



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

**Case reference** : **CAM/00BK/LRM/2023/0001 and 0002**

**Property** : **41 – 43 and 45 – 47 Mill Street, Bedford  
MK40 3EU**

**Applicant** : **41-43 Mill Street RTM Company Limited  
(1) and  
45 -47 Mill Street RTM Company  
Limited (2)**

**Representative** : **Mr S Madge-Wyld -Counsel instructed  
by Lease Law Limited**

**Respondent** : **Sarrosons Limited (1)  
Assethold Limited (2)**

**Representative** : **Scott Cohen Solicitors Limited through  
Mr R Gurvits of Eagerstates Limited for  
(2)**

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

**Tribunal member(s)** : **Judge Dutton**

**Date of decision** : **11 September 2023**

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**DECISION**

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**Decisions of the Tribunal**

- (1) As a result of the concessions made at the hearing by Mr Ronni Gurvits acting for and on behalf of the second Respondent Assethold Limited the Tribunal records
- (2) that the notice of invitation to participate had been given to each person as provided for in sections 78(1) and 79(2) of the Commonhold and Leasehold Reform Act 2002 (the Act)

- (3) that in so far as 41 -43 Mill Street RTM Company Limited is concerned on the relevant date there were the requisite number of qualifying tenants as required by s79(5) of the Act
- (4) As a result the Tribunal determines pursuant to section 84(5)(a) of the Act that:
  - (a) the first Applicant was on the relevant date entitled to acquire the right to manage 41 – 43 Mill Street, Bedford MK40 3EU; and
  - (b) the second Applicant was on the relevant date entitled to acquire the right to manage 45 – 47 Mill Street, Bedford MK40 3EU.
- (5) The Tribunal orders the second Respondent to reimburse the Applicant with the application and hearing fees in the sum of £400 within 28 days of the date of this decision.

### **The application**

1. These were applications for determinations that on the relevant date the Applicants were entitled to acquire the right to manage 41 – 43 and 45 – 47 Mill Street, Bedford MK40 3EU (“the Premises”) under section 84(3) of the Commonhold and Leasehold Reform Act 2002. The Second Respondent served counter-notices asserting that each Applicant RTM company was not on the relevant date entitled to acquire the right to manage. There was no Counter Notice served by the First Respondent who has accordingly not objected to the Applicants acquiring the right to manage the Premises.
2. The Second Respondent, Assethold Limited, appears to have acquired the freehold of the Premises in early 2022 and on 25 February 2022 applied to be registered as the Proprietor. However, at the relevant date, namely the date of the Claim Notices (31 October 2022) the registration process had not been completed and only the First Respondent was recorded as the legal owner of the Premises.
3. The Applicants had asserted (amongst other things) that because the Second Respondent was not the registered proprietor of the Premises at the relevant date it had no right to serve any Counter Notice in this case. Further it was said that a Claim Notice was not given to the Second Respondent, it was merely sent a copy.
4. I was told that this or a similar issue is the subject of an appeal to the Upper Tribunal (permission having been given by the FTT) in the case of Assethold v Prince of Wales Road RTM Co. Ltd (LON/00AG/LCP/2022/0011). I understand that this relates to a claim for withdrawal costs by Assethold Limited, which was rejected by the FTT in the circumstances of that case.

## **The law**

5. The relevant provisions of the Act are referred to in the decision below.

## **Documents**

6. I was provided with a bundle of papers running to some 214 pages. This bundle included the parties' statements of case and witness statements of Mr Luck and Mr Funnell, with exhibits the contents of which were noted by me. In addition, the Claim Notice and Counter Notice for each property were included, together with copies of the relevant Land Registry entries on 31 October 2022 and specimen leases. Details of the Membership Register for both companies was included and further information in relation thereto and copies of letters and emails passing between the legal representatives for both sides. Finally, I was provided with copies of the applications and the directions issued by the tribunal on 9 May 2023.
7. The hearing was conducted by video.

