



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

Case reference : **LON/00AM/LRM/2021/0016**

HMCTS : **P: PAPER REMOTE**

Property : **1-33 Finn House, Bevenden Street,
London N1 6BN**

Applicant : **1-33 Finn House RTM Company
Limited**

Representative : **Stock Page Stock, Surveyors
(John Fowler)**

Respondent : **Long Term Reversions (Torquay)
Limited**

Representative : **J B Leitch, Solicitors
(Camilla Waszek)**

Type of application : **Right to manage**

Tribunal member : **Judge Robert Latham
Trevor Sennett FCIEH**

**Date and Venue of
paper determination** : **18 October 2021 at
10 Alfred Place, WC1E 7LR**

Date of decision : **20 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Neither party requested an oral hearing. The Respondent has provided a Bundle of Documents which extends to 421 pages.

Decisions of the Tribunal

The Tribunal determines that:

(i) the Applicant has not complied with the statutory requirements of section 79(5), 78(1) and 79(8) of the Commonhold and Leasehold Reform Act 2002.

(ii) By reason of the above, the Applicant was not entitled to acquire the right to manage the premises on 30 June 2021 pursuant to section 84(5)(a) of the Act.

The Application

1. By an application dated 15 April 2021, the Applicant applies under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage in relation to premises known as 1-33 Finn House, Bevenden Street, London N1 6BN ("the Premises"). The application form specified the documents that the Applicant was obliged to serve with the application form. The Applicant did not include the counter-notice which had been served.
2. Stock Page Stock, Surveyors, have acted for the Applicant. The Applicant has not been well served by its representative
3. By a claim notice dated 17 February 2021, the Applicant gave notice that it intended to acquire the Right to Manage the Premises on 30 June 2021.
4. By a counter-notice, dated 19 March 2021 the Respondent freeholder disputed the claim, alleging that the Applicant had failed to establish compliance with sections 79(5), 78(1) and 79(2) of the Act. In particular:
 - (i) The membership of the Respondent Company on the relevant day was not less than one half of the 33 flats contained in the Premises (section 79(5));

(ii) Before making the RTM Claim, the Applicant had not given the requisite Notice Inviting Participation on each person who was a qualifying tenant and who neither was nor had agreed to become a member of the Respondent Company (section 78(1));

(iii) Not every person who required to be given a Notice Inviting Participation had been given the requisite 14 days' notice (section 79(2)).

5. On 26 March, there was an exchange of emails between Rosanna Sayers, an In-house solicitor with the Respondent's managing agents, and John Fowler, of Stock Page Stock. Ms Sayers pointed out the defects to the application and invited the Applicant to withdraw it. Mr Fowler responded that the points taken were just nit picking.
6. On 18 June 2021, the tribunal gave Directions. The Procedural Judge identified the issue to be decided, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage ("RTM") the premises. The Judge was satisfied that this matter could be determined on the papers. Neither party has requested an oral hearing.
7. Pursuant to the Directions, on 19 July, the Respondent filed their Statement of Case expanding on its grounds for contending that the Applicant had failed to comply with the statutory requirements of the Act. On 15 July, the Respondent's Solicitor had written to the Applicant setting out in detail why the application was doomed and inviting the Applicant to withdraw its application. The Applicant did not respond to this letter.
8. By 9 August, the Applicant was directed to file its Reply to the Respondent's Case. The Applicant failed to comply with this Direction. On 12 August, the Applicant purported to serve a Reply. The Reply purported to have 24 paragraphs. The document served only contained paragraphs 15, 16 and 17. On 20 August, the Respondent pointed out this defect. The Applicant took no step to remedy this error.
9. By 10 September, the Applicant was directed to file a Bundle of Documents. The Applicant failed to comply with this Direction and the bundle which it filed was wholly inadequate. On 17 September, the Respondent filed an Updated Bundle.
10. On 21 September, a Procedural Judge noted the inadequacies of the Bundle. She again highlighted that the Applicant's Reply was incomplete. The Applicant was directed to coordinate with the Respondent to file a "Final Agreed Document". On 7 October, the Respondent filed this document.
11. When this Tribunal considered the papers this morning, it was apparent that none of the bundles which had been filed included a full

copy of the Applicant's Reply. At 10.06, the parties were asked to provide the missing pages. At 10.10, the Respondent (Ms Waszek) replied that it had never been furnished with these pages. At 12.49, the Applicant (Mr Fowler) provided a further incomplete copy of the Applicant's Reply. At 15.32, Ms Waszek again pointed out the Reply was incomplete. There was no further response from the Applicant. The Tribunal had no option but to determine the application on the papers before it.

