FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UH/LRM/2019/0001**
Property	**:**	**Manor View, 83 Mount Pleasant Road, Chigwell, Essex IG7 5EP**
Applicant	**:**	**Manor View RTM Company Limited**
Representative	**:**	**Colman Coyle Limited, solicitors**
Respondent	**:**	**Powell and Co Property Limited**
Representative	**:**	**Sean Powell**
Type of application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal member(s)	**:**	**Judge Wayte** **Mr S E Moll FRICS**
Date of decision	**:**	**16 January 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 Manor View, 83 Mount Pleasant Road, Chigwell, IG7 5EP ("the premises").

2. By a claim notice dated 12 June 2019, the applicant gave notice to the respondent that it intended to acquire the right to manage the premises on 20 October 2019.

3. By counter-notice dated 11 July 2019, the respondent disputed the claim, by reason of section 78 of the 2002 Act (which refers to the notice inviting participation), no particulars were provided.

4. The application was dated 15 August 2019 and received by the tribunal on 27 August 2019. Directions were issued on 16 September 2019, initially on the basis that the case was suitable for a paper determination, although the case was subsequently listed for an oral hearing on the request of Mr Powell for the respondent.

The law

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

The hearing

6. The hearing took place on 6 December 2019 at Romford County Court. The applicant was represented by counsel Ms de Cordova, the respondent through its director Mr Powell. There was a slight delay in starting the hearing which enabled the parties to narrow the dispute still further and Mr Powell to consider the skeleton argument prepared by Ms de Cordova.

7. The applicant had previously sent a hearing bundle, which has been considered by the tribunal in reaching its decision. The applicant relied on the case of *Avon Freeholds Limited v Regent Court RTM Co Ltd* [2013] UKUT 0213 (LC). The tribunal also identified the case of *Elim Court RTM v Avon Freeholds* [2017] EWCA Civ 89 as relevant and requested any submissions from either party on that authority in writing by 13 December 2019, extended on the respondent's application to 3 January 2020.

The background facts

8. Manor View is a residential property containing 6 flats ("the Property"). There was some confusion as to the name and address which appears to have been caused by a typing mistake on the application form, which referred to "Mount View" and the postal address which is referred to as 83 Mount Pleasant Road on the application form and 172 Manor Road in

the applicant's Articles of Association and claim notice. It was subsequently confirmed that the building is on a corner and some of the flats bear one address and some the other. No point was taken by either party as to any effect on the application and in the circumstances the tribunal does not pursue the issue either.

9. The applicant RTM Company was incorporated on 13 May 2019. As at the date of the hearing, owners of 5 out of the 6 flats were members. The remaining flat, number 1, was owned by Mr Sean Powell, the director of the respondent company owning the freehold title, with his two sisters Tania Powell and Melissa Willicombe. The tribunal was informed at the hearing that the flat was to be sold at auction and was subsequently informed by the applicant's solicitors that it was sold on 16 December 2019 to Woodlands Properties Limited, which also owns flat 2. Again, no point was taken by either party as to any effect on the application and in the circumstances the tribunal has made its decision on the facts as presented at the hearing, together with the representations referred to in paragraph 7 above.

10. On 17 May 2019, the applicant gave a Notice Inviting Participation (under section 78 of the 2002 Act) to each of the three non-member lessees (qualifying tenants) at that date, namely: Sean Powell, Melissa Willicombe and Tania Powell, together the qualifying tenant of flat 1; Homes 2 Limited, the qualifying tenant of flat 3; and Ronald Robert Moss, the qualifying tenant of flat 5. Service was effected by pushing the Notices under the doors to each flat.

11. By a Claim Notice dated 12 June 2019 the RTM Company notified the respondent of its claim to acquire the right to manage the Property.

12. On 11 July 2019, the respondent gave a counter-notice under section 84, alleging that the applicant was not entitled to acquire the right to manage by reason of section 78 of Chapter 1 of Part 2 of the 2002 Act. No further particulars were given in the notice.

