



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

Case reference : **CAM/00KA/LRM/2019/0002**

Property : **37 Stockwood Crescent, Luton,
Bedfordshire LU1 3SS**

Applicant : **37 Stockwood Crescent RTM
Company Ltd**

Representative : **Tolhurst Fisher LLP**

Respondent : **Assethold Ltd**

Representative : **Scott Cohen Solicitors Ltd**

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

Tribunal member(s) : **Judge Wayte**

Date : **6 February 2020**

DECISION

The tribunal determines that the applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002, and the applicant will acquire such right three months after this determination becomes final.

The application

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for a determination that, on the relevant date, the applicant company was entitled to acquire the Right to Manage (“RTM”) premises known as 37 Stockwood Crescent, Luton, Bedfordshire LU1 3SS (“the premises”).
2. By a claim notice dated 27 August 2019, the applicant gave notice to the respondent that it intended to acquire the right to manage the premises on 6 January 2020.
3. By counter-notice dated 1 October 2019, the respondent disputed the claim, by reason of section 79(5) of the 2002 Act (which refers to the membership of the RTM company), no further particulars were provided.
4. The application was dated 10 October 2019. Directions were issued on 25 October 2019 for a paper determination in the absence of a request for a hearing. No such request was received.

The law

5. The relevant provisions of the 2002 Act are referred to in the decision below.

The background facts

6. The applicant provided a supplementary statement setting out their case. They submitted that the Applicant RTM company had the right to acquire management under Chapter 1 of the 2002 Act on the grounds that:
 - (i) The premises consist of a self-contained building or part of a building with or without appurtenant property;
 - (ii) They contain two or more flats held by the qualifying tenants;
 - (iii) 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.
7. The premises contains six flats. All six qualifying tenants participated in the right to manage claim. In the circumstances the applicant submitted that the respondent’s counter notice was merely an obstruction to a lawful right to manage claim.

The respondent’s case

8. The respondent's statement of case dated 15 November 2019 focused on the document provided by the applicant as evidence of its Register of Members ("the Register"). That document simply listed each flat number and the members alongside their flat. The respondent stated that the document was not a valid register as the Companies Act required that the register of a company limited by guarantee must contain an entry for each member of the company showing:
- (i) The member's name and address;
 - (ii) The date on which the member was registered as a member; and
 - (iii) The date on which the member ceased to be a member.

The Register provided by the applicant did not contain the details set out in (i) and (ii) above or space for (iii). The respondent confirmed that (ii) was particularly relevant as it would confirm the date the company held the appropriate members.

9. The applicant replied to the statement of case submitting that in order for the register to be inspected under s116 of the Companies Act 2006, the respondent should have served a valid request to inspect the register. No such request had been made.

The tribunal's decision and reasons

10. I considered the papers on 20 December 2019 and wrote to both parties in an attempt to clarify whether there was a register which complied with the Companies Act and therefore whether the matter could be agreed between the parties. I also referred the parties to the case of *Assethold Limited v 14 Stansfield Road RTM Company Limited* [2012] UKUT 262 (LC) where Assethold had raised "the membership point" and the Upper Tribunal refused to interfere with the FTT dismissal of that challenge. The President of the Upper Tribunal stated in paragraph 21: "*In any event a defect in the register would not be sufficient to show that section 79(5) was not complied with and indeed it could be insufficient even to raise a doubt as to compliance*".
11. The parties' response to that letter did not really progress matters and I therefore ordered the applicant to produce the full register to the tribunal and the respondent's solicitors. In the event that the respondent maintained their claim that there was a defect with the register, they were ordered to explain why that would be sufficient to show that section 79(5) was not complied with.
12. The full register was sent to the tribunal and the respondent on 16 January 2020. It contained all the details set out by the respondent above. All six qualifying tenants had become members before the notice of claim was issued. The respondent has not replied to that

information and in the circumstances the tribunal assumes that the validity of the register is no longer under challenge.

13. In the circumstances, the tribunal determines the applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.
14. Therefore, in accordance with section 90(4), the acquisition date is the date three months after this determination becomes final. According to section 84(7):
 - “(7) A determination on an application under subsection (3) becomes final—
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”

Name: Judge Wayte

Date: 6 February 2020

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).