



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

Case reference : **LON/00AG/LRM/2022/0036**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **7 Buckland Crescent, London NW3 5DH**

Applicant : **7 Buckland Crescent RTM Company Limited**

Representative : **Urang Property Management Limited**

Respondents : **Derimay Property Management Limited**

Representative : **Devin Kohli, Director**

Type of application : **Application in relation to the denial of the Right to Manage**

Tribunal Member : **Judge N Hawkes
Ms M Krisko FRICS**

London Panel : **10 Alfred Place, London WC1E 7LR**

Date of paper determination : **30 November 2022**

DECISION

PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that the Tribunal was referred to are contained in a bundle of 109 pages (including index). The order made is described below.

Decision of the Tribunal

The Tribunal determines that, on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage 7 Buckland Crescent, London NW3 5DH.

Background

1. The Applicant seeks a determination under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage the premises known as 7 Buckland Crescent, London NW3 5DH ("the Property").
2. By a claim notice dated 27 June 2022, the Applicant gave notice that it intended to acquire the Right to Manage the Property on 7 November 2022.
3. By counter notice dated 29 July 2022, the Respondent freeholder disputed the claim alleging that:

“by reason of section 72(6) and paragraph 3 of Schedule 6 of the Commonhold and Leasehold Reform Act 2002, more particularly that the premises (7 Buckland Crescent, Hampstead NW3 5DH) do not qualify for the right to manage as a result of the resident landlord exemption, on 27 June 2022, 7 Buckland Crescent RTM Company Limited ("the company") was not entitled to acquire the right to manage the premises specified in the claim notice.”
4. The Tribunal issued Directions dated 15 September 2022 identifying a single issue to be decided, namely, whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the Property.
5. The Directions provided that, unless a hearing was requested by 3 November 2022, the Tribunal would decide this application based on written representations. Neither party has requested an oral hearing.

The Respondent's case

6. As stated above, the Respondent relies upon the resident landlord exemption. The Respondent's Statement of Case includes the following submission:

"In this instance, the freeholder is not an individual but a company. Like any limited company, it is run and governed by a board of Directors and owned by shareholders. The Board of Directors of the Freeholder voted by majority to issue the counter notice against the RTM, implicit in this is that the Freeholder body corporate rejects the RTM notice and agrees with the exemption. A full copy of the counter-notice served by Derimay, and the accompanying signed Board Minutes is appended as Schedule C.

More prescriptively, a de minimis of at least 50% of the shareholder directors of the Freehold who reject the RTM notice live and currently reside in the Premise and have done so for over 12 months. More particularly:

- Angelina Kohli has lived in the Premises for over 30 years, and this is her only and principal home. She is also the acting Company Secretary of the Freehold and longest serving Director. This can be validated by electoral roll.*
- Anand Daldas has lived in the Premises for 2.5 years and this is his only and principal home. This can be validated by electoral roll.*
- Devin Kohli has partially lived in the Premises for the past 30 years and would classify this his principal home.*

*The remaining shareholder directors who support 7 Buckland Crescent RTM Company Limited's application **do not** live in the Premises nor can either of the two shareholder directors in question claim the Premises are their only or principal home for the past twelve months. As stated earlier, Rajae Rouhani has lived in Australia for the past 3 years and rents out Flat 3 to long term tenants and it can be evidenced that Mikhil Raja lives in the property sporadically and has tenanted out the property over the past twelve months.*

Should the RTM proceed, there will be a legally perverse situation where the 50% of the Freehold that lives in the actual Premises will be subject to an RTM Company run exclusively by shareholder directors who do not live in the Premises and in the instance of Mikhil Raja – are openly looking to sell their property online.

It therefore follows that via pro-rata ownership of the Freehold – Angelina Kohli, Anand Daldas and Devin Kohli occupy at least one of the flats and have done so as their principal and sole home for the past

twelve months and consequently the criteria for the Resident Landlords Exemption is met.”

The Applicant's case

7. By a Reply dated 27 October 2022 to the Respondent's Statement of Case, the Applicant states:

“8.) The Applicant objects to the Respondent's case on the grounds that the RTM was not entitled to acquire the right to manage of the premises because of the Resident Landlord Exemption as per Section 72(6) and paragraph 3 of Schedule 6 of the Commonhold and Leasehold Reform Act 2002.

9.) With referral to the Freeholder title (Schedule B of the Applicant's Statement), the premises does not fall within the Resident Landlord Exemption as the Landlord is a company. The company is not a natural person, cannot 'occupy' the premises and consequently cannot fulfil the residency requirements. As a result, the Resident Landlord Exemption does not apply in this case.

