



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

Case Reference : LON/00BH/LRM/2018/0019

Property : Bridge Court South, Lea Bridge Road,
London E10 7JS

Applicant : Bridge Court South RTM Co Ltd

Respondent : Triplerose Ltd

Representative : Scott Cohen solicitors

Type of Application : Right to Manage

Tribunal : Judge Nicol

Date of Decision : 25th September 2018

DECISION

The Tribunal has determined that the Applicant is entitled to exercise the Right to Manage.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. By claim notice dated 25th June 2018, the Applicant sought to exercise the right to manage the building in which its members are lessees, known to them as Bridge Court South. The Respondent served a counter-notice dated 26th July 2018 alleging non-compliance with 11 sections or sub-sections of the Commonhold and Leasehold Reform Act 2002 ("the Act").

2. On 9th August 2018 the Tribunal received the application for a determination of the Applicant's entitlement to exercise the Right to Manage. The Tribunal issued directions on 13th August 2018 for the application to be determined on the papers. Each party has accordingly provided a bundle of relevant documents, including their respective statements of case, and the Tribunal proceeded to make its determination without a hearing.
3. After the Tribunal had drafted the decision but before it could be promulgated, the Respondent sent in further email correspondence alleging that they had not been properly served with the Applicant's statement of case. The Tribunal is satisfied that this is not the case – the directions provide that the application shall stand as the Applicant's statement of case and the Respondent has provided a full statement of case in response.
4. It is possible that the Respondent meant instead to refer to the Applicant's Response to their statement of case, together with the accompanying bundle. However, the directions provide that such a Response is the final pleading – the Respondent has no further right of reply.
5. In their email of 24th September 2018, the Respondent has alleged that evidence, namely the contents of the Register of Members, has been altered but the Tribunal is satisfied that the findings set out below remain correct in any event.
6. The Respondent has made three points in their Statement of Case. The first is that the decision in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] QB 571 has created such uncertainty for landlords that the safest course is to issue a counter notice to challenge the position for a clear determination on the issue. This is nonsense. If it were correct, it would be an invitation to litigate at virtually every possible opportunity. When faced with a claim to exercise the Right to Manage, the *Elim Court* decision in no way absolves a landlord from the same duty as any potential litigant to articulate their case properly so that issues may be identified and resolved as quickly as practicable and, if possible, without resorting to litigation.
7. The Applicant has identified the building in which they wish to acquire the Right to Manage as Bridge Court South. This nomenclature is not used in the Land Register in which the two blocks of which the Respondent owns the freehold are identified as 340 to 354 (even numbers) Lea Bridge Road and 1 to 48 Bridge Court, Lea Bridge Road, Leyton, London (E10 7JS). The Respondent asserts that, since the two blocks have the same post code, the Applicant's designation means there is uncertainty as to which premises would be the subject of the Right to Manage.

8. The Tribunal is satisfied that the Respondent has no genuine difficulty in identifying the subject premises. There are two blocks, one to the north and one to the south. The addresses by which the leased premises are identified all refer to Bridge Court South. There is no requirement under the Act that an RTM company should use the same description of the premises as that in the Land Register, even though it would be prudent in order to avoid this kind of allegation.
9. The process of exercising the Right to Manage is meant to be simple and the Tribunal will always be alive to the possibility, so long as there is evidence that it applies in the particular case, that a reluctant landlord may stray into putting up obstacles without any genuine foundation. The evidence suggests that this is what has happened here.
10. The Respondent's last point is that they query whether the Applicant has a sufficient number of subscribers on the basis that one of them, Ms Lucy Taylor, was not a founding member of the company and joined in later. The Applicant has explained in their Response to the Respondent's Statement of Case that this was purely a result of the timing of Ms Taylor's purchase of her flat (Flat 29). It had not gone through when the RTM company was founded but she was properly a member at the time of claim. The Tribunal is satisfied that the Respondent's point has turned out to have no foundation, irrespective of the detailed contents of the Register.
11. There being nothing in the Respondent's objections, the Applicant is entitled to exercise the Right to Manage accordingly.

Name: NK Nicol

Date: 25th September 2018

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 72 Premises to which Chapter applies

- (1) This Chapter applies to premises if—
 - (a) they consist of a self-contained building or part of a building, with or without appurtenant property,
 - (b) they contain two or more flats held by qualifying tenants, and
 - (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
 - (a) it constitutes a vertical division of the building,
 - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
 - (c) subsection (4) applies in relation to it.
- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
 - (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
 - (b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

Section 73 RTM companies

- (1) This section specifies what is a RTM company.
- (2) A company is a RTM company in relation to premises if—
 - (a) it is a private company limited by guarantee, and
 - (b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.
- (3) But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).

(4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.

(5) If the freehold of any premises is conveyed or transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the conveyance or transfer is executed.

Section 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.

(2) A notice given under this section (referred to in this Chapter as a "notice of invitation to participate") must—

- (a) state that the RTM company intends to acquire the right to manage the premises,
- (b) state the names of the members of the RTM company,
- (c) invite the recipients of the notice to become members of the company, and
- (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

- (a) be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
- (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.

(5) A statement under subsection (4)(b) must—

- (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
- (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
- (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
- (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

Section 79 Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, 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.
- (6) The claim notice must be given to each person who on the relevant date is—
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

Section 80 Contents of claim notice

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must 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.

- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
 - (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.