## **The counter-notice**

8. In its counter-notices, the Second Respondent raised issues under section 78(1), 79(2) and 79(5) of the Act and enlarged on these issues in its statement of case dated 30 May 2023. The Respondent was represented by Mr Ronni Gurvits an experienced managing agent with Eagerstates Limited who regularly, if not exclusively, represent the Second Respondent. He had come to the case very late in the day, for reasons which were not expanded upon. There was no communication, that I am aware of, from Scott Cohen Limited indicating that they were not attending. Suffice to say having considered the Applicants statement of case, the papers filed for this hearing and heard the submissions of Mr Madge-Wyld he confirmed that the objections contained in the Counter Notices were no longer pursued and that he agreed the Applicants were entitled to acquire the right to manage the premises.
9. This concession, somewhat late in the day, means that I do not need to make any findings on the objections contained in the Counter Notices, although I would add that I consider Mr Gurvits' concessions to be wholly appropriate.
10. The only other potential issue, upon which I was encouraged to make a finding by Mr Madge-Wyld, was the Second Respondent's right to serve a Counter Notice in the first place. I did raise the apparent anomaly on dates, the Counter Notice being dated 14 December 2022, requiring to be served by 16 December 2022 as per the Notice of Claim but apparently being sent under cover of a letter dated 19 December 2022. I

was told that this was a red herring and that in fact the Applicants' solicitors had received the Counter Notice on 15 December 2022.

12. I have reviewed the submissions made about this by both Mr Madge-Wylde and by Scott Cohen Solicitors Limited on behalf of the Respondent. For the following reasons, I am not satisfied that it is necessary or appropriate to attempt to make any finding about this point in these proceedings.
13. First, I have not been provided with sufficient evidence about the transfer documents and registration applications, let alone any correspondence with the Land Registry to explain the delay in processing the applications to register the transfers to the Second Respondent, to enable me to make adequately informed factual findings. The parties referred to the Prince of Wales Road decision noted above on a similar point in a different case about withdrawal costs under section 88 which is the subject of an appeal to the Upper Tribunal, but that was not a case under section 84(3) and appears to have been made at least partly by reference to the relevant transfer and other documents.
14. Second, the Applicants' arguments are not consistent with the applications they have made and pursued under section 84(3): ("*Where the RTM company has been given one or more counter-notices ... the company may apply ... for a determination that it was on the relevant date entitled to acquire the right to manage the premises*"). The case management directions given on 9 May 2023 warned that the tribunal may not have jurisdiction to deal with these applications if the notices from the Second Respondent were not counter notices for the purposes of section 84(3). The Applicants chose to pursue the applications as if they were. It appears that, if I decided the point (with or without directions for further evidence and potentially another hearing) and did not accept the case of the Second Respondent on it, there is at least an unacceptable risk of wasteful litigation about whether the applications should then be struck out because there was no right to make them or the tribunal has no jurisdiction to deal with them (and what the consequences of that might be), which as I understand it is not the result sought by the Applicant in any event.

### **Summary**

15. As a result of the, in my view, correct concessions by Mr Gurvits for and on behalf of Assethold Limited at the hearing of this matter, the Tribunal determines that each Applicant was on the relevant date entitled to acquire the right to manage the relevant premises pursuant to section 84(5)(a) of the Act.
16. The tribunal does not have general jurisdiction to determine the acquisition date and cannot advise but I understand that in view of the

concessions made by the Second Respondent this decision is final so, in accordance with section 90(4), three months after this determination the Applicants will acquire the right to manage these Premises.

### **Fees**

17. In the light of the last-minute concessions made by Mr Gurvits for and on behalf of the second Respondent I order that the second Respondent shall refund to the Applicant the application fees and hearing fee in the total sum of £400 within 28 days.

**Name:** Judge Dutton

**Date:** 11 September 2023

### **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).