



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

Case reference : **LON/00AG/LRM/2022/0026**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **10 Wilmot Place London NW1 9JP**

Applicant : **10 Wilmot Place RTM Company Limited**

Representative : **The Leasehold Advice Centre**

Respondents : **Assethold Limited**

Representative : **Eagerstates Limited**

Tribunal Member : **Judge N Hawkes**

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

Date of paper determination : **3 October 2022**

DECISION

PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 95 pages plus the Respondent's Statement of Case and the Applicant's Reply to the Respondent's Statement of Case. The order made is described below.

Decision of the Tribunal

The Tribunal determines that, on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage 10 Wilmot Place London NW1 9JP.

Background

1. The Applicant seeks a determination under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage the premises known as 10 Wilmot Place London NW1 9JP ("the Property").
2. By a claim notice dated 4 March 2022 and posted on 10 March 2022, the Applicant gave notice that it intended to acquire the Right to Manage the Property on 19 July 2022.
3. By counter notice dated 14 April 2022, the Respondent freeholder disputed the claim alleging that the Applicant had failed to establish compliance with section 78(1) of the 2002 Act, because the claim notice did not correctly provide the information required by section 80(3) of the 2002 Act.
4. The Tribunal issued Directions dated 21 June 2022 identifying a single 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 the Property.
5. The Directions provided that, unless a hearing was requested, the Tribunal would decide this application during the seven days commencing 3 October 2022 based on written representations. Neither party has requested an oral hearing.

The Respondent's case

6. By an email dated 21 July 2022, which is relied upon as a Statement of Case, the Respondent states:

"The ground relied upon is Section 80(3) of the Commonhold & Leasehold Reform Act 2022.

The documents provided by the Applicant do not show a signature by Karen Jane Toth to be entered as a member of the company. Nor would this be a signature of the Trust as required under Section 44 of the Companies Act 2006 which clearly lays out the requirements for signature by a company."

The Applicant's case

7. By a Reply dated 28 July 2022 to the Respondent's Statement of Case, the Applicant states:

"1. The Applicant submits this statement in response to the Respondent's Statement of Case

2. Ground of objection s.80(3)

As to the Respondent's assertion as to the 'The documents provided by the Applicant do not show a signature by Karen Jane Toth to be entered as a member of the company. Nor would this be a signature of the Trust as required under Section 44 of the Companies Act 2006 which clearly lays out the requirements for signature by a company.' There is no substance. It is evident that the membership in respect of the Ground Floor Flat (Also known as Flat 1) is held by Rathbone Trust Company jointly with The Right Honourable Simon Frederick Woolton;

(a) The datasheet produced in order to form the RTM Company clearly states the fact they are to be Members

(b) Karen Jane Toth is a Director of the RTM Company

(c) The Register of Members clearly display Rathbone Trust Company jointly with The Right Honourable Simon Frederick Woolton as Member in respect of the Ground Floor Flat (Also known as Flat 1)

(d) The Notice of Claim clearly shows them as joint members

(e) It was only as a result of the Respondent's solicitor specifically making the request "We note from our previous correspondence on other such matters that you typically provided written confirmation from the joint owners confirming their agreement & desire to be Members of the RTM Company. You do not appear to have provided same on this occasion. May you please clarify, or simply in the spirit of cooperation provide the same by return?" that we sought such confirmation from the parties concerned. Indeed, it is noted that the

confirmation statements from the other joint members are equally as such 'not signed' although they do bear a printed name which is to be taken as the signature. It will be appreciated that not everyone is capable of inserting a signature into an email of course

(f) We note in the matter of Kaleidoscope Apartments LON/00BE/LRM/2021/0026, another case in which we were involved and the Respondent being Assethold Ltd, the Tribunal stated "the Tribunal would not have required the Applicant either to disclose or to prove its Register of Members. The approach adopted by the Respondent has merely delayed the outcome that the tenants sought to achieve and has significantly increased the cost of their endeavour. It has used the Register of Members in a hopeless attempt to trip up the tenants in their attempt to secure the management of their flats." And also "it is noted that in Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89; [2018] QB 571, the Court of Appeal noted that the Government's policy was that the RTM procedures should be as simple as possible to reduce the potential for challenge by obstructive landlords on purely technical grounds and that the legislation should be construed having regard to this legislative intent..... The approach adopted by the Respondent in response to this application has been purely technical and without any substantive merit. It has generated a Bundle of Documents of 266 pages and has merely increased the costs relating to this application. This is not what Parliament intended when this legislation was enacted."

(g) The confirmation email clearly states that Rathbone Trust Company wanted to be a joint Member and arguing baseless points like this simply is not justified merely, we presume to delay the management control & management fees by challenging a perfectly valid claim with no grounds upon which to do so incurring the Applicant in significant additional costs and delay.

