

391



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

Case Reference : LON/00/AU/LRM/2013/0021

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

Applicant : 43-47 Boleyn Road RTM Co Ltd

Representative : Urban Owners Ltd

Respondent : AS Ground Rent Investments Ltd

Representative : Sterling Estates Management Ltd,
Managing Agent

Type of Application : Section 84(3) of the Commonhold
& Leasehold Reform Act 2002

Tribunal Members : Judge I Mohabir

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

Date of Decision : 29 August 2013

DECISION

Introduction

1. This is an application made by the Applicant under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination 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 April 2013 and served on the Respondent, as freeholder, the Applicant exercised the entitlement to acquire the right to manage the property.
3. By a counter notice dated 20 May 2013, the Applicant denied that the Respondent was entitled to acquire the right to manage the property on the basis that it had jointly or severally breached sections 78(1) and 79(2), (5) and (8) of the Act. It is not necessary to set out the statutory provisions here, as they have already been set out at paragraph 6 of the Respondent’s statement of case and are self-evident. Essentially, the sections expressly set out when the notice inviting participation and the claim notice are to be served on every qualifying tenant.
4. By an application dated 3 July 2013, the Respondent made this application to the Tribunal. On 5 July 2013, the Tribunal issued Directions in this case, which included a direction that the matter be dealt with by a paper determination.

Decision

5. The Tribunal’s determination in this matter took place on 29 August 2013 and was made solely on the basis of the statements of case and other documentary evidence filed by the parties pursuant to the Tribunal’s Directions. Each of the challenges made by the Respondent are dealt with below.

Failure to Serve Documentation

6. The Tribunal did not accept the Respondent's assertion that the leaseholders of Flats 9 and 11 were not served with either the notice of invitation to participate or the claim notice. From the documentary evidence provided by the Applicant it is beyond doubt that the notice of invitation to participate had been posted to every leaseholder in the property on 14 March 2013, with deemed service on 18 March 2013. It is also beyond doubt that a copy of the claim notice had been provided to each lessee by a letter dated 19 April 2013, not less than 14 days before the notice of invitation had been given. The Tribunal finds in these terms and concluded that none of the provisions of sections 78(1) and 79(2), (5) and (8) of the Act had been breached.

7. It should be made clear that the fact that the said notices may not have come to the attention of the lessees of Flats 9 and 11, possibly as a result of them being sub-let, does not invalidate the notices. Section 111(5) of the Act provides that service by an RTM company must be effected at the relevant flat address unless it is notified by the qualifying tenant otherwise. I accept the Applicant's submission that it had not been provided with an alternative address by the lessees of Flats 9 and 11. Indeed, they have not provided any evidence to the contrary.

8. It follows, therefore, that the Respondent's assertion that the failure to serve Mr Ahmed, the lessee of Flat 9 who is also a Director of Sterling Estates Management Ltd, on the basis that it was an attempt to exclude him from the process also fails.

9. The concerns expressed by the leaseholders of Flats 9 and 11 about the future management of the property are irrelevant here.

10. The Tribunal did not accept the Respondent's assertion that the lessee of Flat 4, Ms Bonny, did not receive any documentation. It is quite clear from an e-mail from her dated 3 June 2013 that her only reason

for not participating was because she lives abroad. Indeed, she expressly stated that she had “read over the documents”.

Membership Register

11. The Tribunal did not accept the Respondent’s submission that the failure by the Applicant to provide it with a copy of the membership register invalidates this process. There is no such requirement in sections 78(1) and 79(2), (5) and (8) of the Act. There is a requirement to maintain such a register and the Applicant has provided the Tribunal with a copy as part of its evidence. The case of ***Southall Court Residents Ltd & Others v Buy Your Freehold & Others*** (LRX/1242007 AND LRX/137/2007) is of no relevance because in that case it was held that no proper membership register existed. That is not the position here.

12. Accordingly, for the reasons stated above, the Tribunal concluded 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 29 November 2013, being 3 months from the date of this decision.

Judge I Mohabir

29 August 2013