



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

Case reference : **LON/00AY/LRM/2017/0036**

Property : **129 Gleneldon Road, London SW16
2BQ**

Applicant : **129 Gleneldon Road (London)
RTM Company Limited**

Respondent : **Assethold Limited**

Type of application : **Right to Manage**

Tribunal member : **Judge P Korn
Mr K Ridgeway MRICS**

Date of decision : **19th March 2018**

DECISION

Decision of the Tribunal

The application is granted. The Applicant was entitled on the relevant date to acquire the Right to Manage in respect of the Property.

The application

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("**the Act**") that on the relevant date it was entitled to acquire the Right to Manage in respect of the Property.
2. By a claim notice dated 13th August 2017 the Applicant gave notice to the Respondent that it intended to acquire the Right to Manage in relation to the Property. By a counter-notice dated 22nd September 2017 the Respondent denied that the Applicant was entitled to acquire the Right to Manage. The grounds for the Respondent's challenge are set out below.

Paper determination

3. The Tribunal has identified the case as being suitable for a determination on the papers alone without a hearing, and neither party has requested an oral hearing. Accordingly the case is being determined on the papers alone.

Relevant extracts from the Act

4. Under section 73(2) of the Act, "*A company is a RTM company in relation to premises if – (a) it is a private company limited by guarantee, and (b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises*".
5. Under section 79(3) of the Act, "*The claim notice must be given by a RTM company which complies with subsection (4) or (5)*".
6. Under section 79(4) of the Act, "*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*".
7. Under section 79(5) of the Act, "*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*".

8. Under section 79(8) of the Act, “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”.

Respondent's objections

Section 73(2) of the Act

9. The Respondent states that the address of the Property is 129 Gleneldon Road, London SW16 2BQ and accepts that that this is correctly set out in the Claim Notice. However, the Property is described in the articles of association as 129 Gleneldon Road, London SW13 0PQ, i.e. with a different – and incorrect – postcode. In the Respondent's submission this error means that the articles of association do not comply with section 73(2)(b) in that they misdescribe the Property. The Respondent adds that, in its submission, such an error leads to ambiguity as to the location of the premises which the company has been set up to acquire and manage, and it is not sufficient to resolve the ambiguity by reference to the Claim Notice.
10. The Respondent has also referred us to the First-tier Tribunal decision in *59 Huntingdon Street RTM Company Limited v Assethold Limited* (Ref: LON/00AU/LRM/2014/0017), on which we comment below.

Section 79(3) of the Act

11. The Respondent states that the document produced as the Register of Members shows the dates of registration of the leaseholders of Flat 2 and of Flat 5 both as being 14th July 2017. This is the same date in each case as the date on which these leaseholders each **applied** for membership. The Respondent submits that the date of registration is unreliable as the applications for membership could not have been received until 15th July 2017 at the earliest.

Section 79(8) of the Act

12. The Respondent's solicitors state that the copy correspondence exhibited by them shows that the Claim Notice was served on the leaseholder of Flat 3 on 29th August 2017. However, the date of the solicitor's letter confirming this point to the Respondent's solicitors is dated 25th August 2017. The discrepancy, in their submission, raises questions regarding compliance with section 79(8) in relation to service on the qualifying tenant of Flat 3.

Applicant's response

Section 73(2) of the Act

13. The Applicant states that the articles of association correctly identify the Property as 129 Gleneldon Road, London and that there is nothing in the Act or in any regulations to indicate that the postcode needs to be stated in the articles of association or that it is relevant to the validity of the articles of association. In any event, there is no other Gleneldon Road in London.
14. The Applicant has referred us to the Upper Tribunal decision in *Avon Ground Rents Ltd v 51 Earls Court Square RTM Company Ltd (2016) UKUT 22 (LC)*, on which we comment below, and states that the postcode error is an obvious mistake of the type referred to in that decision.

Section 79(3) of the Act

15. The Applicant has provided a witness statement from its solicitor, Emily Fitzpatrick, in which she states that the leaseholders of Flats 2 and 5 were entered onto the register of members after returning their respective signed applications for membership.