(h) It is noted that the Respondent is not challenging who the Members are, thereby admitting the Members to be correct and in so doing admitting the validity of the Notice of Claim. The challenge is solely on somewhat of a technicality being the manner in which an unnecessary email has been signed which does not, in itself, form part of the RTM process but was merely provided at the request of the Respondent's solicitor as the Member does not appear on the Memorandum as Companies House will not admit any joint members as being subscriber members as the Respondent knows only too well.

(i) It is self-evident the Respondent has adopted a baseless & frivolous argument and served a Counter Notice refuting the claim and allow this to run to the extent of a Tribunal application!

(j) Whilst we accept the importance of correct admissions to Membership, we would assert the same, as attached, has been maintained as required although equally would make the point that the success or failure of a claim cannot fall on how an email is signed and we cannot find a regulation within the Commonhold & Leasehold Reform Act 2002 requiring this?

(k) Given the above it is apparent that the Respondent has no case in this matter, nor ever did have providing further support that it is considered the Landlord has acted frivolously & vexatiously in serving

a Counter Notice disputing the claim on inappropriate grounds and then failed to enter into any productive correspondence in respect thereto leaving 10 Wilmot Place RTM Company Limited with no alternative but to incur the additional costs of making application to the First-tier Tribunal for them to determine the matter.”

8. The Applicant goes on to invite the Respondent to admit the claim.

The Tribunal’s determination

9. [Chapter 1 of Part 2](#) of the 2002 Act provides for an RTM company to acquire the right to manage premises to which the Chapter applies if the following conditions are satisfied:

- (i) The premises must be a self-contained building or part of a building, with or without appurtenant property which contains two or more flats held by qualifying tenants ([section 72](#)).

- (ii) The RTM company must be a company limited by guarantee whose objects include the acquisition and exercise of the right to manage the premises in question ([section 73\(2\)](#)).

- (iii) At the date of service of the claim notice the members of the RTM company must be at least two in number and must be qualifying tenants of at least half of the flats in the premises ([section 79\(4\)-\(5\)](#)).

- (iv) At least 14 days before serving the claim notice the RTM company must have served a notice of invitation to participate on all qualifying tenants who are not members of the RTM company and have not agreed to become a member ([section 78\(1\)](#)).

- (v) A claim notice must be served on the landlord under a lease of the whole or part of the premises, any third party to such a lease, and any appointed manager ([section 79\(6\)](#)).

- (vi) By [section 84\(1\)](#) a person who receives a claim notice may give a counter notice disputing the RTM company's entitlement to acquire the right to manage the premises.

10. The Respondent relies on one ground in opposing this application, namely, it asserts that the Applicant has failed to comply with section 80(3) of the 2002 Act. Section 80 of the 2002 Act provides (emphasis added):

80 Contents of claim notice

- (1) *The claim notice must comply with the following requirements.*

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both—
(a) the qualifying tenant of a flat contained in the premises,
and
(b) a member of the RTM company,
and the address of his flat.

(4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

(a) the date on which it was entered into,
(b) the term for which it was granted, and
(c) the date of the commencement of the term.

(5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.

(8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.

(9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

11. Section 112 of the Companies Act 2006 (“the 2006 Act”) provides for “the Members of a Company”:

(1) The subscribers of a company’s memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.

12. Section 113 of the 2006 Act provides for the “Register of Members”:

(1) Every company must keep a register of its members.

(2) There must be entered in the register: (a) the names and addresses of the members; (b) the date on which each person was registered as a member, and (c) the date at which any person ceased to be a member.

....

(7) If a company makes default in complying with this section an offence is committed by (a) the company, and (b) every officer of the company who is in default.

(8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

13. Section 114 of the 2006 Act provides for that “the Register to be kept available for inspection”:

(1) A company's register of members must be kept available for inspection– (a) at its registered office, or (b) at a place specified in regulations under section 1136

14. I am satisfied that the claim notice states the full name of each person who is both (a) the qualifying tenant of a flat contained in the premises, and (b) a member of the RTM company, and the address of their flat. Section 80 of the 2002 Act does not require the contents of a claim notice to include “a signature by Karen Jane Toth to be entered as a member of the company”.

15. The Register of Members is evidence of the membership of the RTM Company. The Company is under a duty to maintain it. There are criminal penalties under section 113 of the 2006 Act if the Register is not accurately maintained. Third parties are entitled to rely on it. The Register of Members states that Rathbone Trust Company jointly with The Right Honourable Simon Frederick Woolton is the Member in respect of the Ground Floor Flat at the Property.

16. Accordingly, the Respondent’s ground for challenging the validity of the claim notice is without foundation and I find that the claim notice is valid. I therefore determine that, on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage 10 Wilmot Place London NW1 9JP.

Judge N Hawkes

Date: 3 October 2022

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).