



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

Case reference : **LON/00AC/LRM/2015/0038**

Property : **38-44 (evens) Abercorn Road,
London NW7 2JL**

Applicant : **Abercorn Road RTM Company
Limited**

Representative : **Crooks Commercial Solicitors**

Respondent : **Eurotop Limited**

Representative : **Wallace LLP**

Type of application : **Application in relation to the denial
of the Right to Manage**

Tribunal members : **Mrs S O'Sullivan
Ms M Krisko FRICS**

**Date and venue of
determination** : **3 February 2016 10 Alfred Place,
London WC1E 7LR**

Date of decision : **3 February 2016**

DECISION

Decisions of the tribunal

The tribunal determines that the Applicant will acquire the Right to Manage the property known as 38-44 (even) Abercorn Road, London NW7 2JL on 22 February 2016.

The application

1. The tribunal has received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the "Act")
2. By a claim notice dated 15 October 2015 the Applicant gave notice that it intended to acquire the right to manage the property known as 38-44 (even) Abercorn Road, London NW7 2JL (the "Property") on 22 February 2016.
3. By counter notice dated 16 November 2015 the Respondent disputed the claim alleging that the counter notice (a) did not comply with the requirements about the form of claim notices as prescribed by the regulations made in accordance with sections 79(6) and 11(3) of the Act.
4. Directions were made dated 2 December 2015 for this matter to be considered by way of a paper determination and the matter was accordingly considered on 3 February 2016. The directions provided for the application to stand as the applicant's statement of case with the Respondent making a statement in reply and the applicant having an opportunity to make a supplemental reply.

The Respondent's case

5. The Respondent made written submissions dated 21 December 2015 and opposes the right to manage as set out below;

- (a) No notice claiming the right to manage was validly given to the Respondent;

It is said that the landlord gave a notice under section 11(4) of the Act of the address at which it wished any notice to be served. However although the documents contained a copy of a notice addressed to the Respondent c/o Wallace LLP, One Portland Place, London W1B 1PN notice was ever received.

- (b) The Respondent is not a right to manage company within the definition of section 73(2) of the Act;

It is argued that at its incorporation the Applicant was plainly not a RTM Company as it did not have as its object the acquisition of the

right to manage a single set of premises. The Respondent relies on the Court of Appeal decision in *Triplerose Limited –v- Ninety Broomfield Road RTM Co Limited*. It is further said that the purported resolution of a single Director was ineffective to amend the Articles of Association.

- (c) No notice inviting participation was given by the Applicant; alternatively the Notice of Claim was given less than 14 days after those persons required to be given a Notice of Invitation to participate had been given such a Notice.

If the resolution was effective then it could only take effect on 12 October 2015 when it was entered into the Applicant's register. Thus it is said notice of participation could only have been given effective on 12 October 2015. As the claim notice was given on 15 October 2015 it was not given 14 days after any Notice inviting participation had been given.

6. It is acknowledged that (a) and (b) above were not raised in the counter notice but the Respondent relies on the Upper Tribunal's decision in *Fairhold (Yorkshire) Limited –v- Trinity Wharf (SE16) RTM Co Limited*.

The Applicant's submissions in reply

7. The Applicant made the following submissions in reply. It was pointed out that points (b) and (c) were not raised in the counter notice the Applicant deals with them nevertheless as follows;

- (a) No notice claiming the right to manage was validly given to the Respondent;

The Applicant says that a copy of the notice was sent to Wallace LLP and a copy sent to the Respondent. It is clear that the notice was received as a counter notice was served.

- (b) The Respondent is not a right to manage company within the definition of section 73(2) of the Act; and

A resolution was passed by the company dated 29 September 2015 in respect of which every director of the company agreed to the amendment. The directors have therefore complied with the requirements of the Companies Act 2006 and the resolution stands as passed. It is also said the amendment is a simple administrative error and given the Notice of Invitation states the full and correct address no prejudice has been suffered.

- (c) No notice inviting participation was given by the Applicant; alternatively the Notice of Claim was given less than 14 days after those

persons required to be given a Notice of Invitation to participate had been given such a Notice.

Notices of Invitation are attached to the reply. They stated the correct postal address and therefore they did not require a further Notice of Invitation following the special resolution.

8. Both parties rely on the decision of the Upper Tribunal in three cases all considered at the same time references (2014) UKUT 0397, LRX/25/2013, LRX/81/2013 and LRX/87/2013.

The tribunal's decision

9. The tribunal finds that the Applicant has acquired the Right to Manage the Property on 22 February 2016.

Reasons for the tribunal's decision

10. There appears to be an issue as to whether the claim notice was served at the address specified by the landlord, that is c/o Wallace LLP. The Applicant says a copy was duly served. The Respondent accepts that it received a copy of a claim notice purportedly served at that address but no such notice was ever received. It is clear however that a copy of the claim notice has indeed been received by the Respondent and indeed by Wallace LLP as a counter notice has been served and thus ground of opposition fails.
11. As far as the contention that the Applicant is not a RTM Company the tribunal is satisfied from the evidence provided that all of the director of the Applicant company agreed to the resolution to amend the Articles of Association and that as a result the resolution was validly made in accordance with the provisions of the Companies Act 2006.
12. Lastly the Applicant is criticised for not having served a further Notice of Invitation after the resolution to amend the Articles became effective. We agree that a further Notice of Invitation was not necessary at this stage. The leaseholders had already been served with a Notice of Invitation which clearly identified the correct address. A further notice would have been superfluous and no prejudice can have been suffered by the alleged failure to serve a fresh notice.
13. The tribunal therefore concludes that the Applicant has acquired the Right to Manage the Property on 22 February 2016.

Name: S O'Sullivan

Date: 3 February 2016