FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	CHI/00HE/LRM/2022/0002
Property	**:**	7-9 Philip Street, Penzance, Cornwall
Applicant	**:**	7-9 Philip Street RTM Company Limited
Representative	**:**	RTMF Services Ltd
Respondent	**:**	MW Freeholds Limited
Representative	**:**	None
Type of application	**:**	Application relating to (No Fault) Right to Manage Commonhold and Leasehold Reform Act 2002
Tribunal member(s)	**:**	Judge David Clarke, MA, LLM. Mrs. J. Coupe FRICS
Hearing Venue:	**:**	Determination on the papers
Date of decision	**:**	1st November 2022

DECISION

Determination

By virtue of, and under, section 84(3) of the Commonhold and Leasehold Reform Act 2002, the Tribunal determines that the Applicant RTM company was, on the relevant date, entitled to acquire the right to manage the premises known as 7-9 Philip Street, Penzance, Cornwall, TR18 2DN.

Statement of Reasons

The Application

1. This is an application under Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") by 7-9 Philip Street RTM Company Limited ("the Applicant"), a registered RTM (Right to Manage) Company, for a determination that it was entitled to acquire the right to manage the premises known as 7-9 Philip Street, Penzance, Cornwall ("the Premises"). Applications under section 84(3) are 'no fault' and must be approved by the Tribunal if the Applicant RTM company meets the statutory requirements and has followed the correct procedure. The claim was made by a claim notice ("the Notice") under section 79 of the Act on 11 March 2022.

2. The Respondent freeholder is a company known as MW Freeholds Ltd whose registered office is at 5 Sentinel Square, Hendon, London NW4 2EL. There are two reasons put forward by the Respondent to object to a determination in the Applicant's favour.

The Premises

3. The Tribunal needs to describe the Premises in some detail, not only to provide the background to one of the grounds of objection of the Respondent but also because there is an unusual feature relating to the way the Premises are described. This was not explained by either party thus requiring the Tribunal, in what was a determination on the papers, to ascertain the position from the various documents in the bundle.

4. The Applicant company was incorporated with reference to '7-9 Philip Street' and the Notice is a claim to acquire the right to manage '7-9 Philip Street'. However, the Notice then sets out in Schedule 1 the details of eight persons who are both Qualifying Tenants and members of the Applicant company. These include the leaseholders of 3, 4, 5 and 6 Philip Street alongside the leaseholders of 8, 9, 9A and 9B Philip Street, namely 8 of the 9 Qualifying Tenants. When the Tribunal then turned to the photographs and plans in the bundle of documents, it becomes clear that Philip Street consists of terraced properties. Numbers 1 and 2 Philip Street, and properties numbered 11 and upwards, enclose numbers 3-9 (which includes 9A and 9B). The Photograph on page 71 of the Bundle reveals that flats 3-9B have been created within what were probably once part of a larger row of terraced houses. All of which raises the question – is the claim, which is in respect

of '7-9 Philip Street', a valid notice when the claim clearly includes the four flats 3-6 Philip Street?

5. Fortunately, the answer is provided by the registered title of the Respondent. The Tribunal was supplied with a copy of Title number CL228233. The Property Register describes the land and estate in the title as the freehold land shown edged with red on the plan of the above title filed at the Registry as 'being 7-9 Philip Street, Penzance, TR18 2DN'. However, the Schedule of notice of leases then lists all nine of the flats from number 3 through to 9B. Moreover, the filed plan to the title clearly delineates all the properties from number 3 to number 9.

6. The Tribunal is therefore satisfied that the Premises, though described as '7-9 Philip Street', includes all the property within Title number CL228233, including the leasehold flats numbered 3-6 Philip Street. It is also clear that this position is accepted in the Respondent's Statement of Case as in the first two paragraphs the Respondent refers to it being the freeholder of '7-9 Philip Street' and 'its title is registered under title number CL228233'.

Validity of the Claim Notice

7. The Respondent submits that the notice of claim served by the Applicant on the Respondent was invalid. Specifically, it is said that it was given by RTMF Services Ltd and on their headed notepaper. The Notice is signed by a Mauricea South who, it is said, is not an officer of the Applicant company (or of RTMF). Thus, it is submitted that the only reasonable conclusion is that the claim, or 'Purported Claim', is made by RTMF which is, of course, not an RTM company and has no status to submit a claim itself.

