



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

Case reference : LON/00AF/LRM/2017/0009

Property : 42 London Lane, Bromley, Kent
BR1 4HE

Applicant : 42 London Lane RTM Company
Limited

Representative : Judge & Priestley LLP Solicitors

Respondent : Gateway Holding (NWB) Limited

Representative : Wallace LLP solicitors

Type of application : Right to manage

Tribunal member(s) : Tribunal Judge Dutton
Mr L Jarero BSc FRICS

Date of decision : 31st May 2017

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant was not, on the relevant date, entitled to acquire the right to manage 42 London Lane Bromley BR1 4HE (the Premises) for the reasons set out below

The application

1. This was an application to acquire the right to manage of ("the Premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.

2.

The law

3. The relevant provisions of the Act are referred to in the decision below.

The counter-notice

4. In its counter-notice, the Respondent raised the complaint that the “Claim Notice had not been given to each person who on the relevant date was landlord under a lease of the whole of the premises.”

5. The Respondent has altered the point of attack to allege that the Applicant is not an RTM company as defined in section 73(2) of the Commonhold and Leasehold Reform Act 2002 (the Act). The reason for this assertion is that by reference to s73(2)(b) of the Act the “articles of association state that the objects, or one of the objects, is the acquisition and exercise of the right to manage the premises.” A copy of the Articles of Association, which utilises the RTM Companies (Model Articles)(England)Regulations 2009 (the Regulations) and at the Schedule thereto sets out the Articles of the RTM company (the Applicant), a company limited by guarantee, is provided.

6. The complaint on the part of the Respondent is that within the definitions, the “Defined terms” in the Regulations, “Premises” should be defined in a space marked [*name and address*] which has not been completed. It is said for the Respondent that this failure to stipulate the Premises over which the RTM Company has the right to manage means that the Applicant is not an RTM company because the Memorandum of Association fails to state that its object or one of its objects is the acquisition and exercise of the right to manage the Premises.

7. In response the Applicant, through its solicitors sets out the response. It is said that the Applicant has not fallen foul of section 73(2)(b) as the objects say as follows “The objects for which the company is established are to acquire and exercise in accordance with the 2002 Act the right to manage the Premises”. The “premises” it is said have been defined under section 72 of the Act and the address “manifests upon the Service of Notice to Acquire the Right pursuant to s79 and 80(2) of the Act by operation of law. If it is determined that there has not been compliance with s73(2)(b), then such non-compliance does not invalidate the claim.

8. The statement goes on to address the statutory wording and the purpose of ss73(2)(b). It is said that the purpose of the company is “evident, plain and transparent by the number of prescribed Articles which list the objectives of the Company”. We have carefully noted the remaining elements of the statement and considered the Court of Appeal case of *Elim Court RTM Co. Ltd v Avon Freeholds*

[2017]WEWCA Civ 89, which referred to the other cited case of *Osman v Natt*. As a matter of comment it would be helpful if parties seeking to rely on authority had the good grace to include copies with their submissions.

9. Having considered the statements by both parties and the documents in the bundle, the tribunal has made the following decision.

Findings

10. The Court of Appeal case of *Elim Court* provides encouragement to us to find that errors in the procedure might be ignored in certain circumstances. The opening lines of the judgment of Lord Justice Lewison are fitting comment on the procedures required to establish a no fault right to manage. We have noted paragraph 77 of the judgment.
11. We accept that the Notice of Claim and the Counter-notice include the address of the Premises. We cannot say what was included in the Notice inviting participation but as no complaint is raised we assume, we hope safely, that the Premises address is included there as well. Accordingly on the face of it the Notice is correct.
12. However, it is clear that the provisions of s73(2)(b) require that the Articles of Association must have as one of its objects the acquisition and exercise of the right to manage the Premises. Here lies the problem. The 'defined terms' require that the Premises are detailed. They are not. There is space for the Premises details to be inserted. This has been left blank. The remainder of the Articles refers to the various objectives relating to the 'Premises'. They must be defined to make sense. We do not accept that such sense can be derived from the Notices of claim or to participate. Any person considering the Articles of Association would have no idea to what Premises the RTM Company was intending to exercise the right to manage. We find that this omission is fatal, as the basis upon which the Notice of Claim is founded is that there is a properly constituted RTM company in existence to acquire and exercise the right to manage the Premises.
13. Therefore, in accordance with section 84(3), we determine that the Applicant does not have the right to acquire the right to manage the Premises.

Name: Tribunal Judge Dutton **Date:**

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).