) for a determination that, on the relevant date, it was entitled to acquire the right to manage the Property.

Background

2. The Property is a residential block accommodating nine flats, also known as Silverstone House. It appears that, at least at the relevant time, the registered proprietor of the freehold title remained UK Housing Sites Limited. Apparently the freehold had been sold to the Respondent, Assethold Limited, but their application for registration of the transfer had not yet been completed.
3. On incorporation, the members of the Applicant were the leaseholders of five of the nine flats (Nos. 1, 3, 4, 5 and 7). Notices of invitation to participate dated 12 December 2022 were given to the other leaseholders. In response, the leaseholder of No. 6 applied for membership and their details were added to the register of members from 30 January 2023.
4. By a claim notice dated 9 February 2023, sent to UK Housing Sites Limited and the Respondent on 13 February 2023, the Applicant gave notice that it intended to acquire the right to manage the Property on 30 June 2023. Those named in the claim notice as qualifying tenants and members of the Applicant were those noted above (leaseholders of six of the nine flats). On 20 February 2023, Scott Cohen Solicitors Limited wrote on behalf of the Respondent to request copy documents. These were provided on 24 February 2023.
5. By a counter notice dated 29 March 2023 signed by Ronni Gurvits of Eagerstates, who represents the Respondent, indicating that he was “*Duly authorised agent of UK Housing Sites Limited*”, the claim was disputed. Mr Gurvits alleged that on 20 February 2023 the Applicant was not entitled to acquire the right to manage because “*the notice inviting participation*”:
 - a) did not contain the particulars prescribed by the regulations made under section 78(2) of the Act; and
 - b) did not comply with the form of notices inviting participation as prescribed by the regulations made under section 78(3) of the Act.

Procedural history

6. On 14 August 2023, a procedural Judge gave case management directions. The application with enclosures would stand as the Applicant’s case. The Respondent was directed to by 5 September 2023 produce a statement of case setting out precisely the nature of their

challenge, including any legal submissions, with any relevant supporting information to be produced in bundles.

7. The directions warned that if the Respondent failed to comply with them the tribunal could bar the Respondent from taking any further part in these proceedings and may determine all issues against them. Those directions were sent to the parties by e-mail and post on 15 August 2023. On 22 August 2023, Scott Cohen Solicitors Limited confirmed that their client would now be dealing with the matter directly and all future correspondence should be sent to Mr Gurvits at Eagerstates.
8. The Respondent has failed to produce anything in these proceedings, let alone a statement of case, despite the e-mail from the Applicant's representative on 18 September 2023 attaching for this determination a bundle of the documents already produced. That bundle noted clearly on its cover page that the Respondent had failed to produce a statement of case.
9. The directions provided that the tribunal would determine this matter on or after 26 September 2023 based on the documents provided unless the tribunal considered a hearing was necessary or by 15 September 2023 either party requested a hearing. Neither party requested a hearing. Accordingly, by Rule 31(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"), the parties are taken to have consented to this matter being decided without a hearing. I am satisfied that a hearing is not necessary to determine this case.

Determination

10. In view of the failure by the Respondent to comply with the directions, particularly the failure to explain what particulars were said to be missing from the notices of invitation to participate and how those notices were said not to comply with the prescribed form, under Rules 9(3)(a) and (7) I bar the Respondent from taking further part in these proceedings and under Rule 9(8) I summarily determine the matter against the Respondent. The Applicant was on the relevant date entitled to acquire the right to manage the Property.

Review

11. However, to avoid any potential risk of argument, and since the counternotice (in response to the claim notice given to the (then) registered proprietor and the Respondent) may be equivocal about who it was given for, I have for the sake of completeness considered the only apparent mistake in the notices, as identified by the Applicant.
12. The counter notice did not dispute that the notices of invitation to participate contained the particulars required by section 78(2)(a) to (c). The only relevant provision in section 78(2) is subsection (d), by which a notice of invitation to participate must contain such particulars as may be required to be contained in such notices by relevant regulations. By

section 78(3), such notice must also comply with such requirements as to the form of such notices as may be prescribed by relevant regulations.

13. Regulation 3 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 (the “**Regulations**”) provides that notices of intention to participate shall in addition to the other particulars required by section 78(2) contain specified information including: “...*the names of the landlord and any third party*” and various prescribed statements. By Regulation 8, notices of invitation to participate shall be in the form set out in Schedule 1 to the Regulations.
14. The notices of intention to participate given by the Applicant appear to be in the form set out in Schedule 1 to the Regulations, including the prescribed notes. As the Applicant’s representatives identified in their letter to the Respondent on 11 April 2023 in response to the counterclaim and in their application documents copied to the Respondent, the only apparent mistake in the notices of invitation to participate is in relation to the name of the landlord. These notices gave in paragraph 4 a rather lengthy description, which includes the following:

“The Landlord – Currently shown at the Land Registry as UK HOUSING SITES LIMITED ... although it is known that the Freehold has been sold and is pending registration at the Land Registry to ASSETHOLD LIMITED Accordingly, the landlord is currently REDPOINT LIMITED, though, Assethold Limited may at anytime, upon registration of the disposition to it, and relating back to the date of its application to the Land Registry to register the disposition, become the landlord...”
15. In my view, the erroneous reference to Redpoint Limited would not invalidate the notices of intention to participate. The notices complied with Regulation 3, because they contained the name of the landlord. This was not a case where only an entirely incorrect name had been given. The reference in this long paragraph to Redpoint Limited is unfortunate but in context it is such an obvious mistake that it does not sufficiently undermine the earlier statement of the name of the landlord.
16. Further, in view of the earlier statement of the correct name of the landlord, it is an inaccuracy which would be saved by section 78(7), which provides that a notice of intention to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 78.
17. Even if it is a failure to comply and even if it is not an inaccuracy saved by section 78(7), applying the principles in Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89 (at [56-59] and [67] in particular), this failure would not invalidate the notices because it is an obvious mistake of a type that would not prejudice the general purposes of the requirement (in subordinate legislation, not the Act itself) to include in notices of intention to participate the name of the landlord.

18. Accordingly, I am also satisfied based on the material helpfully produced by the Applicant in advance that the Applicant was on the relevant date entitled to acquire the right to manage the Property.

Costs

19. Under Rule 13, the tribunal has discretion to order reimbursement of tribunal fees. Since the Respondent has failed to comply with the directions and/or has been unsuccessful, I order it to pay £100 to the Applicant to reimburse the tribunal application fee paid by them.

Name: Judge David Wyatt

Date: 29 September 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).