



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

Case reference : **LON/00AU/LRM/2018/0005**

Property : **81a Benwell Road, London, N7 7BW**

Applicant : **81a Benwell Road RTM Co Limited**

Representative : **N/A**

Respondent : **Assethold Limited**

Representative : **Scott Cohen & Co**

Type of application : **Application in relation the denial of the right to manage**

Tribunal Judge : **Judge Amran Vance**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 May 2018**

DECISION

The Tribunal's Decision

- (1) This application is dismissedstruck out under rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as the tribunal has no jurisdiction to determine the application.

Background

- (2) This is an application made under s.84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") seeking a determination that the applicant was entitled to acquire the Right to Manage premises described in the application notice to the tribunal (and in the applicant's preceding Notice of Claim sent on 9 December 2017) as being 81a Benwell Road, London, N7 7BW.
- (3) The application was received by the tribunal on 9 February 2018. The tribunal issued directions on 19 February 2018.
- (4) In its subsequent statement of case dated 15 March 2018, the respondent contended, amongst other matters, that there had been a clear and fundamental error in the formation of the applicant RTM Company and that its claim notice was invalid. The respondent stated that whilst it is the freehold owner of premises known as Flats 1-5, 81 Benwell Road, it has no legal ownership of any premises known as 81a Benwell Road. Copy Land Registry title entries confirming this to be the case were attached to its statement of case.
- (5) On 26 March 2018, the applicant's former representative, Canonbury Management, wrote to the tribunal stating that the applicant wished to withdraw its claim and discontinue this application.
- (6) On 5 April 2018, a tribunal case officer wrote to Canonbury Management stating that the request to withdraw would be referred to a Judge on receipt of evidence that the request had been copied to the respondent. In response, on 13 April 2018, Canonbury Management provided a copy of its letter to the respondent's solicitors dated 26 March 2018 in which it confirmed its wish to withdraw the claim and discontinue the application.
- (7) Following receipt of this information a tribunal judge, on 16 April 2018, consented to the withdrawal under Rule 22 of the First-tier Tribunal (Property Chamber) Rules 2013 ("the 2013 Rules"). The parties were informed of that decision on 17 April 2018.
- (8) On 19 April 2018 the respondent's solicitors emailed the tribunal requesting a formal dismissal of the application so that it could recover its costs pursuant to section 88(3) of the Act. In a subsequent letter to the tribunal dated 27 April 2018 it provided a copy of the decision of the Upper Tribunal in the case of *Post Box Ground Rent Ltd v The Post Box RTM Company Ltd* [2015] LR/83/2015.

- (9) In a letter dated 1 May 2015 the tribunal wrote to the parties stating that a procedural judge, who was in fact me, had reviewed this application and that in his view it was clear from the decision in *The Post Box RTM Company Ltd* case that the withdrawal of an application made under s.84(3) Commonhold and Leasehold Reform Act 2002 does not bring an application to an end and that the application is only brought to an end when the tribunal formally dismisses it. The letter went on to say that although the tribunal had approved the withdrawal of the application, a decision still needed to be made as to whether or not the application should be dismissed. The applicant was directed to submit any written representations to the contrary by 15 May 2018.
- (10) In response, Richard and Sara Harvey, the lessees of Flat 2, wrote to the tribunal on 14 May 2018 asserting that the application should not be dismissed as a result of the error that had been made in the mis-description of the premises in the application. They state that their intention is to “re-enter” the application with the correct address.

Decision and Reasons

- (11) In my judgment this application was defective at the outset and must be dismissed.
- (12) Section 88 of the Act provides as follows:
- (1) A RTM company is liable for reasonable costs incurred by a person who is—
 - (a) landlord under a lease of the whole or any part of any premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 to act in relation to the premises, or any premises containing or contained in the premises,in consequence of a claim notice given by the company in relation to the premises.
 - (2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
 - (3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.

(13) Section 89 provides that where a claim notice given by a RTM company-

(a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) at any time ceases to have effect by reason of any other provision of this Chapter (section 89(1)).

then the following costs consequences of withdrawal set out in section 89(2) apply, namely:

'The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.'

(14) At paragraph 44 of its decision in *The Post Box RTM Company Ltd* the Upper Tribunal concluded that the withdrawal of an application made under s. 84(3) does not, without more, bring that application to an end and that the application ends only when the tribunal formally dismisses it.

(15) I see no reason to refuse the respondent's request for dismissal and do not accept the arguments advanced by the lessees of Flat 2. If they intend to make a further application to this tribunal seeking a determination that the Right to Manage has been acquired then this will require a fresh application following service of a valid claim notice.

(16) Given the obvious errors made by the applicant in this case that led to the withdrawal of its application it is entirely appropriate to dismiss this application. As the respondent points out, it has incurred costs as a party to this application and there is no reason to deprive it of its ability to recover such costs subject to the limitations set out in section 88(2).

(17) The effect of this dismissal means that the applicant is liable for the reasonable costs incurred by the respondent in consequence of the claim notice including costs incurred as a party to the proceedings up to the withdrawal of its application. If those costs cannot be agreed the matter may be referred to the tribunal for determination of the appropriate amount under section 88(4) of the Act.

Name: Judge Amran Vance

Date: 21 May 2018

APPENDIX - RIGHTS OF 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.