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

**Case reference** : **LON/00AR/LRM/2018/0011**

**Property** : **Flats 1 – 18 Admirals Lodge  
89 Western Road, Romford RM1 3  
LN**

**Applicant** : **Admirals Lodge (RM1) RTM  
Company Limited**

**Representative** : **RTMF Services Ltd**

**Respondent** : **Retirement Acre (BH) Limited**

**Representative** : **Estates & Management Ltd**

**Type of application** : **Right to manage**

**Tribunal members** : **Judge Carr  
Mr D Jagger**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **2<sup>nd</sup> October 2018**

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**DECISION**

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## **Decision of the tribunal**

- (1) The tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.

## **The application**

1. This was an application to acquire the right to manage Admirals Lodge, 89 Western Road Romford, RM1 3LN("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.

## **The counter-notice**

3. In its counter-notice, the Respondent raised the issue that the applicant had failed to comply with section 79(5) of the Act as it was alleged that fewer than one half of the total number of qualifying tenants were valid members and that the membership of at least 2 was obtained by misrepresentation, duress or undue influence.

## **The hearing**

4. The hearing took place on 23 July 2018. Mr Joiner from RTMF Services Ltd represented the applicant. Mr Forster, a solicitor with Estates & Management Ltd, represented the respondent. Ms Jo-Ann Wilson, area manager for First Port Retirement Property Services, Mrs Diane Greig, the leaseholder of Flat 12 within the property, Ms Joan Tresadern of Flat 14 within the property, and Ms Annie Skingle of Flat 10 also attended the hearing and gave evidence. It should be noted that Ms Greig does not live in the development, but, with her husband, lets it out to a tenant.
5. The determination below has been reached following consideration of the evidence presented by the parties and submissions received on 23 August 2018.

## **The background**

6. The background is taken from the Respondent's skeleton argument but is not in dispute.
7. The development is a retirement development comprising 18 flats let on long leases. Only those over 60 years are able to become lessees. The development is currently managed by FirstPort.
8. The right to manage application at the development had been initiated by Mr John Leach of Flat 7 and Mr Michael Hughes of Flat 4. RTMF was appointed to assist with the process of acquiring the right to manage.
9. It is common ground between the parties that a number of tenants at the development requested that their membership of the Applicant company be withdrawn following service of the Claim Notice. The applicant responded to say this was not possible because article 27(3) of the Applicant's articles of association, which are in prescribed form, do not allow withdrawal of membership once a notice of claim has been issued until after the right to manage has been acquired or the claim notice withdrawn.

### **The Respondent's argument**

10. The Respondent argues that the question of withdrawing membership in accordance with the articles of association is irrelevant. Its position is that communications from qualifying tenants purporting to withdraw membership should be understood as elections to rescind their consent to becoming a member of the Applicant company as for a number of reasons the transactions were voidable.
11. The Respondent provides a useful table which sets out which qualifying tenants were members of the Applicant Company at the relevant dates, i.e 25 October 2017, when the Applicant served a notice of invitation to participate on qualifying tenants who were not already members of the Applicant, and on 9 January 2018, being the relevant date when the Claim notice was served, and, also when certain qualifying tenants communicated to the Applicant that they wished to withdraw their membership. That table is copied at Appendix 1.
12. The first argument that the Respondent makes is that Mr Leach provided all tenants at the development with inaccurate information about the right to manage. For instance at one point Mr Leach suggested that 75% of leaseholders approval was required. The Respondent suggests that these misstatements of law contributed to a generally confusing and inaccurate picture of the right to manage.
13. The second argument is that membership of the Applicant company was procured through misrepresentation and specifically fraudulent

misrepresentation. In particular the Respondent argues that Mr Leach informed the tenants that First Port had overcharged them for many years and owed them money. Mrs Greig for instance gave evidence to suggest that Mr Leach claimed that sums were owing of up to £250,000.

