



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

Case reference : **LON/00BH/LRM/2022/0015**

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

Property : **90 Markhouse Road, London, E17 8BG**

Applicant : **90 Markhouse Road RTM Company
Limited**

Representative : **The RTM Company**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors, Henley-on-
Thames**

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

Tribunal members : **Judge H Carr**

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

Date of decision : **9th August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that I was referred to are in a bundle of 73 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the Applicant is entitled to acquire the Right to Manage of 90 Markhouse Road, London, E17 8BG.

The application

1. The Applicant seeks a determination under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a decision that, on the relevant date, the applicant RTM company was entitled to acquire the Right to Manage premises known as 90 Markhouse Road, London, E17 8BG.

The issues

2. The tribunal has identified 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 premises specified in the notice.

The argument of the Respondent

3. The Respondent argues that the Applicant failed to serve Notice Inviting Participation upon the Leaseholders of Flat 90D, Ben Matthew Awad and Nelly Gergi in accordance with s.78(1) and s.79(2) and is therefore not entitled to to acquire the Right to Manage of 90 Markhouse Road, London, E17 8BG.
4. It argues that as Ben Matthew Awad and Nelly Gergi acquired the leasehold interest in 90D by conveyance dated 22nd October 2021 and that because their interest was registered on 23rd November 2021 they were the qualifying tenants at the date the claim notice was given.
5. The Respondent refers to the land registry title number AGL371672 in the bundle at page 43 which is dated 15th March 2022.

6. The claim notice is dated 14th February 2022 and was received by the Respondent on 15th February 2022. The relevant date for the purposes of s.79(1) is the date on which the claim notice is given.
7. The evidence provided by the Applicant shows that no notice was served upon Ben Matthew Awad and Nelly Gergi. Instead, the Notice inviting participation was served on Heather Marney and Laura Jayne Marney who were the previous proprietors of the leasehold interest of 90D. The Respondent argues that at the date the notices were served it was Ben Matthew Awad and Nelly Gergi who were entitled to receipt.
8. Nor have Ben Matthew Awad and Nelly Gergi been served with a copy of the claim pursuant to section 79(8). Section 78(1) of the Act requires that before making a claim to acquire the right to manage any premises, a RTMIP to each qualifying tenant who is not, or has not agreed to be a member of the company. By s.79(2) a failure to do so prevents the giving of a claim notice. S.79(8) requires copy of the claim notice to be given to each person who on the relevant date was the qualifying tenant of a flat contained in the premises.
9. The Respondent refers to *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Company Ltd and another* [2020] UKUI 358 (LC) which found that failure to give notice of invitation to a qualifying tenant who was not already a member, or who had not agreed to become a member of the RTM company invalidated the claim notice. As well as stipulating the timescale for service of a claim notice, section 79(2) sets out the consequences of failing to serve a notice of invitation to participate in accordance with the statutory requirements. Parliament intended failure to give notice of invitation to participate to invalidate a subsequent claim. company 'must' give a Notice.

The Applicant's Reply

10. On the 12th January 2022, the Applicant says that it downloaded the land registry title number AGL37T672 (at page 58 of the bundle) which detailed the qualifying tenants of 90D Markhouse Road, London, E17 8BG as Heather Marney and Laura Marney.
11. On the 25th January 2022 notice inviting participation was served by the Applicant on each person who at the time when the notice is given is a), 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.
12. Notice was given to Heather Marney and Laura Marney. on the 13th February 2022 and before giving notice of the claim, the Applicant again downloaded the land registry title number AGL37T672 which detailed the qualifying tenants of 90D Markhouse Road, London, E17 8BG as

Heather Marney and Laura Marney. A copy of the title register is in the bundle at page 63.

13. The Applicant served the claim notice on the 14th February 2022 ("the relevant date") to the respondent landlord, Assethold Limited of 5 North End Road, Golders Green, London, NW11. On the relevant date, the Applicant says that the qualifying tenants of 90D Markhouse Road, London, EL7 8BG are Heather Marney and Laura Marney.
14. The Applicant refers to land registry title number AGL37L672 taken for 90D Markhouse Road, London, E17 8BG on the 13th February 2022 and argues that on the relevant date the transfer to Matthew Awad and Nelly Gergi had not been registered at Land Registry and that they were not therefore the qualifying tenants. The Applicant says that unless and until that transfer was registered, Heather Marney and Laura Jayne Marney are the qualifying tenants.
15. The Applicant argues that when registered land is transferred the registration requirements under section 27 of the Land Registration Act 2002 must be satisfied in order to vest the legal estate in the transferee. Until the transfer is registered, the transfer operates only in equity and the legal estate remains with the transferor - the 'registration gap'.
16. The Applicant quotes s.27 of the Land Registration Act 2002. Dispositions required to be registered

S.27 (1) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.

(2) In the case of a registered estate, the following are the dispositions which are required to be completed by registration-

(a) a transfer,

(b) where the registered estate is an estate in land, the grant of a term of years absolute-

(i) for a term of more than seven years from the date of the grant,

(ii) to take effect in possession after the end of the period of three months beginning with the date of the grant,

(iii) under which the right to possession is discontinuous,

(iv) in pursuance of Part 5 of the Housing Act 1985 (c. 68) (the right to buy), or

(v) in circumstances where section 1-71A of that Act applies (disposal by landlord which leads to a person no longer being a secure tenant),

(c) where the registered estate is a franchise or manor, the grant of a lease.

17. Upon receipt of the Respondents counter notice dated 15th March 2022, the Applicant says that it sent a letter by email (at page 67 of the bundle) on the 30th March 2022 to Scott Cohen Solicitors citing the above which it notes was omitted from their Statement of Case.
18. The Applicant received no response to that emailed letter. The Applicant maintains that on the relevant date, the qualifying tenants of 90D Markhouse Road, London, E17 8BG are Heather Marney and Laura Marney and that notice was given correctly in accordance with s. 78(1),
19. 79(2) and 79(8) of the Commonhold and Leasehold Reform Act 2002.

The tribunal's decision

20. The tribunal determines that the Applicant is entitled to acquire the Right to Manage 90 Markhouse Road, London, E17 8BG.

Reasons for the tribunal's decision

21. The tribunal prefers the argument of the Applicant. It agrees that at the relevant dates the transfer to Ben Matthew Awad and Nelly Gergi had not been registered at Land Registry and that they were not therefore the qualifying tenants.
22. Whilst the Land Registry documents at page 43 of the bundle and dated 15th March 2022 show that the interest of Ben Matthew Awad and Nelly Gergi was registered on 23rd November 2021, the tribunal determines that the relevant documents are the Land Registry title documents of 12th January 2022 and 13th February 2022 as these show the registered proprietors at the time of the relevant RTM procedures rather than subsequent to those procedures. At that time the registered proprietors were Heather Marney and Laura Jayne Marney and were therefore the qualifying tenants for the purposes of the legislation.

Name: Judge H Carr

Date: 9th 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).