



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

Case reference : **LON/00BK/LRM/2021/0021**

HMCTS : **P: PAPER REMOTE**

Property : **St James' Court, 73-77 Gloucester Terrace, London W2 3 DH and Craven Court, 29/31 Craven Road, London W2 3BX (including 17/18 Brook Mews North, London W2 3BW)**

Applicant : **St James' & Craven Court (London) RTM Company Limited**

Representative : **Prime Property Management**

Respondent : **SEP Properties Limited**

Representative : **Brethertons LLP Solicitors (Roger Hardwick)**

Type of application : **Right to manage**

Tribunal member : **Judge Robert Latham
Mark Taylor MRICS**

Date and Venue of Hearing : **6 October 2021 at
10 Alfred Place, WC1E 7LR**

Date of decision : **6 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Neither party requested an oral hearing. The Applicant has provided a Bundle of Documents which extends to 111 pages.

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant complied with the statutory requirement to serve Notices Inviting Participation as required by section 78 of the Commonhold and Leasehold Reform Act 2002.
- (2) The Tribunal determines that on 25 August 2021, the Applicant was entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.

The Application

1. On 25 August 2020, the Applicant issued this application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage in relation to premises known as St James' Court, 73-77 Gloucester Terrace, London W2 3 DH and Craven Court, 29/31 Craven Road, London W23BX (including 17/18 Brook Mews North, London W2 3BW) ("the Premises").
2. By a claim notice dated 19th April 2021, the Applicant gave notice that it intended to acquire the Right to Manage the Premises on 25th August 2021.
3. By a counter-notice dated 19th May 2021 the Respondent freeholder disputed the claim, alleging that the Applicant had failed to establish compliance with sections 72(1)(a), 72(2), 72(3), 72(6), 73(2)(b), 75, 78, 79(2), 79(3), 79(5), 79(6)(a), 79(8), 80(2) and 112(1) of the Act or with Paragraph 1 of the Sixth Schedule to the Act.
4. On 23 June 2021, the tribunal gave Directions. The Procedural Judge identified the issue to be decided, namely whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage ("RTM") of the premises. The Judge was satisfied that this matter could be determined on the papers. Neither party has requested an oral hearing. Pursuant to the Directions, the parties have filed the following:

- (i) The Applicant’s Statement of Case (19.7.21)
- (ii) The Respondent’s Statement of Case (30.8.21)
- (iii) The Applicant’s Reply (9.9.21)
- (iv) The Respondent’s Response to the Applicant’s Reply (20.9.21)
- (v) A Bundle of Documents.

5. The Respondent now resists this right to manage application on the grounds that the Applicant has failed to comply with the invitation to participate requirements specified by section 78 of the Act. The Respondent contends that the Applicant RTM company ought to have served a Notice of Invitation to participate on every person who, at the time when the notice was given, was a qualifying tenant, and neither had become nor had agreed to become a member of the Applicant. The Applicant has provided copies of the Notice of Invitation to participate upon which it relies. These are dated 1 October 2020. At that date, the Applicant only had one member, John Joseph Murphy. The notice was only served on 8 qualifying tenants. There are a total of 28 flats at the Premises.

The Law

6. The Act provides (emphasis added):

78 Notice inviting participation

(1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is 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.

(2) A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—

- (a) state that the RTM company intends to acquire the right to manage the premises,
- (b) state the names of the members of the RTM company,
- (c) invite the recipients of the notice to become members of the company, and
- (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4) A notice of invitation to participate must either—

(a) be accompanied by a copy of the articles of association of the RTM company, or

(b) include a statement about inspection and copying of the articles of association of the RTM company.

(5) A statement under subsection (4)(b) must—

(a) specify a place (in England or Wales) at which the articles of association may be inspected,

(b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,

(c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the articles of association may be ordered, and

(d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it. Commonhold and Leasehold Reform Act 2002 Page 55 (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

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

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

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

The Background

7. On 25 August 2020, the Applicant RTM Company was incorporated (p.9). The sole shareholder and director was John Murphy. The Company Secretary was Prime Management (PS) Limited which trades as Prime Property Management. Mr Murphy is the leaseholder of Flat 12 St James Court.
8. On 1 October 2020, Prime Property Management gave Notices of Invitation to Participate in Right to Management pursuant to section 78 of the Act to eight of the qualifying tenants (at p.66-107). At that time, Mr Murphy remained the sole shareholder and director.
9. The Applicant has not explained why it only served the Notices of Invitation on 8 leaseholders. The Respondent refer to an email from Stephen Wiles, the Applicant’s representative, dated 19 August 2021, in

which he confirmed that (i) the only Notices of Invitation to Participate were those relating to these eight flats and (ii) the individuals who applied to become members of the Applicant RTM Company after 1 October 2020 had not agreed to become members at a date earlier than their applications. Whilst they may not have agreed to become members of the Applicant RTM Company, it seems probable that they supported the proposal to exercise the statutory RTM.

