



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

Case reference : **LON/00BJ/LRM/2021/0019P**

Property : **46 Falcon Road, Battersea London
SW11 2LR**

Applicant : **46 Falcon Road RTM Company
Limited**

Representative : **Mr E Crossfield of The RTM
Company**

Respondent : **Boccel Management Limited**

Representative : **Mr R Davidoff, Director**

Type of application : **Determination of entitlement to
acquire right to manage**

Tribunal member : **Ms H C Bowers**

Date of decision : **26 October 2021**

DECISION:

**46 Falcon Road RTM Company Limited is entitled to the right to
manage and the relevant date is 27 January 2022.**

Covid-19 pandemic: description of hearing

This has been a determination on the papers, which has not been objected to by the parties.

The application

1. The application is made under Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), section 84(3) for a determination that the Right to Manage ("RTM") company was entitled to acquire the right to manage the property under Part 2, chapter 1 of the 2002 Act on the relevant date, the Respondent having served a counter notice under section 84(1) of the 2002 Act.
2. Directions were issued by the Tribunal on 18 May 2021 (Judge Dutton), and amended on 22 June 2021 (Judge Carr).
3. The notice of claim was dated 19 March 2021. The counter notice was dated 20 April 2021.
4. The Tribunal made a decision on 30 September 2021 which determined that the Applicant had established that it acquired the right to manage (the 30 September Decision).
5. On 6 October 2021 the Tribunal set aside the 30 September Decision under Rule 51 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [the Rules]. The set aside was made on the grounds that there was a procedural irregularity as the Respondent had requested an oral hearing.
6. On 20 October 2021 the Respondent indicated that it wished to withdraw the challenge to the RTM application. Also, on 20 October 2021 the Applicant as a response to the Respondent's notification that it was withdrawing its challenge, confirmed its consent to the notice of withdrawal. Additionally, the Applicant requested that the acquisition date be set for 1 January 2022, being three months from the 30 September Decision.

Discussion and Determination:

7. In the following sub- paragraphs, the substance of the 30 September Decision is set out:
 - (i) "The property is a building consisting of 25 flats arranged on four floors, over 2 commercial units.

- (ii) Initially, the first and second respondents were Bredasdorp Investments Ltd and Montagu Investments (London) Limited, the superior landlord and intermediate leaseholder. They had served a counter-notice on 22 April 2021. On 18 June 2021, they both withdrew (Rule 22 of the 2013 Rules), on the basis of a consent order by which they agreed that the applicant was entitled to acquire the RTM (the consent order refers to section 85(5) of the 2002 Act, which I assume to be a typographical error for section 84(5), specifically section 84(5)(b)), on the basis of no order as to costs, but without prejudice to costs under section 88 of the 2002 Act.

- (iii) Although I have not been supplied with any of the leases, it is not contested that they are tripartite, and a brief extract indicating that the lease contains covenants by “the management company” was included in the bundle. It is not contested that the respondent is that party. The respondent (originally, the third respondent) is represented by Mr Davidoff. The respondent’s statement of case/witness statement of 8 August 2021 was prepared and signed by Mr Davidoff.

- (iv) In the respondent’s statement, Mr Davidoff, having implied that he controls or is associated with ABC Estates, who were managing agents in relation to the property, says that at some time he was asked to act as “nominee” director of the respondent (when may be disputed, but is not material). In that capacity, he took directions from a Mr Smithers, who apparently speaks for the freeholder.

- (v) Mr Davidoff states that Mr Smithers told him to serve a counter notice, and that he instructed counsel to do so. The notice alleges that, by reason of section 78(1), section 79(2), section 79(5), section 79(6)and section 80(6) of the 2002 Act, the applicant was not entitled to acquire the RTM.

- (vi) The statement makes it clear that Mr Smithers, being concerned with other more pressing matters, could not devote time to the issues. Nonetheless, he understood that Mr Smithers was trying to sell the freehold and it would be more valuable if the RTM were not to be acquired, and that he should “proceed as best I can”.

- (vii) Mr Davidoff adverts to Mr Smithers telling him that the address at which the claim notice was served was not one he recognised, notes that “the RTM process is technically exacting, and a typographical error or technical error can invalidate the claim”, and closes by saying that “if the address was incorrect as stated by [Mr Smithers], then the current claim must fail”. It is therefore clear that it is only the requirement in section 79(6) that the respondent is now alleging was not satisfied.
- (viii) It appears, then, that whatever the generality of the counter-claim, the only issue that is now pursued in relation to the claim itself is whether the claim notice was properly served on the freeholder.
- (ix) As the applicant notes, the freeholder has now withdrawn its objection to the claim notice. Nonetheless, it is upon failure to serve that party, not the respondent, that the respondent relies.
- (x) The applicant provides documentary evidence of the freeholder company’s registered address (a screen shot of the relevant Companies House record), and evidence that the claim form was posted on 19 March 2021, and received on the 22 March. This comprises a certificate of posting by first class signed-for post, and a confirmation (taken, it appears, from the website referred to on the certificate) of delivery, and what appears to be a form of signature.
- (xi) The respondent relies only on what Mr Davidoff says Mr Smithers told him, to the effect that he “did not recognise” the address used.
- (xii) I find, without difficulty, that the claim form was properly served as evidenced by the applicant.
- (xiii) As stated above, it is clear to me that the respondent is no longer pursuing the other boilerplate objections alleged in the counter claim. Nonetheless, for completeness sake, I find that the applicant has provide clear documentary evidence that the requirements in 78(1), section 79(2), section 79(5), and section 80(6) of the 2002 Act were also satisfied.

(xiv) *Decision:* The applicant has established that it acquired the right to manage on the relevant date.”

9. Given the concession made by the Respondent, I confirm that the Applicant has the right to manage.
10. The relevant date of the right to manage as set out in section 90(4) of the 2002 Act is three months from the date after the determination becomes final. As the 30 September Decision has been set aside, the three-month period is from the date that I have re-made the decision, namely 26 October 2021 and therefore the relevant date is **27 January 2022**.
11. Given that there may be significant benefits to the parties and in the overall interest of the building, it may be prudent that the parties agree 1 January 2022 as the relevant date. If the parties do reach such an agreement, they should inform the Tribunal.

Next Steps:

12. The Applicant has also applied for costs under Rule 13(1)(b) of the 2013 Rules, on the basis that the Respondent acted unreasonably in conducting the proceedings. An application under the 2002 Act is a “leasehold case” for the purposes of Rule 13 (Rule 1, and section 176A of the 2002 Act). The proper approach to “unreasonably” is set out in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290, [2016] L&TR 34.
13. Rule 13(6) requires the Tribunal to not make an order for costs unless the paying party has been given an opportunity to make representations. Although provisions were made for submissions in respect of the Rule 13 application in the 30 September Decision, I am unsure to what extent there has been compliance.
14. Therefore, I direct that if not already done so, the Respondent may make representations in respect of the application costs to be received by the Tribunal and copied to the Applicant no later than **1 November 2021**.
15. The Applicant then may make any representations in respect of the costs to be received by the Tribunal and copied to the Respondent no later than **15 November 2021**.
8. The decision on the Rule 13 will then be made on the basis of written submissions in the fourteen days from **22 November 2022**. If either party requests a hearing for this issue, then they should make such a request by **17 November 2021**.

Name: Ms H C Bowers

Date: 26 October 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).