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

Case Reference : LON/00AU/LRM/2014/0017

Property : 59 Huntingdon Street London N1
1BX

Applicant : 59 Huntingdon Street RTM
Company Limited

Representative : Urban Owners Limited

Respondent : Assethold Limited

Representative : Scott Cohen Solicitors

Type of Application : For the determination of an
Application relating to the Right to
Manage

Tribunal Members : Judge Carr
Mr Hugh Geddes RIBA

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 10th February 2015

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Applicant is not entitled to acquire the Right to Manage of 59 Huntingdon Street.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision

The application

1. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') makes provision for RTM companies, the members of which are qualifying tenants of premises to which the provisions apply, to acquire the right to manage the premises. A landlord who is given a notice claiming the right to manage an RTM company may give the company a counter-notice alleging that the company is not entitled to acquire the right to manage the premises (section 84(2)), and the RTM company may then apply to the LVT for a determination that it was on the relevant date entitled to acquire such right (section 84(3)).
2. By a claim notice dated 19th May 2014 the Applicant, 59 Huntingdon Street, an RTM Company, gave notice to the Respondent, Assethold Limited, the freehold owner of 59 Huntingdon Street, the premises which are the subject of this determination, that it intended to acquire the Right to Manage the premises.
3. By a counter-notice dated 16th June 2014 the Respondent disputed the claim alleging that by reason of section 72 of the Act the Applicant was not entitled to acquire the Right to Manage the premises.
4. The Applicant has therefore applied to the Tribunal pursuant to section 84 of the Commonhold and Leasehold Reform Act 2002 for a determination that it was, on the relevant date, entitled to acquire the Right to Manage 59 Huntingdon Street.
5. On 11th July 2014 the FTT issued directions in this matter and determined that the matter be decided on the basis of written representations alone and without an oral hearing.

The issues

6. The only issue before the Tribunal is 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. The Respondent in particular disputes the claim on the basis (i) that the claim notice failed to comply with the prescribed form of claim notices as the document had not been properly signed and (ii) that the RTM company was not an RTM Company in relation to the premises known as 59

Huntingdon Street London N1 as it does not comply with part b of Section 73(2) of the Commonhold & Leasehold Reform Act 2002.

The law

7. Sections 71 – 94 of the Act set out the statutory framework for the acquisition of the Right to Manage. The relevant sections for the purposes of this determination are s.71, s.73(2), s.80(8) and s.80(9). For the convenience of the parties a summary of the salient provisions are set out below.
8. Section 71 of the Act provides that a Right to Manage Company may acquire the right to manage premises.
9. Section 73(2) provides that a Right to Manage Company is one that
 - (i) Is a private company limited by guarantee and
 - (ii) Its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage premises
10. Section 80 concerns the contents of the claim notice. Subsection (3) provides that the notice must state the full name of each person who is both the qualifying tenant of a flat contained in the premises, and a member of the RTM company such particulars of the lease as are sufficient to identify it, including the date on which it was entered into, the term for which it was granted, and the address of the flat. Subsection (8) provides that the claim notice 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. Subsection (9) provides that in addition it must comply with such requirements (if any) about the form of the claim notices as may be prescribed by regulations so made.
11. The relevant regulations are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. Paragraph 8 of the Regulations provides that the form of claim notices comply with the prescribed form of notice exhibited in Schedule 2 to the Regulations.

Argument in connection with the notice of claim

12. The Respondent's arguments are set out in its statement of case. It argues that the claim notice is defective because the document has not been properly signed. The claim notice has been signed by its company secretary, Urban Owners Limited. An individual has given a personal signature on behalf of Urban Owners Limited.

13. The Respondent's argument is that because the company secretary is a company, it can only sign a document in one of the methods prescribed by s.44 of the Companies Act 2006, ie by affixing its common seal, signed by two authorised signatories or one director in the presence of a third party who attests the signature.
14. The Applicant argues that the person who signed the claim notice is Stephen Charles who signed on behalf of Urban Owners Limited which is the Company Secretary of the RTM.
15. The Applicant considers that the signature of Stephen Charles is sufficient for the purposes of the Regulations.

The Tribunal's decision

16. The Tribunal determines that the claim notice is not defective.

Reasons for the tribunal's decision

17. Since the date of the application to the Tribunal, the Upper Tribunal has considered this matter. Indeed this application was deferred until the decision was handed down.
18. In *Elim Court RTM Co Ltd v Avon Freeholds Ltd and Assethold Limited and 369 Upland Road RTM Company Ltd & Canadian Avenue RTM Company Ltd and Sinclair Gardens Investments (Kensington) Limited and (i) Farnborough Road (Calloway House) RTM Company Limited (2) Farnborough Road (Brand House) RTM Company Limited (LRX/25/2013 and LRX 81/2013 and LRX /87/2013)* the Upper Tribunal considered the significance of a signature to the claim form on behalf of a company which was itself the company secretary of the RTM company which failed to comply with the requirements of s.44 of the Companies Act 2006.
19. It should be noted that the Tribunal offered the parties the opportunity to respond to the Upper Tribunal decision in a letter dated 1st December 2014. Neither party provided a response.
20. In the opinion of the Tribunal, and without the benefit of representations from the parties, the effect of the Upper Tribunal decision is that, despite the failure of Stephen Charles to sign the claim form in a manner compliant with s. 44 of the Companies Act 2006, and despite the unhelpful addition of the words 'on behalf of Urban Owners Ltd, Company Secretary', the signature remains valid for the purposes of the claim form because Mr Charles is someone authorised to sign on behalf of the RTM.

21. The Tribunal relies upon paragraphs 52 – 58 of the Upper Tribunal in reaching this decision.
22. Whilst the Tribunal has no specific evidence that Mr Charles is so authorised, there is no doubt that if the Tribunal asked the Applicant to confirm that position it would do so.
23. Therefore the notice of claim is not defective.

Argument in connection with the articles of association

24. The Respondent argues that the RTM Company was not an RTM Company in relation to the premises known as 59 Huntingdon Street as it fails to comply with part b of section 73(2) Company fail to state that the object of the RTM Company is to acquire and exercise the right to manage the premises as specified within the claim notice.
25. In particular the articles of association of the RTM are defective because the premises are described as Flat 1 – 6, 59 Huntingdon Street whereas the premises are defined in the freehold title in its entirety ie as 59 Huntingdon Street
26. The argument of the Respondents is that this misdescription is significant because the wording of the definition of the premises within the articles of association does not allow the RTM to acquire the right in relation to the entire freehold premises and appurtenant property but refers only to the management of the leaseholder interests of the premises.
27. The Applicant provides very little in rebuttal of the Respondent's argument stating only that the Respondent's argument is incorrect.

The tribunal's decision

28. The Tribunal determines that the misdescription of the premises renders the claim form defective.

Reasons for the tribunal's decision

29. The tribunal shares the concerns of the Respondent and agrees that the definition of the premise should leave no scope for interpretation given the rights and obligations that follow the acquisition of the Right to Manage.
30. It is the decision of the Tribunal that there is a material difference between 59 Huntingdon Street and Flat 1 – 6 Huntingdon Street.

Name: Helen Carr

Date: 10th February 2015