



Neutral Citation Number: [2024] UKUT 113 (LC)

Case No: LC-2023-763

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

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

FTT REF: LON/00AU/LRM/2023/0018

16 May 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – RIGHT TO MANAGE - withdrawal of claim notice – address for service – effect of failure to use address notified under section 111(4) of the Commonhold and Leasehold Reform Act 2002

BETWEEN:

ASSETHOLD LIMITED

Appellant

-and-

429 NEW CROSS ROAD RTM COMPANY LIMITED

Respondent

429 New Cross Road,
London,
SE14 6TA

Upper Tribunal Judge Elizabeth Cooke
Determination on written representations

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The following cases are referred to in this decision:

Elim Court RTM Company Limited v Avon Freeholds Limited [2017] EWCA Civ 89

Gateway Property Holdings Ltd v Ross Wharf RTM Co Ltd [2016] UKUT 97 (LC)

Natt v Osman [2014] EWCA Civ 1520

Triplerose Limited v Mill House RTM Co Ltd [2016] UKUT 80 (LC)

1.

Introduction

1. This is an appeal from a decision of the First-tier Tribunal (“the FTT”) that the respondent was entitled to acquire the right to manage property, of which the appellant is the freeholder. It raises a short point about the service of notices in the context of the right to manage.
2. The appeal has been conducted under the Tribunal’s written representations procedure; the appellants have been represented by Scott Cohen Solicitors Limited and the respondent by AM Surveying and Block Management.

The legal background

3. Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 provides for the acquisition of the right to manage leasehold premises on a no-fault basis; the right is acquired if procedural steps are correctly taken, without the need to show that there was anything wrong with the management carried out to date by the landlord. The right is acquired by a nominee company owned by qualifying leaseholders. The process of acquisition of the right to manage is supposed to be straightforward. But the procedure does have to be followed correctly, and errors may send the RTM company back to square one.
4. The crucial starting point for the acquisition of the right to manage is the claim notice, which has to be given to various people including the landlord. The 2002 Act makes provision for the landlord to respond with a counter-notice denying the RTM company’s entitlement to acquire the right to manage if it considers that the procedure has not been followed properly.
5. In the present case a claim notice dated 8 August 2022 was served on the appellant on 10 August 2022. The appellant served a counter-notice on 14 September 2022, setting out why it contended that the right to manage had not been acquired.
6. The Right to Manage (Prescribed Particulars and Forms) (England) Rules 2010/825 prescribe a form for counter-notices, and set out the information to be contained in a counter-notice. One of the requirements of the prescribed form in Schedule 3 is:

“[give the address to which future communications relating to the subject matter of the notice shall be sent]”
7. In its counter-notice the appellant complied with that requirement by stating:

“Scott Cohen Solicitors Limited, Suite One, Dorchester House, 7 Fairview Estate, Henley on Thames, Oxfordshire, RG91HE.

Being the address to which future communications relating to the subject matter of the notice shall be sent.”
8. On receipt of the counter-notice the RTM company commenced proceedings in the FTT for a determination as to whether it was entitled to acquire the right to manage, and on 24 April the FTT decided that it was not.

9. An RTM company which has given a claim notice is permitted to withdraw it at any time before it acquires the right to manage, by giving a notice to that effect to the landlord and others (section 86(1) of the 2002 Act). Although its claim to acquire the right to manage had just been rejected by the FTT, on 26 April 2023 the RTM company sent a second claim notice to the appellant and said in its covering letter:

“By virtue of this correspondence, our Claim Notice dated 8th August 2022 is withdrawn and is no longer of any effect. Please find enclosed a new Claim Notice pursuant to s79 of the Commonhold and Leasehold Reform Act 2002, together with the Articles of Association for the RTM Company.”

10. The letter was addressed to the appellant at its registered office, being the address given in the latest service charge demand dated 6 March 2023 (in compliance with section 47 of the Landlord and Tenant Act 1987, which requires that any written demand given to a tenant must contain the name and address of the landlord) and not to Scott Cohen at the address given in the counter-notice (paragraph 5 above).
11. In order for that second claim notice to be effective to initiate a new claim, it was essential that the first notice should no longer continue in force, because section 81(3) of the 2002 Act provides:

“(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
(a) the premises, or
(b) any premises containing or contained in the premises,
may be given so long as the earlier claim notice continues in force.”

