



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

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| Case reference | : | LON/00AU/LRM/2018/0006 |
| Property | : | 96 Tollington Way, London N7 6RY |
| Applicant | : | 96 Tollington Way (London) RTM Company Limited |
| Representative | : | Prime Property Management |
| Respondent | : | Assethold Limited |
| Representative | : | Scott Cohen Solicitors |
| Type of application | : | Determination of entitlement to acquire right to manage |
| Tribunal member(s) | : | Tribunal Judge Prof R Percival Mr H Geddes RIBA |
| Date of decision | : | 9 April 2018 |

DECISION

The application

1. This was an application to acquire the right to manage 96 Tollington Way, London N7 6RY ("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 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 notice of claim was dated 27 November 2017. The counter notice was dated 21 December 2017.

The counter-notice

3. In its counter-notice, the Respondent raised three issues:
 - (i) That the identity of one of the members of the right to manage company was not consistent with land registry records;
 - (ii) That the claim for did not conform to the prescribed form; and
 - (iii) That the claim notice had not been validly signed.
4. The Respondent submits that by virtue of these failings, the claim notice is invalid.

The issues

The name of the leaseholder of flat 4

5. The registered proprietor of flat 4 in the premises is “Jacqueline Sarah Penberthy White”. The corresponding name in the RMT Company’s register of members is “Jack White”.
6. The Respondent submits that this constitutes a discrepancy, and that “the clear and unambiguous identification of any member and the consequent proper registration of members in accordance with the Companies Act and the Articles of Association is not a triviality that can be ignored.”
7. This alleged discrepancy, the Respondent submits, amounts to a failure to comply with sections 74(1), 79(3) and 80(3) of the 2002 Act.

The form

8. The Respondent argues that the claim notice breaches sections 80(8) and (9) of the 2002 Act, in that it fails to contain certain particulars required by the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2010. In particular (in addition to the issue raised in relation to the leaseholder of flat 4), that the claim notice does not specify the address of the landlord and that the form itself references the Leasehold Valuation Tribunal rather than the First-tier Tribunal (Property Chamber).

The signature

9. The Respondent relies for a further breach of sections 80(8) and (9) on the argument that the form was signed by a Stephen Wiles, Prime Management (PS) Ltd. Mr Wiles is not himself the RTM Company’s secretary, but rather a director of Prime Management, the company which is the Company secretary of the Applicant.

10. The Respondent relies on *86 Bow Road LON/00BG/LRM/2016/0019*, where this Tribunal found that, in the same circumstances, the signature was not valid, and invalidated the claim notice.

The Tribunal's decision

11. The Applicant, in its statement of case, relies on the decision of the Court of Appeal in *Elim Court RTM Company Ltd v Avon Freeholders Ltd* [2017] EWCA Civ 89. This decision clearly sets out the proper approach to be adopted to decisions as to the validity of claim notices, and in particular, the consequences of non-compliance.
12. In *Elim Court*, the Court of Appeal sets out the basis of the statutory scheme, laying some emphasis on the fact that, in considering the legislation, the Government was concerned to provide as simple a procedure as possible.
13. The Court applies the principles relating to the nature of statutory requirements set out in *Natt v Osman* [2014] EWCA Civ 1520, [2015] 1 WLR 1520 to RMT claim notices. The notices fall into the second of the two categories set out in that case, that is, requirement relating to property, or similar, rights accorded to an individual, rather than those of a public law nature (citing *Triplerose Ltd v Mill House RTM Ltd* [2016] UKUT 80). They are thus not to be satisfied by merely substantial compliance, but the effect of non-compliance with such a requirement depended on whether (in these circumstances), Parliament had intended that a landlord should succeed when asserting that a defect was fatal. Landlords had a legitimate interest in certainty, but not every failure to comply would, in the light of the legislative intent, invalidate a notice. In particular, “there was a distinction to be drawn between a failure to satisfy jurisdictional or eligibility requirements on the one hand, and purely procedural requirements on the other”: [59].
14. We apply those principles to the counter notice.

The name of the leaseholder of flat 4

15. We do not consider that there is any real uncertainty or ambiguity in relation to the name and identity of the leaseholder of flat 4. “Jack” is a normal and common abbreviation of “Jacqueline”. The Applicant has provided a witness statement from the leaseholder confirming her identity, and that she rarely used her given name but was widely known as “Jack”. In those circumstances, we may well have been prepared to conclude that “Jack” is her proper name.
16. But in any event, it is abundantly clear that, in the light of *Elim Court*, even if the rendering of the name in the list of members was non-complaint, it is certainly not of a nature to invalidate the claim notice.

There is no real issue as to eligibility. If there is any issue, it is only one of a “purely procedural” nature.

The form

17. The criticisms of the form fall into the same category. The landlord knows its address, and, obviously, has actual knowledge of the claim notice. The failure to write the address down is a trivial procedural flaw.
18. The same is true of the use of a slightly out of date form, with the result that the identity of this Tribunal is formally misstated. There is obviously no room for any uncertainty as to our identity.
19. Neither issue goes to a jurisdictional or eligibility requirement.

The signature

20. The Court of Appeal in *Elim Court* considered the same factual situation in relation to the signature of the claim notice. There, as here, the signatory was a director of the company that was the company secretary of the RTM Company. Upholding the Upper Tribunal on this issue, the Court concluded that the “technical in the extreme” argument put by the landlord there, as here, was incorrect. The conclusion in that case was that the signatory was, in fact, signing as an individual, rather than as the company acting as company secretary, and that he was indeed an authorised member or officer of the RTM Company, authorised to give the claim notice on its behalf.
21. The same applies in this case. The Court in *Elim Court* noted, further, that if this conclusion were wrong, then “I would have no hesitation in saying the consequences of non-compliance are not fatal to the validity of the notice if the claim notice is signed by someone who is actually authorised by the RTM company to sign it”. The same applies here.

Conclusion

22. The claim notice is valid.

Name: Tribunal Judge R Percival **Date:** 9 April 2018

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).