Section 79(8) of the Act

16. The date of the letter to the qualifying tenant of Flat 3 enclosing a copy of the notice of claim is self-evident, and in any event the Applicant submits that the query raised regarding the date of service is irrelevant in the light of the Upper Tribunal decision in *Alleyn Court RTM Company Ltd v Abou-Hamdan (2012) UKUT 74 (LC)*.

Tribunal's analysis

Section 73(2)

17. Under section 73(2)(b) of the Act, the object (or one of the objects) of the RTM company's articles of association must be "*the acquisition and exercise of the right to manage the premises*". It follows, self-evidently, that the premises themselves need to be identified.
18. The Applicant states that the premises are referred to in the articles of association as 129 Gleneldon Road, London and that there is nothing in the Act or in any regulations to indicate that the postcode needs to be stated in the articles of association. First of all, this is not quite accurate as the address does not end with "London" but instead goes on to include an

incorrect postcode. Secondly, the issue in our view is not whether the postcode has been included but whether the inclusion of an incorrect postcode is problematic.

19. The Respondent has referred us to the First-tier Tribunal (FTT) decision in *59 Huntingdon Street RTM Company Limited v Assethold Limited*. In that case the claim related to the whole of 59 Huntingdon Street whereas the articles of association described the premises as just Flat 1 – 6, 59 Huntingdon Street. The FTT in that case concluded that the articles of association were defective as they only related to a part of the premises in respect of which the right to manage was being sought.
20. The present case is different from the *59 Huntingdon Street* case. In our case there is no question or dispute as to the extent of the Property; the only issue is whether the inclusion of the wrong postcode in the articles of association renders the articles defective. The Applicant makes the factual point that there is only one Gleneldon Road in London and the Respondent has not disputed this.
21. As regards the Upper Tribunal decision in *Avon Ground Rents Ltd*, in giving his decision in that case Martin Rodger QC comments at paragraph 27 as follows: *“Where a document, including a company’s articles of association, is ambiguous or reasonably capable of bearing more than one meaning, the court or tribunal required to interpret that document will give it the meaning which is more consistent with the parties’ presumed intention. If a document contains an obvious mistake, and it is clear what the parties must have intended, the document will be interpreted in accordance with that intention”*.
22. In our view the inclusion of the wrong postcode is obviously an error and it is clear what was intended, especially as there is only one Gleneldon Road in London. For the same reason, the error will not in practice cause any confusion. Accordingly, this is not a valid basis for challenging the acquisition of the right to manage.

Section 79(3)

23. The Respondent states that as the application by the leaseholders of Flats 2 and 5 for registration as members was not made until 14th July 2017 those applications could not have been received until 15th July 2017 at the earliest. It therefore concludes that the date of registration itself, 14th July 2017, is unreliable.
24. We do not accept this argument. It seems to us self-evident that the applications could have been delivered by hand or in person, and therefore there is no sensible basis for this argument in the absence of any evidence as to the date or method of application supporting the Respondent’s position. Indeed, not only has the Respondent offered no

such evidence but the Applicant has supplied a witness statement from its solicitor supporting its own position. Accordingly, this argument is not a valid basis for challenging the acquisition of the right to manage.

Section 79(8)

25. The letter of 25th August 2017 to which the Respondent refers states (inter alia) that it encloses "A copy of the Notice of Invitation to Participate served upon the non-participating Lessee at Flat 3 along with a copy of our covering letter serving the same". The letter dated 29th August 2017 to which the Respondent also refers is a letter which is expressed to enclose a copy of the **Claim Notice**, not of the Notice of Invitation to Participate. There is a separate copy letter in the bundle which is expressed to enclose a copy of the Notice of Invitation to Participate, and that letter is dated 20th July 2017.
26. The Respondent's objection appears to be that a letter dated 25th August 2017 cannot enclose a copy of a letter dated 29th August 2017 without raising suspicion or confusion, but the evidence would seem to indicate that the letter referred to in the letter of 25th August 2017 was in fact dated 20th July 2017. Accordingly, this argument is also not a valid basis for challenging the acquisition of the right to manage.

Name: Judge P Korn

Date: 19th March 2018

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.