



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

Case reference : **LON/00AM/LRM/2020/0012**

Property : **Malferna House Malvern Road
London E8 3LJ**

Applicant : **Malferna House RTM Company
Limited**

Representative : **In person**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of application : **Right to manage**

Tribunal member : **Judge Professor Robert Abbey**

**Date of paper-based
decision** : **29 September 2020**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant was not on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.

The application

1. This was an application to acquire the right to manage **Malferna House Malvern Road London E8 3LJ** (“the property/premises”)

under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.

2. The Claim Notice is dated 27 March 2020 and the Counter-Notice 20 May 2020. The Applicant's then made an application to this Tribunal relating to the claim to the Right to Manage. The Respondent took issue with the validity of the application to the Tribunal, as a result of a breach of s.79(6).
 1. This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was classified as P (PaperRemote). A face to face hearing was not held because it was not practicable given the Covid-19 pandemic (and the need for social distancing) and no one requested the same or it was not practicable and all issues could be determined in a remote hearing on paper. The documents that the Tribunal was referred to are in an electronic bundle supplied by both parties. Similarly no site inspection was considered appropriate given the constraints on social interaction arising from the pandemic restrictions.

The law

3. The relevant provisions of the Act are referred to in the Decision below.

The counter-notice

4. In its counter-notice, the Respondent raised two issues and one of these were still unresolved by the time of the hearing. This therefore just left the issue relating to the service of the notice of claim and the effect of section 79(6) of the act that is set out below. Having considered the documents in the bundle and the legal submissions made by the parties in writing to the Tribunal at the time of the hearing, the Tribunal has made the following decision.

The Tribunal's decision

5. The law that governs the service of notices to which the Right to Manage might apply is section 79 of the Commonhold And Leasehold Reform Act 2002 and specifically sub-section (6) (set in bold by the Tribunal) which says: -

*79 Notice of claim to acquire right
(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.

(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(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 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the F1... tribunal or court by which he was appointed

6. In making this decision the Tribunal had to consider the statute and cases that might assist the Tribunal in interpreting the statute.

7. It is the applicant's case that section 79(6) has been complied with as the notice of claim was given to each person as required and specifically

the notice of claim was given to the landlord expressed to be Assethold Limited and all qualifying tenants.

8. On the other had the respondent says that although Assethold was served they had only recently acquired the freehold estate and that at the time of service they had not yet been registered and the previous owner was still named on the registered title as the freeholder. Secondly as the leases contained a third party, Malvern Road Residents Limited, that company should also have been served but it was not.
9. Accordingly, there are two issues regarding service of the notice that require consideration by the Tribunal, first the service or lack of it on the freeholder and secondly the lack of service upon Malvern Road Residents Limited. The Tribunal can dispose of the second element quite simply. This is because this company had been dissolved on 29 October 2019. Details from Companies House were disclosed to the Tribunal confirming the dissolution. This being so the applicant simply could not serve a non-existent company. Taking into account all these factors the Tribunal determines that there is no error in the non-service of Malvern Road residents Limited.
10. Turning now to the more difficult subject of service on the freeholder, it seems that the transfer of ownership from Malvern Road Limited to the respondent took place on 2 March 2020. As at the date of the respondent's statement of case, 6 August 2020, the completion of the transfer registration was still pending. This meant that there was a registration gap with the legal estate still registered in the name of the old owner and the equitable estate vested in the new owner, the respondent.
11. The applicant disclosed the bulk certificate of posting confirming service upon all seven leaseholders as well as Assethold Limited, the respondent. This is dated by the post office on the 1 April 2020. At that time the registered proprietor on the freehold title at the land registry was still Malvern Road Limited.
12. Why did the applicant serve the respondent and not the former owner? The Tribunal believes this is because of correspondence received by the tenants from solicitors acting for the old owner and from managing agents acting for the new owner. Those solicitors, Wedlake Bell, wrote on 9 March and again on 1 June 2020 to confirm the change of freehold ownership on 2 March 2020. Eagerstates Limited the managing agents for the respondents also wrote to the tenants on 2 March 2020 confirming the change of ownership to the respondent. A lay person would naturally assume that the paperwork should therefore be directed to the new owner, and this is what took place.
13. However, there is a problem caused by the registration gap. The 'registration gap' is what is referred to as the period of time between

