



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

Case reference : LON/00AZ/LRM/2020/0032

Property : 439 Brockley Road London SE4 2PJ

Applicant : 439 Brockley Road (London) RTM
company Limited

Representative : Prime Property Management

Respondent : Assethold Limited

Representative : Scott Cohen Solicitors

Type of application : Right to manage

Tribunal members : Judge H Carr
Mr M Cairns

Date of decision : 3rd June 2021

DECISION

Decisions of the Tribunal

- (1) 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, and the Applicant will acquire such right within three months after this determination becomes final.

The application

1. This was an application to acquire the right to manage 439 Brockley Road London SE4 2PJ ("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the 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.

The law

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

The counter-notice

3. In its counter-notice, the respondent raised a number of issues. However during the course of proceedings certain matters were conceded/resolved. The outstanding issues are:
 - (i) the definition of the premises
 - (ii) the giving of the claim notice
 - (iii) the omission of the address of Assethold and 439 BR Limited from the body of the claim notice.
4. Having considered the documents in the bundle, the tribunal has made the following decision.

The definition of the premises

5. The respondent argues that the definition of the premises in the Articles of Association and Claim Notice as 439 Brockley Road, London SE4 2 PJ is not consistent with the description of the premises within the Freehold title which is 437 and 439 Brockley Road London SE4 2PJ. It therefore insufficiently identifies the extent of premises for which the claim notice has been given.
6. The respondent's position is that for the claim to be valid the articles and claim notice would need to have identified the premises in full to include 437 Brockley Road.
7. It accepts that one might draw conclusions regarding the intention of the RTM company by reference to its members but argues that it is the correct definition of premises which provides the right from the Articles. It is critical that such definition is correct and without ambiguity. The definition of premises should leave no scope for interpretation.
8. The respondent argues that omitting the correct premise is fatal and significant. The respondent contends that as a result of the failure to identify the premise in full the application should be dismissed. The existence of a company properly constituted as an RTM company in

relation to premises to which the statutory regime applies is the first of the procedural preconditions to acquiring the right to manage.

9. The applicant argues that the premises have been correctly described as 439 Brockley Road. It argues that the correct point of reference for the description of the premises is the Royal Mail records. This is because freehold titles are notoriously inaccurate because they come into existence prior to recent development. The applicant explains that previously the site contained two street numbers (437 and 439). It now only contains one. 437 Brockley Road no longer exists and has been removed from Royal Mail records. To include it, says the applicant would be inaccurate and incorrect.
10. The applicant argues that the premises as described by the articles and the claim notice is clear and has been understood fully by the respondent. There is no ambiguity and the respondent's assertion should therefore fail.
11. The applicant refers to the Court of Appeal decision *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2018] QB 571. which clearly states that RTM claims should not be successfully challenged on minor technical arguments.
12. In reply the respondent disagrees with the applicant pointing out that the existence of a company, properly constituted as an RTM company in relation to premises to which the statutory regime applies, is the first of the procedural preconditions to acquiring the right to manage. The respondent asks the tribunal to determine the matter.
13. It provides evidence as follows:
 - (i) Pedder Property Ltd is an estate agency which occupies the ground floor commercial units at the premises. Although the applicant asserts that 437 Brockley Road no longer exists Pedder Property's website provides the address as 437 – 439 Brockley Road Lewisham London SE4 2 PH. A screen shot of the website is provided by the respondent.
 - (ii) The premises address on the building is also provided as Broca Court, 437 – 439 Brockley Road, London SE4 2 PJ and a copy of the property owners policy schedule is enclosed.

The Tribunal's decision

14. The tribunal determines that the premises have been correctly identified as 439 Brockley Road_.

The reasons for the Tribunal's decision

15. The tribunal has carefully considered the evidence provided by the respondent. It does not agree that the use of 437 – 439 Brockley Road by the commercial premises provides evidence of the correct address and despite the freehold title address it agrees with the respondent that in this case the Royal Mail records are the correct point of reference. In the light of 437 no longer being in existence 439 Brockley Road is the correct identifier