14. The tribunal were shown a confirmation slip drawn up by Mr Leach which included an option as follows: 'I understand that if I say no I shall be giving away my share of over £0,000 of savings and the possibility of my share of £250,000 to be recovered per flat'.
15. Mrs Tresarden- who was not a member of the RTM – gave evidence that Mrs Stacey only signed because she thought she would get money back.
16. The witnesses also suggested that Mr Leach's status as a retired chartered accountant affected their decisions.
17. The third argument of the Respondent is that Mr Leach procured membership of the Applicant company through duress and/or undue influence exerted on, at least, some of the lessees.
18. There was evidence that Mr Leach is a formidable figure who was determined to progress the right to manage at the development. It was difficult to disagree with him and he made a nuisance of himself in connection with the right to manage. Mrs Tresardern said she just wanted him to leave her alone.
19. The Respondent makes specific arguments in relation to Mary Stacey and Margaret Love.
20. Mary Stacey did not appear at the tribunal due to her frailty. The argument was that she became quite exhausted by Mr Leach's persistence and asked him not to visit her. Mrs Wilson gave evidence that Ms Stacey had asked her to ask FirstPort managers on Friday 12th January to stop Mr Leach putting letters through her door.
21. There is evidence that Ms Stacey wrote a letter on 17 January 2018 that she had changed her mind about the RTM and that she had become a member only after having been given false information under duress. However, whilst there is a suggestion that she wrote a note earlier, prior to 9 January 2018, the date of the notice of claim, there is no evidence to substantiate this.
22. The argument in connection with Margaret Love relates to her capacity to understand the right to manage or what she was signing in becoming a member. Indeed, there is evidence that Margaret Love tore up the

form to write a shopping list and that it was taped back together by Mr Leach.

23. Mrs Love also wrote a letter on 17 January 2018 saying she wished to withdraw membership, and a further letter on 7 February. Jo-Ann Wilson of FirstPort drafted the letters for her.
24. Mrs Love did not attend the tribunal due to frailty.
25. The Respondent argues that duress has been exerted and relies on letters signed by the tenants stating this to be the case. It argues that Ms Stacey and Ms Love had little choice but to agree with Mr Leach in order to be left in peace.
26. The Respondent argues that duress renders a contract voidable at common law. It also argues that undue influence, which it says arises from his status as a neighbour, a member of the restricted retired community and his assumed responsibilities, enables the transactions to be voided. The argument is that because Ms Stacey and Ms Love clearly communicated their wish not to be members of the Applicant company then the transaction is void.
27. Finally the Respondent suggests that it is not in the best interests of the leaseholders to take on the Right to Manage particularly when the majority are not content for it to proceed. For the Applicant not to withdraw the application in these circumstances is unconscionable.

### **The Applicant's argument**

28. The Applicant argues that there is no evidence to support allegations of duress, undue influence or misrepresentation. For instance Annie Skingle, a lessee, says a form was put through her door which she initially signed and then changed her mind. That change of mind was accepted. Whilst she agrees Mr Leach was very persistent in his pressing of the case for the RTM she also says he was pleasant enough. Ms Tresadern says that his persistence was 'testing' but that is not sufficient.
29. The Applicant says that Mr Leach may have been impolite but not improper and that the transaction should therefore stand.
30. The Applicant also refers to Mrs Greig's evidence and points out that she made a conscious decision to become a member after evaluating the facts and that it is not right to argue that she was put under duress, undue influence or any other sort of unacceptable pressure.

31. The Applicant also states that in the light of the adverse publicity that FirstPort, as Peverel, received it is understandable that Mr Leach may want to scrutinise the handling of the service charges.
32. In relation to the undue influence point, the Applicant submits that the Respondent has failed to meet the burden of proof required. Further there is no evidence of a fiduciary relationship between Mr Leach and the leaseholders.

### **The tribunal's decision**

33. Taking into account the evidence and the submissions it has considered, the Tribunal determines the notice of invitation to participate is valid.