The respondent's ground of opposition

13. The respondent's statement dated 14 October 2019 explained the objection in more detail. In particular, the company through its director Sean Powell denied that service had been effected on him and his sisters as the qualifying tenants of flat 1. In particular, the flat was uninhabitable as the directors of the RTM Company were well aware and in the circumstances the notices should have been sent to the home address of each person as detailed in the office copy entries of the leasehold title and/or by email to him personally. His contact details had been provided to the other leaseholders as an address for service for the respondent in accordance with section 48 of the Landlord and Tenant Act 1987. He originally refused to accept that the Notice had been put

under the door to flat 1 but this was conceded during the short delay before the hearing started.

14. Mr Powell relied on section 78(1) of the 2002 Act which states that "*Before making a claim to acquire the right to manager any premises, a RTM company must give notice to each person who at any time when the notice was 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*".

15. His claim was that simply posting the notice under the flat door did not qualify as giving notice in accordance with section 78(1) in the circumstances of this case.

The applicant's response

16. The applicant produced a supplementary statement of case in response to the respondent's statement confirming that it relied on the provisions for deemed service in section 111(5) of the 2002 Act which reads: "*A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.*"

17. The applicant also relied on *Avon Freeholds Limited v Regent Court RTM Co Ltd* [2013] UKUT 0213 (LC) as an answer to the respondent's point about use of the addresses in the office copy entries of the leasehold title or Mr Powell's address as the landlord's representative. In particular, at paragraph 42, The President Sir Keith Lindblom stated: "*As the LVT acknowledged, the provision for the deemed giving of notice provides a RTM company with a means of achieving valid service on a non-participating tenant. This will be so even if the tenant is not living in his flat in the premises and the RTM company does not know where he is. The LVT accepted that service at the address given on the Proprietorship Register at the Land Registry does not constitute service at a different address notified to the RTM company by the tenant. As it said, notification of an alternative address would have required "some direct form of communication" between the RTM company and the tenant, specific to the service of notices under the 2002 Act, and in this case that was not done. The LVT noted, again correctly, that a certificate of posting to an alternative address is not evidence of a valid form of service for the purposes of section 111(5).*"

18. No such notification had been given by the qualifying tenant of flat 1 and therefore the notice had been served in accordance with the 2002 Act.

***Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89**

19. This decision is acknowledged to be the leading authority on compliance with the statutory regime for the RTM process, or rather on how to deal

with alleged non-compliance. In the circumstances and as it was only raised for the first time at the hearing, the tribunal invited written representations from both parties on that case as set out above.

20. The applicant's submission stated that since its case was that the notice of invitation had been served in accordance with the statutory provisions, there was no need to consider the consequences of non-compliance. *Elim Court* did not impinge on the *Avon Freeholds* case in relation to the point about direct notification being required, although as stated in *Tanfield Chambers' Service Charges and Management 4th Ed.*, at 26-10, the Court of Appeal did disagree with the earlier case's finding that prejudice was relevant to the consequences of non-compliance. The applicant had been clear that there was no prejudice here, the qualifying tenants of flat 1 were able to join the RTM at any time.

21. The respondent's submissions picked up on the point that prejudice was irrelevant but simply reiterated the assertion that having obtained addresses from the Land Registry the applicant should have used those rather than relying on deemed service. He relied on a quote from the UT decision in paragraph 70 which appeared to support the use of information from the Land Registry, although in paragraph 71 Lord Justice Lewison said that "*in my judgment the UT misdescribed the nature of this aspect of the statutory scheme*." In any event the UT were talking about serving the notice of claim in the case of a missing landlord, rather than service of the notice to participate on qualifying tenants which benefits from the deeming provisions in section 111(5) of the 2002 Act.

The tribunal's decision

22. Although the tribunal understands Mr Powell's frustration in respect of the lack of a courtesy copy of the notice, he had no response to the applicant's argument that the combination of section 111(5) and the *Avon Freeholds* case meant that the notices had been served in accordance with the statutory requirements. His best point was that the flat was clearly unoccupied and the applicant aware of at least his address for service as the landlord (for the purposes of section 48 of the Landlord and Tenant Act 1987). But there has been no notification of an alternative address by the qualifying tenants in respect of the RTM process and *Avon Freeholds* provides clear authority that a different address in the office copy entries does not count as notification for the purposes of section 111(5).

23. 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.

24. 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:** 9 January 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).