8. The Notice of claim is at pages 33-36 of the bundle and is in the form required by the Act. Apart from the printed heading 'RTMF', and a statement at the foot of each page in tiny font stating 'freedom is the opportunity to choose', every part of the text of the notice makes it clear that the Notice is given by the Applicant. The Applicant's response to the Respondents submission, therefore, in their Statement of Reply, is that they submit the Notice is valid, clearly given by the Applicant, and includes all that the Act and Regulations require.

9. The Respondent's submission is wrong, and the Applicant is correct, for two main reasons. Firstly, the notice meets all the statutory requirements of section 79 of the 2002 Act. The Applicant also correctly states that it includes all the details required by section 80 of the Act and that is not disputed by the Respondent. The Notice may be on the notepaper of RTMF, but the notice is clearly given by the Applicant.

10. Secondly, there is clear authority from previous decisions which make it clear that the Notice is valid. Section 79 only requires the claim notice to be given by the RTM Company to all relevant parties – in this case the Respondent. There is no requirement for it to be signed but there is a detailed list of what it must contain in section 80. The Notice, in paragraph 1, says that it is given by the Applicant. It is given to the Respondent. It is signed my Mauricea South as a person authorized by the Applicant company giving the notice –

namely, the Applicant as the RTM company. It is long accepted law that an authorized agent can sign a notice – though in this case there is no specific requirement in the 2002 Act for it to be signed at all. The prescribed form of claim notice is the only place where the requirement of a signature is to be found and it only requires that the notice is signed with the authority of the Applicant company. The Tribunal is satisfied on the evidence that Mauricea South had the authority of the Applicant to sign the notice.

11. Any doubt can be assuaged by the Court of Appeal decision in *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 cited to the Tribunal by the Applicant. In that case, the fact that the prescribed claim form requires a signature of a member or officer meant it was argued that the notice was invalid because there was an error in the description of the person who signed. The Court of Appeal held the notice was valid. But even if they were wrong, and there was technical invalidly, Lawton LJ added (paragraph 68 of the judgement):

"I would have no hesitation in saying that the consequences of non-compliance are not fatal to the validity of the notice if the claim notice is signed by someone who is actually authorized by the RTM Company to sign it".

12. The Tribunal therefore determines that the claim notice is valid.

Whether the premises are premises to which s72 of the Act applies

13. The Respondent submits that the premises to be acquired by the claim notice do not satisfy the criteria in section 72 of the 2002 Act. It is claimed that the premises detailed in the Notice are two or three self-contained buildings, and an RTM Company can only make a claim for one of the three self-contained buildings. The case is made in the counternotice and subsequently more fully in the Statement of Case and is expanded in paragraphs 6-12 beginning on page 73 of the bundle. The submission is founded upon the Respondent's interpretation of the Court of Appeal decision in *Triplerose Ltd v Ninety Bloomfield Road RTM Co Ltd* [2015] EWCA Civ 282

14. The Applicant's response is in their Reply where it is submitted that various sections of the 2002 Act clearly indicate that a qualifying self-contained building may contain two or more self-contained parts. This is indicated by the repeated reference in the 2002 to what the Applicant refers to in shorthand as 'premises within premises' – and sections 73(4), 79(9), 81(3), 105(4) and Schedule 6(2) are referred to. Given those provisions, it is submitted that the Act permits an Applicant RTM company to choose which part or parts, or the whole, of a self-contained building to include in a claim under the 2002 Act.

15. It is the opinion of the Tribunal that the Applicant is broadly correct in its submission on the law. Section 72(1) says that the premises to be acquired must consist of 'a self-contained building or part of a building'. Section 72(2) defines a self-contained building as one that is structurally detached. Section 72(3) states that part of a building is self-contained part of a building if there is a vertical division; and it can be redeveloped independently of the rest of the building; and meets sub-section 4 in relation to any services.

