

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2019] UKUT 0368 (LC)
Case No: LRX/59/2019**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***LANDLORD AND TENANT – RIGHT TO MANAGE – MISTAKE ON APPLICATION
FORM – APPLICATION BY THE RTM COMPANY***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

BETWEEN:

ASSETHOLD LIMITED

Appellant

- and -

**20 UPPER WICKHAM RTM COMPANY
LIMITED**

Respondent

**Re: 20 Upper Wickham Lane,
Welling,
Kent, DA16 3HE**

Elizabeth Cooke, Upper Tribunal Judge

Determination on written representations

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Introduction

1. The appellant, Assethold Limited, is the registered freeholder proprietor of 20, Upper Wickham Lane, Welling, Kent. The respondent, 20 Upper Wickham RTM Company, was formed by four lessees of flats in the property for the purposes of exercising the right to manage the property pursuant to Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).

2. By a claim notice dated 6 June 2018 the respondent gave notice to the appellant’s predecessor in title that it intended to acquire the right to manage the property, pursuant to section 79 of the 2002 Act. By a counter-notice dated 12 July 2018 and served (as the First-tier Tribunal found) on 13 July 2018 the then freeholder asserted (pursuant to section 84(2)(b) of the 2002 Act) that the respondent was not entitled to acquire the right to manage.

3. On 12 June 2018 an application was made to the First-tier Tribunal (“the FTT”) pursuant to section 84(3) of the 2002 Act.

4. The then freeholder applied to the FTT to strike out the application on the basis that it was made by Mr Sami Bakshish, one of the lessees, and not, as the statute requires, by the respondent, the RTM Company. The FTT determined, as a preliminary issue on 28 January 2019, that the application had been made by the respondent and that therefore the application was valid. This is an appeal by the present freeholder from that decision, with permission granted by the FTT.

5. There is no appeal from the FTT’s decision that the application was made in time (that is, within two months of service of the counter-notice). The appeal has been determined on the basis of the written submissions of the parties, neither of whom has been legally represented. The respondent in the written submissions made on its behalf has raised questions about the legitimacy of the transfer of the freehold to the appellant, but that has not been the subject of any application to or decision by the FTT and it is not relevant to this appeal.

The statutory provisions and the application

6. Sections 84(3) and (4) of the 2002 provide:

“(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.”

7. It is not in dispute that the application must therefore be made by the company and not by anyone else. The first page of the FTT's Form RTM contains a set of boxes headed "1. Details of applicant(s)" and the name given there is "Sami Bakshish". Hence the appellant's challenge to the validity of the application.

The FTT's decision

8. The FTT observed:

"The Applicant's representatives argued that they had sent the application form as part of a large bundle all of which should be understood as the application. That bundle, from the first page onwards made it clear that the applicant was the RTM Company."

9. The FTT concluded:

"... the Application form was only one element of the bundle that represented the Application. Once the first page of that bundle is read it is clear that the Applicant is the RTM Company. Therefore the application is valid."

The appeal

10. In its written representations the appellant argues that the bundle submitted with the form was not part of the application. It points out that Mr Bakshish also made an application under section 20C of the Landlord and Tenant Act 1985, and that therefore inferences cannot be drawn from the documentation which would have been submitted with both applications. It also quotes the application form which instructs the applicant not to submit "any other documents" until directed to do so. The appellant refers to the decision of the FTT in *John Galliers, BLR Property Management Limited v Alco Realty Limited* [2018] UKFTT RP_LON_00AE_LRM_2017_0030 (14 February 2018), in which the FTT refused to accept an application made by an individual and a company that was not the RTM company. It also argues that the respondent, by asking the FTT in the alternative to substitute its name on the form, has conceded that it did not make the application.

11. As to the latter point, there was no concession. Mr Bakshish wrote to the FTT to explain that he had made the application on behalf of the respondent as its director, with its authority. He asked that if the freeholder continued to press the point the FTT should exercise its discretion to substitute the respondent's name as applicant. I take that as an application made in the alternative, to be pursued if the FTT was not persuaded that the respondent was the applicant. But Mr Bakshish's position, on behalf of the respondent, was that the respondent was the applicant. In his written representations to the Tribunal on behalf of the respondent Mr Bakshish said "The First-tier Tribunal application was made on behalf of RTM company and signed by me, as an authorised officer of 20 Upper Wickham RTM Company Limited in my capacity as director and member of that company with the approval of the other company members."

12. The application form itself displays the following information at the top of the first page:

“This is the correct form to use if you want to ask the Tribunal for a determination that on the relevant date the Right to Manage company was entitled to acquire the Right to Manage the subject premises under the Commonhold and Leasehold Reform Act 2002. It is also the correct form to use in order to make one of the other types of application listed in Annex 1 to this form.”

13. The form then provides boxes, in numbered sections, to be filled in. The first section is headed “Details of Applicant(s)” and gives space for a name, address and contact details; Mr Bakshish gave his own name, address and contact details. It also contains boxes for a representative’s name and address, which Mr Bakshish left blank. The second section is for the address of the property. The third is for the address of the landlord. The fourth is headed “The right to manage company” and has boxes for the company’s name, number and address, in which the respondent’s name and details were set out. Further sections invite information as to the type of hearing required, venue, availability etc. Section 9 on page 5 is headed “Checklist” and provides tick boxes to indicate the enclosure of a copy of the RTM Company’s Certificate of Incorporation and Articles of Association, the details of the freeholder and any intermediate landlord and any manager of the premises if not already given on the form, and a cheque or postal order for the fee. There is a warning that the FTT will not process the application until those documents are provided.

