

392



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

Case Reference	LON/00AZ/LRM/2013/0019
Property	37, Whatman Road, London SE23 1EY
Applicant	37, Whatman Road RTM Company Limited
Representative	Canonbury Management
Respondent	Assethold Limited
Representative	Eagerstates Limited
Date of Directions	21st June 2013
Date of Receipt of the Application	14th June 2013
Date of Paper Determination	29th August 2013
Tribunal Members	Tribunal Judge S Shaw
Date and venue of Hearing	10 Alfred Place, London WC1E 7LR

DECISION

Introduction

1. This case involves an application made by 37 Whatman Road RTM Company Limited ("the Applicant") pursuant to the provisions of Section 84 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The application relates to 37, Whatman Road SE23 1EY ("the Property") and is made against Assethold Limited ("the Respondent") which is the freehold owner of the property. The Property, as understood by the Tribunal, comprises a house which has been divided into two flats, namely Flats A and B. The Applicant is the corporate entity formed by the long leasehold owners of those two flats for the purposes of exercising rights to manage in relation to the property, pursuant to the provisions of the Act.
2. The claim to acquire those rights to manage was instituted in the usual way, by service of a claim notice which appears at page 44 in the bundle of documents prepared by the Applicant for the use of the Tribunal. The claim notice is dated 31 March 2013. A counter notice was served on behalf of the Respondent dated 2 May 2013. The counter notice, which cannot be faulted for brevity, challenges the entitlement to acquire the right to manage by reference to four of the statutory provisions, that is to say sections 80(2),(8),(9) and 79(8) of the Act. Although these sections are cited, the precise basis upon which they are relied upon is not revealed in the counter notice.

3. The entitlement to acquire the right to manage having been so challenged, the Applicant made this application to the Tribunal in order to determine the issue by application received on 14th June 2013 and, as indicated, pursuant to the provisions of section 84(3) of the Act.

4. Directions were given by the Tribunal on 21 June 2013, to the effect that the Respondent should set out by way of explanation the grounds relied upon, and the Applicant was given an opportunity to respond to that Statement of Case in due course. The Tribunal indicated that it deemed the application appropriate for a paper determination (that is to say without the attendance of either party, and to be determined on the basis of written representations and documents only) but gave the parties the opportunity to request an oral hearing as is required by the Regulations. In fact neither party has requested an oral hearing, and accordingly this matter was dealt with on the basis of the representations received from the parties.

5. The Applicant's Statement of Case is made by way of witness statement and accompanying documents dated 12 June 2013, such statement having been made by Roger McElroy, a director of the Applicant company. The Respondent, in accordance with the Tribunal's directions, has supplied a Statement of Case, albeit undated, which appears at pages 68 and 69 of the bundle of documents prepared. That Statement of Case has in turn been replied to, on behalf of the Applicant,

by a Statement of Case in response dated 23 July 2013, which appears at pages 70-72 of the bundle.

6. It is proposed to deal with the two essential points made on behalf of the Respondent in its Statement of Case in opposition to the application.

Specification of the premises and the grounds upon which the claim is made

7. The first point taken by the Respondent in the Counter Notice is that by reason of Section 80(2) of the Act, the Applicant was not entitled to acquire the right to manage the premises. This is expanded upon in the Statement of Case and the Respondent therein claims that the Claim Notice has not been properly varied so as to be "*exclusively*" for this property. It makes the point that the claim form is of a generic kind and cites the various grounds upon which a claim can be brought but there is "*no need to state those that are not relevant*". As this is a property with only two flats, then the Claim Notice should have been altered to reflect this.

8. The response to this point from the Applicant is that it is clear from the Notice that the premises are 37 Whatman Road and that that property is configured in two flats. The reason that this is obvious is that the Notice has been served, as required by the Act, upon the qualifying tenants and members of the company who own Flat A and Flat B. The first paragraph of the Notice states in terms that the RTM Company claims the right to manage 37 Whatman Road, London, Greater London, United

Kingdom SE23 1EY and any common parts of that building which lessees of that building currently have use of under their leases.