Giving of claim notice

16. The respondent argues that despite requests no evidence has been provided that a copy of the claim notice has been served upon the qualifying tenants as provided by the Act. The involvement of leaseholders in the process is a key matter and the obligation to provide notice to leaseholders of the actions being taken is a requirement of the legislation.
17. The applicant responds by saying that in their letter of the 15th of September 2020 (which it says it only received by email on the 28th September and never received by post) the respondent asked for copies of any correspondence serving the claim notice. This was misinterpreted by the applicant as a request for the copies of the claim notice served on the landlords. This it claims was understandable given that there had been a transfer of title meaning there were potentially two landlords. Those documents were sent.
18. It now understands that the respondent was requiring evidence of service on the qualifying tenants. In order to evidence such service a witness statement has been prepared. In the light of this there is clear evidence that the claim notice was served on all qualifying tenants and no evidence to the contrary exists.
19. The respondent replies that no documentary evidence has been provided that a copy of the claim notice has been served upon the qualifying tenants as provided by the Act.
20. The respondent states that it appreciates the applicant's witness statement, yet this does not provide documentary evidence that the claims were given to all qualifying tenants. Further the witness statement of Stephen Wiles is without a signed statement of truth.
21. It argues that it is the applicant's responsibility to set out a prima facie case of entitlement. It is the obligation of the applicant to discharge the relevant burden of proof in respect of the giving of the claim notice and it considers that the applicant has failed to do so.

The Tribunal's decision

22. The tribunal determines that copies of the claim notice have been served upon the qualifying tenants as provided by the Act.

The reasons for the Tribunal's decision

23. The tribunal accepts the witness statement of Mr Wiles that claim notice was served on all qualifying tenants
24. It also notes that there is no evidence to the contrary and considers that the applicant has discharged the necessary burden of proof.

Particulars and requirements of a claim notice

25. The respondent argues that the claim notice served omits the addresses of Assethold and 439 BR Limited in the body of the notice. The prescribed form of claim notice provides for the [name and address]. Only the name has been completed. This is an omission rather than an inaccuracy as the claim notice fails to comply with the particulars and requirements of a claim notice.
26. The respondent argues that given the automatic transfer of management functions both under the Leases and under statute, the respondent has taken steps to ascertain whether the Right to Manage process has been undertaken in accordance with the provision of the 2002 Act to ensure that whilst the intentions of the applicant are to take over the Right to Manage that same is executed in a valid process under the 2002 Act so the respondent may have certainty in its position and release of its statutory obligations.
27. The applicant argues that the claim notice correctly identifies the legal entities that it is served on by expressing their full legal company name.
28. The omission of the recipient's address has no bearing on the validity of the claim notice. It is likely that the only reason for inclusion of the address on the template is to ensure the notice reaches the recipients. This is achieved by the covering letters.
29. Even if the above is incorrect the omission of the addresses is undoubtedly an inaccuracy and as such covered by s.81(1) of the Act and therefore the claim notice is not invalidated.
30. The respondent replies by pointing out that the applicant has conceded that there has been an omission of the addresses.

31. It considers this to be a failure to provide mandatory information as required by the prescribed form of claim notice.
32. It accepts that some claim notices can be spared from invalidity by a 'saving' provision in the statute – s.81(1) which provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by section 80. However it refers to *Assethold Ltd v 15 Yonge Park RTM Co Ltd* [2011] UKUT 379 which considered what was meant by an inaccuracy and decided that provision of information which is simply wrong is not an inaccuracy.
33. The respondent argues that omitting a particular altogether is also not an inaccuracy and therefore cannot be overlooked as only inaccuracies in the particulars required can be overlooked.

The Tribunal's decision

34. The tribunal determines that the omission of the addresses of Assethold and 439 BR Limited from the body of the notice does not invalidate the claim notice.

The reasons for the Tribunal's decision

35. The tribunal notes the respondent's reference to the decision in *15 Yonge Park RTM*. However it considers that the decision of the Court of Appeal in *Elim Court* is more pertinent. In that case the court decided that a failure to comply with a procedural requirement will not always cause an RTM claim to be invalid. What is important is that there has been a failure to comply, and not the distinction between an omission and an inaccuracy.
36. The Court said that it is necessary to consider whether Parliament would have intended that a failure to comply should preclude the person from acquiring the right in question. This depends on whether the error or omission was critical to the scheme, or whether it was of secondary or ancillary importance.
37. It accepts the argument of the applicant that the purpose of the requirement is to ensure the notice reaches the recipients. As this is achieved by the covering letters, the tribunal in this particular instance determines that the omission was of secondary or ancillary importance.

Summary

38. Overall, 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.

39. Therefore, 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.”

Costs

40. Section 88(3) of the Act states:

“(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”

41. In the light of the Tribunal’s decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

Name: Judge H Carr

Date: 3rd June 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).