

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

DETERMINATION WITH REASONS

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SECTION 84(3)

Premises:	Blocks 1 and 2, HQ Development, Lower Hall Street, St Helens WA10
Applicants:	HQ (Block 1) Action Management Company Limited HQ (Block 2) Action Management Company Limited
Respondent:	Fairhold Mercury Limited
Tribunal Members:	Mr J W Holbrook LL.B (Chairman) Mr J Faulkner FRICS

DETERMINATION

- A. On 24 October 2011, HQ (Block 1) Action Management Company Limited was entitled to acquire the right to manage the premises known as Block 1 HQ Development, Lower Hall Street, St Helens WA10.
- B. On 24 October 2011, HQ (Block 2) Action Management Company Limited was not entitled to acquire the right to manage the premises known as Block 2 HQ Development, Lower Hall Street, St Helens WA10.

REASONS

Background

1. On 24 October 2011 ("the relevant date") HQ (Block 1) Action Management Company Limited ("the First Applicant") gave a claim notice under section 79 of the Commonhold and Leasehold Reform Act 2002 ("the Act") to Fairhold Mercury Limited ("the Respondent"). The premises specified in the claim notice were Block 1 HQ Development, Lower Hall Street, St Helens WA10 ("Block 1").
2. Also on the relevant date, HQ (Block 2) Action Management Company Limited ("the Second Applicant") gave a claim notice under section 79 of the Act to the Respondent. The premises specified in that claim notice were Block 2 HQ Development, Lower Hall Street, St Helens WA10 ("Block 2").
3. The Respondent is the landlord under numerous long leases of apartments in Block 1 and Block 2, and on 15 November 2011 it gave each of the Applicants a counter-notice under section 84 of the Act alleging that it was not entitled to acquire the right to manage the premises specified in the claim notice on the relevant date.
4. By applications dated 21 November 2011 each Applicant applied to the Tribunal under section 84(3) of the Act for a determination that it was on the relevant date entitled to acquire the right to manage the premises in question. A hearing took place in Liverpool on 3 February 2012. The Applicants were represented by Miss S Mansfield of counsel. The Respondent was not represented at the hearing, although the Tribunal had been provided with a bundle of relevant documentation which disclosed the Respondent's objections to the applications. The Tribunal did not inspect the premises.

The Law

5. Section 71(1) of the Act provides:

This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).

6. Section 73 of the Act specifies what is a RTM company in the following terms:

- (2) *A company is a RTM company in relation to premises if—*
 (a) *it is a private company limited by guarantee, and*
 (b) *its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.*
- (3) *But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).*
- (4) *And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.*
- (5) ...

7. Section 74(2) – (5) provides as follows:

- (2) *The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.*
- (3) *A RTM company may adopt provisions of the regulations for its memorandum or articles.*
- (4) *The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.*
- (5) *A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.*

8. Section 79 of the Act provides for a RTM Company to give notice claiming the right to manage, and section 80 sets out a number of requirements with which the notice must comply. In particular, section 80(5) requires the notice to state the name and registered office of the RTM Company. Section 81(1) then provides that “a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80”.

9. Section 84 of the Act provides that:

- (1) *A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).*
- (2) *A counter-notice is a notice containing a statement either—*
 - (a) *admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or*
 - (b) *alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled, and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.*
- (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 a leasehold valuation 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.*
- (5) *Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—*
 - (a) *on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or*
 - (b) *the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.*
- (6) *If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.*
- (7) *A determination on an application under subsection (3) becomes final—*
 - (a) *if not appealed against, at the end of the period for bringing an appeal, or*
 - (b) *if appealed against, at the time when the appeal (or any further appeal) is disposed of.*
- (8) *An appeal is disposed of—*

- (a) *if it is determined and the period for bringing any further appeal has ended, or*
- (b) *if it is abandoned or otherwise ceases to have effect.*

