



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

Case reference : **LON/00BH/LRM/2015/0039**

Property : **18-20 Sturge Avenue,
Walthamstow, London E17 4LQ**

Applicant : **20 Sturge Avenue (Management)
RTM Company Limited**

Representative : **Huggins & Lewis Foskett,
Solicitors**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

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

Tribunal members : **Mrs S O'Sullivan
Mr P Roberts Dip Arch RIBA**

**Date and venue of
determination** : **15 February 2016 10 Alfred Place,
London WC1E 7LR**

Date of decision : **15 February 2016**

DECISION

Decisions of the tribunal

The tribunal determines that the Applicant acquired the Right to Manage the property known as 18-20 Sturge Avenue, Walthamstow, London E17 4LQ.

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 28 September 2015 the Applicant gave notice that it intended to acquire the right to manage the property known as 18-20 Sturge Avenue, Walthamstow, London E17 4LQ on 3 February 2016.
3. By counter notice dated 29 October 2015 the Respondent disputed the claim alleging that the Applicant had failed to establish compliance with sections 73(2), 78(1), 79 (2), 80 (3), 80 (8) and 80 (9) of the Act.
4. Directions were made dated 9 December 2015 for this matter to be considered by way of a paper determination and the matter was accordingly considered on 15 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 Issues

5. The Respondent made written submissions received on 13 January 2016 and the Applicant made a statement in reply dated 4 February 2016. The issues and the parties' respective cases are set out below;

- (a) Section 73(2) of the Act - premises referred to as 20 Sturge Avenue rather than 18-20 Sturge Avenue;

The Respondent says that the premises are defined in the freehold title as 18-20 Sturge Avenue, London E17 4LQ. However the Articles of Association of the RTM Company refer to the premises as 20 Sturge Avenue. The Respondent says that this misdescription produced the result that the company articles permit the acquisition of management in relation to 20 Sturge Avenue only although the claim notice seeks the right to acquire the entirety of the freehold, i.e. 18-20 Sturge Avenue. It is submitted that the literal definition of the premises does not allow the RTM Company by its own articles to acquire the right in relation to the entire freehold. The Respondent says that the Applicant is not therefore an RTM Company for which

the claim notice was served. The Respondent relies on two recent findings of the tribunal in case references LON/OOAU/LRM/2014/0017 and CAM/22UG/LRM/2015/0009.

The Applicant explains that the apparent disparity stems from the fact that all of the postal allocations for the flats comprising the relevant freehold refer solely to 20 Sturge Avenue rather than 18-20 Sturge Avenue. The articles are therefore said to refer to the property by reference to the description used in practice and they contend it was clearly intended for it to refer to the whole building rather than any specific part. The Applicant says the authorities on this point are conflicting. It differentiates the current application however as it is said the properties in the cases relied upon by the Respondent were flats where the description referred to flats at the premises rather than reference being made to the building as a whole. It is further said that the description in the articles of association refers to the building as a whole as described by the local authority and postal records. It is noted that the claim notice specified the description as in the Land Registry title.

(b) Section 78(1) and 79 (2);

It is the Respondent's position that the Applicant has failed to serve the notices inviting participation in accordance with the requirements of section 78(1) and 79(2) to all qualifying tenants as Ms Rebecca Dishington was not a member at the date the claim notice was given and was not served with a notice inviting participation. The Respondent relies on a copy of the register of members which shows that the membership of Ms Dishington ended on 24 August 2015. It is therefore submitted that as Ms Dishington was not a member of the company on the relevant date and was thus entitled to receive a notice inviting participation.

In response the Applicant says that this contention arises from an error in the register of members sent to the Respondent's solicitors. The register appeared to indicate that Ms Dishington had resigned as a member on 24 August 2015. In fact Ms Dishington has never resigned and the members of the RTM Company have remained the same and included all qualifying tenants since incorporation. The Applicant relies on what it says is the correct Register of Members together with witness statements from MS West and Ms Dishington which confirm the Applicant's submissions.

(c) Section 80(3)

The Respondent says that the Applicant has incorrectly included Ms Dishington as a member on the claim notice when she was not a member on the relevant date. As a result the participation of qualifying tenants has been misrepresented.

The Applicant relies on the submissions made in (b) above

(d) Sections 80(8) and 80(9)

Section 80(8) requires that the claim notice must contain other such particulars as required by regulations made by the appropriate national authority. Section 80(9) requires in addition that the claim notice must comply with such requirements about the form of claim notices as may be prescribed by the regulations. It is the Respondent's position that the claim notice did not comply with section 80(8) and 80(9) by reason of incorrect inclusion of details of members in relation to Ms Dishington as detailed above.

The Applicant relies on the submissions made in relation to (b) above.

The Applicant also relies on the decision in *Assethold Ltd –v 14 Stansfield Road RTM Company Ltd* [2012] UKUT 262 (LC) where it was held that an alleged defect in the register of the members of the company was not sufficient to show that section 79(5) of the Act was not complied with.

The tribunal's decision

6. The tribunal finds that the Applicant has acquired the Right to Manage the Property on 3 February 2016.

Reasons for the tribunal's decision

7. The Respondent contends that the Applicant is not a RTM Company as in the Articles of Association the definition of the premises is 20 Sturge Avenue Walthamstow rather than as defined by the freehold title as 18-20 Sturge Avenue, London E17 4LQ. As a result it is said that the company articles permit solely the acquisition of management in relation to 20 Sturge Avenue. It is noted that the claim notice contains the definition of the premises in the freehold title. We accept the Applicant's evidence (which is not rebutted by the Respondent) that the premises are known as 20 Sturge Avenue in postal allocations and no such property as 18 Sturge Avenue exists. In both the authorities relied upon by the Respondent the tribunal denied the right to manage on the basis that the Articles of Association in both cases had referred solely to the flats in the description of the premises rather than the freehold title as a whole. The tribunal agreed in those cases that the misdescription was important as it did not allow the RTM company to acquire the entire freehold premises and appurtenant property and was limited to the management of the leaseholders' interests of the premises. No such concerns however arise in this case. The building is a single building and there is no limitation to the flats at the premises in the description

of the premises. Thus the issue of the practical and technical problems of the common parts not being managed and whether the structure and foundations of the freehold title are included does not arise in our view. Rather it appears to us that the description of the premises by how it is commonly known was an administrative error, has caused no prejudice to the Respondent and will cause no practical problems in the ongoing management. Although the Respondent has referred to possible ambiguity in its statement of case there is no example of what ambiguities might arise in this case. Thus we concluded that the Applicant is a RTM company in relation to the premises.

8. The Applicant may however wish to consider as suggested a special resolution to amend the definition of the premises in the articles of association to avoid any future administrative issues.
9. We are satisfied from the evidence that Ms Dishington did not resign as a member of the Applicant at any time and thus there was no necessity for a notice inviting participation to be served on her. In this regard we accept the Applicant's account in relation to a register of members being sent in error which did not accurately reflect the position as to the members. As a result of that finding it follows that we find that there are no issues of non compliance in relation to sections 78(1), 79(2), 80(3), 80(8) and 80(9) of the Act.
10. The tribunal therefore concludes that the Applicant has acquired the Right to Manage the Property on 3 February 2016.

Name: S O'Sullivan

Date: 15 February 2016