



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

**Tribunal reference** : **LON/00AH/LRM/2019/0010**

**Property** : **18 Langdale Road, Thornton Heath,  
Surrey, CR7 7PP**  
**(1) Lavaughan Paulette Blake**

**Applicants** : **(2) Kingswood Property  
Developments Ltd**

**Representative** : **Harmens (Property Management)**

**Respondent** : **Assethold Ltd**

**Representative** : **Scott Cohen, solicitors**

**Tribunal member** : **Judge Amran Vance**

**Date of decision** : **20 September 2019**

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**DECISION**

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**Summary of the decision**

1. This application is defective and must be dismissed. 18 Langdale Road RTM Co Ltd has not acquired the right to manage.

**Background**

2. On 16 May 2019, the tribunal received an application form seeking a determination, pursuant to s.84(3) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that on the relevant date, 18 Langdale Road RTM Co Ltd, was entitled to acquire the right to manage 18 Langdale Road, Thornton Heath, Surrey, CR7 7PP (“the Building”). The Building comprises two flats, one located on the ground floor of the building, and the other on the first floor.

3. The applicants specified in the application form were: (1) Lavaughan Paulette Blake, the leaseholder of the first floor flat; and (2) Kingswood Property Developments Ltd, the leaseholder of the ground floor flat. The applicants had formed 18 Langdale Road RTM Co Ltd with a view to acquiring the statutory right to manage, and had served a claim notice dated 21 February 2019, on the respondent, the freehold owner of the Building. On 20 March 2019, the respondent served a counter notice denying that the RTM company was entitled to acquire the right to manage.
4. Although the applicants state that they submitted copies of the claim notice and counter notice when lodging their application with the tribunal, the tribunal has no record of receipt. Nor are the notices included in the list of documents accompanying the application form, contained in applicants' representative's covering letter to the tribunal dated 14 May 2019. It is for that reason that the tribunal directed the applicant to provide copies of both notices in its directions of 19 June 2019.
5. On 8 July 2019, the respondent's solicitors applied for the application to be struck out pursuant to Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), on the basis that the application was defective as: (a) the application was not made by the RTM company as required by s.84(3) of the 2002 Act; and (b) the claim notice and counter notice had not accompanied the application.
6. The tribunal directed that the question of the tribunal's jurisdiction would be considered as a preliminary issue and on 6 August 2019, I directed that the parties provide written statements of case on the question of jurisdiction, and on the tribunal's powers under the 2013 Rules to substitute the RTM company as the applicant in this application, and to waive any irregularity regarding late provision of the claim notice and counter notice. In response, the tribunal received written submissions from Mr Bates, of counsel, on behalf of the respondent and from the applicants' representative.

### **The law**

7. Subsections 84(3) and (4) of the 2002 Act provide as follows:
  - (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.

- (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.
8. Therefore, where a counter-notice containing a statement that a RTM company is not entitled to acquire the right to manage premises has been given, the RTM company may, within a two-month time limit, beginning with the day on which the counter-notice was given, apply to this tribunal for a determination that it was, on the relevant date, entitled to acquire the right to manage the premises.
9. Section 87 deals with deemed withdrawal of the claim notice and provides:
- (1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either-
- (a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or
- (b) such an application is so made but is subsequently withdrawn,
- the claim notice is deemed to be withdrawn.
- (2) The withdrawal shall be taken to occur—
- (a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and
- (b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.

### **Decision and Reasons**

10. In my determination the wording of s.84(3) is clear, only a RTM company may make an application for the right to manage. This application was made by the two leaseholders, and not by the RTM Company. As such, the tribunal has no jurisdiction to determine it.
11. In addition, as s.84(4) requires an application under s.84(3) to be brought not later than two months beginning with the day on which the counter-notice was given, no valid application was made by the RTM Company within that period, and it is out of time for doing so. The

consequence of not making a valid application within that two-month window is that the claim notice is deemed withdrawn by virtue of s.87 of the Act.

12. The applicants seek to overcome the error made in their application, by inviting the tribunal to substitute 18 Langdale Road RTM Co Ltd as the applicant in this application, in place of themselves, under rule 10 of the 2013 Rules. Rule 10(1) provides that the tribunal may give a direction adding, substituting or removing a person as an applicant or a respondent. They ask that the tribunal direct that the substitution is to take effect from the date the application was made.
13. However, I agree with Mr Bates' submission that the tribunal cannot use its procedural rules to circumvent or override a statutory provision. In the recent case of *Robert Court RTM Company Limited v The Lough's Property Management Limited* [2019] UKUT 0105 (LC) the first-tier tribunal had used Rule 8 of the 2013 rules to correct a defective application form received by the tribunal from a RTM Company. The tribunal's decision was overturned on appeal, the Deputy President of the Upper Tribunal (Lands Chamber) holding that rule 8 cannot be used to cure a defect in compliance with the minimum requirements of s.84(3). He considered the statutory requirements to be substantive, and that they had either been satisfied when the application had been made, or they had not. If they had not been satisfied by that date, the consequence of deemed withdrawal provided for by section 87(1)(a) would befall the claim notice. That consequence was, he stated, specified in the statute, and cannot not be avoided by reliance on rule 8 or any other procedural tool.
14. Similarly, this tribunal cannot use a different procedural rule, rule 10, to substitute the RTM Company as the applicant in order to cure non-compliance with the substantive statutory requirement that the application be made by the RTM Company. The tribunal therefore has no jurisdiction to determine the application, which must be dismissed.
15. As to the apparent failure of the applicant to include the claim notice and counter notice with its application, Mr Bates agreed that as the requirement to include these documents with the application emanates from the tribunal's own rules and practice direction (r.26; Practice Direction on Residential Property Cases 9 September 2013, Schedule 6) Rule 8 could be used to remedy the breach. However, he contends that the power under rule 8 can only arise if the tribunal has already been given sufficient material to enable the application to be determined, and that without sight of the claim notice and counter notice it could not begin to consider if the statutory test for acquiring the right to manage was met. He also submits that a failure to comply with the tribunal's rules and practice direction should be subject to the same type of relief from sanctions test as applied in the civil courts, using the principles set out in *Denton v TH White Ltd* [2014] EWCA Civ 906. He

submits that the tribunal does not know why the breach occurred but that on the present facts, no relief should be granted.

16. Given, my determination above, that the application must be dismissed because it was not made by a RTM Company, it is unnecessary for me to go on to consider whether the tribunal should apply rule 8 to waive the requirement for the applicant to have included the claim notice and counter notice with its application. I decline to do so because: (a) there appears to be a dispute of fact as to whether the applicant included those documents with its initial application; and (b) before the tribunal could determine Mr Bates' submission concerning relief from sanctions, further directions would need to be given by the tribunal. To determine both points would require further evidence from the applicants and this would, in my view, unnecessarily prolong this application. Given my primary determination, such prolongation would not accord with the tribunal's overriding objective, which includes avoiding unnecessary delay.

Amran Vance

23 September 2019

## **ANNEX - RIGHTS OF APPEAL**

1. 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 date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking.