



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

Case Reference : **LON/00AY/LRM/2015/0018**

Property : **8 & 9 Estreham Road, London
SW19 5NT**

Applicant : **8 & 9 Estreham Road RTM
Company**

Representative : **Canonbury Management
Mr R McElroy**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors
Mr R Gurvitz**

Type of Application : **Application relating to Right to
Manage under Section 84(3) of the
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Tribunal Judge Dutton**

**Date and venue of
Hearing** : **26th August 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **21st September 2015**

DECISION

DECISION

The Tribunal determines that the Applicants are entitled to acquire the right to manage the property at 8 & 9 Estreham Road, London SW16 5NT under the provisions of the Commonhold and Leasehold Reform Act 2002 (the Act) for the reasons set out below.

BACKGROUND

1. By an application dated 9th June 2015 the Applicants sought the right to manage the premises at 8 & 9 Estreham Road, London SW16 5NT (the Property) under the provisions of Section 84(3) of the Act.
2. This is not the first application for an acquisition of the right to buy by the Applicant Company. On 1st October 2013 a claim notice seeking the right to manage was made. A counter notice challenging that right was also lodged and the matter came before the Tribunal on the 21st May 2014 when the application was dismissed for reasons set out in case reference LON/OOAY/LRM/2013/0031. Subsequently a further notice of claim was made on 18th August 2014 and again this was objected to and came before the Tribunal on 17th December 2014. Again the Tribunal took the view that the Applicant had not satisfied the requirements of the Act for the reasons set out in that decision under case number LON/OOAY/LOA/2014/0004. The matter that came before me, therefore, on 28th August 2015 was the third bite of the cherry that the Applicants have had at seeking an order to acquire the right to manage of the Property.
3. Prior to the Hearing I had before me a bundle of documents which included the application, the Respondent's statement of case and the Applicant's response, Tribunal directions, a copy of the claim notice and counter notice, documentation relating to the incorporation of the Applicant, the register of members and copies of invitation notices and additional claims' evidence.
4. In the Respondent's statement of case, which is dated 27th July, Scott Cohen Solicitors alleged that there had been failures on the part of the Applicant under the provisions of Sections 78(1) and 79(8) of the Act as well as under Sections 79(6) and 79(3).
5. In the response to the statement of case, which had a number of exhibits attached, the Applicants appeared to adopt a somewhat nonplussed approach suggesting that the Respondent "has not presented a single valid objection which is valid and irrespective of the issues with the historical claims, the current claim, should, in our opinion, succeed."

6. It is understood that following the service of the Respondent's statement of case certain documentation was provided which answered some of the outstanding points.

HEARING

7. At the Hearing Mr McElroy represented the Applicants and Mr Gurvitz, I understand to be a director of the Respondent Company, appeared for Assethold. He had attended the two previous hearings although had little to say on those occasions. At this time, however, he did indicate that there were some additional comments he wished to make on the documentation indicating that the bundle before me had been received by them a couple of weeks or so ago.
8. The first point he wished to raise was that he thought the Bank of Ireland address shown on the notice of invitation as PO Box 3191 was incorrect. He thought the only PO Box number was 27 as is shown in the register of title for the leasehold interest of 8A Estreham Road of which the Bank of Ireland is the lessee. However, when it was pointed out to him that the register of title for the leasehold interest held by Mr Mohammed Yasir Khan of 8A Estreham Road showed the Bank of Ireland having a PO Box address of PO Box 3191 he withdrew this complaint. However, he was not content with that but, before moving on to other issues, confirmed with us that he no longer proceeded with the complaints set out in the statement of case relating to potential breaches of Section 78(1), 79(8) and 79(6) accepting that the notices of invitation had been sent both to Mr Khan at the flat address and to the Bank of Ireland at an address which is certainly shown on one register of title. However, this still left a complaint that Section 79(3) had not been complied with and also he revisited the question of the valid notice of invitation to Mr Khan because the document included in the bundle, having been served by the Applicant on 17th March 2015, did not include under paragraph 4 the details of the Bank of Ireland being a landlord of Mr Khan.
9. In respect of the issues under Section 79(3) his case was that the members' register did not show those members of the company who were no longer members but merely the current membership. The document in the bundle is a report produced by the Applicants headed 'Register of Directors and Members' and dated 6th August 2015 which shows that the leaseholders of Flats 9A, 9B, 9C and 8B are all members of the company and that in all cases were members before any notice of invitation was issued and certainly before the claim notice was issued, which was on 4th April 2015. He said the failure to include former members of the company was such that it rendered the notice of invitation to Mr Khan invalid and also, as in his view the register of members was defective, it therefore fell foul of the provisions of Section 79.
10. In response Mr McElroy told me that the register of members was taken from his computer system and he accepted it did not include

former members. However, he confirmed that at the relevant times those people shown on the register of members certainly from July 2014 had been consistent and remained members at all relevant times. He was therefore of the view that the failure to include those members who had retired or resigned was irrelevant. He said there was nothing in the Act which provides for rejection under the Companies Act 2006.

11. In respect of the invitation notice he accepted that it did not include the details of the Bank of Ireland but that this again was not fatal. The intention of the notice of invitation was to let the lessee know the proposed management arrangements, who the landlord was and invite that person to become a member of the RTM Company. He also pointed out that the notice of invitation was in the same form as that sent out on the previous unsuccessful claims when this point had not been raised. It was also not a point raised by the solicitors for the Respondent in the statement of case before me, nor it seems, from the copies of the earlier cases was this a point taken previously.
12. It is also fair to record one further issue that Mr Gurvitz raised, although did not appear to pursue with any great vigour, and that related to the schedule attached to the notices of invitation which set out the leaseholders and the company directors but did not specifically list Mr McElroy and Mr Breare as directors in the schedule. However, they both signed on behalf of RTM Secretarial Limited and RTM Nominee Directors Limited, clearly indicating their position with those companies.

THE LAW

13. The law applicable to this application is set out in the annex hereto and I have considered this when reaching my decisions. I have also taken into account the written documentation and the submissions made by Mr Gurvitz and Mr McElroy.

FINDINGS

14. I must confess I find it somewhat surprising that having had two attempts already to resolve the right to manage, there would be some suggestion by the Respondents that still things were not procedurally correct. As a result of the production of documentation, a number of the complaints raised by the Respondent's solicitors fell away and Mr Gurvitz was pragmatic enough at the Hearing to withdraw complaints with regard to the address for service of the Bank of Ireland. I was therefore left with two matters to consider. The first was whether or not the notice of invitation was faulty in that it failed to include the Bank of Ireland and secondly whether the register of members was faulty in that it did not include former members.
15. I will deal with each of those issues in turn starting firstly with the notice of invitation. Section 78 requires a notice of invitation to be sent to any qualifying tenant who has not agreed to become a member or is a

member of the RTM company. This was Mr Khan. It was said that the notice of invitation to Mr Khan was faulty because it failed to include details of the Bank of Ireland. I reject that contention. It seems to me that the purpose of the notice of invitation is to let the lessee know the intention to seek the Right to Manage and to invite him to become a member of the RTM Company giving all the relevant details of that RTM Company as is necessary under the Act. I do not consider that the failure to include details of the Bank of Ireland, who would be known to Mr Khan as being his mortgagee and his superior landlord, could in anyway cause prejudice to Mr Khan is this procedure. In those circumstances, therefore, I find that the failure to include the Bank of Ireland on the notice of invitation does not render it invalid.

16. I then turn to the question of the register of members. The notice of claim under Section 9 must comply with sub-sections 4 and 5. Sub-section 5 applies in this case which says "in any other case the membership of the RTM Company must on the relevant date include a number of qualifying tenants of the flats contained in the premises which is not less than one half of the total number of flats so contained." It has no other requirement. It does not say that the register of members should include details of persons who are no longer members of the RTM Company. It is quite clear from the latest copy of the register of members produced by the Applicant at page 100 onwards that the leaseholders of Flats 8B, 9A, B and C were members of the management company at the relevant date and continued to be members of the management company on 6th August 2015 when the report was issued. I find that the failure, if it be such, to include details of those persons who are no longer members of the management company an irrelevance. In those circumstances, therefore, I reject the submissions made by Mr Gurvitz that there had been a breach of Section 79(3).
17. In those circumstances, therefore, I conclude that the Applicant has established the right to acquire management of the Property under the Act and that such right to acquire will become effective three months after the date becomes final.

Judge: Andrew Dutton
A A Dutton

Date: 21st September 2015

78 Notice inviting participation

- (1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—
- (a) is the qualifying tenant of a flat contained in the premises, but
 - (b) neither is nor has agreed to become a member of the RTM company.
- (2) A notice given under this section (referred to in this Chapter as a "notice of invitation to participate") must—
- (a) state that the RTM company intends to acquire the right to manage the premises,
 - (b) state the names of the members of the RTM company,
 - (c) invite the recipients of the notice to become members of the company, and
 - (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.
- (3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.
- (4) A notice of invitation to participate must either—
- (a) be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
 - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.
- (5) A statement under subsection (4)(b) must—
- (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
 - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
 - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
 - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

79 Notice of claim to acquire right

(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.

(6) The claim notice must be given to each person who on the relevant date is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

(1)