12. It was therefore crucial for the RTM company that its withdrawal of the first claim notice, in its covering letter, should have taken effect before the second claim notice was given to the appellant.
13. The appellant served a counter-notice to the second claim notice, challenging the RTM company’s entitlement to acquire the right to manage on three grounds:

- 1) It had served a second claim notice while the first was still active, because the first remained active pending any possible appeal of the FTT’s decision in accordance with section 84(6) and (7) of the 2002 Act which provides:

“(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.”

- 2) It had not served the notice of withdrawal at the correct address as indicated in the September 2022 counternotice; and

- 3) The simultaneous service of a withdrawal notice and the second claim notice meant that the first claim notice was not withdrawn prior to the service of the second claim notice, as the statute requires.
14. The RTM company then commenced a second application to the FTT for a determination that it had acquired the right to manage based on the second claim notice.
15. The FTT found in favour of the RTM company on points 1 to 3 above, and the appellant sought permission to appeal on the grounds that it was wrong about those three points.
16. As to point 1), the appellant's argument was that despite the service of a notice of withdrawal, the first claim notice remained live until time had expired for any application for permission to appeal (relying upon section 84(6) of the 2002 Act). The FTT found that the service of a withdrawal notice did indeed mean that the first claim notice was no longer in force; there was no longer any possibility of an appeal from the FTT's determination because the withdrawal of the notice meant that there could be no further argument about the validity of the first claim notice. Both the FTT and this Tribunal have refused permission to appeal on this point.
17. The FTT also found in favour of the RTM company on point 2) above, and the appellant appeals that determination with permission from this Tribunal.
18. As to point 3), the FTT found in favour of the RTM company, and the FTT refused permission to appeal. In granting permission to appeal on point 3) this Tribunal said:
- “If an appeal on ground 2 is successful, then ground 3 may be academic. The service of a notice of withdrawal in an envelope which also contained a new claim notice would be understood by any reasonable recipient with knowledge of the statutory scheme as being intended to take effect in such sequence as would make them effective for their obvious purpose. There is no reason to treat them as ambiguous. But if the notice of withdrawal could only validly be served at the address nominated in the counternotice then the withdrawal would be ineffective, and the new claim notice would be premature.”
19. I therefore have to decide the appeal on ground 2), about the address for service of the withdrawal notice. If that ground succeeds then so does ground 3) because the withdrawal notice will not have been served before the second claim notice was received by the appellant; the first claim notice would therefore have continued in effect at the time the second claim notice was received by the appellant, so the second notice would therefore be ineffective.

The appeal

20. Section 111 of the 2002 Act provides:

- “(1) Any notice under this Chapter—
 (a) must be in writing, and
 (b) may be sent by post.
(2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole

or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).

(3) That address is—

(a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with [section 48](#) of the 1987 Act (notification of address for service of notices on landlord), or

(b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with [section 47](#) of the 1987 Act (landlord's name and address to be contained in demands for rent).

(4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.”

21. The appellant’s argument in the FTT was that it had, in the September counternotice, specified “a different address” under section 111(4) and that therefore the RTM company’s use of the appellant’s registered office as shown on the service charge demand rendered the service of the withdrawal notice invalid.

22. The FTT dealt with this point as follows:

“17. The requirement of notification of a different address under s.111(4) of the Act will not be satisfied unless there has been a direct communication between the landlord and the RTM company, specifically for the purpose of service of claim notices (Tanfield: Service Charges and Management 5th edition). This narrow view of s.111(4) was adopted in *Gateway Property Holdings Ltd v Ross Wharf RTM Co Ltd*.

18. The same must apply to notices of withdrawal. In the present case the Respondents’ counter notice to the First notice stated the following:

Scott Cohen Solicitors Limited, Suite One, Dorchester House, 7 Fairview Estate, Henley on Thames, Oxfordshire, RG91HE. Being the address to which future communications relating to the subject matter of the notice shall be sent.

