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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LRM/2013/0007**
Property	:	**70 Chatsworth Road, London NW2 4DG**
Applicant	:	**Chatsworth Foreign and Colonial RTM Company Ltd**
Representative	:	**Mrs M Mossop Solicitor Mayfield Law**
Respondent	:	**JR Properties (UK) Ltd**
Representative	:	**J Bates of Counsel instructed by Brethertons LLP**
Type of Application	:	**Section 84(3) Right to Manage**
Tribunal Members	:	**S Carrott LLB** **Hugh Geddes JP RIBA MRTPI**
Date and venue of Hearing	:	**22 May 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**10 September 2013**

DECISION

Decision

The Applicant RTM Company is entitled to acquire the Right to Manage the premises 70 Chatsworth Road, London NW2 4DG.

Background

1. This is an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ('the Act') by the Applicants, Chatsworth Foreign and Colonial RTM Company Ltd, for a determination that it was on the relevant date entitled to acquire the right to manage the premises 70 Chatsworth Road, London NW2 4DG.

2. On 11 November 2011, Ms Anita Combe, the qualifying tenant of flat A, 70 Chatsworth Road, and Mr Adeeb Ahmed, the qualifying tenant of flat C, indicated their consent to become members of the Applicant company.

3. On 4 December 2012 the Memorandum of Association was signed by Ms Combe and Mr Ahmed.

4. On 11 December 2012 the Applicant Company was incorporated.

5. On 13 December 2012 Notices of invitation were served on the remaining qualifying tenants of flat B, who had previously agreed to become members of the Applicant Company and on 19 December 2012 they were duly added to the membership register.

6. By a notice of claim dated 11 January 2013, the Applicants claimed a right to manage in respect of the above premises in accordance with Chapter 1 of Part 2 of the Act.

7. By a counter notice dated 18 February 2013, the Respondents disputed the claim on the basis that the claim did not comply with sections 71(1), 78(2)(d), 78(3), 79(5), 80(2), 80(3), 80(8) and 80(9) of the Act.

8. On 13 March 2013 the Applicant issued the present application.

Preliminary Issues

9. At the start of the hearing the Respondent submitted that the application should be struck out, first because the Applicant had failed to comply with directions and secondly because the application was not properly constituted.

10. On the first issue the Respondent's case was that the Applicant had failed to comply with the directions made by the Tribunal on 14 March

2013 and that on 26 April the Tribunal gave notice pursuant to Regulation 11 of the Leasehold Valuation Tribunal (Procedure) Regulations 2003, that it was minded to dismiss the application. The Applicant was directed to file and serve a comprehensive document bundle by 13 May 2013 and this was not done until 20 May 2013. The Respondent contended that in the absence of a reasonable explanation or an apology, then the application should be struck out.

11. With regard to the second issue the Respondent contended that the when the application was issued it was not accompanied by the Articles of Association. The Respondent contended without such Articles of Association the application was invalid.

12. On the first issue the Applicant's Solicitor Mrs Mossop explained the practical difficulties that the Applicant had in complying with the directions and referred to the extensive communications with the Tribunal on this issue all of which were documented in the master file. The Applicant contended that compliance was occasioned as soon as reasonably practicable.

13. The Tribunal was satisfied that the non-compliance with the directions could not be described as unreasonable or frivolous or indeed vexatious. We found that the Applicant had communicated with the Tribunal and explained fully it's difficulties as evidenced by the correspondence and documentation in the master file and that the Respondent was not prejudiced by what was a short and otherwise unavoidable delay in compliance with the directions. In this regard we refer also to the letter dated 27 March 2013 where Mayfield Law advised that Tribunal that it had conflicting Tribunal hearings leading up to 3 May 2013, together with annual leave which would leave the Solicitors with insufficient time to comply with the directions.

14. On the second issue, the Tribunal perused the master file. It was clear that the Articles of Association were in fact included with the application. The Respondent had relied upon email correspondence with the clerk to the Tribunal. The clerk had erroneously suggested that no Articles of Association had accompanied the application. In our view if the Respondent considered that the application had been improperly made, the issue should have been canvassed with a Procedural Chairman, rather than the clerk to the Tribunal. It is unnecessary therefore to decide what the effect of non-compliance would have been although we doubt that such irregularity would necessarily result in the strike out of the claim.

