



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

Case Reference : **LON/00AF/LRM/2024/0005**

Property : **47 MANOR ROAD, BECKENHAM,
BR3 SJB**

Applicant : **THE MANOR HOUSE MGMT Co
RTM COMPANY LIMITED**

Respondents : **ASSETHOLD LTD**

Type of Application : **S.84(3) COMMONHOLD &
LEASEHOLD REFORM ACT (2002)**

Tribunal Member : **Judge Shepherd
John Naylor FRICS**

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

Date of Decision : **8th October 2024**

DECISION

(C) CROWN COPYRIGHT

1. This is an application made by Manor House MGMT Co Limited (“The Applicants”) for a determination that they were entitled acquire the Right to Manage premises at 47 Manor Road, Beckenham, BR3 5JB (“The premises”). The Application is brought against Assethold Limited the freeholders of the premises. Surprisingly, the Applicants chose not to attend the hearing of their own application on 5th August 2024. The Respondents were represented by Kate Traynor of Counsel who gave considerable assistance to the Tribunal.
2. The premises consist of a converted house with five flats on long leases. The Applicants gave a claim notice stating their intention to acquire the right to manage the Property, pursuant to s.79 of the 2002 Act, on 17 November 2023. The Respondents didn’t receive this notice until 29th November 2023 as it was sent in the post. The notice specified the relevant date for acquisition of the RTM as 17th March 2023 and required a counternotice to be served by 17th December 2023. In addition to this notice the Applicants produced another notice as part of their case which stated that the counternotice needed to be served by 19th December 2023. The Respondents had not received this except as part of these proceedings.
3. In response to the Claim Notice that they did receive the Respondents served a counter notice on 14th December 2023 denying that the Applicants were entitled to acquire the right to manage the premises because: contrary to s.80(6) of the 2002 Act, the RTM Co did not specify a date not earlier than one month after the relevant date; contrary to s.80(7) of the 2002 Act, the RTM Co did not specify a date at least three months after the date specified under s.80(6) and contrary to s.79(3) of the 2002 act, the membership of the RTM Co did not include a number of qualifying tenants of flats contained in the premises which was not less than one-half of the total number of flats so contained.
4. Although they didn’t attend the hearing of their own application the Applicants provided a bundle of documents and a statement. In relation to service these included a screenshot which showed the collection of the claim notice on 21st November 2023. It’s not clear which of the two claim notices is being collected nor by whom. They also exhibited evidence of an uber journey to the freeholder’s offices on 17th November 2023. They say that this is evidence of service of the notice on 17th November 2023. It patently is not evidence of this. They could and should have provided a witness statement confirming service but they chose not to. The uber evidence is entirely equivocal in terms of what it proves. Interestingly, the Applicants suggested in their statement that there was no prejudice to the Respondents because the latter gave counter notice on 14th December 2023. This somewhat misses the point because the counternotice pointed out the deficiencies in the notice.

5. The Applicants also provided a redacted document referred to as a register of members. This document suggests that members of the RTM company had become members before they'd made their applications for membership. The applications for membership were included as part of the Applicants' evidence. The reliability of the register of members is therefore at question.

The law

The Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

6. The 2002 Act, s.79 provides as follows:

(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.

7. The 2002 Act, s.80 sets out the requirements for the contents of the claim notice:

(1) The claim notice must comply with the following requirements.

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both (a) the qualifying tenant of a flat contained in the premises, and (b) a member of the RTM company, and the address of his flat.

(4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

(a) the date on which it was entered into,

(b) the term for which it was granted, and

(c) the date of the commencement of the term.

(5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.

(8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

8. The 2002 Act, s.81 provides:

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

9. The regulations referred to in s.80(8) and (9) are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. They require the use of prescribed forms, for the notices required in the process of acquisition of the right to manage.

10. The Companies Act 2006 s.113, provides for the company's duty to keep a register of its members and s.116 provides for the rights to inspect and request copies of the register and index of members.

Determination

11. It can be seen that the date specified under s.80(6) must be “not earlier than one month after the relevant date.S.79(1) provides that 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 i.e the date of service or receipt *Moskovitz and Others v 75 Worple Road RTM Company Ltd* [2010] UKUT 393 (LC), [2011] 13 EG 108.

12. If the notice was sent by post on 17th November 2023 this self evidently would not give the required one month’s notice. Further even if the Applicants were given the

benefit of the doubt (and we are not inclined to give them this as they chose not to attend and give evidence) and they did hand serve the notice on 17th November 2023 the corresponding date rule would necessarily mean that the notice would be inadequate.

13. Accordingly the claim notice did not specify a date not earlier than one month after the relevant date and a failure to provide information required by s.80(6) is a failure to provide mandatory information which prevents the claim from being valid : *Assethold Ltd v 15 Yonge Park RTM Co Ltd* [2011] UKUT 379 (LC). The notice was also defective because it did not comply with s.80(7) of the Act.

14. This is sufficient to decide the case but we also find that at the relevant date (when the notice was served) the Applicants did not have the requisite number of qualifying tenants because the memorandum of association of the RTM Co, dated 17 April 2023, includes only James De Souza as a member of the RTM Co and the Applicants have failed to explain the discrepancies between the date of membership on the document entitled 'Company Membership Record' and the memorandum of association dated 17 April 2023.

15. In summary the application is dismissed.

Judge Shepherd

3rd October 2024

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.