Issues and conclusions

10. The Respondent had objected to the Applicants' claim notices on a number of grounds, and the Tribunal considered these in turn.
11. First, the Respondent maintained that another company was already a RTM company in relation to both Block 1 and Block 2 and that, because of this, section 73(4) of the Act operated to prevent either of the Applicants from being a RTM company in relation to those premises. On the evidence available to us at the hearing, however, it was clear that the company in question – HQ Action Management Company Limited – is a company limited by shares, and is not a company limited by guarantee, as a RTM company is required to be by section 73(2)(a) of the Act. It follows that that company is not a RTM company, and that the Respondent's first ground of objection is not well founded.
12. Second, the Respondent maintained that neither of the Applicants were validly constituted as RTM companies because their registered names did not include the words "RTM" or "right to manage". Regulation 2(1) of the RTM Companies (Model Articles) (England) Regulations 2009 ("the 2009 Regulations") provides that the articles of association of a RTM company shall take the form, and include the provisions, set out in the Schedule to those Regulations. Paragraph 2 of the Schedule states "The name of the company is [name] RTM Company Limited". Clearly, the articles of neither Applicant contain those words, and a question arises as to compliance with the 2009 Regulations. However, this is a different question from that of whether the Applicants meet the definition of "RTM company". That definition is exclusively contained within the Act (and within section 73 of the Act in particular). Indeed, this is apparent from footnote (2) to the 2009 Regulations, which refers to sections 71(1) and 73 of the Act for the definition of RTM company. If

each of the Applicants meets the conditions of section 73 of the Act (as we find they do), then they are RTM companies regardless of whether their articles conform with the 2009 Regulations.

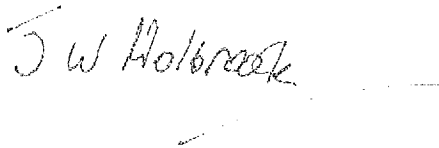
13. The Respondent's third ground of objection related exclusively to the claim notice given by the Second Applicant in relation to Block 2. The Respondent maintained that that claim notice was invalid because it incorrectly stated both the Second Applicant's registered office and its company number. The Second Applicant conceded that the address given as its registered office in the notice was Hamill House, 112-116 Chorley New Road, Bolton BL1 4DH, whereas the address which should have been given is 227 Strand, London WC2R 1BA. However, the Second Applicant contended that section 81(1) of the Act saved these inaccuracies from invalidating the claim notice. We do not agree. Whilst we accept that the typographical error in the company number has no effect whatever on the validity of the claim notice (it is not a mandatory item of information in any event), the complete failure to provide the correct details of the company's registered office is fatal to the notice's validity.
14. The material circumstances of this case seem to us identical to those which confronted the Upper Tribunal in *Assethold Limited v 15 Yonge Park RTM Company Limited* [2011] UKUT 379 (LC). As the Upper Tribunal said in paragraphs 18 and 19 of its decision:

All that section 81(1) does is save the claim notice from invalidity if there is an "inaccuracy" in those mandatory details. So, for example, if there was a spelling or typing error in the name or registered office of the RTM company then that would be, in my judgment, an "inaccuracy" that section 81(1) would bite upon so that the claim form would be saved from invalidity. Providing the wrong name or the wrong registered office of the RTM company is not, in my judgment, an "inaccuracy". It is a failure to provide the mandatory information required by section 80.

15. Miss Mansfield invited us to distinguish this case on the basis that the tenants of Blocks 1 and 2 may suffer prejudice if the right to manage the different blocks is not assumed simultaneously by RTM companies. We see no basis for such a distinction and, adopting the reasoning of the Upper Tribunal, we find that the claim notice given by the Second Applicant was invalid because it

failed to include the address of the company's registered office, as required by section 80 of the Act.

16. We therefore conclude that, on the relevant date, the First Applicant was entitled to acquire the right to manage Block 1, but that the Second Applicant was not entitled to acquire the right to manage Block 2.



.....
Jonathan Holbrook
Chairman

28 February 2012