The Issues

15. Despite the multiplicity of grounds of objection contained in the counter notice and the Respondent's Statement in Reply and Skeleton Argument, the Respondent relied upon three grounds alone. We therefore heard no evidence or legal argument on the other issues raised in these documents, Mr Bates for the Respondent asserting that

although as a matter of law the Tribunal was bound to rule against the Respondent on the other arguments raised, he nevertheless wished to preserve the Respondent's rights of appeal on these very same issues.

16. The three issues/objections relied upon by the Respondent at the hearing of this application were therefore as follows –
    (1) the right to manage cannot extend to the property which has been unlawfully converted and/or is currently the subject of a trespass by the leaseholders;
    (2) the notice inviting participation and the claim notice were invalid because they were not signed in a format known to law; and
    (3) the notice of invitation was invalid for failure to comply with the prescribed requirements as to content.

The Parties' Submissions on the above Issues

17. On the first issue the Mr Bates submitted that the right to manage could not extend to property which has been unlawfully converted and/or is currently the subject of trespass by leaseholders.

18. Mr Bates relied upon paragraphs 26 and 27 of the Addendum to the Respondent's Statement of Case which in so far as material stated as follows –
    '26 ... In or about August or September 2010, without the licence or consent of the landlord, the garage/car port was converted into an enclosed and self-contained structure (thought to be a guest unit, including a shower). In addition, the nethermost wall of the what was formerly the car port was moved forward onto the common parts, resulting in an act of trespass.'
    '27 It is submitted that the right to manage can only extend to property originally demised under the terms of the lease; and not, in particular, property which is substantially different, both in character and extent, to that which was originally demised, as a consequence of unauthorised alterations.'

19. The Addendum to the Respondent's Statement of Case was signed by the Solicitor having conduct of this matter on behalf of the Respondent and was dated 5 April 2013.

20. Mr Bates submitted that a party cannot rely upon its own wrong doing to seek to claim an advantage and relied upon the decisions of **Gaingold Ltd v Devonbrae Ltd LRX/19/2005 and Henley v Cohen [2013] EWCA Civ 480**.

21. As a result therefore the right to manage could not extend to the (former) garage/carport and having claimed the same, the claim notice was therefore invalid.

22. We asked Mr Bates whether he proposed to adduce any evidence on this issue. He argued that having made the allegation it was for the

Applicant to reply or adduce evidence on the issue but that the Applicant had been silent on this issue.

23. We also asked Mr Bates whether or not any one from the Respondent had inspected the property and whether there was any report corroborating the assertion which had been made in the Addendum. He submitted that notwithstanding the lack of any report that there was a letter and the Addendum itself

24. He further referred to the decision of **Welwyn Hatfield Borough Council v Secretary of State or Communities and Local Government [2011] 2 AC 304**, at paragraphs 45, 53 and 54 as further illustrating the proposition that the Applicant as a matter of public policy could not be allowed to benefit from its own wrong doing.

25. Mrs Mossop submitted that there was a distinct lack of any particulars to the complaint and that it was a mere assertion. She submitted that bearing in mind that the wrongful act was alleged to have been committed in 2010, that one would have expected some evidence, some particulars but that as matters stood, there was no evidence upon which the Tribunal could reasonable or lawfully conclude that such wrongful act as complained of by the Respondent had in fact taken place. It was a mere assertion and the Tribunal had to act on evidence and not simple assertions. She submitted that since the Respondent was making the allegation there was a requirement for the Respondent to adduce evidence on the issue and that unless and until such evidence was adduced there was no duty on the Applicant to adduce any evidence on the issue.

26. Mrs Mossop further submitted that since the Applicant was only incorporated in 2012, it was difficult to understand how it could be asserted that the Applicant was said to be relying upon its own wrong when the wrongful act complained of was alleged to have predated its incorporation. The Applicant was a distinct legal entity and the members and the Applicant could not be seen as the same legal entity.

27. On the second issue, Mr Bates submitted that signatures on the claim notice and notice inviting participation did not comply with section 44 of the Companies Act 2006. A company he argued could only sign a document in the manner prescribed by section 44. In the absence of such compliance with section 44, the document was not signed and was of no effect.

