



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

Case Reference : **CHI/00HP/LRM/2020/0003**

Property : **446-450a Ashley Road, Poole BH14 0AD
and Victoria Place, Victoria Road, Poole
BH12 3EE**

Applicant : **Victoria Place Flats RTM Company Limited**

Representative : **The Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of Application : **Determination of the Right to Manage**

Tribunal Members : **Judge Paul Letman**

Date and venue of : **19 October 2020 (Assigned notional
hearing date)**

Hearing : **On Paper**

Date of Decision : **2 December 2020**

DECISION

Introduction

1. By an application dated 1 July 2020 the Applicant (RTM company) applies for a determination under section 84(5) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') that it was on the relevant date (the date of its Notice of Claim) entitled to acquire the right to manage the subject premises known as and situate at 446-450a Ashley Road, Poole BH14 0AD and Victoria Place, Victoria Road, Poole BH12 3EE (hereinafter 'the Premises').

Relevant Facts

2. From the documents before the tribunal the following facts and matters are apparent and this tribunal makes findings of fact accordingly.
3. As regards the Premises, there is no issue that they do in fact consist of a self-contained building or part of a building, containing 2 or more flats (in point of fact, 12 flats) held by qualifying tenants, and in which the total number of flats held by such tenants is not less than 2/3rds of the total number of flats contained in the premises, so as they are premises to which Chapter 1 of Part 2 of the 2002 Act applies.
4. Likewise, no point arises as to the constitution of the Applicant RTM company and again it is apparent from the documentation including copy articles before the tribunal that it meets the statutory requirements of section 73. Equally, that its membership is compliant with section 74 of the 2003 Act, with each of its members owning a long lease in the Premises and being a qualifying tenant of a flat for the purposes of Chapter 1.
5. Thus, consideration of the papers confirms that the following are both qualifying tenants (of the flat indicated) and members of the Applicant:

Doreen Algenio Evangelista (Flat 1)

Raymond Buckmaster (Flat 2)

Amy Louise Richardson (Flat 3)

Nicholas John Murphy (Flat 4)

Hayley Lorna Tapping (Flat 6)

Dawid Jan Szczupak (Flat 8)

Romiley Gunningham & Nicholas Patou Greenwood (Flat 9)

Kerry-Ann Wagstaff (Flat 12)
6. Further, it is apparent on the documents before the tribunal that 'Notice of invitation to participate in right to manage' dated 23 March 2020 was given by the Applicant on each of the non-participating owners of flats, numbers 5 [24-29] and 10 [30-35] and 11 [36-43] under cover letters dated 26 March 2020 [24, 30 and

36]. Proof of posting is provided at [43-44] confirming the notices were each consigned on 27 March 2020 at Shanley Green, Post Office.

7. Thereafter, Claim Notice dated 24 April 2004 [46-51] addressed to both Holton Homes Limited and also to Assethold Limited was given to Holton at its business and registered addresses [45, 51] and Assethold at its registered address [61] and care of its managing agents Eagerstates Limited [70]. As explained on the face of the Notice of Claim, the reason for the two addressees, was that whilst Holton remained the registered freehold owner at the date of the notice, it was known that the same had been sold to Assethold and its registration as the new owner was pending. The Notice was sent both by email (given the current pandemic) and by post on 28 April 2020 [69].
8. For information also Notice of Claim was served on the commercial tenants of the building, Bulpitt Crocker Taxation Ltd at their shop premises (Unit 1) [78] and registered office [86] and Civic Capital Ltd also at their shop premises (Unit 2) [94] and registered office [102].
9. On 30 April 2020 copy Claim Notices were duly served on each flat owner [110 – 138] including Nicola Frampton of Flat 5, Shannon Kennedy of Flat 10 and Simon Coleman & Ruth Goulden of Flat 11. Acknowledgments of service from each are in the bundle before the tribunal [139-150].
10. By letter dated 1 May 2020 from Scott Cohen solicitors for Assethold, the Claim Notice was acknowledged and information requested so that they might ‘make a full assessment of the claim notice’ [151]. By letter dated 6 May 2020 [152] on behalf of the Applicant the requested information was duly provided including all relevant OCE’s, Register of Members [192], copy all notices and proof of sending, Articles of Association [266] etc.
11. By email dated 4 June 2020 [286] from Scott Cohen to the Applicant’s representative the above information was acknowledged and some further copy emails requested in respect of Flat 9. Confirmation of membership of Flat 9 was provided by return [287].
12. On 5 June 2020 [290] solicitors for Assethold served a counter notice [291] disputing the claim in the following terms ‘by reason of section 79(6) of the 2002 Act [the Applicant] was not entitled to acquire the right to manage the premises specified in the claim notice because the claim notice was not given to each person as required by that section.’
13. When asked by email dated 8 June 2020 [293] to explain the objection Scott Cohen solicitors for Assethold responded ‘.. that upon review of the documentation you provided, it did not appear that a copy of the claim was served upon the registered freeholder and there was no evidence of the same’ [298]. By return email [299] was duly pointed out, however, that the notice was specifically addressed to the freeholder and evidence of service provided.

14. By letter dated 23 June 2020 [303] Scott Cohen wrote on behalf of Assethold in the following terms 'We write to confirm that our client hereby withdraws the Counter Notice dated 5th June 2020 given in relation to the property.'
15. By email dated 23 June 2020 [304] the said withdrawal was noted. However, on the basis that section 84(5)(b) provides the only basis for disapplying the effect of a negative counter notice (other than by way of an application and final determination by this tribunal) the Applicant invited Assethold to agree in writing by no later than 25 June 2020 that it was entitled to acquire the RTM.
16. There was no reply to the Applicant's invitation before the expiry of the relevant time limit (under section 84(4)) and accordingly this application was made on 1 July 2020 (within time) for a determination. The Applicant also seeks an order for reimbursement of the application and any hearing fees, on the basis the application is only necessary as a result of the Respondent's failure to respond and agree in writing to the Applicant's entitlement as it might simply have done.

Decision

17. In the light of the foregoing and the findings of fact made herein, the tribunal is satisfied that a valid Notice of Invitation to Participate complying with the requirements of section 78 was given in this matter to each person to whom it was required to be given, namely the owners of flats 5, 10 and 11 as qualifying tenants who neither were nor had agreed to become members of the Applicant.
18. Further, that in compliance with section 79(2), that is to say at least 14 days after the above Notices were given, a valid Claim Notice complying with the requirements of section 80 was duly given on 28 April 2020 (the relevant date) to each person to whom it was required to be given under and in accordance with section 79 of the 2002 Act.
19. In the premises, the tribunal is satisfied that the Applicant was on the relevant date entitled to acquire the right to manage the Premises and the tribunal so determines and in so far as necessary declares and orders.

Refund of fees

20. Further in the circumstances it does appear to the tribunal that it would be fair and just for the Respondent rather than the Applicant to meet the application fee (there is no hearing fee). It would have been a simple matter for the Respondent to respond timeously to the Applicant's email of 23 June 2020 and agree in writing that the Applicant was entitled to acquire the right to manage on the relevant date and no sensible reason is advanced as to why it did not do so.

21. The tribunal further orders, therefore, that the application fee in the sum of £100 to be refunded to the Applicant by the Respondent within 28 days of the date of this decision.

Name: Judge Paul Letman

Date: 2 December 2020

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 rpsouthern@ejudiciary.net 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).