



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

**Case Reference** : **MAN/00BL/LBC/2021/0002**

**Property** : **7 The Kilphin, Princess Road,  
Lostock, Bolton BL6 4DR**

**Applicant** : **Bestjoin Residents Management Ltd**

**Respondent** : **William Joseph Newsome and  
Stephanie Jane Newsome**

**Type of  
Application** : **For an order that a lease covenant has been  
breached: section 168(4) Commonhold and  
Leasehold Reform Act 2002**

**Tribunal** : **A M Davies, LLB  
W Reynolds, MRICS**

**Date of Decision** : **1 September 2021**

---

**DECISION**

---

© CROWN COPYRIGHT 2021

**ORDER     The application is dismissed.**

**REASONS**

**BACKGROUND**

1.     The Applicant is a private company limited by shares, the purpose of which is to own and manage a small estate known as The Kilphin. The Applicant's shareholders are owners of long leases, all in similar terms, of the 7 houses on the estate. The Respondents are the leaseholders of 7 The Kilphin and Mrs Newsome is a director of the Applicant, along with 5 of the other leaseholders.
2.     On 7 August 2020 Mrs Axford, who is a director and the company secretary of the Applicant, wrote to the Respondents informing them "as secretary of Bestjoin Management" that the gates they had recently erected at the entrance to their driveway were "prohibited in the lease agreement" and that they must be removed.
3.     The Respondents refused to remove the gates, and on 25 January 2021 Mrs Axford, naming Bestjoin Residents Management Ltd as the Applicant, applied to the Tribunal under s168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a finding that the Respondents were in breach of their lease. Such a finding is a pre-requisite to an application for forfeiture of the lease. The gates remain in place at the date of this order.

**THE LEASE**

4.     The Applicant is a party to the lease, in which it is referred as "the Management Company". It subsequently purchased the freehold, and is therefore now also "the Lessor".
5.     At clause 3(iii) of their lease the Respondents covenant with the Applicant as the Management Company  
"to perform and observe all the covenants on the part of the Lessee and conditions to be observed by the Lessee contained in the Lease to the Lessee of the Property".

Those covenants include the following, at clause 2(xvii):

"The Lessee hereby further covenants with the Lessor for the benefit of the Lessor's reversion and also as a separate covenant for the benefit of the adjoining neighbouring land of the Lessor and each and every part thereof being at the date hereof land comprised in the title above referred to and as a further separate covenant with each of the respective Lessees of the other residential units for the benefit of such respective residential units that the Lessee will observe the restrictions set forth in the Fourth Schedule hereto."

6. The Fourth Schedule to the lease includes the following paragraphs:
- “8. Not to make or suffer to be made any substantial alteration or addition affecting the elevation external structure or stability of any building on the Property nor to erect or set up or permit or suffer to be erected or set up upon any part of the Property any new buildings or structures without the previous consent in writing of the Lessor and to pay to the Lessor or its Agents a reasonable sum for the approval of any plans or documents submitted in connection therewith.
10. Not to erect any buildings fences or hedges upon that portion of the Property as lies in front of the dwellinghouse shown on the said plan [ie, 7 The Kilphin].”

### **THE LAW GOVERNING THE APPLICANT**

7. A company may only act through its authorised agents, who are obliged to comply with the contract between the company and its shareholders. In this case, the contract consists of articles of association which have not been altered since the Applicant company was formed in 1987. The articles incorporate Table A regulations as amended.
8. An officer of the company may only act on its behalf to the extent that authority has properly been given, as provided by regulations 70 – 72 of Table A which read:
- “70 Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.
- 71 The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.
- 72 The directors may delegate any of their powers to any committee consisting of one or more directors. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.”

There is no suggestion in this case, nor is any evidence presented to the Tribunal, that powers have been formally delegated by the directors to Mrs Axford.

