



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

**Case Reference** : **MAN/00CE/LRM/2021/0001**

**Property** : **Flats 5 & 8 Bessacarr Court,  
Bawtry Road, Doncaster DN4 7AP**

**Applicant** : **Flats 5/8 Bessacar Court  
RTM Company Limited**

**Representative** : **The Leasehold Advice Centre**

**Respondents** : **Grey GR Limited Partnership (1)  
161 Bawtry Road Management Company  
Limited (2)**

**Representative** : **Camilla Waszek of JB Leitch Limited (1)  
Liz Rowen of Keebles LLP (2)**

**Type of Application** : **Commonhold and Leasehold Reform Act  
2002 -Section 84-Right to Manage**

**Tribunal Members** : **Judge J. E. Oliver  
Tribunal Member S. A. Kendall**

**Date of Determination** : **27<sup>th</sup> July 2021**

**Date of Decision** : **10<sup>th</sup> August 2021**

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**DECISION**

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## **Decision**

1. Bessacar Court acquired the Right to Manage the Properties with effect from the date specified in the claim notice, 22<sup>nd</sup> March 2021.
2. Grey GR and 161 Bawtry Road are to pay to Bessacar Court the application fee of £100.

## **Background**

3. This is an application by Flats 5/8 Bessacar Court RTM Company Ltd (“Bessacar Court”), dated 11th February 2021, for the Tribunal to determine whether it has the Right to Manage the properties known as Flats 5 and 8 Bessacarr Court Doncaster (“the Properties”), pursuant to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).
4. The Properties are self-contained flats held on long leases for a term of 125 years from 1<sup>st</sup> January 2007.
5. On 16<sup>th</sup> November 2020 a Notice of Claim was served upon the registered proprietor of the freehold of the Properties, Grey GR Limited Partnership (“Grey GR”) at 13 Queens Road, Aberdeen AB15 4YL and c/o Block Management UK Ltd, Unit 5 Stour Valley Business Centre, Sudbury Suffolk CD10 7GB. The Notice was also served upon a further party to the lease, 161 Bawtry Road Management Company Ltd (“161 Bawtry Road”) at c/o Block Management UK Ltd as before.
6. On 16<sup>th</sup> December a Counter Notice was served on behalf Grey GR stating:  
*“I allege that, on 14<sup>th</sup> November 2020 Flats 5/8 Bessacarr Court RTM Company Limited (‘the company’) was not entitled to acquire the right to manage the premises because the claim related to part of a building which is not independent of the services provided for the occupiers of the rest of the building and the services could not reasonably be separated from the rest of the building without causing significant interruption to the rest of the building. See Sections 72(4) (a) and S72(4)(b) of the Commonhold and Leasehold Reform Act 2002.”*
7. On 17<sup>th</sup> December 2020 a Counter Notice was served by Keebles on behalf of 161 Bawtry Road stating:  
*“I allege that, by reason of s.80 of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 on 14<sup>th</sup> November 2020, Flats 5/8 Bessacarr Court RTM Company Limited (‘the Company’) was not entitled to acquire the right to manage the premises specified in the claim notice.”*
8. On 20<sup>th</sup> April 2021 the Tribunal issued directions providing for the filing of bundles and thereafter for the matter to be listed for a hearing. A bundle was filed on behalf of Bessacar Court; no documents or submissions were filed by either Grey GR or 161 Bawtry Road. The Tribunal had sight of the correspondence between the parties within the bundle provided.
9. The Tribunal determined the application was suitable to be dealt without an inspection or hearing.

## **The Law**

10. The 2002 Act is the relevant statute in respect of this application.
11. Section 71 provides:
  - (1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM Company).
  - (2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.
12. Section 72 provides:
  - (1) This Chapter applies to premises if-
    - (a) They consist of a self-contained building or part of a building, with or without appurtenant property
    - (b) They contain two or more flats held by qualifying tenants, and
    - (c) The total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
  - (2) A building is a self-contained building if it is structurally detached.
  - (3) A part of a building is a self-contained part of a building if-
    - (a) It constitutes a vertical division of the building,
    - (b) The structure of the building is such that it could be redeveloped independently of the rest of the building, and
    - (c) Subsection (4) applies in relation to it.
  - (4) This subsection applies in relation to part of a building if the relevant services provided for the occupiers of it-
    - (a) Are provided independently of the relevant services provided for occupiers of the rest of the building, or
    - (b) Could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
  - (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
  - (6) Schedule 6 (premises excepted from this Chapter) has effect.

13. Section 79 provides:

- (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 the notice of claim is given.
- (2) The claim notice may not be given unless each person required to be given notice of invitation to participate has been given such a notice 14 days before.
- (3) The claim notice must be given by a RTM company that 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 the lease of the whole or any part of the premises,
  - (b) Party to such a lease otherwise than as a landlord or tenant,
  - (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 required the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means 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 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.

14. Section 80 provides:

- (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 date 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.

15. Section 84 provides:

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).
- (2) A counter-notice is a notice containing a statement either-
  - (a) Admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
  - (b) Alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled.