10.) We would note that there are also similarities with the Resident Landlord Exemption in the context of collective enfranchisement claims under the LRHUDA 1993, and the language used in section 10 of that Act (albeit that the wording is not identical). See also the Resident Landlord Exemption for the purposes of the right of first refusal, in Section 58 of the LTA 1987.

11.) Moreover, it is highly questionable whether the company decision to serve the counter-notice on 29th July 2022 as a majority decision from Directors was valid. Two Directors voted on behalf of flat 2. These Directors were added without board approval or notice, and do not comply with the 1 Director per flat agreement within the articles of the company. This is detailed within the board meeting summary on 30th July 2022 (Appendix 4) as well as the legal advice on Directorships outlined in the letter to flat 2 on 22 October 2020 (Appendix 5).”

The Tribunal's determination

8. The Respondent relies on one ground in opposing this application, namely, it asserts that the resident landlord exception pursuant to section 72(6) and paragraph 3 of Schedule 6 of the 2002 Act applies.
9. Section 76(2) provides that Schedule 6 to the 2002 Act has effect and Paragraph 3 of Schedule 6 to the 2002 Act provides (emphasis supplied):

“3 Premises with resident landlord and no more than four units

(1) This Chapter does not apply to premises falling within section 72(1) if the premises—

(a) have a resident landlord, and

(b) do not contain more than four units.

*(2) **Premises have a resident landlord if—***

(a) the premises are not, and do not form part of, a purpose-built block of flats (that is, a building which, as constructed, contained two or more flats),

(b) a relevant freeholder, or an adult member of a relevant freeholder's family, occupies a qualifying flat as his only or principal home, and

(c) sub-paragraph (4) or (5) is satisfied.

(3) A person is a relevant freeholder, in relation to any premises, if he owns the freehold of the whole or any part of the premises.

(4) This sub-paragraph is satisfied if—

(a) the relevant freeholder, or

(b) the adult member of his family,

has throughout the last twelve months occupied the flat as his only or principal home.

(5) This sub-paragraph is satisfied if—

(a) immediately before the date when the relevant freeholder acquired his interest in the premises, the premises were premises with a resident landlord, and

(b) he, or an adult member of his family, entered into occupation of the flat during the period of 28 days beginning with that date and has occupied the flat as his only or principal home ever since.

(6) “Qualifying flat”, in relation to any premises and a relevant freeholder or an adult member of his family, means a flat or other unit used as a dwelling—

(a) which is contained in the premises, and

(b) the freehold of the whole of which is owned by the relevant freeholder.

(7) Where the interest of a relevant freeholder in any premises is held on trust, the references in sub-paragraphs (2), (4) and (5)(b) to a relevant freeholder are to a person having an interest under the trust (whether or not also a trustee).

(8) A person is an adult member of another's family if he is—

(a) the other's spouse or civil partner,

(b) a son, daughter, son-in-law or daughter-in-law of the other, or of the other's spouse or civil partner, who has attained the age of 18, or

(c) the father or mother of the other or of the other's spouse or civil partner;

and “son” and “daughter” include stepson and stepdaughter (“son-in-law” and “daughter-in-law” being construed accordingly).”

10. The directors and shareholders of the freeholder company are separate legal entities from the freeholder company itself. In other words, Angelina Kohli is not Derimay Property Management Limited, Anand Daldas is not Derimay Property Management Limited and Devin Kohli is not Derimay Property Management Limited.

11. At paragraph 2.1501 of Palmer’s Company Law 2022 ,it is stated:

“The company as legal person

Upon the issue of the certificate of incorporation, the company becomes a body corporate or, in other words, a corporation (s.16(2) of the Companies Act 2006). Prior to the date of the certificate the company has no legal existence. A corporation is not, like a partnership in English law or a family, a mere collection or aggregation of individuals. In the eyes of the law it is a person distinct from its members or shareholders, a metaphysical entity or a fiction of law, with legal but no physical existence. It is, as Lord Selborne said, “a mere abstraction of law”, and, as Lord Macnaghten observed, “at law a different person altogether from the subscribers to the memorandum of association.”

12. Paragraph 3 of Schedule 6 of the 2002 Act makes provision, as highlighted in bold above, for the resident landlord exemption to apply where an adult member of a relevant freeholder's family, occupies a qualifying flat as his only or principal home. It does not, however, make provision for the resident landlord exemption to apply where a director and/or shareholder of the relevant freeholder occupies a qualifying flat as their only or principal home.

13. Accordingly, the Respondent's ground for challenging the validity of the claim notice is without foundation and the Tribunal finds that the claim notice is valid. The Tribunal therefore determines that, on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage 7 Buckland Crescent, London NW3 5DH.

Judge N Hawkes

Date: 30 November 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).