9. The articles of the company deal with the calling of directors' meetings at regulation 88 of Table A (emphasis added):

“88 Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, *and the secretary at the request of a director shall, call a meeting of the directors.....*”
10. Prior to the issue of any court action (of which this application is an example) a resolution authorising such action must be passed at a properly called and constituted meeting of the company's directors. While this requirement may sometimes be overlooked in practice, where, as here, it has been raised as an issue on behalf of the Respondents, the Tribunal is duty bound to consider it.
11. The law relating to the issue (or defence) of proceedings by a company is accurately set out in the Respondent's Grounds of Opposition at paragraphs 39 and 40. The Respondents refer to the judgement of Harman J in *Breckland Group Holdings Ltd v London and Suffolk Properties Ltd* (1988 WL 1608517). In that case, Mr Justice Harman (whose decision was not overturned on this point) suspended the litigation before him pending a meeting at which a draft resolution ratifying the company's involvement in court proceedings was to be put to the Board. The meeting had been called for a date not far ahead. Whether the resolution would be passed was not known.

The judge said: “Thus, as it seems to me I ought to say that until that matter is decided no further steps should be taken in this action. I will not and I should not strike it out at present. The matter of striking out must await later resolution. It could not be right at present when there is a pending board meeting. But it is right to say that an unauthorised action should not be pursued....”

## **THE ARGUMENTS**

12. Pursuant to directions, and following an extension of time for service of the Respondents' Statement of Case, on 19 May 2021 BBS Law acting for the Respondents submitted Grounds of Opposition to the application, raising two arguments, namely (1) whether the Applicant was authorised to bring the application, and (2) whether a breach of the lease had occurred.
13. In support of their argument that the application should be dismissed, the Respondents say that no meeting of directors or general meeting of the Applicant company has taken place, at which there was any discussion about the alleged breach or any decision to issue this application. There has been no board or shareholders' resolution minuted by the Applicant, authorising legal action.
14. On 26 June 2021 Mrs Axford filed a Response on behalf of the Applicant. In it she accepts that no formal meeting of directors has taken place and that no directors' or company resolution has been passed, authorising her as Company

Secretary to seek an order under s 168(4) of the Act or to take any other steps to enforce the lease covenants, whether by application for forfeiture of the Respondent's lease or otherwise. She confirms that in February 2021 she received a letter from her fellow director Mrs Newsome formally requesting a meeting of the directors. Mrs Axford did not call the meeting, and says

“It was felt that a meeting was not required as Mr and Mrs Newsome were made aware that they were in breach of the Lease and the application to the Tribunal had already been made.”

She tells the Tribunal that a meeting of directors was proposed for dates in June and July 2021, but that these did not take place. There is no suggestion that a formal meeting has been called with draft resolution(s) for the directors to consider.

15. Mrs Axford confirms that she has intended to act throughout on behalf of the Applicant company, signing letters over the words “Secretary”, “Bestjoin Residents Management Ltd”, “Company Secretary” and “For and on behalf of Bestjoin Residents Management Ltd”. She refers to previous directors' decisions having been formally minuted. However she also says

“We are not a professional or corporate body. We hold at least annual meetings (Covid restrictions notwithstanding) and we comply with Companies House regulations. We are simply trying to act collectively....”

## **CONCLUSION**

16. The application has not been authorised by the Applicant. This case differs from *Breckland Group Holdings Ltd v London and Suffolk Properties Ltd*. There is no date fixed for a meeting of the directors. Mrs Axford has not acknowledged the need for a resolution ratifying the unauthorised proceedings she has purported to institute on behalf of the company. If such a resolution were put to the directors, - or indeed to the shareholders in general meeting - it is not known whether or not it would be passed.
17. For the Respondents, the consequences of the order sought by Mrs Axford could be severe, potentially involving them in forfeiture proceedings. Correct procedures should be followed.
18. Consequently, the application should be dismissed as an unauthorised action. The Tribunal makes no determination under s 168(4) of the Act.

AM Davies  
Tribunal Judge  
1 September 2021