28. The claim notice, he argued, must contain such particulars and comply with such requirements as are prescribed (section 80(8)(9), Commonhold and Leasehold Reform Act 2002 and that by Schedule 2, Right to Manage (Prescribed Particulars and Form) (England) Regulations 2010/825, the Secretary of State has prescribed that the notice must be 'signed'.

29. Mr Bates referred the Tribunal to the claim notice at page 61 of the bundle. The notice contained two signatures. The first signature was that of Dudley Joiner, Director, RTMF Services Ltd For and on Behalf of Chatsworth Foreign and Colonial RTM Company Limited. The second signature was that of Nick Bignall, Director of the Applicant company.

30. After referring the Tribunal to section 44 of the Companies Act 2006, Mr Bates relied upon **Hilmi & Associates Ltd v 20 Pembridge Villas Freehold Ltd [2010] EWCA Civ 314** where the Court of Appeal held that a company could only sign a document if it complied with the statutory requirements of the Companies Act (in that case section 36 of the 1985 Act; now section 44 of the 2006 Act).

31. He submitted that the failure to comply with section 44 meant that the claim notice had not been signed and as such was not in the prescribed form.

32. The failure to sign the form, he argued could not be saved by the section 81(1) of the 2002 Act because this was not simply an inaccuracy in the particulars but the complete omission of a lawful signature.

33. Mr Bates referred the Tribunal to the case of **Assethold Ltd v 15 Yonge Park RTM Co Ltd [2011] UKUT 379 (LC)** where Her Honour Judge Walden Smith drew a distinction between an inaccuracy in particulars and non-compliance with the mandatory information required by section 80 of the Act.

34. He submitted that the same failing was true of the notice inviting participation.

35. Mrs Mossop submitted that section 44 of the Act did not apply in the circumstances and that having regard to the statutory scheme set out by the 2002 Act, all that was required was compliance with those provisions. She submitted that in any event the documents concerned could not be read in the way that Mr Bates contended for. She said that each signatory had signed and described his status following the signature rather than purporting to sign on behalf of the company and therefore no issue under the 2002 Act arose.

36. With regard to the third and final issue, Mr Bates submitted that the notice inviting participation was invalid for failure to comply with the prescribed requirements as to content. All qualifying tenants, he argued, who are not already members of the RTM company (or have not agreed to become members) must be given a notice inviting them to join the RTM company (section 78(1), (2) and (3) of the 2002 Act.

37. Mr Bates drew our attention to Regulation (3) of the Right to Manage (Prescribed) Particulars and Forms) (England) Regulations 2010/825 which set out the additional content of a notice of invitation including the qualifications and or experience (if any) of the existing members of

the RTM company in relation to the management of residential property (Regulation 3(2)(g). He submitted that in this case the notice did not set out the qualifications and experience of the members of the RTM.

38. Mrs Mossop referred to the prescribed form itself. Looking at the form, she argued, there was no need to state qualifications and experience where it was not being contended that the RTM had previous qualification or experience. According to Mrs Mossop this did not invalidate or otherwise nullify the notice of invitation.

39. Following the hearing Mrs Mossop provided the Tribunal with copies of two authorities which she had referred to during the course of the hearing – **R v Home Secretary ex p Jeyeanthan [2000] 1 WLR** and **Assethold v 14 Stansfield Road LRX/52/2004**. She relied upon those authorities to support her argument that the failure to follow a procedural requirement did not invalidate the notice of invitation to participate or indeed the notice of claim.

40. At the end of the hearing we had directed that the Respondent should send its observations within 7 days of the authorities being submitted by the Applicant. Unfortunately the Tribunal did not receive the Respondents observations until 5 August 2013. The Respondent's Solicitors contended that they did not receive those authorities from the Applicant until 1 July.

41. The Respondent contended that the authorities relied upon by the Applicant did not assist because in the present case the purpose of the provisions of the 2002 Act was to substantially alter the existing contractual rights of the parties under the long leases in any given premises. That being the case the correct approach in relation to statutory notices of this nature was that set out in **Burman v Cook Land Ltd [2002] 1 EGLR 61**, which considered the validity of a landlord's counter notice under section 45 of the Leasehold Reform, Housing and Urban Development Act 1993, following a claim by a tenant of a flat to acquire a new long lease under that Act. This approach, the Respondent argued, simply required asking two questions: what does the statute require? Does the notice fulfil those requirements.

