



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

<b>Case reference</b>	:	<b>LON/00AM/LRM/2019/0027 and LON/00AM/LCP/2019/0011</b>
<b>Property</b>	:	<b>36 Dunsmure Road, London N16 5PW</b>
<b>Applicant</b>	:	<b>36 Dunsmure Road RTM Company Limited</b>
<b>Representative</b>	:	<b>Mr Ricky Coleman, Solicitor, of Dean Wilson LLP</b>
<b>Respondent</b>	:	<b>Assethold Limited</b>
<b>Representative</b>	:	<b>Mr Ronni Gurvits of Eagerstates, Respondent's managing agents</b>
<b>Type of application</b>	:	<b>Right to Manage and determination of costs to be paid</b>
<b>Tribunal members</b>	:	<b>Judge P Korn Mr S Mason FRICS</b>
<b>Hearing</b>	:	<b>3<sup>rd</sup> February 2020 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>9<sup>th</sup> March 2020</b>

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Applicant was not entitled on the relevant date to acquire the right to manage in respect of the Property.
- (2) The amount of the section 88 costs payable by the Applicant is reduced to £1,245.84 (comprising legal fees of £825.00 + VAT, managing agent's fee of £200 + VAT and disbursements of £13.20 + VAT).

## **The application**

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("**the Act**") that on the relevant date it was entitled to acquire the right to manage the Property.
2. The Applicant also seeks a determination pursuant to section 88(4) of the Act as to the amount of any costs payable by it to the Respondent in consequence of the claim notices given by it in relation to the Property.
3. By a claim notice dated 9<sup>th</sup> May 2019 the Applicant purported to give notice to the Respondent that it intended to acquire the right to manage in relation to the Property. The notice was expressed to be given by 36 Dunsmure Road London RTM Company Limited. By a counter-notice dated 11<sup>th</sup> June 2019 the Respondent denied that the Applicant was entitled to acquire the Right to Manage on the basis that the notice did not state the name of the company and registered office as required.
4. The Applicant then served another claim notice on 8<sup>th</sup> July 2019. The Respondent's position in relation to this other claim notice is that it too is invalid, this time by reason of section 81(3) of the Act because it was – according to the Respondent – given at a time when an earlier claim notice remained in force.

## **Relevant extracts from the Act**

### 5. Section 79

*(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.*

### Section 80

*(1) The claim notice must comply with the following requirements.*

...

*(5) it must state the name and registered office of the RTM company.*

...

#### Section 81

*(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.*

...

*(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies ... the premises ... may be given so long as the earlier claim notice continues in force.*

*(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously – (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or (b) ceased to have effect by reason of any other provision of this Chapter.*

#### Section 84

*(1) A person who is given a claim notice by a RTM company ... may give a notice (referred to in this Chapter as a “counter-notice”) to the company ...*

*(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 ...*

*(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.*

...

### Section 86

*(1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect ...*

...

### Section 88

*(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 1987 Act to act in relation to 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.*

...

*(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.*

## **Applicant's case**

### Acquisition of right to manage

6. The Applicant notes that the first notice dated 9<sup>th</sup> May 2019 incorrectly described the Applicant's own name. The Applicant is 36 Dunsmore Road RTM Company Limited but the name of the company specified in the notice was 36 Dunsmore Road **London** RTM Company Limited. No company with that name (i.e. with the inclusion of the word "London") exists.
7. The Respondent then served a counter-notice alleging that the first notice was ineffective and therefore, in response, the Applicant served a second notice dated 8<sup>th</sup> July 2019. The second notice was identical to the first one, save that it now contained the correct name of the Applicant. The Respondent then objected to the second notice on the

basis that the first notice had not been withdrawn and therefore there was no entitlement to serve another notice.

8. The Applicant's position is that it agrees with the Respondent's objection to the first notice. As that notice was not compliant with the Act it is as if it never existed. On the basis that it did not exist as a notice it was not possible to withdraw it. In support of its argument it cites the decision of Morgan J in *Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freehold Limited (2008) L&T.R. 8 (Ch)* and the decision of the Upper Tribunal in *Avon Freeholds Limited v Regent Court RTM Co Ltd (2013) UKUT 0213 (LC)*.
9. In addition, the Applicant submits that the Respondent is estopped from arguing that the second notice was incapable of being given due to the first notice still being in force, as the Respondent's position is that the first notice was invalid. The Applicant was entitled to rely on the Respondent's representations in this regard, i.e. that it considered the first notice to be invalid, and to serve a second, valid, notice. The Applicant characterises the Respondent's position as gamesmanship and as relying on a change in its own position as regards the first notice.
10. The Applicant also cites the decision of the Upper Tribunal in *Assethold Limited v 15 Yonge Park RTM Co Limited (2011) UKUT 379 (LC)* in which the Upper Tribunal held that the failure to state the registered office of the right to manage company rendered the claim notice invalid by virtue of a failure to comply with section 80(5) of the Act. The Applicant argues that getting the name of the RTM company wrong also renders the claim notice invalid under section 80(5).