The Law

12. The Act provides (emphasis added):

Section 58 - Qualifying Tenants

(1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.

(2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

(3)

(5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.

(6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.

(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

Section 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 articles of association of the RTM company, or
 - (b) include a statement about inspection and copying of the 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 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 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. Commonhold and Leasehold Reform Act 2002 Page 55 (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.

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 tribunal or court by which he was appointed.

Section 112 – Definitions

(5) Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or to the tenant or qualifying tenant is (unless the context otherwise requires) a reference to both or

all of the persons who jointly constitute the landlord or the tenant or qualifying tenant, as the case may require.

13. In *Southall Court Residents Ltd v Buy Your Own Freehold Ltd* LRX/124/2004, the Upper Tribunal (HHJ Reid QC) held at [9]:

“In order for a person other than a subscriber to be a member that person must (a) have agreed to become a member and (b) had their name entered in the register of members: see section 22(2) of the Companies Act 1985. Those two requirements are cumulative: see for example Nicol’s case (1885) 29 Ch D 421, Re a Company [1986] BCLC 391 at 393 per Hoffmann J and National Westminster Bank v IRC [1995] 1AC 119 at 127B per Lord Templeman.”

Our Determination

14. The first point taken by the Respondent is that on 17 February 2021, the date on which the Notice of Claim was given, the Applicant Company did not have at least 17 members who were qualifying tenants (see section 79(5) of the Act). On that date, a person other than a subscriber to be a member that person must (a) have agreed to become a member **and** (b) had their name entered in the register of members. A copy of the Register of Members is at p.289. Whilst there purports to be 19 members, the Respondent takes issue with 7 of these.

(i) Flat 33: The Register records the member as “M Kolokotroni”. The Official Copy of Register of Title (at p.292), records the leaseholder to be “Bindoon Holdings Limited”. The member should therefore have been “Bindoon Holdings Limited”. The Applicant states that the company is registered in Cyprus and that Mr Kolokotroni is its representative. This is irrelevant. It is the company that should have been recorded as the member as the relevant qualifying tenant.

(ii) Flats 7 and 28: The Register records the member as “Pam Sokhi”. The Official Copy of Register of Title (at p.292), records the leaseholder to be “Sital Kaur Sokhi and Sarinder Singh Sokhi”. Both Sital and Sarinder were jointly the qualifying tenant who should have been recorded as members. Even if “Pam Sokhi” is “Sarinder Sokhi”, as the Applicant suggests, this could not be excused as a trivial error. We accept the Respondent’s argument that if only one of two joint tenants have joined the company, the RTM Company must give the non-member an Invitation to Participate. Whilst one joint tenant may become a member of the Company, that member alone would not constitute a “qualifying tenant”. The “qualifying tenant” would only be a member of the Company, when both joint tenants are members. Joint tenants must act together in order to validly participate in the Right to Manage.

(iii) Flat 4: The Register records the member as “O Dixon”. The Official Copy of Register of Title (at p.303), records the leaseholder to be “Poppy Jane Fraser Dixon and Oliver Bertram Fraser Dixon”. Both Poppy Jane Fraser Dixon and Oliver Bertram Fraser Dixon were jointly the qualifying tenant who should have been recorded as members.

(iv) Flat 5: The Register records the member as “Poonam Sekhri”. The Official Copy of Register of Title (at p.307), records the leaseholder to be “Poonam Sekhri and Vijay Kumar Sekhri”. Poonam Sekhri and Vijay Kumar Sekhri were the qualifying tenant who should have been recorded as members.

(v) Flat 30: The Register records the member as “RJ Buist”. The Official Copy of Register of Title (at p.311), records the leaseholder to be “Robert John Buist, Penny Anne Buist and Benjamin Victor Buist”. Robert John Buist, Penny Anne Buist and Benjamin Victor Buist were jointly the qualifying tenant who should have been recorded as members.