19. This does not satisfy s.111 (4) as it does not refer to either the service or withdrawal of notices. It simply refers to “future communications relating to the subject matter of the notice”. If it was intending to refer to either the service or withdrawal of notices it should have said so. Accordingly, the Applicants were entitled to rely on the landlord’s address for service of their withdrawal as indicated by the service charge demand dated 6th March 2023 their members had received.”

23. In giving permission to appeal on this point the Deputy President said “it is not obvious why the FTT did not treat the statement of an address at which “future communications” relating to the subject matter of the notice as applying to all such communications, and in particular to a notice of withdrawal in the same proceedings.”

24. I agree. The FTT misconstrued what was said in *Gateway Property Holdings Ltd v Ross Wharf RTM Co Ltd* [2016] UKUT 97 (LC). In that case an RTM company served a claim notice on the landlord in July 2014 and the landlord served a counter-notice which said:

“The address at which future communications in relation to the subject matter of the notice and any further notice which may be served under Chapter 1 Part II of the Act should be sent is: c/o Wallace LLP ...”

25. The authors of *Tanfield: Service Charges and Management* comment:

“The 2014 claim was not pursued. In February 2015, an associated company of the landlord sent service charge demands to all the lessees stating that the address for the service of notices was its registered office in England. In April 2015, the RTM company made a second claim to acquire the right to manage. The claim notice was delivered by hand to the landlord’s registered office, and not served on the landlord’s solicitor. The Upper Tribunal held that delivery of the claim notice to the landlord’s registered office was effective service because the registered office had been identified without qualification or restriction as its address for the service of notices in the service charge demands, and reliance on that address was not prohibited by s.111(4) because no different address had been identified by the landlord to the RTM company as its address for the service of *future claim notices*.” (emphasis in the original)

26. In *Gateway* what was in doubt was the validity of service of a second claim notice, starting afresh. The counter-notice to the first claim notice had specified an address relating to “future communications ... and any further notice which may be served” under Chapter 1 of Part II of the 2002 Act. On the one hand, that notice (addressed to the RTM company) was not superseded by the address for service given in the service charge demand addressed to the leaseholders. On the other hand, that notice governed notices and communications relating to the first claim notice. It did not have effect in relation to future claim notices – which might have been served years later. As the Deputy President, Martin Rodger KC, put it at paragraph 29:

“The notice” which is first referred to in the statement is obviously the claim notice of July 2014. Communications in relation to the subject matter of that notice were to be sent to Wallace LLP. Communications in relation to the subject matter of any further notice which might be served under the Act were also to be sent to the same destination. The appellant suggests that the “further notice” which might be served included any future claim notice under section 79 of the 2002 Act, but that does not seem to me to be the natural reading of the statement at all. The natural meaning is that any further notice in relation to the subject matter of the first claim notice must be sent to the solicitors who are acting in relation to that claim notice.”

27. Hence the emphasis in the passage from *Tanfield* quoted above. But this passage in *Gateway* is not about the meaning of section 111(4) of the 2002 Act; it is only about the meaning of the notification given in that case. The FTT suggested that a “narrow view of s.111(4)” was adopted by the Tribunal in *Gateway*, but that overstates what was decided; the “narrow view” was of the meaning of the notification in that case, and the Tribunal did not suggest either that it is impossible to notify an address for communications in relation

to any future claim notice which might be served or that there is some requirement to specify in minute detail what type of communication the notification is intended to cover.