#### Level of costs

11. The Applicant accepts that the Respondent is entitled to be paid its reasonable costs incurred in consequence of the giving of the claim notices but it considers that the process took longer than it should have taken. In addition, it considers that the managing agent's fee is not payable as the managing agent did not need to be involved at that stage of the process.
12. The Applicant's representative took the Tribunal through each item of charge and concluded that a reasonable aggregate charge would be £440.00 (not £1,017.50) plus VAT and disbursements.

## **Respondent's response**

### Acquisition of right to manage

13. The Respondent argues that, in order to acquire a right to manage, the RTM company must comply with all of the statutory requirements set out in sections 72 to 81 of the Act.
14. Specifically, for the purposes of this case, section 81(3) of the Act precludes a subsequent claim notice being served for so long as an earlier claim notice remains in force. The Respondent's position is that the second claim notice dated 8<sup>th</sup> July 2019 was invalid by reason of section 81(3) because it was given at a time when an earlier claim notice – the first notice dated 9<sup>th</sup> May 2019 – remained in force.
15. The Respondent responded to the first claim notice by alleging that the Applicant was not entitled to exercise the right to manage, but the Applicant's solicitors did not initially accept this. Instead they indicated an intention to issue an application to the First-tier Tribunal unless the Respondent accepted that the Applicant had acquired the right to manage. Reference was made by the Applicant to section 81(1) of the Act which provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
16. Section 81(4) of the Act makes provisions regarding a claim notice continuing in force unless withdrawn or deemed to be withdrawn or ceasing to have effect. A claim notice can only be withdrawn by giving a notice which is compliant with section 86 of the Act and no such notice has been given. None of the circumstances in which a claim notice is deemed to be withdrawn under section 87 has been evidenced by the Applicant.
17. The Applicant did not go on to make an application to the First-tier Tribunal in respect of the first notice and nor did it withdraw that notice. On receipt of the second notice the Respondent specifically asked the Applicant for a copy of its notice withdrawing the first notice but the Applicant responded that it was unnecessary to withdraw it as it was invalid. The Respondent contends that this is incorrect; the first notice still had effect because there had been no decision by the First-tier Tribunal in respect of its validity.
18. The Respondent also cites the decision of the Upper Tribunal in the case of *Plintal SA and another v 36-48 Edgewood Drive RTM Company Limited and another (LRX/16/2007)* in which a claim notice which had failed to comply with section 80 of the Act was held to have continuing validity unless and until the Leasehold Valuation Tribunal (as the First-tier Tribunal was then known) held otherwise.

19. As regards the *Poets Chase* case cited by the Applicant, in that case it was agreed that the first notice was invalid whereas in the present case the Applicant wrote to the Respondent on 18<sup>th</sup> June 2019 (well after service of the second notice) maintaining that the first notice was valid.

#### Level of costs

20. The Respondent's position is that its costs are reasonable and payable in full. The legal fees represent what the Respondent would normally pay to its solicitors and the Respondent submits that it was reasonable for its solicitors to have taken the steps that they took in order to protect its interests. The fee rate of Ms Scott reflects her experience and level of specialisation. The reductions proposed by the Applicant seem arbitrary.
21. As regards the managing agent's fee, the work involved falls outside standard management activities and in the Respondent's submission the work done by the managing agent needed to be done immediately upon receipt of the claim notice.

#### **Tribunal's analysis**

##### Acquisition of right to manage

22. As regards the status of the first notice, under section 80(5) of the Act a claim notice must state the name of the RTM company. However, under section 81(1) "*a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80*".
23. The first notice does state a name for the RTM company but the name specified is inaccurate. Instead of describing the company as 36 Dunsmure Road RTM Company Limited the claim notice describes it as 36 Dunsmure Road **London** RTM Company Limited. Section 81(1) expressly envisages the possibility that any of the particulars required by section 80 (including the name of the RTM company) could be specified in the claim notice but could contain one or more inaccuracies which would not render the notice invalid.
24. Especially in view of the fact that no company exists with the name "36 Dunsmure Road London RTM Company Limited" it would or should have been obvious (or at least easily verifiable) to a recipient of the claim notice which company was intended to be referred to, namely the Applicant. In our view, the accidental addition of the word "London" is exactly the sort of inaccuracy envisaged by section 81(1) and will not by itself have invalidated the claim notice.