42. Reference was also made to the case of **Speedwell Estates Ltd v Dalziel [2002] 1 EGLR, Free Grammar School of John Lyon v Secchi [1999] 3 EGLR 49**, CA again a case under the 1993 Act and **Assethold Ltd v 15 Yonge Park RTM Co Ltd** referred to above.

43. The Respondent contended that this point was dealt with in **Hilmi & Associates v 20 Pembridge Villas Freehold Ltd [2010] 1 WLR 2750**.

44. The Respondent emphasised that where a company as distinct from an individual purports to sign and the signature does not comply with these requirements, there is in law, no signature.

Reasons for the Tribunal's Decision

Issue 1 – Unlawful Conduct

45. The factual basis upon which the Respondent relied for the first issue was set out in the Statement of Case for the Respondent, which stated as follows –
'26. To the extant that 'appurtenant property' includes any other property which was demised with a flat (and exclusively serving the same), it is denied that the right to manage would extend to the (former) garage/car port forming part of the lease on the ground floor. In or about August or September 2010, without the licence or consent of the landlord, the garage/car port was converted into an enclosed and self-contained structure (thought to be a guest unit, including a shower room). In addition the northernmost wall of what was formerly the car port was moved forward onto the common parts, resulting in an act of trespass.'

46. The Statement of Case for the Respondent was signed by the Respondent's Solicitor Mr Robert Hardwick and contained a statement of truth.

47. The Respondent did not call any evidence, written or oral which expanded upon the assertion contained in the Respondent's Statement of Case. No further particulars or explanation was given on behalf of the Respondent. There were no surveyors' reports, no contemporaneous correspondence (that is contemporaneous with the unlawful acts alleged), and no photographs before the Tribunal. Neither was the Tribunal invited by either party to inspect the premises.

48. The factual basis for this submission therefore remained an assertion made in the Respondent's Statement of Case by Mr Hardwick.

49. It was not for the Applicant to call evidence on this issue. The Applicant's position at the hearing was that the allegation was not admitted. In those circumstances it was for the Respondent to adduce some evidence before the Tribunal to which it could attach proper weight of unlawful conduct. The Respondent failed to adduce such evidence.

50. At best, the Tribunal was left to second guess as to what, if anything had in fact transpired in the past.

51. Neither was the Tribunal persuaded in law or fact that responsibility would in any event lie with the RTM for the alleged unlawful acts, again because of the distinct lack of evidence on this issue.

52. In **Assethold Limited v 14 Stansfield Road RTM Company Limited [2012] 262 [LC]** the President stated as follows –

'It is not sufficient for a landlord who has served a counter notice to say that it puts the RTM company to 'strict proof' of compliance with a particular provision of the Act and then sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to proof does not create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied.'

53. In this case the Respondent had simply asserted that there was unlawful conduct. It called no proper evidence on the issue but simply sat back to see what the Applicant had to say about it. There is no difference between that approach and the approach which was disapproved of by the President in the above case.

54. If the Respondent was seriously contending that the Applicant was not entitled to acquire the right to manage on grounds of unlawful conduct, then it was required to prove that allegation on the balance of probabilities. A mere assertion by the solicitor having conduct of the case was not sufficient proof.

55. Accordingly, on this issue the Tribunal finds for the Applicant.

Issue 2 – Non-Compliance with s. 44 Companies Act 2006

56. With regard to the second issue, the written evidence of Adeeb Ahmed and Anita Louise Combe makes clear, the qualifying lessees had sought the assistance of a company known as RTMF Services Ltd in order to acquire the right to manage.

57. The Applicant Company was incorporated on 11 December 2012 and RTMF Services Limited were appointed as the company secretary. The procedural steps taken to acquire the right to manage were undertaken by RTMF Services Ltd.

58. In particular, on 13 December 2012 the Applicant served a Notice Inviting Participation on Rahamin Yehood and Juliet Yehood, the qualifying tenants of flat C. The notice is contained on pages 73 to 75 of the bundle.

59. The final page of the document states as follows -

The names of the members of the company are:

ADEEB AHMED
ANITA LOUISE COMBES

The name of the company secretary is;

RTMF SERVICES LTD

'Signed by authority of the company.

Dudley Joiner, Director of RTMF Services Limited, Company Secretary For & On Behalf of Chatsworth Foreign and Colonial RTM Company Ltd. '

60. Above the reference to Dudley Joiner, is the signature of Mr Joiner.

61. The words 'signed by authority of the company' are taken from the prescribed form itself and are intended to refer to the particular applicant RTM.

