



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

Case reference : **LON/00AY/LRM/2020/0030**

HMCTS code: : **P: PAPERREMOTE**

Property : **10 Morrish Road London SW2 4EH**

Applicant : **10 Morrish Road RTM Company
Limited**

Representative : **Crossfield Property Services Limited t/a
The RTM Company**

Respondent : **Freehold ESS NO 1 Limited**

Representative : **Keebles LLP t/a PM Legal Services
Limited**

Type of application : **Right to Manage Section 84(3)
Commonhold and Leasehold Reform
Act 2002**

Tribunal member : **Judge Pittaway**

Date of decision : **27 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by any respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

The documents to which the tribunal was referred are in an electronic bundle of 86 pages, which included the applicant's statement of case and 16 annexes, comprising the memorandum and articles of association, membership forms and register of members of the applicant company (annexes 1-3), claim notices and proof of posting (annexes 4-7), PM Legal Services letter (annex 8), The RTM Company letter (annex 9), counter notice (annex 10), the application to the tribunal and notice of it (annexes 11 and 12), tribunal directions (annex 13), respondent's case (annex 14), the applicant's reply (annex 15) and title registers (annex 16).

The tribunal's decision is set out below.

Decision of the Tribunal

The Tribunal determines that the applicant was, on the relevant date, entitled to acquire the Right to Manage the premises pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002.

The application

1. This was an application to acquire the right to manage 10 Morrish Road London (the '**premises**') under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (the '**Act**').
2. By a claim notice dated 14 September 2020 10 Morrish Road RTM Company (the '**applicant**') gave notice that it intended to acquire the right to manage on 21 January 2021. By a counter notice dated 13 October 2020, under cover of a letter dated 15 October 2020, the respondent freeholder disputed the claim, asserting that the applicant was not on the relevant date entitled to acquire the right to manage, by reason of the applicant not having established compliance with sections 74 and 78(1) of the Act.
3. The applicant applied to the tribunal on 4 November 2020 for a determination that on the relevant date it was entitled to acquire the right to manage.

The law

4. The relevant provisions of the Act are referred to in the decision below.

The respondent's statement of case

5. The bundle before the tribunal contains an undated 'Application in relation to the denial of right to manage' from an unspecified person at Keebles LLP, stating that they are duly authorised to sign the statement for the respondent. This refers to a claim notice dated 2 July 2020 and a counter-notice dated 30 July 2020. This states, at paragraph 6, 'The Respondent (sic) operates pursuant to the articles of an RTM company', that the Articles of Association of the Respondent (sic) are annexed, and that part 2 of clause 16 of the Articles of Association state that, 'The quorum for directors meetings may be fixed from time to time by decision of the directors, but must never be less than two, and unless otherwise fixed it is to (sic)'. The statement then states that 'The Respondents therefore maintain that at the date that the claim notice was served, the Applicant was not entitled to acquire the right to manage of the Premises since they were not a functioning RTM Company'.

The Articles of Association of neither the applicant nor the respondent are attached to this statement in the bundle before the tribunal.

The applicant's reply

6. The applicant's statement of case dated 31 March 2021 was made by Mr Crossfield, a director of The RTM Company.
7. Mr Crossfield referred to the date of the claim notice given in the respondent's case being incorrect and confirmed that it was served on 14 September 2020 and not 2 July 2020. It required a counter-notice to be served by no later than 20 October 2020. The counter-notice was received under cover of a letter dated 15 October 2020 alleging that the applicant was not entitled to acquire the right to manage by reason of section 74 and 78(1) of the Act.
8. Mr Crossfield stated that the applicant was incorporated on 19 May 2020 adopting the prescribed articles as detailed in 'The RTM Companies (Model Articles) (England) (Regulations) 2009' with Mr G S Sefton acting as director (annex 1 in the bundle). Following incorporation the board received membership forms from all qualifying tenants who were not registered as original subscribers of the applicant on incorporation (annex 2) and a membership register was taken confirming all qualifying tenants as members of the company and the date they became members (annex 3). He submitted that as all qualifying tenants were members of the company there was no requirement to give notice inviting participation under section 78(1) of the Act.

9. Mr Crossfield attached a copy of the applicant’s articles of association to his reply. In response to the reference by the respondent to part 2 of clause 16 of Articles of Association he referred to part 2 of clause 12, as stating,
- ‘(2) If-
- (a) The company has only one director, and
- (b) No provision of the articles requires it to have more than one director,
- the general rules do not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors’ decision-making’.
10. Mr Crossfield submitted that as the applicant has only one director and its articles do not require it to have more than one director that director may take decisions without regard to part 2 of clause 16. Accordingly at the date the claim notice was served the applicant was a functioning RTM company and entitled to the right to manage the premises.

Reasons for the tribunal’s decision

11. Having considered the documents in the bundle and the submissions by the parties the reasons for tribunal’s determination are the following.
12. While the respondent did not pursue non-compliance with section 78(1) in its statement of case, this was alleged by it in its counter-notice.
13. Section 78 of the Act provides,
- 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
- (b) neither is nor has agreed to become a member of the RTM company.
14. From the membership register (annex 3) it is clear that by 1 August 2020 all the qualifying tenants were members of 10 Morrish Road RTM Company Limited. This pre-dates the service of the claim notice on claim notice dated 14 September 2020. Accordingly there was no need to give notice to any other person.
15. The applicant had complied with section 78 of the Act before serving its claim notice dated 14 September 2020 on the respondent.

16. The respondent also alleged non-compliance with section 74 of the Act, in its counter-notice.

17. Section 74 of the Act provides,

74 RTM companies: membership and regulations

(1)The persons who are entitled to be members of a company which is a RTM company in relation to premises are—

(a)qualifying tenants of flats contained in the premises, and

(b)from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.

(2)The appropriate national authority shall make regulations about the content and form of the articles of association of RTM companies.

(3)A RTM company may adopt provisions of the regulations for its articles.

(4)The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.

(5)A provision of the articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.

(6)The regulations have effect in relation to articles—

(a)irrespective of the date of the articles, but

(b)subject to any transitional provisions of the regulations.

18. The respondent referred to the applicant not being compliant with section 74 of the Act in its counter-notice but did not substantiate this in its statement of case. The tribunal have no reason to doubt the applicant’s statement that it adopted the prescribed articles as detailed in ‘The RTM Companies (Model Articles) (England) (Regulations) 2009’, and therefore find that the applicant was properly constituted.

19. Otherwise it would appear that the respondent’s case is based on the submission that the fact that the company had only one director prevented the it from being a functioning RTM Company, because article 16(2) of the articles of the ‘respondent’ (sic)refers to a quorum of two directors being necessary. The respondent’s statement of case was poorly prepared. It contained inaccuracies as to the date of the claim notice and counter-notice and confused the respondent with the applicant. The tribunal presumes that when it referred to the articles of the respondent it intended to refer to the articles of the applicant. The respondent relied on one provision of those articles of association, without considering it in the context of the remainder of the relevant provisions.

20. The articles of the applicant are set out in annex 1 of the bundle and contain both the article 16(2) referred to by the respondent, and the article 12(2) referred to by Mr Crossfield. The tribunal accepts Mr Crossfield’s submission that where there is only one director, as is the case here, article 12(2) supercedes the general rules, including that in

article 16(2). Any decision taken by that sole director was therefore valid, and the applicant was a functioning RTM company on the date it served its notice.

21. The Tribunal accordingly determines that the applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.

22. The tribunal would draw the parties' attention to Section 88(3) of the Act states:

'(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.'

Name: Judge Pittaway

Date: 27 April 2021

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 the regional office 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).