



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

**Case reference** : **LON/00AZ/LOA/2020/0002**

**HMCTS** : **V: CVPREMOTE**

**Property** : **41a-41d Belmont Hill, London,  
SE13 5AX**

**Applicant** : **41a-41d Belmont Hill RTM  
Company Ltd**

**Representative** : **Roger McElroy (Director)**

**Respondent** : **Assethold Limited**

**Representative** : **Ronni Gurvits (Office Manager,  
Eagerstates Limited)**

**Type of application** : **Right to manage**

**Tribunal member** : **Judge Robert Latham**

**Date and Venue of  
Hearing** : **14 April 2021 at  
10 Alfred Place, WC1E 7LR**

**Date of decision** : **21 April 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal have considered the documents listed at [2] to [4] below.

## **Decisions of the Tribunal**

- (1) The Tribunal determines that the claim notice was properly served on the Respondent, in that it was delivered to its Registered Office no later than 29 June 2020 and gave the Respondent the statutory one month period for the service of the landlord's counter-notice.
- (2) The Tribunal determines that on 4 November 2020, the Applicant was entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The Application**

1. On 25 August 2020, the Applicant issued this application to acquire the right to manage 41a-41d Belmont Hill, London, SE13 5AX ("the 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. On 20 October 2020, the Tribunal gave Directions which were revised on 26 October. The Tribunal noted that by its counter-notice, the Respondent had disputed that the Applicant had complied with sections 79(6) and 80(6) of the Act. The Tribunal set the matter down for a paper determination. The Applicant has files a Bundle of Documents which includes:
  - (i) The Respondent's Statement in Response to the Application, dated 20 November 2020 (at p.49);
  - (ii) The Applicant's Response, dated 15 December 2020, which is attested by a statement of truth signed by Roger McElroy, a director of the Applicant Company (at p.77);
  - (iii) The Respondent's Statement in Reply, dated 5 February 2021 (at p.81).
3. On 24 February 2021, the Tribunal gave Further Directions. Judge Vance, having perused the papers, determined that there should be an oral hearing to determine the dispute of fact as to when the claim notice had been received by the Respondent. The Judge directed that there should be a concurrent exchange of witness statements on 5 March

2021 addressing the factual issue in dispute. The parties were directed to exhibit any evidence of posting/receipt. Pursuant to these Directions, the following witness statements have been provided:

(i) Mr Roger McElroy, on behalf of the Applicant, dated 12 March 2021;

(ii) Mr Ronni Gurvits, on behalf of the Respondent, dated 8 March 2021.

4. On 23 February 2021, the Applicant filed an additional Bundle of Documents extending to 109 pages relating to a number of other applications involving these parties, including Roneo Court, 61 Lewisham Hill and 245 Stanstead Road. The Tribunal has not had regard to this Bundle. The Applicant has not met the threshold for establishing that it is admissible as similar fact evidence. It appeared to the Tribunal to be more prejudicial, than probative. Any application must be determined having regard to the facts of the particular case.

### **The Hearing**

5. The Applicant was represented Mr Roger McElroy. He is a director of Investment Technology Ltd which trades as Canonbury Management (“Canonbury”). He is also a director of RTM Nominee Directors Ltd, a company which has been established to be a corporate director of the RTM companies that he establishes. He is also a director of the Applicant Company, as of a number of other RTM companies which Canonbury has established.
6. The Respondents were represented by Mr Gurvits. He is employed as Office Manager by Eagerstates Limited (“Eagerstates”) who are managing agents for the landlord. In his witness statement, he gives his address as 5 North End Road, London, NW11 7EH. This is rather the address of his accountants. He works from a residential address some five minutes away. Mr Gurvits declined to give the Tribunal either his residential or business addresses.
7. The Tribunal heard evidence from Mr McElroy and Mr Gurvits, both of whom have filed witness statements.
8. The application has been brought against both Assethold Limited, as landlord, and Eagerstates, as managing agent. It was agreed that Assethold Limited is the relevant landlord and that Eagerstates should be removed as a respondent to this application.
9. There is a single issue which the Tribunal is required to determine, namely the date on which Notice of the Claim was given to the Respondent. The letter, dated 25 June 2020, which enclosed the notice

of claim is at p.32. The notice is at p.33-36. The date by which the Respondent is required to serve a counter-notice is specified as 30 July 2020. The date on which the Applicant intended to acquire the RTM is specified as 4 November 2020. The parties agreed that the last date by which the Notice was required to be given to the landlord was Monday, 29 June 2020.

(i) The Applicant contends that the Notice of Claim was sent by first class post on Thursday 25 June 2020 and would have been received in the normal course of the post on 26 June.

(ii) The Respondent contends that it was not received. However, a copy of the Notice which was sent by first class tracked mail to the managing agent was not delivered until 13.06 on 2 July. This is confirmed by the “Track Your Item” record (at p.75).