62. Mr Bates' submission was that Mr Joiner was signing on behalf of RTMF Services Ltd.

63. On 19 December 2012 Rahamin Yehood and Juliet Yehood were added to the membership register.

64. On 11 January 2013 the Applicant served its Claim Notice.

65. The Claim Notice is contained at pages 59 to 61 of the bundle. That notice was signed by Mr Joiner and Mr Nick Bignall, a director of the Applicant Company.

66. Two questions therefore arise –
    (1) Has the Applicant complied with the relevant statutory provisions?
    (2) If the Applicant has not complied with the relevant statutory provisions, what affect if any, does this failure have on the Applicant's claim for the right to manage?

67. Section 78(1) of the 2002 Act provides that 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 is a qualifying tenant of a flat contained in the premises who has not agreed to become a member of the RTM company.

68. Section 78(2) sets out the information that must be contained in the notice, namely –
    (a) state that the RTM company intends to acquire the right to manage,;
    (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.

69. Section 78(3) provides that the notice of invitation must comply with such other requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

70. Section 78(7) provides that a notice of invitation is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

71. Schedule 2 of the Right to Manage (Prescribed Particulars and Forms)(England Regulations) 2010 sets out the prescribed form. The form concludes with the words –
Signed by Authority of the Company

[Signature of authorised member or officer]

[Insert date]

72. No reference is made in the Regulations or the Prescribed Form itself to the requirements of section 44 of the Companies Act 2006, notwithstanding that the Notice is being served on behalf of the RTM company. The Secretary of State in fact appears to envisage that one signature will suffice whether it be a 'member' or someone else authorised by the RTM company to sign the document.

73. There are similar provisions governing the content and form of the claim notice: see sections 80 and 81 of the 2002 Act and Schedule 2 of the 2010 regulations. The wording of the requirement for signature remains identical.

74. In **Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Company LRX/52/2004**, the President regarded a failure to serve a notice of invitation on one of two joint tenants as a procedural irregularity which did not invalidate the right to serve a claim notice. In reaching that decision the Lands Tribunal relied upon **R v Immigration Appeal Tribunal ex p Jeyeanthan [1999] 3 All ER 231** and **London Clydesdale Estates Limited v Aberdeen DC [1979]** 3 All ER 876 on the categorisation of statutory requirements into mandatory and directory, notwithstanding that there was no statutory provision in the 2002 Act which would allow the failure to serve such notice as being a procedural irregularity which could be disregarded.

75. In the later case of **Assethold Ltd v 15 Yonge Part RTM Co. Ltd [2011] UKUT 379 [LC]** Judge Walden Smith held that providing the wrong name or the wrong registered office of the RTM company in a claim notice was not an 'inaccuracy' for the purposes of section 81 (1) of

the 2002 Act but a failure to provide the mandatory information required by section 80.

76. The Respondent contends that there is no difference between the failing in that latter case and the present because if there was no compliance with section 44 of the Companies Act 2006, then the claim notice in the present case could not be regarded as being signed.

77. In **Assethold Limited v 14 Stansfield Road RTM Company Limited** (above) the claim notice was signed by a person who was authorised to do so by all three directors of the company but was not a member of officer of the company. The President held that the fact that the person was not a member or officer did not matter. All that was required under the Act was that the person signing had the authority of the RTM to do so.

78. At paragraph 18 of the decision, the President stated –
'18. The Appellant's contention has force, it is clear that, only if the words in square brackets '[Signature of authorised member or officer] are to be treated as imposing a limitation on who may sign the form. The appellant says that they are to be to be so treated because that is what the notice 'clearly provides. In my judgment, however, that is not correct. If the form had provided for the status of the signatory to be stated (for example "[Insert as appropriate 'member' or, or if officer position held]"), there would be obvious force in the contention. The fact that it does not do this, however suggests that the words are not to be treated as imposing a limitation on who may sign. My conclusion is that it is sufficient that the person signing, by authority of the company, does have that authority ...'

79. Section 44 of the Companies Act 2006 provides the method by which a company can execute documents. A document can only be executed by a company be affixing its common seal to the document or by two authorised signatories, or by a director of the company in the presence of a witness who attests the signature. Further, an authorised signatory for the purposes of the Act includes every director of the company and in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.

