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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KB/LRM/2018/0003

Properties (2) : Flats 1-5 and Flats 6-9 River Court,
16a River Street,
Bedford,
MK40 1PX

Applicants : River Court Bedford No. 1 RTM Co. Ltd.
River Court Bedford No. 2 RTM Co. Ltd.

Represented by : The Leasehold Advice Centre

Respondent : Assethold Ltd.

Represented by : Scott Cohen Solicitors

Date of Application : 18th June 2018

Type of Application : For an Order that the Applicants are
entitled to acquire the right to manage
the properties (Section 84(3)
Commonhold and Leasehold Reform
Act 2002 (“the 2002 Act”))

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS

AMENDED DECISION

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1. This Application succeeds and the Applicants therefore acquire the right to manage the properties on the 9th January 2019 (Section 90(4) of the 2002 Act) subject to any appeal.
2. No order for costs is made.

Reasons

Introduction

3. The Respondent accepts that the Applicants are right to manage companies (“RTMs”). Such RTMs gave the Respondent Claim Notices on or about the 17th April 2018 seeking an automatic right to manage the properties. Counter-notices dated 25th May 2018 were served denying the right to acquire the right to manage. It alleged breaches of subsections 78(1), 79(2), 79(3), 80(3), 80(8) and 80(9) of the 2002 Act.

4. In its statement of case within these proceedings, the Respondent says that the right to manage should not be allowed because the Claim Notices are not valid and no Notices of Invitation to Participate have been given when they should have been. The reasons for this are (a) people who were not subscribers to the RTMs have not made an application to be a member, (b) such people have not been served with a Notice of Invitation to Participate and (c) the Claim Notices did not set out those persons who were both qualifying tenants and members.
5. The only real question to be determined by the Tribunal is whether, on the 17th April 2018, the qualifying tenants listed below were members or had agreed to become members of the RTMs. If the Applicants are right, then all of the objections effectively fall away. If the Respondent is right, the process has not been complied with and the Applicants cannot assume management.

Procedure

6. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties and (b) an oral hearing would be held if either party requested one. No such request was received.

The Law

7. Sections 79, 80 and 81 of the 2002 Act set out the requirements of a Claim Notice. The 'relevant date' is mentioned several times within those sections and is defined in section 79(1) as being "*...the date on which the notice of claim is given*" i.e. 17th April 2018 in this case.
8. Subsection 79(5) says that with properties of this size qualifying tenants in not less than one half of the flats must be members of the RTM. Subsection 80(3) says that the Claim Notice must state the full name and flat address of each person who is both a qualifying tenant and a member of the RTM.
9. Subsection 78(1) says that if, on the relevant date, a qualifying tenant is not a member of the RTM or has not agreed to become a member, that person must be served with a Notice of Invitation to Participate.
10. The Applicants have made an application for costs. As there is nothing in the 2002 Act which covers such an application, and there is no general costs shifting provisions for this Tribunal, such an order can only be made pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013** which requires an applicant to prove that the party against whom such an order is made has behaved unreasonably and, as a result, costs have been incurred.
11. Such an application has little to do with the merits of the main application. It concentrates of the behaviour of a party.

Discussion

12. The Respondent refers the Tribunal to the case of **Southall Court (Residents) Ltd and others v Buy Your Freehold Ltd. and others** [2008] EWLands LRX/124/2007 in which His Honour Judge Reid QC said, in paragraph 9, that *"In order for a person other than a subscriber to be a member that person must (a) have agreed to become a member and (b) had their name entered in the register of members: see section 22(2) of the Companies Act 1985."* In paragraph 10, he went on to say *"In the absence of a register of members a person's name could not be entered on the register and so the person could not be a member, whether or not that person had agreed to become a member."*
13. In the Claim Notice for the first Applicant ("the No. 1 RTM"), it is said, at pages 106 and 107 in the bundle, that the persons who are both the qualifying tenants and members are Simon Richard Daniel (flat 1), Big Citizen Ltd. (flat 2), Charlie George O'Toole (flat 3), Martin David Walters and Susan Mary Jones (flat 4) and Christopher Wootton and Janet Wootton (flat 5). It is not being suggested that these are not the full names of those involved.
14. The Memorandum and Articles of Association of the RTM say, at page 36 in the bundle, that the subscribers are Messrs. Daniel, O'Toole and Walters and the company Big Citizen Ltd. The question for the No. 1 RTM company, therefore, is whether Susan Mary Jones, Christopher Wootton and Janet Wootton (the non-subscribers) had agreed to become members and that there was a register of members by the 17th April 2018.
15. Similarly, in respect of the second Applicant, ("the No. 2 RTM"), it is said, at pages 112 and 113 in the bundle, that the qualifying tenants and members are Joanna Mary Reid (flat 6), Sarah Monica Wickens and Christopher Paul Wickens (flats 7 and 9) and Janet Ingle (flat 8). The Memorandum and Articles (page 57) say that Janet Ingle and Joanna Mary Reid are the subscribers leaving the question whether Sarah Monica Wickens and Christopher Paul Wickens (the non-subscribers) had agreed to become members and that there was a register of members by 17th April 2018.
16. The Respondent argues that because no applications for membership have been produced for the non-subscribers, the applicants must fail.
17. The Applicants say that the non-subscribers always intended to be members and that after the RTMs were formed (6th April 2018 for the No 1 RTM and 9th April 2018 for the No. 2 RTM), they were admitted as members and their names appear in the members registers which are at pages 168 and 169 of the bundle. Those registers say that all the qualifying tenants named in the Claim Notices were admitted as members on the dates of formation in respect of each company i.e. 6th and 9th April 2018 respectively. Finally, the Applicants say that Companies House will only allow one tenant of a flat to be a subscriber, not joint tenants. If true (and it is not denied), that lends credence to the Applicants' description of events.

