



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

Case Reference : CHI/21UD/LRM/2018/0011

Property : Calverley Court, Calverley Road, Hastings  
TN34 3DQ

Applicant : Calverley Court RTM Company Limited

Representative : Arko Property Management

First Respondent : Kirkdell Limited  
Second Respondent: Maxiwood Limited

Second Respondent`s  
Representative : Coole Bevis LLP

Type of Application: Right to Manage – Section 84(3) Commonhold and  
Leasehold Reform Act 2002 (“the 2002 Act”)

Tribunal Member : Judge P.J. Barber

Date of Decision: 25<sup>th</sup> February 2019

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**DECISION**

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## **Decision**

The Tribunal determines that the claim notice has not been served in accordance with the requirements of Section 79(6) of the 2002 Act. Accordingly, and on the evidence provided for the determination of this preliminary issue, the claim notice was not properly given and the application must fail.

## **Reasons**

### **INTRODUCTION**

1. The application was made under Section 84(3) of the 2002 Act, for the Right to Manage (“RTM”) in respect of Calverley Court, Calverley Road, Hastings TN34 3DQ. Directions dated 13<sup>th</sup> November 2018 were issued, indicating that the Tribunal would determine a preliminary issue arising, by way of written representations without an oral hearing.
2. The parties were directed to file their respective statements of case and legal authorities in the matter. The Applicant provided a statement of case dated 7<sup>th</sup> January 2019 and the Second Respondent provided its statement of case dated 10<sup>th</sup> December 2018.
3. The preliminary issue for determination is the identity of the landlord for the purposes of Section 79 of the Commonhold and Leasehold Reform Act 2002, in circumstances where there has been a transfer of the freehold title, but the transferee has not been registered at the Land Registry.

### **THE LAW**

4. Section 79(6) of the Commonhold and Leasehold Reform Act 2002 provides that:-
  - (6) *The claim notice must be given to each person who on the relevant date is-*
    - (a) *Landlord under a lease of the whole or any part of the 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.*

### **WRITTEN REPRESENTATIONS**

5. The Respondent broadly submitted in its statement of case as follows. The Second Respondent Maxiwood Limited, purchased the freehold of the Property from a mortgagee in possession on 6<sup>th</sup> December 2017, and at all material times the registered freehold proprietor has continued to be Kirkdell Limited. As a result of complications, Maxiwood Limited was not registered as proprietor until a later date. Maxiwood Limited has nevertheless actively managed the Property since purchasing it. The first claim notice was served on Maxiwood Limited on 28<sup>th</sup> March 2018; the Second Respondent served a counter notice on 26<sup>th</sup> April 2018 denying the RTM on the basis that the notice should have been given to Kirkwood Limited as well as Maxiwood Limited to comply with Section 79(6)(a). By letter dated 5<sup>th</sup> June 2018, the Applicant`s agent withdrew the first claim notice and served a second claim notice purportedly dated 6<sup>th</sup> June 2018; the second claim notice was explicitly given to Maxiwood Limited although Arko`s letter stated “As you are not a party to the

lease we do not expect to receive a counter notice from you.” It transpires that the Applicant claims it also served the second claim notice on Kirkdell Limited, although it is disputed whether the notice apparently so served was the same. The term “landlord” is not defined by the 2002 Act. It is well established that until a transferee is registered as proprietor, they are not entitled to serve a valid notice to quit or forfeit a lease as landlord; various case law was referred to including the decisions in:-

*Smith v Express Dairy Co Ltd [1954] JPL 45*

*Crumpton v Unifax Properties Ltd [1992] 2 EGLR 82*

*Brown Root Technology Ltd v Sun Alliance & London Assurance Co Ltd [2001] Ch 33*

*Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89*

It is submitted that the claim notice must be given to the registered proprietor, being Kirkdell Limited, and also to Maxiwood Limited on the basis that “landlord” must have a wider meaning than just the registered proprietor and that Sections 91 to 94 of the 2002 Act would be unworkable if the term “landlord” was not construed to include an unregistered transferee of the freehold interest.

