

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

Case Reference : CHI/24UF/LRM/2015/0011

Property : Harlequin Court, Rope Quays, Gosport,  
Hampshire. PO12 1EN

Applicant : Rope Quays (Harlequin Court) RTM Company  
Limited

Representative : Leasehold Doctors

Respondent : Holding & Management Solitaire (No 2) Limited

Representative : Estates & Management Limited

Type of Application: Application under Chapter 1 Commonhold and  
Leasehold Reform Act 2002 relating to (No Fault)  
Right to Manage

Tribunal Members : Judge P J Barber  
Mr P D Turner-Powell FRICS

Date of Decision : 26th November 2015

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**DECISION**

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## Decision

1. The Tribunal determines in accordance with the provisions of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that on the relevant date, being 17<sup>th</sup> July 2015, Rope Quays (Harlequin Court) RTM Company Limited (“the RTM Company”) was entitled to acquire the right to manage the premises known as 74-110 Harlequin Court, Rope Quays, Gosport, PO12 1EQ (“the Premises”).

## Reasons

### BACKGROUND

2. The application is for a determination that on the relevant date, the RTM Company was entitled to acquire the right to manage the Premises, pursuant to Section 84(3) of the 2002 Act. The RTM Company issued a claim notice dated 17<sup>th</sup> July 2015; by Counter-Notice dated 17<sup>th</sup> August 2015, the Respondent disputed the claim, alleging broadly, by reason of sections 78(1)(a) and (b), 78(2)(b), 79(2) and 79(8) of the 2002 Act, that the RTM Company had not given notice to all qualifying tenants, not served a Notice of Invitation to Participate (“NITP”) on all qualifying tenants, not served a claim notice on the lessee of Flat 108 Harlequin Court, and failed to provide the correct names of the members of the RTM Company. A sample copy of the NITP dated 24<sup>th</sup> June 2015 and which had been issued to Flat 76, was included in the bundle at Pages 42-46. The Applicant RTM Company filed an application with the Tribunal, for a determination in regard to its claim to acquire the right to manage.
3. Directions were issued in the matter on 8<sup>th</sup> September 2015 identifying a single issue for determination, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the right to manage the premises specified in the notice. The directions further provided that the application would be determined on the papers without a hearing unless a party objected in writing to the Tribunal within 28 days of the date of receipt of those directions. No objection has been received and accordingly the determination in this matter is made on the papers and without an oral hearing.
4. The Tribunal briefly inspected the Premises on 19<sup>th</sup> November 2015 in the presence of Mr Torrington of the Applicant’s agent Parker Torrington, and Mr Pulman and Mr Harvey of the Residents’ Association. The Tribunal was advised that that Harlequin Court comprises 37 flats arranged over 14 floors with 2 penthouses.

### THE LAW

5. Section 78(1)(a) & (b) and 78(2)b) provide that :

*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*

both the NITP and claim notice. In regard to the alleged failure to provide the correct names of the members of the RTM Company pursuant to Section 78(2)(b) the Applicant submitted that it had complied, in that TF Fearnley and CM Fearnley became members on 19<sup>th</sup> June 2015, before the date of the NITP – adding that there had been a typographical error in the membership register, which it said, may account for this allegation.

### **THE DETERMINATION**

9. In regard to the allegation by the Respondent that the Applicant was in breach of Section 78(1)(a) and (b) of the 2002 Act, by failing to serve a NITP on Flat 108, the Tribunal notes from the somewhat limited evidence provided, that the Respondent has not disputed the allegation made by the Applicant, that the lease of Flat 108 has not been registered at the Land Registry. The Tribunal further notes that the copy lease provided by the Respondent at Pages 143-180 of the bundle, includes no wholly conclusive or categorical reference to it having been granted in respect of Flat 108, rather it refers to Plot 107, with a rather faint hand written note on the front sheet referring to “Flat 108”, the significance of which is unclear. The Tribunal notes the effect of Section 27(1) of the Land Registration Act 2002, to the effect that if a disposition of a registered estate (which includes a lease granted for a term of more than seven years) is required to be completed by registration, it does not operate at law until the relevant registration requirements are met. On the basis of such evidence as has been provided, it appears that no lease of Flat 108 has been so registered; it follows that if a lease has been entered into, it will not operate at law. In such circumstances, there can be no qualifying tenant and no long lease in respect of Flat 108, as a result of failure to register any such lease as may exist. Accordingly it also follows that there can have been no requirement for the Applicant to serve a NITP on Flat 108.
10. The Tribunal notes that the Respondent has indicated in its statement of case, that it is not pursuing any issue in regard to service of the NITP in respect of any flats other than Flat 108.
11. In regard to the Respondent’s complaint that the Applicant had not served a copy of the claim notice on the qualifying tenant of Flat 108, it also follows from paragraph 9 above, that there can have been no requirement for the Applicant so to do.
12. In regard to the Respondent’s allegation that the NITP is inaccurate because it overstated the members of the Applicant, the Tribunal notes from the certificate of posting on Page 40 of the bundle that the NITP appears to have been served on 25<sup>th</sup> June 2015. The Tribunal further notes from the copy Official Register of Members at Pages 226-231 of the bundle, and in particular at Page 230, that the date on which the lessees of Flat 74 are shown as being registered as members, was not until 10<sup>th</sup> July 2015. The Applicant purports to explain this, although somewhat cryptically, by referring to a typographical error in the register, and it submits that the lessees of Flat 74 had applied for membership before the date of the NITP, namely on 19<sup>th</sup> June 2015, by reference to Page 41 in the bundle. The Tribunal considers that the NITP did therefore overstate the membership by including reference to the lessees of Flat 74 as members of the RTM Company. Nevertheless on the face of the evidence provided, the lessees of Flat 74 had prior to the date of the NITP applied for membership. The Tribunal notes the provisions of Section 78(1)(b) of the 2002 Act to the effect that before making a claim to

acquire the right to manage, an RTM Company must give a NITP to each person who “*neither is nor has agreed to become a member of the RTM company*”. Accordingly the Tribunal considers that whilst the NITP did overstate actual membership as at 25<sup>th</sup> June 2015, the lessees of Flat 74 had by that date, applied for membership and as a result it is implicit that they had agreed to become members of the RTM Company. The Tribunal further notes that no evidence has been adduced by the Respondent to the effect that it has been materially disadvantaged or prejudiced as a result of such overstatement. The Tribunal also notes the saving provisions of Section 78(7) of the 2002 Act to the effect that a notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of that section. In the circumstances, the Tribunal accepts that the overstatement in the NITP may be properly regarded as such an inaccuracy, such as not to invalidate the NITP.

13. Accordingly the Tribunal concludes that the Applicant was on the relevant date entitled to acquire the right to manage the Premises
14. We made our decisions accordingly.

Judge P J Barber

#### Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.