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

Case Reference : **LON/00AU/LRM/2014/0015**

Property : **43-47 Boleyn Road, London N16
8JS**

Applicant : **43-47 Boleyn Road RTM Company
Limited**

Representative : **Urban Owners**

Respondent : **AS Ground Rent Investments
Limited**

Representative : **Sterling Estates Management
Limited**

Type of Application : **Section 84(3) of the Commonhold
& Leasehold Reform Act 2002
(application in relation to the
denial of the right to manage)**

Tribunal Member : **Mr L Rahman (Barrister)**

**Date and venue of
hearing** : **19.8.14 at 10 Alfred Place, London
WC1E 7LR**

Date of Decision : **19.8.14**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the applicant is entitled to acquire the right to manage the property and that the acquisition date under section 90(4) of the Act is 19.11.14, being 3 months from the date of this decision.

Background

1. The applicant seeks a determination pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that it is entitled to acquire the right to manage the property known as 43-47 Boleyn Road, London N16 8JS ("the property").
2. By a claim notice dated 19.5.14, the applicant gave notice that it intends to acquire the right to manage the premises.
3. By a counter notice dated 5.6.14, the respondent denied that the applicant was entitled to acquire the right to manage the property alleging that the applicant had failed to establish compliance with sections 73, 78(1) and 79(2), (5), and (8) of the Act.
4. By an application dated 20.6.14, the applicant made this application to the tribunal. On 25.6.14 the tribunal issued directions in this case, which included a direction that the matter be dealt with by a paper determination. The tribunal also identified a single issue for determination, namely, whether on the date on which the notice of claim was given, the applicant was entitled to acquire the right to manage the premises specified in the notice.
5. The tribunals determination in this matter was made solely on the basis of the statements of case and other documentary evidence filed by the parties pursuant to the tribunals Directions. Each of the relevant challenges made by the respondent are dealt with below.

Compliance with s.73

6. The respondent does not explain why it feels there has been a failure to comply with this section.
7. The applicant has provided relevant copies of the Certificate of Incorporation and the Articles of Association confirming it is a private company limited by guarantee and its Articles state that its object is the acquisition and exercise of the right to manage the property. There is no evidence the applicant is a "commonhold association", there is no evidence that another company is already an RTM company in relation

to the property, and there is no evidence that the freehold title to the property has been conveyed or transferred to the applicant.

8. The tribunal finds no evidence of a failure to comply with this section of the Act.

Compliance with s.78(1)

9. The respondent states there is no evidence of service of the Notices of Invitation to Participate.
10. The applicant states the owners of flats 1, 3, 4, 7 (Ms O'Farrell), 9, 11, and 12, who were not members of the RTM company, were served with the relevant Notices dated 1.5.14 (copies of which have been included in the applicants bundle). In particular, it relies upon the "Bulk Certificate of Posting" (page 79 of its bundle), dated 1.5.14, to prove that the relevant Notices were posted to flats 1, 3, 4, 7, and 12. It relies upon the witness statement of Scott Lewis McCabe, a solicitor, who states he personally served the relevant Notices on the leaseholder of flat 11 and the leaseholders of flat 9 by placing the Notices in the letter box for each of the flats on 2.5.14, by sending a duplicate copy of the Notices by courier to each of the lessees of those two flats at their respective offices and which have been signed as delivered / received on 2.5.14, and also sending the relevant Notices by email to each of the lessees of those two flats on 2.5.14 (pages 80-81 of its bundle).
11. The applicant states the remaining leaseholders of flats 2, 5, 6, 8, 10, 13, and 14, as at 1.5.14, were all members of the RTM company as listed on the relevant Notices and confirmed by the Register of Members (on page 50 of the bundle).
12. In view of the cogent supporting evidence provided by the applicant and in the absence of any evidence from the leaseholders from flats 1, 3, 4, 7, 9, 11, and 12, claiming not to have received the relevant Notices, the tribunal is satisfied the relevant Notices were served.
13. The respondent states the leaseholder of flat 4, Bonny Morris, who was not an existing member of the applicant, was not correctly served with the Notice of Invitation to Participate. Ms Morris resides in Singapore and does not reside in this country. The relevant Notice has purportedly been issued directly to the flat. No evidence has been provided to indicate the relevant Notice was served on Ms Morris at her actual place of residence in Singapore.
14. The applicant states Bonny Morris did not ask for any Notices to be sent to any alternative address and relies upon a signed statement from Bonny Morris (page 82 of its bundle), dated 3.8.14, in which she states she was fully aware that the applicant had served a notice of claim

dated 19.5.14, she had received the Notice of Invitation to Participate dated 1.5.14 and served at flat 4, and that she had not notified the RTM company of any different address in England or Wales at which she wished to be given any relevant Notices.

15. Given the witness statement provided by Bonny Morris the tribunal is satisfied she had been served with the relevant Notices.
16. The respondent states the leaseholder of flat 7, at the date of the Notice of Claim, was not Denise O'Farrell, who had sold her flat on 31.3.14, but on whom the applicant had served a Notice of Invitation to Participate dated 1.5.14. The new owner, Mr Jeffrey, is purported to be a member of the RTM company, in the Claim Notice dated 19.5.14, yet approximately 18 days earlier such membership was not noted on the Notices of Invitation to Participate. The applicant has provided no evidence to support the membership either by way of a signed membership application form or an updated copy of the Membership Register.
17. The applicant relies upon the Register of Members (page 50 of the bundle) and the "Application for Membership" dated 7.5.14, completed and signed by Mr Jeffrey, to show that Mr Jeffrey had become a member of the RTM company on 7.5.14.
18. Given the cogent supporting evidence and in the absence of any evidence to the contrary, the tribunal is satisfied Mr Jeffrey had become a member of the RTM company on 7.5.14. It therefore follows that it was correct to not include Mr Jeffrey's name as a member on 1.5.14.

Compliance with s.79(2)(5)(8)

19. The respondent has not clearly set out the way in which it claims the applicant had failed to comply with the relevant subsections, although it is noted at paragraph 31.ii of the respondents statement of case that it questions whether there is evidence of service of the Notice of Claim upon the qualifying tenants.
20. The applicant states the relevant subsections had been complied with and that copies of the cover letters (which refer to the attached copy of the Claim Notice) that were sent to all the leaseholders along with copies of the Claim Notice are included at pages 85-98 of the bundle, together with the "Bulk Certificate of Posting" dated 19.5.14 (page 98 of the bundle), confirming postage by first class.
21. In view of the cogent supporting evidence provided by the applicant and in the absence of any evidence from the leaseholders claiming not to have received the relevant Notices, the tribunal is satisfied the

relevant Notices were served on all the leaseholders by first class post on 19.5.14.

22. For the reasons given at paragraphs 9-12 above the tribunal is satisfied the Notices of Invitation to Participate were served by first class post on 1.5.14 and by hand/courier/email on 2.5.14. The tribunal is satisfied the Notices of Invitation to Participate were given at least 14 days before giving the Claim Notice.
23. The Tribunal is satisfied, having looked at the Register of Members, that at the relevant date the membership of the RTM company included qualifying tenants of flats not less than one half of the total number of flats, namely, flats 2, 5, 6, 7, 8, 10, 13, and 14 out of a total of 14 flats.
24. Accordingly, for the reasons stated above, the tribunal concluded that on the date on which the Notice of Claim was given, the applicant was entitled to acquire the right to manage the property.

Name: L Rahman

Date: 19.8.14