9. Although it may have been desirable to delete those parts of the claim form at paragraph 2, which may not have been of direct application, or in some way to have crafted that paragraph so as to be directly descriptive of the property, the Tribunal cannot find any statutory requirement to this effect, and is in no doubt at all that the premises are fully identified and clear, taking the notice as a whole. There is no suggestion on the part of the Respondent that it was in any way confused or unclear about the premises referred to, nor is it at all likely that they could have been. This first point is determined in favour of the Applicant.

The challenge made pursuant to Sections 80(8) and 80(9) of the Act and the question of the signature of the Notice

10. These two sub-sections of Section 80 read as follows:

“(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. Although not referred to in the Respondent’s Statement of Case, the relevant regulations are “The Right To Manage (Prescribed Particulars And Forms) (England) Regulations 2010. Those Regulations require, as might be expected, that the form must be signed with the signature of “*authorised member or officer*”.

12. The point taken by the Respondent, as explained in its Statement of Case, is that the Counter Notice has not been properly signed by the Applicant company, in accordance with section 44(2) of the Companies Act 2006.
13. Section 44 provides that:
- (1) "Under the law of England and Wales or Northern Ireland a document is executed by a company –*
- (a) by affixing of its common seal, or*
- (b) by signature in accordance with the following provisions.*
- (2) A document is validly executed by a company if it is signed on behalf of the company –*
- (a) by two authorised signatories, or*
- (b) by a director of the company in the presence of a witness who attests the signature."*
14. Section 44(3) of the Act identifies "*authorised signatories*" but there is no issue in this case that the signatories of the Claim Notice were "*authorised signatories*" for the purposes of the Act.
15. In this particular case, the Applicant chose to have the Claim Notice signed on its behalf by 2 directors, those directors themselves being companies – namely RTM Nominee Directors Limited, and RTM Secretarial Limited. There is no difficulty in principle in this, says the Respondent, provided these companies comply with the above provisions of the Companies Act, as to execution of documents.

16. In this case however, the Respondent argues that the Applicant has failed to comply with those provisions. Each company has been signed for by only one director (the same director in each case – Mr Roger McElroy). This does not constitute one of the 3 statutory options for execution of a document referred to above, and therefore the Notice is bad.
17. In its Reply, the Applicant argues that compliance has taken place because under section 44(3) (a) and (b) both directors of a company and company secretaries are authorised signatories. Since the companies in question are both a director and secretary respectively, there is valid compliance with the Act.
18. The view of the Tribunal is that this is to miss the point taken by the Respondent. There is nothing objectionable in principle with using corporate directors to execute such a document. However, since such directors are corporate, a signature by them requires compliance with the statutory provisions referred to above. In short, those corporate directors could themselves have signed by use of the company seal, by 2 human directors' signatures for each company, or a witnessed signature of a single human director for each company.
19. In this case the Applicant took none of those routes, but purported to use a single signature for each corporate director, which this Tribunal finds was invalid execution for the purposes of the Companies Act 2006.

- 20 Applicant raises a further possible issue towards the end of its Statement of Case in Reply. It argues that:

“There is a question mark over whether the Companies Act 2006 applies in the case of 2002 Act claim notices. It is specified in the statutory form of claim notice contained in “The Right To Manage (Prescribed Particulars and Forms) (England) Regulations 2010 that the form must only be signed with a “signature of authorised member or officer”.

21. The Applicant contends *“the absence of plurality in the Statement is suggestive that a single company officer may be all that is required for valid signature of the claim notice.”*

22. In this respect, it does not seem to the Tribunal that the Regulations can override the provisions of the Companies Act 2006 in respect of valid signature by a corporate entity, or that the form notes which are contained in Schedule 2 of the Regulations, do anything other than to stipulate that the signature must be by an authorised member or officer of the company. There is no dispute in this case that the two corporate directors are so authorised. This however begs the question as to how a company can or cannot validly execute a document. For the reasons indicated above, it seems to the Tribunal that there must be compliance, as argued for by the Respondent, with the 2006 Act, which compliance has not occurred in this case.

Conclusion

23. For the reasons indicated above, the Tribunal considers that this highly technical point taken on behalf of the Respondent is sound, and that the Claim Notice in this case has not been validly signed on behalf of the Applicant company. In the circumstances it must follow that the notice itself is invalid, and this is the finding of the Tribunal.

Tribunal Judge: S. Shaw

Dated: 29th August 2013