completion of a property transfer and the subsequent registration of the transaction at the Land Registry. In relation to both freehold and leasehold registered land, legal title does not pass to the transferee until they are registered as proprietor at the Land Registry. The transferee is merely the owner in equity until registration.

14. In *Stodday Land Limited and Ripway Properties Limited V William Marsland Pye* [2016] EWHC 2454 (Ch) Mr Justice Norris considered the effect of this registration gap. At paragraph 22. Mr Justice Norris observes that

“In “*Emmet & Farrand on Title*” paragraph 9.017 it is noted that under section 27(1) and 74 of the Land Registration Act 2002 the legal estate does not pass to the purchaser until the transfer is registered and that prior to that date the purchaser is unable to serve a valid notice to quit. Amongst the cases relied on is *Lever Finance Ltd v Needlemans Trustee* [1956] Ch 375 and *Lankester v Rennie* [2014] EWCA Civ 1515. To the same effect is a passage in “*Property Notices: Validity and Service*” (2nd edition) by Tom Weekes at paragraphs 3.53 to 3.56.”

15. So, if a purchaser cannot serve a notice to quit it must also be true that a buyer cannot be in receipt of an effective notice.
16. To clarify this further Mr Justice Norris went on to say

“23. The *Lever Finance* case concerned a mortgage (not a tenancy): in it the transferee of a registered charge appointed a receiver during the “registration gap”. Harman J held that until registration the transferee could not exercise the statutory power to appoint a receiver. So the case is in some measure supportive of the proposition for which it is cited, but clearly not directly in point.

24. *Lankester v Rennie* concerned an unregistered transfer of a lease. The Court of Appeal (relying at paragraph [25] on the passage from the judgment of Mummery LJ cited above in *Brown & Root Technology*) acknowledged the importance of not confusing the equitable rights as between transferor and transferee with the legal rights as between landlord and tenant.”

17. This all relies upon the effect of s.27 (1) of the Land Registration Act 2002 that said that if a disposition of a registered estate, such as a transfer as applies in this dispute, is required to be completed by registration, “it does not operate at law until the relevant registration requirements are met”. The problem for the applicant is that the

requirements for registration were not met and the applicant served the respondent who at that time of service was a mere equitable owner. Perhaps the best course of action for the avoidance of doubt would have been to have served both parties to the freehold transfer. The registration gap is a problem; careful consideration is required to identify the correct parties to serve and receive notices and precise drafting is required to avoid the complications arising from tardy registration.

18. As Mr Justice Norris says at paragraph 37

“... as is pointed out in Ruoff & Roper “*Registered Conveyancing*” (in paragraph 13.003.04) “... A person’s right to exercise owner’s powers, by virtue of being entitled to be registered as proprietor, does not mean that he has unlimited powers of disposition. The fact that he has acquired such a right under a registrable disposition which has not yet been completed by registration, and which therefore takes effect in equity only until registered, of itself means that his powers of disposition under the general law are limited.” The giving of a notice to quit is one of the instances in which, under the general law, the ownership of the equitable title does not suffice for the service of an effective notice, and where subsequent acquisition of the legal estate cannot validate the notice retrospectively. “

If this is the law for the giving of a formal notice it must also be true for the receiving of a notice.

Summary

19. In the light of the above, the Tribunal determines that the Applicant was not on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act because it had not fulfilled the service requirements of section 79(6) in that it had not served the legal owner but had in error served the equitable owner.

Name: Judge Professor Robert
Abbey

Date: 29 September 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).