



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

**Case reference** : **LON/00BE/LRM/2020/0029**

**HMCTS code:** : **P: PAPERREMOTE**

**Property** : **171 and 177 Tower Bridge Road, London  
SE1 2AW**

**Applicant** : **171 Tower Bridge Road RTM Company  
Limited**

**Representative** : **Canonbury Management**

**Respondent** : **Assethold Limited**

**Representative** : **Scott Cohen solicitors**

**Type of application** : **Right to manage Section 84(3)  
Commonhold and Leasehold Reform  
Act 2002**

**Tribunal members** : **Judge Pittaway  
Mr M Cairns MCIEH**

**Date of decision** : **19 March 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by any respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

The documents to which the tribunal was referred are in an electronic bundles of 80 pages, including the application dated 17 November 2020, the memorandum and articles of association of the applicant and its certificate of incorporation, the claim notice dated 28 August 2020, the counter-notice dated 25 September 2020h, directions dated 11 December 2020, the respondent's statement of case dated 21 December 2020, the applicant's response dated 25 January 2021 and the respondent's reply dated 19 February 2021.

The tribunal's decision is set out below.

## **Decision of the Tribunal**

The Tribunal determines that the applicant was not on the relevant date entitled to acquire the Right to Manage the premises pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002.

## **The application**

1. This was an application to acquire the right to manage 171 and 177 Tower Bridge Road, London SE1 2AW (the '**premises**') under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (the '**Act**'). 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 law**

2. The relevant provisions of the Act are referred to in the decision below.

## **The counter-notice**

3. In its counter-notice, the respondent claimed that the applicant was not entitled to acquire the right to manage because
  - the notice of invitation to participate was not given to each person as required by sections 78(1) and 79(2) of the Act;
  - the claim notice had not been given to each person as required by sections 79(6) and 79(8) of the Act;

- the claim notice did not specify the registered office of the company as required by section 80(5) of the Act.

### **The respondent's statement of case**

4. The respondent's statement of case did not pursue the grounds under sections 79(6) and 80(5)
5. The respondent submitted that the applicant had not proved that the notices had been delivered to the leaseholder, submitting that it had not been shown that the applicant had complied with sections 78(1), 79(2) and 79(8). The respondent submitted that s79(2) prevents the service of a claim notice if a notice of invitation to participate has not been served at least 14 days previously. There is no saving provision for failure to serve the notice of invitation to participate, as this does not constitute an inaccuracy.
6. In the respondent's statement it submitted that the qualifying tenant of Flat 8 is not a member of the RTM Company and there is a discrepancy with its address. The leaseholder is a limited company whose registered office is at 10 Lower Manor Road, Milford, Godalming, Surrey GU8 5JH. The notice of invitation to participate and correspondence evidencing the giving of the claim notice were sent to 1 New Orchard Street, South Brent, Devon, which is the address given for the leaseholder in Proprietorship Register for Flat 8 at the Land Registry. It was not sent to the qualifying flat address. The respondent referred the tribunal to s115(2) of the Act which provides,

*'A company which is an RTM company in relation to premises may give a notice under this Chapter to a person who is a qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.'*

7. The respondent referred the tribunal to a previous decision by the tribunal between the same parties dated 20 January 2020 LON/00BE/LRM/2019/0021 ( the '**previous decision**') in which it was decided that a notice of invitation to participate and claim notice had not been properly served on Mr Phillip Lovelock, qualifying tenant of Flat 14, when served on him at the address given for him in the Proprietorship Register for Flat 14 at the Land Registry.

### **The applicant's statement of case**

8. The applicant submitted that notice had been given to the RTM company of the address for service being the Devon address by reason of it being the address for legal service given in the Proprietorship Register for Flat 8 at the Land Registry. If the owner had wanted any

other address to be used it would have advised the Land Registry of that alternative address. The RTM company submitted that if the leaseholder had wanted notices to be served at any other address it would have advised the Land Registry.

9. The applicant further submitted that there had been no prejudice to any party. It referred to a recent review of the Act by the Law Commission where one of the conclusions was that the notice of invitation to participate served no real purpose.

### **The applicant's reply**

10. In its reply the applicant repeated that the notice of invitation to participate was not properly served on the qualifying tenant of Flat 8, and there was no reason for the tribunal to take a different approach to that adopted by the tribunal in the previous decision. The applicant has not proved that it had been notified by the tenant of the address it used for service.
11. The applicant referred the tribunal to the decision in *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 213 (LC) where the notice of invitation to participate had been posted to the non-participating owners of Flat 16 Regent Court to the address for them given in the Proprietorship Register of their registered title to the flat. It referred the tribunal to the decision in *Avon Ground Rents Limited v Canary Gateway (Block A) RTM Company Ltd and another* [2020] UKUT 358(LC) where failure to serve notice on a qualifying tenant who was not a participating member of the RTM company invalidated the claim. It also referred the tribunal to the decision in *Pineview Ltd v 83 Crampton Street RTM Co Ltd* [2013] UKUT 598 (LC) where it was stated that a landlord should not be criticised if it put the claimant to proof that it had complied fully with the statutory procedures.

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

12. Having considered the documents in the bundle and the submissions by the parties the tribunal determines the notice of invitation to participate was not validly served on the qualifying tenant of Flat 8.
13. As stated at paragraph 22 of the previous decision notice of invitation to participate is deemed by s 111(5) to be served if sent to the flat or to an address specifically supplied for that purpose. If another address is used by the RTM company it loses the protection of deemed service and the RTM company bears the burden of proving on the balance of probabilities that the notice of invitation to participate has been properly served.

14. The respondent did not disclose in its submissions whether it had previous notice of the Devon address for the Flat 8 leaseholder but it put the applicant to proof that the notice of invitation to participate and the claim notice had been properly served. The applicant did not prove this to the tribunal on the balance of probabilities. The applicant invited the tribunal to treat the fact that the Devon address was that in the Proprietorship Register of the Land Registry as evidence that that is the address the tenant wanted all notices served to.
15. In *Avon Freeholds Ltd v Regent Court RTM Co Ltd* (paragraph 42) it was decided that service at the address given on the Proprietorship Register at the Land Registry does not constitute service at a different address being notified to the RTM company by the tenant. Notification of an alternative address requires some direct form of notification between the tenant and the RTM company specific to service of notices under the Act. The applicant has not provided any evidence of such notification having been given to the tenant.
16. The tribunal notes that the previous decision commented that the issue of service can easily be avoided by service on the tenant at the flat. The same comment applies equally here.
17. On the evidence before it the tribunal finds that the notice of invitation to participate is invalid.
18. On the applicant's submission that the notice of invitation to participate may have been considered to serve no real purpose by the Law Commission, the law remains that it is a requirement that it must be served. And the applicant's submission in this regard does not address the alleged failure of service of the claim itself.
19. It was determined in the previous decision that failure to serve a notice of invitation to participate is a sufficient defect to invalidate the subsequent RTM procedures. While the tribunal is not bound by the previous decision it agrees with the reasoning given therein and sees no reason to determine this application differently.

### **Summary**

20. The Tribunal determines that the applicant was on the relevant date not entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.

### **Costs**

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

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

22. In the light of the Tribunal’s decision, the parties should seek to agree costs between them but if agreement is not reached application may be made to the tribunal for determination.

**Name:** Judge Pittaway

**Date:** 19 March 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).