28. Accordingly in the present case, the section 111(4) notification in the counternotice was effective to mandate an address for service of notice of withdrawal of the first claim notice. There was no need for it to refer specifically to a notice of withdrawal; that is not what the Tribunal said in *Gateway* nor what the authors of *Tanfield* suggest. A notice of withdrawal is clearly a “future communication relating to the subject matter of the notice”.
29. Accordingly the notice of withdrawal of the first claim notice was not served at the correct address.
30. What are the consequences of that? In *Natt v Osman* [2014] EWCA Civ 1520 the Court of Appeal explained that where there has been a failure to comply with statutory procedural requirements the court must “determine the consequence of non-compliance as an ordinary issue of statutory interpretation”. It identified two categories of cases: those which concern the procedural requirements for challenging a decision of a public body, and those in which a statute conferred a property or similar right on a private person if a specified procedure is followed. The procedure for the acquisition of the right to manage falls within the latter category, as the Tribunal said in *Gateway* (at paragraph 34) and the Court of Appeal agreed in *Elim Court RTM Company Limited v Avon Freeholds Limited* [2017] EWCA Civ 89. In *Natt v Osman* the Chancellor, Sir Terence Etherton, said this about that category:

“31. The Court of Appeal cases showed a consistent approach in relation to statutory requirements to serve a notice as part of the process for a private person to acquire or resist the acquisition of property or similar rights conferred by the statute. In none of them has the court adopted the approach of “substantial compliance” as in the first category of cases. The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid....

32. On that approach, the outcome does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case ... This is consistent with the policy of providing certainty in relation to the existence, acquisition and transfer of property interests. It is to be borne in mind in that connection that service of a section 13 notice has important property consequences.”

31. Consistently with that, the Tribunal has taken a strict approach to defects in claim notices. The omission of the notes in the prescribed form, for example, invalidated the claim notice in *Triplerose Limited v Mill House RTM Co Ltd* [2016] UKUT 80 (LC). In *Gateway* itself the claim notice was served at the correct address, but the Deputy President considered what would have been the position if it had not been:

“ 36. Section 111(4) is explicit that an address for service provided to members of an RTM company may not be used as the landlord's address if the landlord has notified the RTM company of a different address. That prohibition is easy to understand and any failure to comply can be promptly rectified by the re-service

of the original notice at the correct address. It is not necessary for me to decide whether a claim notice served in breach of the section 111(4) prohibition is a nullity, as the issue does not arise in this appeal, but in future, if such a point is taken against an RTM company in a counter-notice, the swiftest, cheapest and safest response is likely to be to re-serve the claim notice.”

32. It is tempting to say that a different approach should be taken to notices of withdrawal, which do not have to be in a prescribed form and whose purpose is to draw a line under a notice that is no longer wanted or that has not worked. I resist that temptation because it is important that the entitlement to the right to manage remains governed by a statutory scheme which is clear, and interpreted consistently, so that all parties know where they are. The consequence of a failure to comply with the statutory scheme is a matter of interpretation of the scheme, and by stating that an RTM company “may not give a notice” at an address different from that notified by the intended recipient for the purpose, Parliament has given a very clear steer.
33. It is equally tempting to be swayed by the fact that the appellant was left in no doubt that the first claim notice was withdrawn, by virtue of the letter of 26 April 2023. But its solicitors did not get that information on that date. Covering letters may be mislaid or detached from their enclosures and there was obvious potential for confusion. There are good reasons why the same approach should be taken to the service of notices of withdrawal as to the service of claim notices.
34. Moreover, it remains the case that the problem is easy to rectify. Had the RTM company responded to the second counter-notice by sending a fresh withdrawal of the first claim notice to the correct address, withdrawing the second notice insofar as necessary, and then starting afresh, it would now be enjoying the right to manage.
35. That means that ground 2 succeeds, as therefore does ground 3 for the reasons set out at paragraph 18 above. The FTT’s decision is set aside; the RTM company is not entitled to acquire the rights to manage the premises.
36. In its written representations in the appeal the RTM company has raised a different point. It says that it served the second claim notice not only on the appellant but also on the current registered proprietor of the freehold, who has sold to the appellant; according to the RTM company the appellant’s title is not yet registered. The registered proprietor of the freehold has not responded to the claim notice and the RTM company argues that therefore it is in any event entitled to the right to manage.
37. I cannot address that point since it does not appear to have been raised before the FTT; I can address only the appeal from the decision that was made.

Upper Tribunal Judge Elizabeth Cooke

16 May 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which

case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.