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

**Case reference** : **LON/00AF/LRM/2017/0031**

**Property** : **174-174A Croydon Road, London  
SE20 7YZ**

**Applicant** : **174 Croydon Road RTM Company  
Limited**

**Respondent** : **Mr Rashnik Gani**

**Type of application** : **Right to Manage**

**Tribunal member** : **Judge P Korn**

**Date of decision** : **31<sup>st</sup> August 2017**

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**DECISION**

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## **Decision of the Tribunal**

The application is granted. The Applicant was on the relevant date entitled to acquire the right to manage the Property.

## **The application**

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("**the Act**") that on the relevant date it was entitled to acquire the Right to Manage the Property.
2. By a claim notice dated 12<sup>th</sup> April 2017 the Applicant gave notice that it intended to acquire the Right to Manage in respect of the Property on 16<sup>th</sup> August 2017. By a counter-notice dated 9<sup>th</sup> May 2017 the Respondent disputed the claim by reason of sections 72(1) and 72(6), Chapter 1 of Part 2 and Schedule 6 of the Act, on the ground that the internal floor area of any non-residential part of the premises exceeds 25% of the internal floor area of the premises. On 4<sup>th</sup> July 2017 the Applicant applied to the Tribunal for a determination that it was entitled to acquire the Right to Manage.
3. This case therefore involves a single issue, namely whether the internal floor area of any non-residential part of the Property exceeds 25% of the internal floor area of the Property.

## **Paper determination**

4. The Tribunal has identified the case as being suitable for a determination on the papers alone without a hearing, and neither party has requested an oral hearing. Accordingly the case is being determined on the papers alone.

## **Respondent's case**

5. The Respondent states that the building contains more than 25% non-residential and therefore is a building which is not eligible for RTM acquisition. The Respondent notes that the Applicant has relied on a report dated 28<sup>th</sup> June 2017 by Stiles Harold Williams, but he objects that according to the report Stiles Harold Williams were instructed by Chris Shaw, not by the Applicant. The Respondent goes on to state that, as such, the findings within the report are not accepted as ones that can be relied upon.
6. The Respondent then proceeds to list certain other objections which he did not mention in his counter-notice.

### **Applicant's case**

7. The Applicant notes that the Respondent has not provided a surveyor's report of his own nor any other evidence to support his contention that the internal floor area of any non-residential part of the premises exceeds 25% of the internal floor area of the premises.
8. As regards the addressee of the report relied upon by the Applicant, it was addressed to Mr Chris Shaw, a subscriber member of the Applicant company, who was fully authorised to instruct Stiles Harold Williams to prepare the report on behalf of the Applicant.
9. As regards the other grounds listed by the Respondent in written submissions, these were not mentioned in the counter-notice and in its view should not be considered by the Tribunal.

### **Tribunal's analysis**

10. The single ground specified by the Respondent in his counter-notice is that the internal floor area of any non-residential part of the premises exceeds 25% of the internal floor area of the premises. He has provided no supporting evidence for this assertion. The only stated basis for his assertion is that the report states that Stiles Harold Williams were instructed by Chris Shaw, not the Applicant.
11. The Stiles Harold Williams report is dated 28<sup>th</sup> June 2017 and is addressed to C Shaw Esq of Flat 1, 174 Croydon Road. The Applicant states, and the Respondent has not denied, that Mr Shaw is a subscriber member of the Applicant company. The Applicant further states, credibly in our view, that Mr Shaw was fully authorised to instruct Stiles Harold Williams to prepare the report on behalf of the Applicant.
12. The Respondent's assertion that the findings of the report cannot be relied upon because it was not addressed to the Applicant is in our view misconceived. Whilst there are circumstances in which technical reliance needs to be established in order, for example, to show that the author of a report owes a duty of care to the person seeking to rely on it, this is not the position here. In the present case the issue is simply whether the internal floor area of any non-residential part of the premises does or does not exceed 25% of the internal floor area of the premises. In support of its position the Applicant has provided a copy of a report from a reputable firm of surveyors, whilst the Respondent has provided nothing at all in support of its own position, which in the circumstances amounts to no more than a simple assertion. Therefore this is not a valid ground for disputing the Applicant's entitlement to acquire the right to manage.

13. As regards the Respondent's other submissions, these relate to points which were not raised in his counter-notice. It is self-evident that the scheme of the legislation is such that if the recipient of a claim notice wishes to challenge the acquisition of a right to manage he needs to specify in his counter-notice all of the grounds on which he is relying. Any grounds raised at a later stage are not ones that the Tribunal can or should consider.
14. Ordinarily it would be appropriate for the Tribunal to quote the relevant parts of the legislation in its decision. However, in the context of the particular arguments raised in this case I consider it unnecessary to do so.
15. Accordingly, the Respondent's objections are not valid objections and the Applicant was on the relevant date entitled to acquire the right to manage the Property.

**Name:** Judge P Korn

**Date:** 31<sup>st</sup> August 2017

#### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.