### **Reasons for the tribunal's decision**

34. The tribunal does not have jurisdiction to decide whether the Right To Manage is appropriate or in the best interests of the residents. Its role is solely to determine whether the legal requirements for the Right to Manage are in place.
35. The tribunal, noting the statutory framework for the Right to Manage, considers that there needs to be persuasive evidence put before it before it will treat the list of members of a proposed RTM as invalid.
36. It notes it did not hear evidence from Mr Leach, nor from Ms Love or Ms Stacey. Much of what it heard in connection with the process of acquiring signatures was therefore second-hand.
37. It also notes that whilst Mr Leach may have been very determined to ensure that the RTM went ahead, there are also very good reasons why the Respondent may wish to resist the creation of a RTM company.
38. The tribunal is persuaded by the arguments of the Applicant, that there is insufficient evidence that there was misrepresentation, duress, undue influence or other incorrect means of achieving the lessees' consents.
39. Mrs Greig was the only witness who had signed the form. She was an intelligent and coherent witness who made a voluntary decision to sign the form. She had access to information in connection with the transaction. She had been influenced by the prospect of management charges being lowered as a result of the RTM and the prospect of recovering money from First Port was appealing, but was nothing to suggest that she had suffered undue or inappropriate pressure.

40. There was no evidence before the tribunal that Ms Stacey had retracted her consent before the relevant date.
41. The Respondent's allegations about Mrs Love's lack of capacity is clearly of importance. However, as the Applicant points out, the law requires a presumption of capacity and no expert evidence was produced to demonstrate that Mrs Love lacked the capacity to sign the form she did on the day that she signed it. Therefore the tribunal cannot accept the argument that she lacked capacity on the due date.
42. Whilst it is agreed that Mrs Love ripped up the consent form after signing it, there is no evidence to suggest that this was done deliberately, rather than in error. Nor is there evidence to suggest that she did not consent to Mr Leach sticking the form together with adhesive tape.

### **Summary**

43. Overall, the Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act. This, of course will mean the members of the RTM Company will control the affairs of the building on behalf of the freeholder, influencing management and future appointments. They can, if they choose appoint FirstPort as managers.
44. Therefore, in accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises.
45. According to section 84(7):

A determination on an application under subsection (3) becomes final—  
(a) if not appealed against, at the end of the period for bringing an appeal, or  
(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”

46. Section 88(3) of the Act states:

A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company that it is entitled to acquire the right to manage the premises.”

47. In the light of the Tribunal's decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

**Name:** Dr Carr

**Date**

**2<sup>nd</sup> October 2018**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).



## Appendix 1

ADMIRALS LODGE (RM1) RTM COMPANY LIMITED  
Company Number 11028626

Leaseholder	Flat	Address	Entered	Date Removed	Title No	Dates of Lease	Notes
BRENDA JEAN HILLMAN	1	1 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	27/10/17		EGL556586	03/06/09	
JOHN VINCENT LEACH	2	2 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	24/10/17		EGL285243	03/05/91	
MICHAEL HUGHES	4	4 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	24/10/17		EGL257667	31/10/89	
EXECUTORS OF CHRISTINE MARY PRENTICE	5	146 Fairfax Drive, Westcliff-on-sea, Essex, SS0 9BH	09/01/18		EGL309927	31/03/93	
PAULINE JOYCE UNDERWOOD	8	8 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	24/10/17		EGL320229	31/01/94	
MARGARET LOVE	9	9 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	24/10/17		EGL299041	21/02/91	
DIANE CLAIRE GREIG and DUNCAN RODGER GREIG	12	17 Victors Crescent, Hutton, Brentwood, Essex, CM13 2HZ	24/10/17		EGL289549	02/05/91	
SHIRLEY MERCADO	17	17 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	24/10/17		EGL286031	28/06/91	
MARY BRIDGET STACEY	18	18 Admirals Lodge, 89 Western Road, Romford, RM1 3LN	24/10/17		EGL307364	18/12/92	