

545



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

Case Reference : **LON/00AR/LRM/2015/0025**

Property : **Kingswood Lodge, 63 Main Road,
Gidea Park, Romford Essex RM2
5EH**

Applicants : **Kingswood Lodge Right to Manage
Company**

Representative : **SLC Solicitors**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of Application : **Application for a decision of the
Leasehold Valuation Tribunal on a
preliminary issue under section 84(3)
of the Commonhold Leasehold Reform
Act 2002**

Tribunal Members : **Ms Judge Daley
Mr L Jarero BSc FRICS**

**Date of hearing paper
determination** : **17 November 2015 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **23 November 2015**

DECISION

Decisions of the Tribunal

The application

Background

- (a) The Tribunal received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002.
- (b) By a claim notice dated 2nd June 2015, the Applicant gave notice to the Landlord that it intended to acquire the Right to Manage, the premises in accordance with chapter 1 of part 2 of the Commonhold and Leasehold Reform Act 2002.
- (c) By counter notice dated 8 July 2015, the Respondent objected.
- (d) On 10 September 2015, Directions were given by the First-Tier Tribunal. These directions identified 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 Tribunal determined that this matter was suitable to be set down for a paper determination.

The law

The Commonhold and Leasehold Reform Act 2002 set out the procedural requirements that a right to manage company must follow before it can acquire the right to manage. The relevant sections for the purposes of this application are ss72 to 84.

Premises subject to the right to manage:

Section 72 defines the premises that may be subject to the right to manage. The relevant section states that a premise qualifies if...

- (a) They consist of a self-contained building or part of a building with or without appurtenant property,
- (b) They contain two or more flats held by qualifying tenants, and
- (c) The total number of flats held by such tenants is not less than two thirds of the total number of flats contained in the premises..."

Right to manage companies:

Section 73 provides that the right to manage can only be acquired and exercised by a RTM company and the company must be a private company limited by guarantee that includes the acquisition and exercise of the right to manage as one of its objects. The company does not qualify if there is already a RTM company for the premises.

Membership of the company:

Section 74 75 and 76 provide that membership of the RTM company must consist of any qualifying tenant, defined as a residential tenant under a long lease of a flat in the premises, and that there can only be one qualifying tenant per flat, no less than half the qualifying tenants (subject to a minimum of two) must be members of the company on the date when the company serves the claim notice. From the time that the company acquires the right to manage the premises, any person who is a landlord under a lease of the whole or any part of the premises can be a member of the RTM company.

Notice of invitation to participate:

Section 78 - before making a claim to acquire the right to manage any premises, a RTM company must give notice to all qualifying tenants who are not members of the company inviting them to become members for the purposes of acquiring the right to manage.

Claim Notice:

Section 79 (1) – “A claim to acquire the right to manage any premises is made by giving notice of the claim 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” and (6) “The claim notice must be served on each person who on the relevant date is

- (a) A landlord under a lease of the whole or any part of the premises,
- (b) A party to such a lease otherwise than as landlord or tenant or
- (d) Appointed as manager of the premises under Part 2 of the Landlord and Tenant Act 1987.”

Contents of the Claim Notice:

Section 80

(1)A 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 the provisions apply. (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...

Claim Notice: supplementary

Section 81

A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80....

Counter Notice:

Section 84 “A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter notice”) under section 80(6).”

The Findings of the Tribunal

The Tribunal determine that -:

(a) **The Applicants have the right to manage the premises known as Kingswood Lodge, 63 Main Road, Idea Park Romford, Essex, RM2 5EH, and that the error in the notice is capable of amendment in accordance with section 81(10) of The Common and Leasehold Reform Act 2002.**

(1) The Applicant pursuant to an application dated 4 September 2015 sought a determination that the Right to Manage Company had acquired the Right to manage the premises known as Kingswood Lodge, Romford Essex RM2 5EH ("the Premises").

The matters in issue

(2) The Tribunal having considered the Respondent's statement of case dated 8 October 2015 which raised a number of issues which are considered in turn in paragraph 2. The Respondent noted that there are 12 flats in the premises in accordance with section 79(3) the Applicant must establish that as at the relevant date its members comprised of qualifying tenants who owned not less than 50% of those flats. In paragraph 3 of the statement of case stated-: "*The Respondent contends that the Applicant is unable to satisfy this requirement because the Applicant has not complied with the provisions of its Articles of Association.*" In reliance upon this point the Respondent referred to sect 112 of the Companies Act 2006 which provides that the name of every member must be entered into the Register of Members. In paragraph 9 of the Statement of Case the Respondent noted that where the flat was jointly owned the joint names were recorded in the remarks. For the purpose of dealing with this issue the Tribunal will refer to this as "*The Membership point*".