25. The Applicant relies in part on the decision of the Upper Tribunal in *Assethold Limited v 15 Yonge Park RTM Co Limited* in support of its position. However, that was a case concerning the requirement to provide details of the RTM company's registered office, and the address of the registered office was not given at all. It was not a case of there merely being an inaccuracy in the particulars required and therefore the validity of the claim notice could not – in that case – be rescued by virtue of section 81(1).
26. As regards the decision of the Upper Tribunal in *Avon Freeholds*, Sir Keith Lindblom held that there was no bar to the second notice being served on the basis that the first claim notice was clearly invalid. However, we do not accept that the first claim notice was invalid in the present case (on the ground being advanced by the Applicant) and therefore the decision in *Avon Freeholds* does not assist the Applicant either.
27. The decision in *Poets Chase* related to collective enfranchisement rather than right to manage. In that case Morgan J held that a document purporting to be a tenants' initial notice but which did not comply with the relevant mandatory statutory requirements had no legal effect and therefore the tenants were not prevented from serving a further notice. However, again, as we do not accept that the first notice was invalid in the present case the decision in *Poets Chase* does not assist the Applicant either.
28. Meanwhile the Respondent cites the decision of the Upper Tribunal in *Plintal SA* in support of its own position. In particular it refers to the statement by George Bartlett QC, in the course of giving his decision, that he did not think that a claim notice ceased to be a claim notice for all purposes under the Act if later found to be invalid. The application of the decision in *Plintal SA* is discussed by Sir Keith Lindblom in *Avon Freeholds*, and we agree with the Applicant that *Plintal SA* was dealing with cost issues under section 88 of the Act and can therefore be distinguished from the section 84(3) question our case. In any event, though, the facts are different from our case because, again, we do not accept that the first notice was invalid.
29. The first claim notice was therefore continuing in force when the second claim notice was purported to be given, and so under section 81(3) of the Act the second claim notice could not be given at the time at which the Applicant purported to give it. The first notice had not been withdrawn under section 86 and the Applicant has not provided any evidence of any deemed withdrawal or of the first notice, and nor are we persuaded that the first notice ceased to have effect for any other reason.
30. The Applicant's alternative argument is that the Respondent argued in its counter-notice to the first claim notice that the notice was invalid



and was now estopped from relying on that notice as a continuing notice in order to defeat the validity of the second notice. We do not accept this argument either. A recipient of a claim notice is entitled to raise arguments in its counter-notice as to why the claim notice might not be valid.

31. The estoppel argument in this case, although not presented in much detail, seems to be based on the proposition that the Applicant was entitled to rely on the Respondent's representation that the first claim notice was invalid. However, we are unpersuaded that the argument run by the Respondent amounts to a representation on which the Applicant did rely at the time or indeed was entitled to rely to its detriment such as to create the makings of a successful estoppel argument. The Applicant did not accept that the first claim notice was invalid until well after it had served the second notice. It was open to, and very easy for, the Applicant to withdraw the first notice – or at least to agree with the Respondent that it was invalid – before serving the second notice. However, it did not do so. The Applicant was unable to explain at the hearing why it did not do so. The Applicant was not even able to identify any downside to withdrawing the first notice before serving the second notice. Therefore, in our view the estoppel argument also fails.
32. In conclusion, therefore, the second claim notice was not given and the Applicant did not acquire the right to manage the premises on the relevant date specified in that second claim notice.

#### Level of costs

33. The Applicant accepts that the Respondent is entitled to be paid its reasonable costs but objects to the amount of time that certain tasks have taken and also objects to paying the managing agent's fee.
34. We do not accept the Applicant's argument in relation to the managing agent's fee. We agree with the Respondent that the work involved was a non-standard management activity and that it was reasonable for the managing agent to have some, albeit limited, involvement at this stage to co-ordinate a management response to the RTM claim. We consider a charge of £200 + VAT to be reasonable for that work.
35. The tasks identified as having been done by the Respondent's solicitors are in our view all reasonable tasks to perform in this context, and the hourly rates are acceptable for somebody of Ms Scott's experience. It is arguable that some tasks could have been carried out by someone more junior, but it is questionable whether this would have created a saving as a less experienced person could well have been less efficient and there would also have been some time spent on liaising with that person.

36. As regards the amount of time spent on each task, whilst this sort of analysis can never be an exact science our view is that the amount of time spent on the preparation of counter-notices and routine attendances seems high and that the overall time spent should not have exceeded 3 hours. Accordingly, the costs are reduced to £1,245.84, comprising legal fees of £825.00 + VAT, managing agent's fee of £200 + VAT and disbursements of £13.20 + VAT.

**Name:** Judge P Korn

**Date:** 9<sup>th</sup> March 2020

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.