### **The Law**

10. The relevant provisions of the Act are set out in the Appendix. The following provisions are relevant to our determination:

(i) A claim to acquire the right to manage any premises is made by giving notice of the claim, namely a “claim notice” (Section 79(1));

(ii) The notice of claim must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84 (Section 80(6));

(iii) The “relevant date” means the date on which notice of the claim is given (Section 79(1)).

(iv) A notice may be sent by post (Section 111(1)(b)).

11. Section 7 of the Interpretation Act 1978 provides:

“Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

12. The Tribunal has had regard to the Upper Tribunal decision in *Southwark LBC v Akhtar* [2017] UKUT 150 (LC); [2017] L&TR 36, in which HHJ Elizabeth Cooke considered (i) the weight to be given to

evidence that notices have been sent out through a robust mechanical process; and (ii) the clarity of the evidence required to rebut the presumption that a document would be delivered in the ordinary course of post.

### **The Submissions of the Parties**

13. Mr McElroy gave evidence he has established thousands of RTM companies. He explained how all RTM applications are “programmatically generated” by their systems created by Investment Technology Limited. A leaseholder completes an online form providing details of other leaseholders who have agreed to be complicit in the formation of a RTM company and who have consented to proceed with such a claim under the 2002 Act. All necessary particulars are taken at that stage. Upon payment by each prospective RTM Member of a fee, a full HMLR search is undertaken to ensure that the people who wish to become members are the qualifying leaseholders of the flats in question and to satisfy data requirements. A company is then formed in accordance with the prescribed articles, with the premises identified and at least 50% of qualifying tenants noted as subscribers to the company who become members upon its formation. The company is formed electronically through a software interface with Companies House. Registers of members and officers are generated as required by the Companies Act. A firm called Fileprint are contracted to provide a printing and posting system similar to that used by police forces, government agencies, credit card companies etc. After the notice inviting participation is sent, the claim notice will be sent, delayed by a minimum of the number of days delay required by the legislation.
14. Mr McElroy stated that four copies of the Claim Notice had been sent, two to the Respondent (as landlord) and two to Eagerstates (as managing agents). One set was sent by first class mail and the second by registered mail. The letters are all dated 25 July 2020 (see p.32). These computer-generated letters should all have been received by the Royal Mail on the same day. The letters were sent to (i) Assethold Limited at their registered address, namely 5 North End Road, Golders Green, London NW11 7RJ, and to (ii) Eagerstates Limited at PO Box 1369, London, NW11 7EH.
15. Mr McElroy relies on the letter which was sent by first class post to the Respondent. His primary case is that this would have reached Royal Mail on Thursday, 25 June 2020 and would have been delivered in the normal course of mail on Friday, 26 June. Mr McElroy considers the systems to be robust and asserted that problems have only arisen with this landlord. If one were to rely on a day’s margin of error, they would have been produced and posted on Friday, 25 June.
16. Mr Gurvits stated that this letter was not received by the Respondent. “5 North End Road” is the address of the Respondent’s accountants.

Every day a member of staff from Eagerstates attends the office every day to collect any mail. A staff member also attends the Post Office every day to collect any mail delivered to the Eagerstates PO Box 1369. The only copy of the Claim Notice which was received was that sent by tracked mail which was collected at 13.06 on Thursday, 2 July. The mail had not been delivered when a staff member had attended on the previous day. Mr Gurvits stated that he was aware of the strict timeframe for responding to RTM notices. Upon receipt of a notice, he immediately sends them to his Solicitor and diarise the Counter-Notice.

17. Mr McElroy referred to the evidence that with first class mail, the Royal Mail aim to deliver the post on the next working day. Their target is to deliver 93% of mail within this period. In August 2018, a Quality of Service report showed that 92.1% of mail is delivered within this target. In 2019/20, the figure was 92.6%. Mr McElroy was reluctant to accept that Covid-19 has had an impact on the reliability of the service. No recent data has been published on quality of the service. The Tribunal is satisfied that as a result of Covid-19, the presumption that first class mail will be delivered on the next working day is now much weaker.
18. The Royal Mail have provided the following evidence:
  - (i) The Royal Mail were unable to deliver the Claim Form which was sent by tracked mail to the Respondent (see p.71). The Tracking No. was "GQ78415992GB". On 29 July, it was returned to the sender. The Royal Mail accepted the letter at 01.30pm on Friday 26 June. It attempted to deliver the letter at 09.52 on Monday 29 June. At 06.53 am on 30 June, it was available for redelivery or collection from the Golders Green Delivery Office. The Respondent made no attempt to collect it or arrange for it to be redelivered.
  - (ii) The Claim Form which was sent to Eagerstates at PO Box 1369 was given Tracking No. "GQ78416009GB". Eagerstates collected this from the Royal Mail at 1.06pm on Thursday, 2 July (see p.75).
19. On Thursday, 9 July, Mr Gurvits sent a copy of the Claim Form to Scott Cohen, his Solicitor. He printed off a "Track your Item" record from the Royal Mail to confirm the date on which it was collected. This is exhibited to his witness statement.
20. On 16 July (at p.58), Scott Cohen acknowledged receipt of the Claim Notice. They stated that the Claim Notice had been delivered to Eagerstates at PO Box 139 on 2 July. They requested copies of the correspondence enclosing the Claim Notice and any proofs of posting and evidence of deliveries. On 22 July (at p.59), the Applicant provided copies of the two tracking numbers. However, it is apparent that there was an error in respect of "GQ78416009GB", which was given as "GQ78416002GB". The Applicant stated that they had been posted on 26 June (sic). On 28 July (at p.37), the Respondent served its Counter-

Notice denying that the Applicant was entitled to acquire the RTM as the appropriate notice had not been given.