(3) In the Applicant's statement of case dated 7.10. 2015, the Applicant stated that the membership of the company comprised 8 of the twelve qualifying tenants. In the Statement in Reply dated 19.10 15 the Applicant further stated that Neither the Articles of the RTM Company or the Companies Act have a prescribed way in which the members are to be registered on the register.

(4) The Applicant relies on section 1135(1) (b) of the Companies Act 2006 which provides that company records "*may be arranged in such manner as the directors of the company think fit provided the information in question is adequately recorded for future reference.*"

The Findings of the Tribunal on the Membership point

- (5) The Tribunal has considered the wording of section 79 (3) of the act, which requires the company to comprise at least 50% of the qualifying tenants. The Tribunal has also considered the copy the Article of Associations which has been provided.
- (6) The Tribunal have noted that of the 12 flats there are a number which are jointly owned, and that in respect of these flats in order to comply with the requirement for 50% of the qualifying tenants to be members of the company there are at least 8 flats where the owners are members whether jointly or in the case of sole leaseholders singly of the company. The Tribunal are satisfied that the Applicant has satisfied this requirement.
- (7) The Tribunal have noted the Respondent's reliance upon Southall Court Residents Limited & Others –v- Buy Your Freehold Limited and others LRX/124/2007 from which the Tribunal derived little assistance. The Tribunal considered the later case of *Asset hold Ltd –v- Satisfied Road RTM* 2012 UKUT 262, in which HHJ Bartlett QC stated in relation to a defect in the register “... *In any event a defect in the register would not be sufficient to show that section 79(5) was not complied with, and indeed it could be insufficient even to raise a doubt as to compliance...*”
- (8) **Accordingly the Tribunal determine that section 79(3) of the Act as been complied with.**
- (9) In paragraph 15 of its Statement of Case, the Respondent referred to 78(1) and Section 79(2) of the Act which requires notice to be given to a person who is at the time the notice is given is the qualifying tenant of a flat contained in the premises who is not a or has not agreed to become a member of the RTM Company. The Respondent also take issue with section 79(2) in relation to the requirement to give a notice of invitation to participate to each qualifying tenant at least 14 days before serving a claim notice. The Respondent refers to the qualifying tenant Ms Morrin of flat 2. of whom it is stated that the applicant's solicitors did not include a notice to participate amongst the documents served. For ease of reference this is referred to as “...*The notice to participate point*”.
- (10) In their reply dated 19 October 2015, at paragraph 15 the Applicant states that the Respondent is incorrect and that at the date of the issue of the Claim Notice Ms Morrin was a member of the company having completed an application form on 14/04/15. A copy of which was attached. The Applicant also states that there were 21 days between the service of the Invitation to participate and the claim notice

The Findings of the Tribunal on the notice to participate point

(11) The Tribunal have considered the copy of application which is signed by Ms Morrin.

(12) The Tribunal noted that no objection has been made by Ms Morrin that she has not been provided with a notice to participate. The Tribunal noted that in the Respondent in formulating their objections have made the assumption which has proved to be unfounded that Ms Morrin as a qualifying tenant had not been invited to participate without any evidence for this assertion.

(13) Accordingly the Tribunal finds that the Applicant has complied with the requirements under 78(2). The Tribunal finds on a balance of probabilities that the Applicant has complied with 79(2) no objection having been made by the affected tenant.

(14) The Respondent states that the Applicant failed to comply with sections 80(8) and 80 (9) of the act. These sections deal with the prescribed form regulations 2010 in particular it is alleged that the contents of the claim notice do not contain the full name of each person who is the qualifying tenant of the flat and a member of the RTM company (80(3)) and particulars of each persons lease such as the date entered into the terms for which it was granted and the date of commencement of the terms. The Respondent at paragraph 21 alleges that the claim notice incorrectly includes qualifying members who were not members of the company and accordingly "incorrectly provided the particulars under section 80(8) and 80 (9) of the 2002 Act 2002.

(15) At paragraph 26 and 27 of the reply the Landlord's contention is disputed. The Respondent states The RTM Company re-affirms that all of the flat owners named in the register are members of the company. The Applicant also relies upon section 81 (2) of the act in the event that there has been incorrect inclusion of non members.

The Findings of the Tribunal on the Section 80(8) and 80(9) points

(16) The Tribunal notes that no particulars are given as to the manner in which the claim notice fails to comply with sections 80(8) and 80(9). The Tribunal are concerned about the lack of particularity with which this issue has been raised, and the lack of any evidence or detailed submissions for what is asserted.

Name: Ms M W Daley

Date: 23 November 2015