



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

Case reference : **CAM/00MF/LRM/2022/0004**

HMCTS code (audio, video, paper) : **P:PAPERREMOTE**

Property : **Mulberry House, Osborne Road, Wokingham, Berkshire RG40 1GQ**

Applicant : **Mulberry House Residents RTM Company Limited**

Representative : **Philip Bazin, Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **Application in relation to the denial of the right to manage**

Tribunal : **Judge David Wyatt**

Date of directions : **17 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision on the papers. The parties are deemed to have consented to this matter being determined without a hearing, as explained below. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents I was referred to are described in paragraph 4 below. I have noted the contents.

Decision

The Tribunal:

- (1) determines that the Applicant was on the relevant date entitled to acquire the right to manage the Property; and
- (2) orders the Respondent to pay £100 to the Applicant to reimburse the tribunal application fee paid by them.

Reasons

Application

1. On 5 May 2022, the Applicant RTM company (registration number 13849570) applied to the tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the “**Act**”) for a determination that, on the relevant date, it was entitled to acquire the right to manage the Property. The Applicant also applied for an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the “**Rules**”) for reimbursement of tribunal fees.

Background

2. The Property comprises a block of 12 flats let on long leases. By a claim notice dated 8 February 2022 and sent on 10 March 2022, the Applicant gave notice that they intended to acquire the right to manage “*the premises known as the building or part of a building known as Mulberry House, Osborne Road, Wokingham RG40 1TL*” on 18 July 2022. On 17 March 2022, solicitors instructed by the Respondent asked for copy documents and these were provided on 23 March 2022.
3. By a counter notice dated 8 April 2022, the claim was disputed. In the counter notice, the Respondent alleged that the claim notice was not given by an RTM company which complied with section 79(5) of the Act and the claim notice did not correctly provide the information required by section 80(3) of the Act, but gave no particulars. In the application documents, the Applicant explained that it appears the current postcode of the Property is RG40 1GQ, not RG40 1TL (the postcode given in the claim notice and other relevant documents), but confirmed these are the same premises. The Applicant (rightly, it seems to me) did not raise any issue about this inaccuracy.

Procedural history

4. On 16 June 2022, a procedural judge gave case management directions. The application with enclosures would stand as the Applicant’s case. The Respondent was directed to produce the documents they relied upon. These were to include their statement of case in response explaining exactly why the Respondent said the specified requirements had not been complied with. They were also to include any representations in respect

of the application for reimbursement of fees. With an extension of time, they did so. The Applicant was permitted to produce a brief reply and produced a paginated electronic bundle of 258 pages of the documents exchanged between the parties. I have noted the contents.

5. The two issues raised by the Respondent in their statement of case are considered below. The extended directions provided that the tribunal would determine this matter on or after 9 August 2022 based on the documents provided unless the tribunal considered a hearing was necessary or by 25 July 2022 either party requested a hearing. Neither party did so. Accordingly, by Rule 31(3), the parties are taken to have consented to this matter being decided without a hearing. I am satisfied that a hearing is not necessary to determine the issues in this case.

Issue 1 – membership - section 79(5)

6. By s.79(3), the claim notice must be given by a RTM company which complies with subsection (4) (which does not apply here) or (5). By subsection (5), the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained. The Applicant said the qualifying tenants of 10 of the 12 flats (all but Nos. 4 and 10) were members.
7. The qualifying tenant of Flats 1, 3, 5 and 7 is Calad Investments Limited (“**Calad**”). The Respondent’s statement of case said this company could only act by someone authorised to enter into agreements into its name. They acknowledged that when they had requested evidence of membership a copy e-mail had been produced by the Applicant, but said: *“The individual delivering that e-mail is unclear. The e-mail proposes to list a number of directors but does not indicate which director has acted in this matter”*.

Correspondence referred to

8. The claim notice was signed by Christopher Stolland. On 23 March 2022, the Applicant’s representatives had sent to the solicitors then acting for the Respondent their file copy of the register of members, confirming that the original was held by Mr Stolland.
9. On 1 April 2022, the Respondent’s solicitors said their client had asked for *“clear confirmation of agreement of the membership”* of Calad. The Applicant’s representatives queried the need to show further evidence of this, but provided a copy of the data sheet from their company formation agent confirming the relevant details, explaining how the company was formed before those not participating were formally invited to participate. Further, they provided a copy of an e-mail dated 1 April 2022 (from a partially redacted e-mail address which begins: *“caladinvestments”*) which states: *“We Calad Investments Limited being a qualifying Tenant of Flats 1, 3, 5 & 7 ... hereby confirm that we wished to be Members in respect thereof of Mulberry House Residents RTM Company Limited and confirm that we provided the relevant ID information for this to be*

done as shown on the Datasheet provided...” and ends with the names of the four directors of Calad, all with the last name “*Parratt*”, stating that there is no company secretary.

Conclusion

10. I am satisfied on the balance of probabilities that Calad was on the relevant date a member of the Applicant in respect of each of their flats. Calad are entered in the Applicant’s register of members as members in respect of each of their flats from 14 January 2022, the date the Applicant was incorporated. The memorandum of association of the Applicant gives the same confirmation, naming Calad as a subscriber in respect of each of their flats. These alone appear to give sufficient evidence, since the Respondent produced no evidence or any specific argument to cast doubt on them. They are supported by the e-mail of 1 April 2022 noted above. That e-mail appears to confirm what Calad’s officers intended and the way in which the Applicant was formed, with each participating tenant a subscriber to the Applicant on formation, having provided the requisite identity information to the company formation agents (as set out in their data sheet) who then incorporated the Applicant electronically. Since I have no doubt about this finding and there were no representations about whether the claim notice would have been valid if Calad had not been a member, I do not express any view on that.
11. Since the only issue raised by the Respondent was about whether Calad was a member of the Applicant, it follows that for the purposes of section 79(3) I am satisfied that the claim notice was given by a RTM company which complied with section 79(5). On the relevant date, the membership of the Applicant included a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained.

Claim notice (section 80(3))

12. By section 80(1), the claim notice must comply with the requirements set out in the following subsections. The Respondent’s statement of case referred only to section 80(3), which requires the claim notice to 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, and the address of his flat.
13. The Respondent confirmed that “*by reason of the above*” (i.e. their question about whether Calad was a member of the Applicant) there: “*may in turn be errors within the notice as it incorrectly names persons as members in the body of the claim notice*”.
14. Part 1 of the Schedule to the claim notice named Calad Investments Limited of 20 Guildford Road, Tunbridge Wells TN1 1SW (the same address entered for Calad in the Applicant’s register of members) as the qualifying tenant, and as having been admitted as member of the company, in respect of Flats 1, 3, 5 and 7 (giving the address of each flat).

Conclusion

15. Again, since the only issue raised by the Respondent in this respect was whether Calad was a member of the Applicant and I am satisfied that it was, the Respondent has not identified any errors in the notice. I am satisfied that the claim notice complied with section 80(3).

Costs

16. The Respondent argued that it needed to ascertain whether the process was valid to have certainty about release of its obligations, given the automatic transfer of management functions. I agree with the Applicant's submissions that in this case, with such a dubious challenge despite the documents provided to it, so little effort to (belatedly) prepare its statement of case and no evidence or other documents produced by the Respondent, that is probably not the only reason for the Respondent's conduct. It appears the Respondent sought more evidence than was needed and may have been seeking to delay acquisition of the right to manage. In any event, it has been unsuccessful. I order it to pay £100 to the Applicant to reimburse the tribunal application fee.

Name: Judge David Wyatt

Date: 17 August 2022

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).