Conclusion

- 18. The **Southall Court** case simply says that if there is no register of members for the applicant RTM, then no-one apart from the subscribing members can be a member or can say that they agree to be a member. It is the lack of a members' register which causes that. Judge Reid did not insist on an application for membership being produced.
- 19. In this case, there is a statement from those representing the Applicants that the non-subscribing members wanted to be members. This is supported by minutes of meetings of the companies, certificates of membership and copy e-mails from those members concerned. The Respondent's statement, at page 154 and others, acknowledges that there are registers of members. Copies of those registers have been produced showing the facts as stated above.
- 20. The Respondents have produced no evidence to suggest that this documentation and the expressed wishes and views of the non-subscribing members should be ignored. It has simply argued that as no applications for membership have been produced, the Applicants must fail.
- 21. The Tribunal does not accept that argument and is satisfied that there has been no procedural defect. In other words, the non-subscribing members had become members by the 17th April 2018 and accordingly, the Claim Notices were correct and no Notices of Invitation to Participate were required.
- 22. As far as the claim for costs is concerned, the Respondent correctly refers to the leading case of **Willow Court Management Company (1985) Ltd. v. Mrs. Rant Alexander and Ors** [2016] UKUT 290 (LC) where the Upper Tribunal felt it necessary to give general guidance in respect of these costs claims. This case confirmed that **Ridehalgh v Horsefield** [1994] Ch.205 is still good law when dealing with the definition of unreasonable conduct i.e. it is 'vexatious and designed to harass rather than advance the resolution of the case'. In other words, the end result of the case is rather a side issue. Just because a party has a bad case does not, of itself, lead to a costs order.
- 23. In this case, some of the correspondence between the parties' representatives has been somewhat hostile but the Respondent has put forward an arguable case even if, at its conclusion, the Tribunal considered that it had little merit. The Tribunal does not consider that the Respondent's conduct has crossed the high threshold needed to make a rule 13 order.



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Bruce Edgington
Regional Judge
7th September 2018

Amended pursuant to Rule 50 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 by changing the date in paragraph 1 of the decision from 6th December 2018 to 9th January 2019 due to an accidental slip on the part of the Tribunal.



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Bruce Edgington
Regional Judge
10th October 2018

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this amended 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.
- ii. 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.
- iii. 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.
- iv. 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.



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/00KB/LRM/2018/0003**

Properties (2) : **Flats 1-5 and Flats 6-9 River Court,
16a River Street,
Bedford,
MK40 1PX**

Proposed Appellant : **Assethold Ltd.**

Proposed Respondents : **River Court Bedford No. 1 RTM Co. Ltd.
River Court Bedford No. 2 RTM Co. Ltd.**

Date of Application : **3rd October 2018**

Type of Application : **For permission to appeal against the
effective date of an Order that the
Proposed Respondents are entitled to
acquire the right to manage the
properties (Section 84(3) Commonhold
and Leasehold Reform Act 2002 (“the
2002 Act”))**

The Tribunal : **Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS**

DECISION

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1. The tribunal has considered the proposed Appellant’s request for permission to appeal dated 3rd October 2018 and determines that:
 - a. it will not review its decision; and
 - b. permission be refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the proposed Appellant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and be received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

Reasons

3. This is an application to appeal a decision of this Tribunal to order that the proposed Respondents are entitled to manage the properties. The only ground of appeal is that the date when the right to manage becomes operative is wrong. It should not be 6th December 2018 but should be 9th January 2019.
4. The Tribunal accepts that it made an accidental slip and has amended its original decision to reflect the changed acquisition date as put forward by the proposed Appellant. The application for permission to appeal is therefore refused.



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Bruce Edgington
Regional Judge
10th October 2018