



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

- Case Reference** : **MAN/00CC/LUS/2021/0001**
- Property** : **9-23 (odd) Highgrove Court, Carlton.  
Barnsley S71 3RW**
- Parties** : **Highgrove Court RTM Company Limited  
(represented by Property Management legal  
Services Limited)**  
  
**and**  
  
: **Residential Freeholds Limited (by its agent  
Moreland Property Limited)**
- Type of  
Application** : **Application for a determination of accrued  
uncommitted service charges under Section  
94(3) Commonhold and Leasehold Reform  
Act 2002**
- Tribunal Members** : **Mr J R Rimmer  
Mr K Kasambara**
- Date of decision** : **15<sup>th</sup> November 2022**
- Order** : **For the reasons set out herein the Tribunal  
has no jurisdiction to consider the  
application**

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**DECISION**

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## **Preliminary**

- 1 The Tribunal has received an application from the Applicant for a determination in respect of uncommitted service charges following the acquisition of the right to manage under the “no fault” provisions enabling such acquisition under the provisions of the Commonhold and Leasehold Reform Act 2002 (“CLRA”)
- 2 The situation in which the parties now find themselves is a complicated one which is best outlined by the timeline set out below
  - On 17<sup>th</sup> September 2020 the Applicant Company (at that time under a different name) serves a notice on the Respondent seeking to exercise the no fault right to manage.
  - On 30<sup>th</sup> September 2020 the Respondent serves a counter-notice alleging that the Applicant is not entitled to acquire that right.
  - The basis for that allegation is that the Applicant at that time has only one director, in breach of its articles of association.
  - On 20<sup>th</sup> November 2020 the Applicant appears to accept that allegation by serving a new notice seeking to exercise the right, having first cured the defect in its composition by appointing a second director.
  - Following the service of the second notice no counter-notice is served and the Applicant proceeds on the assumption that the right to manage has been acquired.
  - One step that the Applicant takes is to seek information from the Respondent to assist in setting appropriate service charges for its management of the properties. This is done by letter dated 16<sup>th</sup> February 2021.
  - On 3<sup>rd</sup> March 2021 the Respondents representative appears to acknowledge the right by seeking fee of £2,100.00 to provide the details requested.
  - In the absence of any substantive departure from the respective positions of the parties an application was made (dated 27<sup>th</sup> July 2021) to the Tribunal for a determination of applications by the Applicant for an order seeking disclosure of the information.
  - This application now appears for a paper determination on 15<sup>th</sup> November 2022.

## Determination

- 3 The Tribunal notes that the application is pursuant to the notice dated 20<sup>th</sup> November 2020 by which the Applicant sought to acquire the right to manage.
- 4 Section 81 CLRA provides:
- (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 premisesmay 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 provisions of this Chapter, or
    - (b) ceased to have effect by reason of any other provision of this Chapter.
- 5 In order for the Tribunal to be able to consider the application before it the Tribunal must therefore be satisfied that the notice dated 17<sup>th</sup> September 2020 was withdrawn prior to the service of the notice dated 20<sup>th</sup> November 2020.
- 6 Section 86 CLRA provides for withdrawal of a notice by giving a notice of withdrawal to:
- (a) the landlord of the premises
  - (b) any party to the lease other than as landlord or tenant
  - (c) a manager (within the provisions of the Landlord and Tenant Act 1987)
  - (d) the qualifying tenants of a flat contained in the premises.
- 7 In the absence of any evidence within the papers before it to show the existence of any such notice the Tribunal must also look at the provisions of section 87 CLRA to ascertain if the first notice is deemed to be withdrawn

- 8 Section 87 provides:
- (1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in (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.
  - (3) Subsection one does not apply if the person by whom the counter-notice was given...has, (before the time when the withdrawal would have been taken to occur) agreed in writing that the RTM company was on the relevant date entitled to acquire the right to manage the premises.

9 The two subsections of Section 84 to which section 87 refers provide:

- (3) Where the RTM company has been given (a) counternotice containing a statement such as is mentioned in 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...was given.

10 The Tribunal understands that the effect of these provisions, as they relate to the first notice dated 17<sup>th</sup> September 2020, to which a counter notice dated 30<sup>th</sup> September 2020 has been served, are as follows:

- (1) The counter-notice is one falling within the provisions of Section 84(2)(b), that is to say a notice that the RTM is not entitled to the right to manage
- (2) The notice itself nevertheless remains in force until it is either
- (3) Explicitly withdrawn by way of a notice complying with Section 86 ( the Tribunal not being aware of any such withdrawal), or

- (4) It is deemed to be withdrawn by virtue of section 87
  - (5) Such a deemed withdrawal takes place, in the absence of an application to the Tribunal to determine the validity of the entitlement to the right to manage (there is no such application here), two months from the date of the service of the counter-notice
  - (6) Since the counter-notice is dated 30<sup>th</sup> September the notice itself therefore remains in force until 29<sup>th</sup> November 2020
  - (7) The second notice then falls foul of the provision of section 81(4) that no further notice may be served in respect of the same premises within the period of validity of the first notice.
- 11 The Tribunal must then reach the conclusion that the second notice dated 20<sup>th</sup> November 2020 is invalid and it has no jurisdiction to consider the applications before it that may be founded upon it.

J R Rimmer  
Tribunal Judge  
15 December 2022