



### **DECISION OF TRIBUNAL**

1. The tribunal determines that on the relevant date (being the date on which the notice of the claim was given) the applicant was entitled to acquire the right to manage the Property.
2. Costs under section 88 do not arise as the tribunal has not dismissed the application.

### **THE APPLICATION**

1. The tribunal has received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. By a claim notice dated 3 January 2014, the applicant gave notice that it intends to acquire the Right to Manage the premises on 15 May 2014.
3. By counter notice dated 6 February 2014, the respondents disputed the claim alleging that the applicant's claim notice failed to comply with the requirements of sections 80(2), 80(8) and 80(9) of the Act.
4. By an application received by the tribunal on 21 March 2014 the applicant applied to the tribunal for a determination that 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.
5. The application also included an application under section 88(4) of the Act, to determine the costs payable by an RTM company.
6. The applicant indicated that it would be content for a paper determination.
7. The tribunal issued directions on 27 March 2014 in which they indicated that the applicant's application in relation to costs under section 88(4) of the Act was premature but that the applicant might subsequently notify the tribunal that it wished to pursue this part of their application whereupon the tribunal would then issue appropriate directions.
8. The respondent did not request a hearing.

### **EVIDENCE**

1. The tribunal had before it the applicant's application and enclosures and the witness statement of Roger McElroy of 8 May 2014, which, in accordance with the directions, it has treated as the applicant's case.
2. The tribunal also had before it the respondent's undated statement of case.

## **REASONS FOR THE TRIBUNAL'S DECISION**

1. The respondent claimed that the applicant was not entitled to acquire the right to manage by reason of section 80(2). The tribunal does not agree. The applicant's claim notice specifies the premises and contains a statement of the grounds on which it claims that they are premises to which Chapter 1 of the Act applies. The respondent has provided no evidence that the premises do not comply with section 72 of the Act.
2. The respondent's statement of case did not particularise why it had claimed that the applicant was not entitled to acquire the right to manage by reason of section 80(8), which requires the notice to contain the additional particulars required by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 ("the Regulations"). The Tribunal find that the notice did contain the additional particulars required by those regulations.
3. The respondent claimed that the applicant was not entitled to acquire the right to manage as the claim form did not comply with the section 80(9) requirement to comply with the form of the notice prescribed by the Regulations), by reason of the signatories of the claim form being themselves directors of the two corporate directors of the applicant company; either because those companies are dormant or because those companies were not original subscribers to the applicant company.

The Regulations do not exclude dormant companies from being directors of a right to manage company.

The form of notice set out in Schedule 2 of the Regulations merely requires the claim form to be "signed by authority of the company". The tribunal does not accept the respondent's submission that the signatories must have been original subscribers to the applicant company to have authority to sign the claim form. It is sufficient that they have the authority of the applicant company to sign the claim form.

Mr McElroy in his witness statement states that the document is signed with the applicant company's authority as it is signed by two authorised signatories, namely two directors of each of RTM Nominee Directors Limited and RTM Secretarial Limited, the corporate directors of the applicant company, in accordance with section 44 Companies Act 2006. The tribunal were not presented with evidence that Mr McElroy and Mr Breare are directors of RTM Nominee Directors Limited and RTM Secretarial Limited but have no reason to doubt that they are; or that in the alternative they have authority from those companies to sign documents on their behalf. The respondent has not denied that they are directors of those companies, nor has the respondent denied that they had authority to sign on behalf of the two corporate directors of the applicant company.

The tribunal therefore determine that the claim form was “signed by authority of the company” as required by the Regulations and therefore find that the claim form did comply with the form of notice prescribed by the Regulations.

**THE LAW**

The relevant statutory provisions are copied in the Appendix to this decision.

**Name:** Judge Pittaway

**Date:** 14 May 2014

## APPENDIX

### 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 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.

### **Section 88 Costs: general**

(1) A RTM company is liable for reasonable costs incurred by a person who is—

(a) landlord under a lease of the whole or any part of any premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

in consequence of a claim notice given by the company in relation to the premises.

(2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation 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.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal.

### **RIGHT TO MANAGE (PRESCRIBED PARTICULARS AND FORMS) (England)** **Regulations 2003**

#### **4 Additional content of claim notice**

A claim notice(1) shall contain (in addition to the particulars required by subsections (2) to (7) of section 80 (contents of claim notice) of the 2002 Act)—

(a) a statement that a person who—

(i) does not dispute the RTM's company's entitlement to acquire the right to manage(2); and

(ii) is the manager party under a management contract(3) subsisting immediately before the date specified in the claim notice under section 80(6) of the 2002 Act,

must, in accordance with section 92 (duties to give notice of contracts) of the 2002 Act, give a notice in relation to the contract to the person who is the contractor party(4) in relation to the contract and to the RTM company;

(b) a statement that, from the acquisition date(5), landlords under leases of the whole or any part of the premises to which the claim notice relates are entitled to be members of the RTM company;