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

- (3) Where the RTM company has been given one or more counter-notices, and 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 there is more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection 2(b), the RTM company does not acquire the right to manage unless-
  - (a) On an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
  - (b) The person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing the company was so entitled.
- (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.
- (8) An appeal is disposed of –
  - (a) If it is determined and the period for bringing any further appeal has ended, or
  - (b) If it is abandoned or otherwise ceases to have effect.

### **Submissions**

16. The statement filed on behalf of Bessacar Court set out the history of the issues between the parties.
17. Bessacar Court was incorporated on 22<sup>nd</sup> October 2020. Its shareholders are the owners of the Properties. Flat 5 Court is owned by Real Freedom Investments Limited and Number 8 is owned by Ozgur Pancar. Mr Pancar is a director of the company.
18. The claim notice was served upon both Grey GR and 161 Bawtry Road on 14<sup>th</sup> November 2020 requiring any counter notice to be served by 21<sup>st</sup> December 2020 and thereafter, in the absence of any objections for the right to manage, for it to be acquired on 22<sup>nd</sup> March 2021.

19. A copy of the claim notices was sent to the owners of the Properties on 16<sup>th</sup> November 2020.
20. On 24<sup>th</sup> November 2020 an e-mail was sent on behalf of 161 Bawtry Road querying whether the Properties are self-contained due to the dividing wall between them and the adjoining property being a “load bearing wall”. After further correspondence, it was acknowledged there is a vertical division, such that the Properties are self-contained. However, it was further questioned whether the services for the development were independent such as to satisfy the requirements of section 72(4) of the 2002 Act. Bessacar Court provided photographs and confirmed all the services are independent.
21. On 17<sup>th</sup> December 2020 a counter notice was served by Keebles, on behalf of 161 Bawtry Road stating Bessacar Court did not have the right to manage but failed to provide any reasons for this within the notice.
22. On 19<sup>th</sup> January 2021 Keebles raised the issue that the claim notice, whilst signed by Ozgur Pancar, stated he was signing it on behalf of College Fields RTM Company Limited and as such, the claim notice was invalid.
23. Bessacar Court submitted this was an error and it was evident from the body of the claim notice and the accompanying letter, the claim notice was served on behalf of Bessacar Court.
24. After this correspondence Bessacar Court confirmed it has heard nothing further from 161 Bawtry Road, either directly or through its solicitors.
25. On 16<sup>th</sup> December 2020 Grey GR served a counter notice refuting the claim as set out in paragraph 6 above, namely that the services for the Properties are not independent from the remainder of the building.
26. Grey GR subsequently raised an issue in respect of the secure gated parking area and a communal gym to which the Properties have access. Bessacar Court submitted this matter could be resolved by a reasonable apportionment of the service charge between the properties having the benefit of those facilities. It believed the communal gym was no longer in existence.
27. No further response was received from Grey GR.
28. Bessacar Court notified both Grey GR and 161 Bawtry Road that, in the absence of their agreement to the claim notice, it would file an application with the Tribunal and seek the recovery of its costs.

### **Determination**

29. The Tribunal accepts from the statement filed on behalf of Bessacar Court the requirements for the contents and service of the claim notice have been fulfilled, as required by section 80 of the 2002 Act. The Tribunal has considered the issue regarding the reference to College Fields RTM Company Limited and determines this does not invalidate the notice. It is clear from the claim notice and the letter effecting service the claim notice refers to Bessacar Court and is signed by Ozgur Pancar. It is also clear from the correspondence between the parties there was no doubt as to what the claim notice referred.

30. Whilst 161 Bawtry Road objected to the claim notice, it did not set out in its counter notice any reasons for its objection. In separate correspondence, it initially queried whether the Properties comprise a self-contained building but subsequently confirmed this was not an issue. Its query whether the services were separate was answered in correspondence and then not raised further. The Tribunal takes note that 161 Bawtry Road has not corresponded further with those representing Bessacar Court since February 2021 and has taken no part in these proceedings.
31. The Tribunal further notes the counter notice from Grey GR refers only to whether the services for the Properties are separate from the remainder of the development and this issue has been addressed by Bessacar Court to confirm they are.
32. The Tribunal determines the objections raised by both Grey GR and 161 Bawtry Road have been shown by Bessacar Court to be invalid. It is clear from the photographs supplied that the Properties are a separate building for the purposes of section 72(3). In addition, the services to the Properties are separate from the remaining development such as to satisfy section 72 (4) of the 2002 Act.
33. The issues raised by Grey GR in respect of the secure gated parking and the communal gym are not referred to within their counter notice, but in any event, are not matters that fall within the definition of services as referred to in section 72(4). The Tribunal agrees with the submissions made on behalf of Bessacar Court that the cost of these facilities, if still in existence, can be dealt with by a reasonable apportionment of the service charge for the development.
34. The Tribunal therefore determines Bessacar Court has fulfilled the necessary requirements of the 2002 Act in order to succeed in its application that it has the right to manage the Properties.
35. Bessacar Court, in their statement to the Tribunal, asked that it be reimbursed for the application and hearing costs expended in the application. The Tribunal therefore orders Grey GR and 161 Bawtry Road to each pay to Bessacar Court the sum of £50, in reimbursement of the application fee of £100. There was no hearing fee.

JE Oliver  
Tribunal Judge  
10 August 2021