80. In **Hilmi & Associates Ltd v 20 Pembridge Villas Freehold Limited [2010] EWCA Civ 314**, a notice served under section 13 of the Leasehold Reform Housing and Urban Development Act 1993 was served by four qualifying tenants one of which was a limited company. However the company had not complied with section 36 of the Companies Act 1985 (now section 44 of the 2006 Act). The Court of Appeal held that since the company had not executed the document in accordance with section 36, the notice was invalid.

81. The difficulty with the Respondent's case is that it requires the Tribunal to read into the 2010 regulations and the 2002 Act itself, an additional requirement after there has already been compliance with the Act and

the regulations. Mr Joiner was authorised to sign both notices on behalf of the Applicant. The fact that Mr Joiner was the director of another company and following his signature set out his position in that company is neither here nor there. There was no suggestion that Mr Joiner did not have authority to sign.

82. The 2010 regulations and the Act require a member or an officer (that is a person authorised by the RTM company) to sign. Even though the RTM is itself a corporate body, there is no requirement in the 2002 Act or the 2010 regulations that the notice inviting participation or the claim notice should be signed in accordance with section 44 of the Act.

83. If the Tribunal were to hold for the Respondent in this case it would have surprising results in relation to both documents that were signed. First in relation to the notice inviting participation, this was acted upon and the qualified tenants were duly registered as members of the company. The qualifying tenants who were served with the notice do not assert any prejudice and neither does the Respondent suggest that there was any prejudice. Indeed once they were in fact registered as members of the company there was clearly a right on the part of the Applicant to serve a claim notice irrespective of any alleged defect in the notice inviting participation .

84. Secondly, it is clear that Mr Bignall was an officer of the Applicant RTM company because he was a director. His signature alone was sufficient to comply with the 2010 regulations and the 2002 Act. The fact that he specified that he was a director of the Applicant company did not engage section 44 of the 2006 Act because the only requirement in this case was to comply with the 2002 Act and the regulations. The fact that Mr Joiner signed the claim notice did not serve to invalidate or nullify the clear authority of Mr Bignall to sign the notice.

85. **Hilmi** can be distinguished because in that case if the company was to sign as a qualified tenant it had to comply with what was then section 36 of the 1985 Act because there being no statutory provision or regulations stating otherwise.

86. In the context of the statutory scheme, it is unsurprising that Parliament does not require an RTM company to comply with section 44 of the 2006 Act before it has acquired the right to manage, because the purpose of the legislation is a social one, namely, to allow leaseholders to obtain control the management of their homes and thereby avoid exploitation from unscrupulous landlords or managing agents. In order to achieve this, the legislation has adopted a relatively straightforward and simple procedure to enable leaseholders to acquire that right, to allow qualifying tenants to join in, and departing, from the conventional approach of section 44, by allowing 'members' to sign notices in pursuance of acquiring that right.

87. Accordingly the Respondent's objection on this ground fails.

Issue 3 – Failure to comply with prescribed contents

88. The Respondent submitted that it was a requirement that the notice inviting participation should expressly state that the members have no qualifications or experience and that a failure to do so is fatal to the claim. The failure to do so, could it was argued, cause prejudice to a landlord who also was the in the position of being a qualified tenant, although no actual prejudice was alleged in this case.

89. Mrs Mossop referred the Tribunal to paragraph 9 of prescribed form. That paragraph states as follows –

> *The company intends to appoint a managing agent within the meaning of section 30B(8) of the Landlord and Tenant Act 1985
>
> *The company does not intend to appoint a managing agent within the meaning of section 30B(8) of the Landlord and Tenant Act 1985.
> [*If any existing member of the company has qualifications or experience in relation to the management of residential property, give details below.]*
>
> **Delete one of these statements, as the circumstances require.*

90. On the page 74 of the bundle the notice inviting participation the first statement is deleted.

91. No existing member of the company purported to have qualifications or experience and so that part of the form was not completed.

92. Mrs Mossop argued that there was compliance with the prescribed form since there was no requirement to state that members did not have any experience.

93. We agree.

94. Accordingly, the third ground also fails.

95. Accordingly on the relevant date, the Applicant RTM Company was entitled to acquire the right to manage the subject premises.

Chairman: S Carrott LLB