14. Annex 1 on page 6 provides tick boxes to indicate the type of application made, the first option being an application under section 84(3) of the 2002 Act, which was ticked (together with the box for a claim for costs, and the box for a claim for payment of accrued uncommitted service charges). Under each option are listed the additional documents to be supplied with the application form; in the case of an application under section 84(3) the additional documents required are a copy of the claim notice and a copy of any counter-notice received. These were supplied, along with the documents listed in section 9.

15. Accordingly, supporting documents are required to be sent with the form; the respondent’s Certificate of Incorporation and Articles of Association, and the claim notice and counter-notice, formed part of the application itself.

16. Moreover, the layout and wording of the form may have given rise to some confusion. The initial wording is addressed to “you” and not to the RTM Company. The form could have said “This is the correct form for use by an RTM Company that wishes to ask the Tribunal for a determination... etc”. As it is, the reader might wonder who is “you”? And there are separate boxes for the applicant and its details in section 1 on the first page, and for the RTM Company and its details in box 4 on page 3.

17. In the light of the layout and wording of the form it is perhaps unsurprising that Mr Bakshish filled it in as he did. If the company’s name goes in box 4, what was supposed to go in box 1 if not his own name? The answer is of course that this form is also used for other

applications where the RTM company itself is not the applicant; but there remains potential for confusion for someone in Mr Bakshish's position, who inevitably had to fill in the form since the company is not a natural person and inevitably had to sign it. I take the view that in the light of the ticking of the boxes on page 6 and of the inclusion of the respondent's documents pursuant to the instruction on page 5, there can be no doubt that this was an application by the respondent.

18. The case of *John Gallier* to which the appellant refers was very different; the applicants in that case were an individual and a company that was not the RTM company. No details are available as to why that was done or as to what was on the form; the FTT's reasoning is very brief, but there is no suggestion that there was anything on the form or among the accompanying documents to indicate that the applicant was in fact the RTM company.

19. More nearly relevant is the Tribunal's decision in *the Lough's Property Management Limited v Robert Court RTM Company Limited* [2019] UKUT 105 (LC). The RTM company had served a claim notice and had received a counter-notice, and so wished to make an application to the FTT. However, on the form the applicant had initially failed to tick a box in Annex 1 to indicate the type of claim made, and had failed to send the requisite supporting documents. By the time the FTT's staff had returned the form to the company, and it had been re-submitted, correctly completed and with the required documents, the two-month deadline for an application to the FTT had passed. The Tribunal found that no application had been made within the two-month time limit for a determination that the RTM company in that case was entitled to exercise the right to manage. The Deputy President said at paragraph 37: "Because none of the menu of options in Annex 1 had been selected it was impossible to tell what sort of application was contemplated." He added that the failure to make the requisite application could not be saved by the exercise of the FTT's discretion under rule 8 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. That rule states, so far as is relevant:

8. —(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

(a) waiving the requirement...

20. By contrast, if the applicant had failed to send with the form one of the documents required by the FTT's own practice direction, the FTT could have waived that requirement under rule 8. But it had no power to cure a failure to make the application required by the statute.

21. In this case the application required by the statute has been made and all the documents supplied. In *Avon Ground Rents Limited v 51 Earls Court Square RTM Company Limited* [2016] UKUT 22 (LC) the Deputy President had to consider the meaning of an RTM company's articles of association and said:

“[26] Just as with any formal document, the meaning of the Company’s articles must be determined objectively, by asking what the parties using those words in those circumstances must reasonably be understood to have meant. [27] Where a document ... is ambiguous or reasonably capable of bearing more than one meaning, the court or tribunal required to interpret that document will give it the meaning which is more consistent with the parties’ presumed intention. If a document contains an obvious mistake, and it is clear what the parties must have intended, the document will be interpreted in accordance with that intention.”

22. Looking at the application form, including the accompanying documents that formed part of the application, it is clear that this was intended to be an application under section 84(3) of the 2002 Act, as the ticked box in Annex1 states and as described in the opening words of the form (see paragraph 12 above). It might be said that there is an ambiguity as to whether the application was made by the respondent itself, as the statute requires, or by Mr Bakshish as its director, because Mr Bakshish put the wrong information in the first section of boxes (forgiveably, I would say, because of the way the form is laid out and worded). But it is perfectly clear that what is intended is an application under section 84(3) of the 2002 Act. Accordingly it is right to resolve any ambiguity by giving effect to what anyone reading the form would understand that the respondent and Mr Bakshish intended, and to construe the form as an effective application under section 84(3) of the 2002 Act.

23. I find that the application was made by the respondent. The appeal fails and the FTT’s proceedings can resume with the respondent continuing to be named as applicant.

A handwritten signature in black ink, appearing to read 'E Cooke', is written over a faint rectangular stamp or watermark.

Upper Tribunal Judge Elizabeth Cooke

27 November 2019