6. The Applicant broadly submitted in its statement of case as follows. The dispute centres around whether Maxiwood Limited or Kirkdell Limited is the landlord of the lease entitled to receive the RTM claim notice. The acquisition date in the claim notice was 6<sup>th</sup> June 2018; Kirkdell Limited is a company in receivership with receivers having been appointed by public notice in May 2017. Lessees were informed by a letter dated 8<sup>th</sup> December 2017, that the freehold had been sold and that the name of the new landlord is Maxiwood Limited; however the new landlord had failed to register its proprietorship at the Land Registry. The RTM company made two attempts to claim the RTM; the first claim notice was served on 28<sup>th</sup> March 2018 on Maxiwood Limited which served a counter notice on 26<sup>th</sup> April 2018 alleging that the claimant was not entitled to acquire the RTM on 4 grounds, including to the effect that the claim should have been served on Kirkdell Limited. The parties to the leases are Kirkdell Limited and the various lessees, there being no manager appointed. Accordingly the first claim notice was then withdrawn and a second claim notice was issued; if Maxiwood Limited are not a party to the leases then the Applicant was not required to serve a claim notice on it at all. Section 79(6) of the 2002 Act is clear with regards to whom a notice should be served. “Landlord” can only be the person registered as proprietor of the legal title at the Land Registry and “A party to the lease” can only be a third party mentioned in the lease such as a management company. The Second Respondents argue that Maxiwood Limited is the landlord, meaning that there are two landlords, and being different to the relevant ground or argument raised in the counter notice served in response to the first claim notice, in which it was stated that Maxiwood Limited is not the holder of the legal title; the Second Respondent cannot have it both ways; there can only be one landlord. It is not accepted that Section 30 of the 2002 Act is of assistance in establishing the meaning of “landlord”, as claimed by the Second Respondent. Section 27(1) of the Land Registration Act 2002 is clear on what constitutes the meaning of “landlord”:

### *Section 27 Dispositions required to be registered*

- (1) *If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.*

The case law cited by the Second Respondent relate to service of break notices and do not give weight to its case. This case is about the legal interest, not the equitable interest. The Applicant maintains that Maxiwood Limited is not the freeholder and the assertion that both Kirkdell Limited and Maxiwood Limited are the landlord, is disputed, on the basis that only the beneficial title has passed to Maxiwood Limited.

### **CONSIDERATION**

14. The Tribunal, have taken into account the statements of case including the case law referred to and all the other case papers in the bundle.
15. Section 79(6)(a) of the 2002 Act refers to the giving of a claim notice to the “landlord under a lease”; however it cannot be correct that such reference to the “landlord” means only the original landlord named in the lease, without allowing for changes over course of time. The term “landlord” should be given its ordinary and natural meaning so as to include any landlord for the time being of the Property. Evidently the lessees had been notified of the transfer of the freehold interest by Kirkdell Limited to Maxiwood Limited, and Maxiwood Limited have collected and expended service charge monies. In the present case, the first claim notice dated 28<sup>th</sup> March 2018 was apparently served only on Maxiwood Limited, but later withdrawn. The second claim notice dated 6<sup>th</sup> June 2018 was served again on Maxiwood Limited; however, no clear evidence has been provided by the Applicant as to service of the second claim notice on Kirkwood Limited. Notwithstanding the Second Respondent having referred in its statement of case, to a dispute regarding whether any notice supposedly served by the Applicant on Kirkdell Limited, was the same as the second claim notice served on Maxiwood Limited, the Applicant made no attempt in its statement of case to refer to or explain, or clarify such uncertainty. The letter dated 5<sup>th</sup> June 2018 sent by Arko to Maxiwood Limited, says:

*“It appears that Maxiwood Ltd are not a party to the lease of the above property and therefore we are not required to serve a claim notice upon you. Notwithstanding this and in case our information is wrong, you are hereby given notice that the claim notice issued on 28/03/2018 is hereby withdrawn. Notwithstanding that it was not validly served on any party to the lease. Please find enclosed a new notice that is self-explanatory. As you are not party to the lease we do not expect to receive a counter notice from you.”*

In these circumstances and on the evidence given in the statements of case, it seems that the second claim notice may not have been served on Kirkdell Limited either at all and/or validly. In regard to service of the second claim notice upon Maxiwood Limited, the effect of the accompanying letter dated 5<sup>th</sup> June 2018 appears to be that the Applicant did not consider that service was required and did not expect any counter notice to be given. The first claim notice was clearly withdrawn; in these somewhat confused circumstances there is significant doubt as to whether the second notice was served at all on Kirkwood Limited and, to the extent that it appears to have been given to Maxiwood Limited, the accompanying

letter contradicted any intention to effect service of a claim notice, so as to trigger the counter notice procedure under Section 84. In these circumstances, service upon the “landlord” is significantly flawed and/or contradictory as to fail to comply with the requirements of Section 79(6). It is not therefore necessary for the Tribunal to go on to consider whether for the purposes of Section 79(6) the term “landlord” in this case includes either or both of Kirkwood Limited and Maxiwood Limited, although it does appear that such term may be construed so as to include the both parties having the respective legal and equitable landlord interests.

16. Accordingly the determination of the Tribunal is that the claim notice was not validly served on the landlord pursuant to Section 79(6) of the 2002 Act; the application claiming the right to manage therefore fails.
17. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal  
appointed by the Lord Chancellor

## Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.