21. The Tribunal notes that there has been some inconsistency in the evidence provided by the Applicant as to whether the four letters were received by the Royal Mail on Thursday 25 June or Friday 26 June. Thus, Mr McElroy's statement asserts (at p.3) "it is reasonable for us to assume that both the first class post and registered post claim were printed and posted on the noted on those documents – Thursday, 25<sup>th</sup> June 2020". However, in its Statement of Case (at p.79), the Applicant asserts that the relevant letter was put into the postal system on the day after it was produced.

### **The Tribunal's Decision**

22. The Tribunal finds, on a balance of probabilities, that the Claim Notice was posted by first class mail on Friday, 26 June and was received by the Respondent on Monday, 29 June 2020.
23. The Tribunal accepts that the Investment Technology Limited computer-generated system is robust. However, the four letters were received by the Royal Mail at about 1.30pm on Friday, 26 June. The Royal Mail have confirmed that this was the time at which one of the letters was received. It is probable that all four letters would have been received at the same time.
24. Had the letter been delivered in the normal course of the post, it would have been received on Saturday, 27 June. However, given the impact of Covid-19, this presumption is not strong. The Tribunal finds that it is more likely that the letter was delivered to the Respondent's registered office on Monday, 29 June. This is the date on which the Royal Mail first sought to deliver the recorded letter to this address. It is probably that the postal delivery worker attended the address with both letters at 09.52. There was no one available to receive the letter. Whilst the first class letter would have been posted through the letter box, the postal worker would have been unable to deliver the letter sent by registered mail. However, s/he would have left a delivery note. This has not been produced by the Respondent.
25. The Tribunal did not find Mr Gurvits to be a satisfactory witness. On his account, neither of the letters which were sent by first class mail respectively to the Respondent's registered address and to PO Box 1369 were received. The suggestion would seem to be that they were both lost in the post. The Tribunal considers this to be most unlikely.
26. On a number of occasions when asked questions, whether by Mr McElroy or the Tribunal, Mr Gurvits responded: "I stand by what I have said in my witness statement". He was not willing to be probed on

background matters that could have tested the reliability of his evidence. When asked about his procedures for recording the receipt of mail, he responded that it was for the Applicant to prove its case.

27. Mr Gurvits has no system for date stamping mail on receipt. He did not retain the envelope in which registered letter had been delivered to PO Box 1369. This should have carried a postmark.
28. The Royal Mail sought to deliver the registered letter to the Respondent's registered office on Monday 29 June. It is probable that the letter would have been delivered to the Delivery Office for PO Box 1369 on the same day. If Mr Gurvits was reliable in his evidence that an employee visited the Delivery Office every day to collect the mail, it would have been collected on either the Monday or the Tuesday. The Royal Mail confirm that it was not collected until the Thursday. Mr Gurvits was unable to identify the staff member who had collected the letter, albeit that their initials appear on the electronically generated Proof of Delivery record.
29. Mr Gurvits' evidence that he immediately forwarded any such Claim Notice to his Solicitor, is contradicted by the evidence that he did not forward it to his Solicitor until a week later on 9 July. His evidence that there was normally someone at the accountant's office during normal working hours is contradicted by the fact that there was no one there to receive the registered letter when it was delivered at 09.52 on Monday, 29 June. The Royal Mail would have left a delivery card. This has not been produced.
30. The Tribunal is thus satisfied that the letter sent by first class mail was delivered to the Respondent's registered office by no later than Monday, 29 June. The Tribunal does not accept the Respondent's assertion that this letter was not delivered by the Royal Mail, but was lost in the post.
31. At the end of the hearing, Mr McElroy applied for a refund of the fees of £300 that he had paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

### **Summary**

32. The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.



33. In accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises. According to section 84(7):

“(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.”

**Judge Robert Latham**  
**21 April 2021**

### **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).

## Appendix

### The Commonhold and Leasehold Reform Act 2002

#### 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 tribunal or court by which he was appointed.

#### 80 Contents of claim notice

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
  - (a) the qualifying tenant of a flat contained in the premises, and
  - (b) a member of the RTM company, and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
  - (a) the date on which it was entered into,
  - (b) the term for which it was granted, and
  - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

#### 81 Claim notice: supplementary

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (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.

(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.