



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

Case reference : **LON/00AH/LRM/2020/0023**
HMCTS Code : **P:PAPERREMOTE**
Property : **55 Penge Road, London SE25 4EJ**
Applicant : **55 Penge Road RTM Company Ltd**
Representative : **Harmens Management**
Respondents : **Assethold Ltd**
Representative : **Scott Cohen Solicitors Ltd**
Type of application : **Application in relation to the denial of the Right to Manage**
Tribunal Member : **Mrs A J Rawlence MRICS**
Date and venue of Paper Determination : **17 March 2021, decided on the papers.**
Date of Decision :

DECISION

Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers which has been not 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 on paper.

Decision of the tribunal

- I. The Tribunal determines the notice of invitation to participate given to the leaseholder of the ground floor flat at 55 Penge Road, London, was invalid as it was not served on the current leaseholder.**

II. The Tribunal, therefore, determines that The Applicant was not entitled to acquire the right to manage 55 Penge Road, London on the relevant date.

The Application

1. The tribunal had received an application on 20 July 2020 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 premises known as ("the premises").
2. By a claim notice dated 21 April 2020, the applicant gave notice that it intended to acquire the Right to Manage the premises on 27 August 2020.
3. By counter notice dated 20 May 2020, the respondent freeholder disputed the claim alleging that the applicant had failed to establish compliance with sections 78(1), 79(2), 79(8), 80(8) and 80(9) of the Act.
4. The tribunal has identified a single 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 the premises specified in the notice.

Background

5. Directions were given in writing on 7 October 2020 for the progress of this case.
6. By 10 November 2020, the respondent was email to the applicant a statement in reply to the application, any legal submissions, and all documents relied upon. This will be regarded as the respondent's case.
7. By 1 December 2020, the applicant might send a brief response and by 22 December 2020 the respondent might reply to any issues raised by the applicant.
8. By 5 January 2021, the applicant was to submit a bundle to the tribunal and a copy to the respondent.
9. On 7 January 2021, the applicant apologised to the tribunal for the delay in submitting the bundle, which was due to personal reasons, and that the bundle would be submitted the next day.
10. On 4 January 2021, the respondent submitted his statement of case and resubmitted it the Tribunal on 21 January 2021, having not received the bundle from the applicant.
11. By letter dated 22 January 2021, the tribunal postponed the decision by 2 weeks and stated that the applicant must submit the bundle by 2 February 2021. If it did not do so the application would be decided on the papers before it.
12. No bundle has been received.

The Property

13. The property, which was not inspected by the tribunal, is a residential property of flats, all held on long leaseholds.

Respondent's Case

14. The respondent stated that:
Section 78(1) of the Act requires 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 the qualifying tenant of a flat contained in the premises.
15. On 12 March 2020 Miss Kelly, by letter addressed to her at 55 Penge Road, was invited to become a member of the company. The letter included a notice to participate in the right to manage. Miss Kelly was the previous leaseholder of the ground floor flat at 55 Penge Road.
16. The owner of the ground floor flat would be a qualifying tenant. However, on 10 August 2019 Grace Jacqueline Essex bought that flat. No notice had been served on her.
17. Therefore, the claim failed under both S79(2) and 79(8) of the Act.
18. The claim also failed under s80(8) and 80(9) as it did not comply with the particulars and requirements of a claim notice and had not been validly served in the prescribed form of notice.

The Tribunal's Decision

19. The Tribunal determines that the notice to participate was given to the wrong leaseholder and therefore, at the date of the notice of claim to acquire the right to manage, s79(2) of the Act had not been satisfied.
20. As a consequence, a copy of the claim notice had not been given to each person who on the relevant date was a qualifying tenant of a flat contained in the premises. S79(8) of the Act.
21. The Tribunal has noted the respondent's comments with regard omissions in the claim notice.

Anthea J Rawlence

Chair

Appeal

1. 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.

2. 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.
3. 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.
4. 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.