10. Between 5 October 2020 and 15 January 2021, 17 additional leaseholders became members of the RTM Company (see p.108–110).
11. On 19 April 2021 (at p.30-35), the Applicant served its Claim Notice. On this date, there were 18 leaseholders who were both qualifying tenants for the purposes of the Act and members of the Applicant RTM Company. Thus, at this date, all the qualifying tenants fell into two categories: either (i) they were members of the Applicant RTM Company; or (ii) they had been served with a Notice of Invitation on 1 October 2020.

The Tribunal's Determination

12. The Respondent resists this right to manage application on the grounds that the Applicant failed to comply with the invitation to participate requirements specified by section 78 of the Act. The Respondent contends that the Applicant RTM company ought to have served a notice of invitation to participate on every person who, at the time when the notice was given, was a qualifying tenant, and neither had become nor had agreed to become a member of the Applicant. Thus, it should also have been served on the 17 leaseholders who subsequently became members of the Applicant RTM company.
13. The Respondent relies on *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd [2020] UKUT 358 (LC)* in which Fancourt J, the Chamber President, held that a purported claim was invalidated by section 79(2) of the Act where notices of invitation to participate had not been served on each person required to be given one. This was not a trivial error that would be saved by application of the decision in *Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89*.
14. The Respondent further argues that the purpose of a Notice of Invitation is not only to invite non-members to become members. It is also to provide them with important information about the claim. The importance of this was emphasised by Martin Rodger QC, the Deputy President, in *Triplerose Ltd v Mill House RTM Co Ltd [2016] UKUT 80 (LC)* at [44]:

“It is apparent from reading the notes to the prescribed form of notice of invitation to participate that they are intended to

inform the recipient of the notice of the basic structure of the statutory scheme. Many of the notes provide an explanation or further elaboration of information contained in the body of the notice itself. For example, the notice of invitation to participate informs the recipient (at paragraph 10) that if the RTM company gives a claim notice any person who is or has been a member of the company will be liable for costs incurred by the landlord and others in consequence of that notice. The recipient is then referred to note 6 which explains that if a claim notice is withdrawn each member is liable for reasonable costs incurred in consequence of the claim notice by three specified categories of recipient (landlords, parties to leases of the whole or part of the premises other than landlords or tenants, and tribunal-appointed managers). The note also explains the circumstances in which a former member will cease to be liable. All of that is important information which might influence the mind of a person considering whether to become a member of an RTM company. Without the notes a reader of the notice would have an incomplete understanding of the statutory scheme and, more importantly, would be less well informed when deciding whether to become a member than Parliament intended they should be.”

15. The Applicant disagrees with this submission. It argues that the purpose of serving the Notices of Invitation is to ensure that no qualifying tenant is disenfranchised from the process and that all qualifying tenants are afforded the opportunity to join the RTM company.
16. The Applicant disputes that there can only be one occasion for the giving of the relevant notices. Each notice given to each qualifying tenant is an independent entity, and must be treated as such. Qualifying tenants can be given Notices of Invitation at different times. The only requirement of the Act is that at the time of giving the Claim Notice the RTM company has given all non-member qualifying tenants a Notice of Invitation.
17. Thus, the giving of the Notices of Intention on the 1 Oct 2020, did not preclude the Applicant RTM company from giving notices later to further qualifying tenants if the need arose. Neither did it preclude qualifying tenants from later becoming members of the Applicant RTM Company, upon making the appropriate application for membership.
18. The Applicant contends that the Upper Tribunal decision in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd* provides no support for the Respondent’s position as it deals with an entirely separate issue, namely correct identification of the qualifying tenant for a flat. No such issue arises here. All the qualifying tenants have been correctly identified and served where required. Those that were not

served, were members of the RTM company at the time of service of the Claim Notice.

19. The Tribunal agrees with the Applicant. We reject the Respondent's suggestion that the Applicant must establish the date on which the Section 78(1) conditions have been met. There may be several dates on which a RTM Company gives its Notices of Invitation. Whilst section 79(2) provides that "the claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before", there is no reason why some qualifying tenants should not have been given more than 14 days' notice.
20. In the case before us, the Applicant gave its Claim Notice on 19 April 2021. The critical requirement was that any person required to be given a Notice of Invitation to Participate should have been given it no later than 5 April 2021. On 19 April 2021, there was no requirement for those qualifying tenants who had become members of the Applicant RTM Company, to have been given a Notice of Invitation (see section 78 (1)(b)).
21. The Tribunal does not consider that the Upper Tribunal decision in *Triplerose Ltd v Mill House RTM Co Ltd* assists the Respondent. There is no suggestion in the current case that the Notices of Intention which have been served in this case omitted any of the information required by statute. It is only those qualifying tenants who may be in two minds as to whether or not to become a member of the RTM company who need the requisite information to enable them to make an informed decision.

Conclusion

22. 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 Act.
23. In accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises. 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.”

Judge Robert Latham
6 October 2021

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).