16. The case reported as *Triplerose* was three conjoined cases decided together. It rules that an RTM Company cannot acquire more than one self-contained building or more than one self-contained part of a building – but it does not decide that an RTM company must make a claim for the smallest divisible part of a self-contained building. In all three cases, the RTM companies were seeking to manage an estate of more than one block of flats, whether two blocks or, as in the third case, seven blocks. All three developments were (prior to the relevant RTM application) managed together and shared some facilities. It may well have been very desirable to continue to manage all the blocks together. The Upper Tribunal certainly thought so and applied a 'purposive construction' to the 2002 Act to permit the RTM claim. The Court of Appeal disagreed. The Act was clear. Only one self-contained building could be acquired by any one RTM company and the blocks within each development were self-contained buildings within section 72(2) as they were structurally detached.

17. In all three cases in *Triplerose*, the blocks of flats were separate buildings. They were structurally detached – s72(2). So together they could not qualify as a single self-contained building. In this Application, however, as the Tribunal can see from the plans and photographs provided, the Premises (3-9 Philip Street, known as 7-9 Philip Street) is a row of former terraced houses converted into flats. They are not structurally detached. Therefore, they can together be the subject of a claim as a 'self-contained' building – even though it may well have been possible to claim to manage a self-contained part of the Premises. The Applicant is correct that a qualifying self-contained building may consist of two or more self-contained parts. It is for the qualifying tenants to decide, acting through the RTM company, and have the right to decide the extent of the claim. In this case, they wish to manage the whole of the Premises which comprises a self-contained building.

18. That conclusion is confirmed by the case of *Craftrule Ltd v 41-60 Albert Place Mansions* [2011] EWCA Civ 185. It concerned a decision under the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") relating to the enfranchisement of premises. However, the point at issue for the Court of Appeal was the meaning of the words 'a self-contained part of a building' in sections 3 and 4 of the 1993 Act. It is therefore very relevant when interpreting the same words in the 2002 Act.

19. In *Craftrule*, the property was part of a larger terraced development, but the subject property was a 'pair' of properties containing 20 flats, with 10 flats in each half, and each half of the pair was divided vertically. The claim was made by the landlord that each half of the pair would satisfy the Act – as in this Application - so the claim could not be made in respect of the two halves together. It was held by the Court of Appeal that it is for the leaseholders to decide which part – or the whole - of the building they wish to claim to manage. It is not for the Landlord to decide. The leaseholders do not have to form an RTM company to take the smallest part which would be within the Act.

20. The judgement in *Craftrule* also clearly points to various sections of the 1993 Act that would not be required if leaseholders could only claim to manage the smallest divisible part. As the Applicant points out, just as in the 1993 Act, there are sections of the 2002 statute that would not be required if the RTM company was always required to limit the management to the smallest part of the building that could qualify as a self-contained

part. To take one example, section 73 of the 2002 Act provides: *'a company is not an RTM company in relation to premises if another company is already an RTM company in relation to the premises or to any premises containing or contained in the premises'*. Lady Justice Smith, referring to similar provisions in the 1993 Act, commented that their presence gave powerful support to the conclusion that the qualifying tenants, here acting through the RTM company, can choose whether to specify a larger or smaller self-contained part of a building.

21. The Tribunal adds that it has taken account of the Respondent's submission that the Premises, which the Respondent describes as the Development, comprises three separate self-contained buildings and that this can be demonstrated by the fact that services could be supplied independently to any of the three separate parts of the Development. The Respondent seeks to rely on *St Stephens Mansions RTM Company v Fairhold NW Ltd* [2014] UKUT 541. However, that decision was a case where two separate RTM companies were seeking separately to manage two modern apartment blocks that were served by a single pump house supplying water to both blocks. One of the issues was whether the water services could be provided independently to each block within section 72(4) of the 2002 Act. In this case, the Premises may be served by two electricity meters but there is no issue of any required change to services to the Premises.

Determination

22. The Tribunal therefore determines that, by virtue of, and under, section 84(3) of the Commonhold and Leasehold Reform Act 2002, the Applicant RTM company was, on the relevant date, 11 March 2022, entitled to acquire the right to manage the Premises known as 7-9 Philip Street, Penzance, Cornwall, TR18 2DN (and for the avoidance of doubt, the Premises includes the flats numbered 3-9B Philip Street).

Right of Appeal

23. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case (RPSouthern@justice.gov.uk). The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

24. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

25. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

31 October 2022