(vi) Flat 32: The Register records the member as “J Cliff”. The Official Copy of Register of Title (at p.315), records the leaseholder to be “Jeffrey Cliff and Hayley Jane Wells”. Jeffrey Cliff and Hayley Jane Wells were jointly the qualifying tenant who should have been recorded as members.

15. We therefore accept the Respondent’s argument that the membership of the Respondent Company on the relevant day was not less than one half of the 33 flats contained in the Premises (section 79(5)):

(i) Those recorded as members for Flats 33, 7 and 28 were not tenants of the relevant flats.

(ii) In respect of Flats 4, 5, 30 and 32, 7 and 28, only one of the joint tenants is recorded as being a member.

16. The second point taken by the Respondent is that before making the RTM Claim, the Applicant had not given the requisite Notice Inviting Participation on each person who was a qualifying tenant and who neither was nor had agreed to become a member of the Respondent Company (section 78(1) of the Act). The relevant Notices are at p.317-334.

17. The Respondent raises the following issues:

(i) Flat 33: No notice was given to Bindoon Holdings Limited.

- (ii) Flats 7 and 28: No Notice was given to Sital Kaur Sokhi and Sarinder Singh Sokhi.
- (iii) Flat 4: No Notice was given to Poppy Jane Fraser Dixon.
- (iv) Flat 5: No Notice was given to Vijay Kumar Sekhri.
- (v) Flat 30: No Notice was given to Penny Anne Buist and Benjamin Victor Buist.
- (vi) Flat 32: No Notice was given to Hayley Jane Wells.
- (vii) Flat 6: No Notice was given to Nicholas Bloomfield. The Official Copy of Register of Title is at p.337.
- (viii) Flat 19: No Notice was given to Sztanyuszlav Meljan. The Official Copy of Register of Title is at p.340.
18. The Respondent relies on *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd [2020] UKUT 358 (LC)* in which Fancourt J, the Chamber President, held that a purported claim was invalidated by section 79(2) of the Act where Notices of Invitation to participate had not been given to each person required to be given one. This was not a trivial error that would be saved by application of the decision in *Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89*.
19. The purpose of a Notice of Invitation is not only to invite non-members to become members. It is also to provide them with important information about the claim. The importance of this was emphasised by Martin Rodger QC, the Deputy President, in *Triplerose Ltd v Mill House RTM Co Ltd [2016] UKUT 80 (LC)* at [44]:

“It is apparent from reading the notes to the prescribed form of notice of invitation to participate that they are intended to inform the recipient of the notice of the basic structure of the statutory scheme. Many of the notes provide an explanation or further elaboration of information contained in the body of the notice itself. For example, the notice of invitation to participate informs the recipient (at paragraph 10) that if the RTM company gives a claim notice any person who is or has been a member of the company will be liable for costs incurred by the landlord and others in consequence of that notice. The recipient is then referred to note 6 which explains that if a claim notice is withdrawn each member is liable for reasonable costs incurred in consequence of the claim notice by three specified categories of recipient (landlords, parties to leases of the whole or part of the premises other than landlords or tenants, and tribunal-appointed managers). The note also explains the circumstances

in which a former member will cease to be liable. All of that is important information which might influence the mind of a person considering whether to become a member of an RTM company. Without the notes a reader of the notice would have an incomplete understanding of the statutory scheme and, more importantly, would be less well informed when deciding whether to become a member than Parliament intended they should be.”

20. The Tribunal accepts the Respondent’s argument that the Applicant has not given the requisite Notices Inviting Participation required by section 78(1) of the Act.
21. The final point taken by the Respondent is that the Applicant is that the Applicant has not given a copy of the Claim Notice on all the qualifying tenants as required by section 79(8) of the Act. The copies of the relevant Notices which were served at p.342-378. It is apparent that the Notice was not given to
 - (i) Flat 6: Nicholas Bloomfield.
 - (ii) Flat 19: Sztanyuszlav Meljan.

Conclusion

22. The Tribunal determines that the Applicant has not complied with the statutory requirements of section 79(5), 78(1) and 79(8) of the Commonhold and Leasehold Reform Act 2002. The manifest errors which the Respondent has identified cannot be described as trivial. We therefore conclude that the Applicant was not entitled to acquire the right to manage the premises on 30 June 2021 pursuant to section 84(5)(a) of the Act.

Judge Robert Latham
20 October 2021

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).