



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

Case reference : **LON/00BF/LRM/2023/0016**

Property : **Poets House, 47 Erskine Road, Sutton
SM1 3AT**

Applicant : **Poets House RTM Company Limited**

Representative : **Mr P Bazin of Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Mr R Gurvits of Eagerstates Limited**

Type of application : **Application in relation to the denial of
the Right to Manage pursuant to section
84(3) of the Commonhold and
Leasehold Reform Act 2002**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12 September 2023**

DECISION ON PRELIMINARY ISSUE

The tribunal's summary decision

- (1) The tribunal finds and determines no valid counter-notice was served on behalf of PICS Investments Ltd,**
 - (2) The tribunal finds no counter notice was served by the respondent Assethold on the applicant as alleged or at all.**
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The application

1. The applicant has sought the tribunal's determination on its right to acquire the right to manage the subject premises as Poets House, 47 Erskine Road, Sutton SM1 3AT ('the premises') pursuant to the provision of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').
2. At a case management hearing followed by Directions dated 11 July 2023 the tribunal identified the question of whether a valid counter-notice was served by the previous respondent as a preliminary issue for determination, as if no counter-notice had been served the tribunal did not have jurisdiction to determine the application.
3. At the case management hearing, no mention was made by either party, either in oral or written communications about the apparent existence of a counter notice served by the current freeholder, also dated 28 April 2023. On 15 August 2023 the applicant asserts that this was the first time it was made aware of the existence of the current freeholder's counter notice by way of the Respondent's Statement of Case. Subsequently, in a Reply dated 18 August 2023 the applicant disputed service of the respondent's counter notice on the applicant.

The background

3. The background to the application was identified in the Directions dated 11 July 2023 as follows:
 - A. The tribunal has received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a decision that, on the relevant date, the applicant RTM company was entitled to acquire the Right to Manage premises known as Poets Corner, 47 Erskine Road, Sutton, SM1 3AT ("the premises").
 - B. By a claim notice dated 20 March 2023, the Applicant gave notice that it intends to acquire the Right to Manage the premises on 1 August 2023.

- C. The registered freehold owner of the premises at the time that the claim notice was served was PICS Investments Ltd. It appears that the premises were transferred to Assethold Ltd on 21 December 2022. At the time that this application was made, Assethold Ltd were still not registered as the proprietor of the freehold interest. The Applicants served the claim notice on both PICS Investments Ltd and Assethold Ltd.
 - D. A purported counter notice dated 28 April 2023 has been served. It is signed by Mr Ronni Gurvits, who is described on the counter notice as “duty authorised agent of PICS Investments Ltd”. The address given is that of Scott Cohen, solicitors.
 - E. Mr Gurvits is a director or employee of Eagerstates Ltd, who act as managing agents for Assethold Ltd. Scott Cohen act as solicitors for Assethold Ltd.
 - F. Both PICS Investments Ltd and Assethold Ltd were identified as Respondents on the original application form. On 26 June 2023, Gentle Mathias LLP, solicitors for PICS Investments Ltd, emailed the Tribunal and requested they be removed as a Respondent, in the light of the transfer. That application was allowed by the procedural judge.
 - G. The Applicant has produced an email from a Mr Abdul Siddeek, who describes himself as a director of PICS Investments Ltd. The email states that “PICS Investment Ltd never authorised Ronni Gurvits to sign/issue this counter notice”. Also provided is a copy of the record at Companies House for Mr Siddeek, that confirms that he is an active director of PICS Investment Ltd.
 - H. The purported counter notice states that the Applicant is not entitled to acquire the right to manage by reason of section 72(1) of the Act “because these are not premises to which the section applies”.
- 4. However, after the directions were issued, in a Statement of Case dated 15 August 2023, Mr Gurvits referred for the first time to a counter notice dated 28 April 2023. This was signed on Assethold’s behalf by Eagerstates Limited. In the applicant’s Reply date 18 August 2023, the applicants denied having received service of the respondent’s counter notice and referred to the fact no previous mention of this notice had been made by the respondent, either to the applicant or to the tribunal and the applicant’s request for proof of service of this counter notice had not been answered.
 - 5. Consequently, by 18 August 2023, the respondent was aware the applicant disputed (i) the validity of the previous freeholder’s counter notice and (ii) the fact of the service of the current freeholder’s counter-notice. Despite this apparent, albeit informal extension to the preliminary issue, the respondent made no attempt to address it or seek

the tribunal's permission to address the issue of service of the current freeholder's counter notice in a Reply or to serve an informal Reply.

The preliminary issue

6. Consequently, having regard to rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal determines it is appropriate to consider both the validity of the previous freeholder's counter notice and the fact of service of the current freeholder's counter notice. The tribunal considers the respondent was alerted to the issue of service of the current freeholder's counter notice several weeks before the date set for the determination of the preliminary issue i.e., in the week beginning 11 September 2023 and has stated it considers the issues for determination are the validity of the two counter notices

The hearing

7. Neither party requested an oral hearing the tribunal has determined the preliminary issue on the documents provided by the parties. The applicant provided the tribunal with a hearing bundle of 50 electronic pages. This included a signed and dated Statement with a Statement of Truth from Mr Bazin, in which the service of counter notice relied upon by Mr Gurvits on behalf of the respondent was denied.
8. The hearing bundle also contained a Respondent's Statement of Case signed by Eagerstates Ltd. on behalf of Assethold Ltd. This Statement was neither dated nor contained a Statement of Truth. No further Statement of Case/Reply or witness statement from the respondent was received by the tribunal.
9. In the respondent's Statement, it was stated the 2 aspects of the preliminary issue are (i) the validity of the counter notice served by the previous freeholder dated 28 April 2023 and (ii) the counter notice dated 28 April 2023 alleged to have been served by the current freeholder. It was stated there was no requirement for the previous freeholder to have served a notice as their rights had been extinguished on the transfer of its interest. However, the issue of whether Mr Gurvits had authority to serve a counter notice on the previous freeholder's behalf was not addressed in this Statement.
10. Further, in the respondent's Statement it was stated the counter notice served by Assethold would be valid being the new freeholder even if their interest had not been registered at the time the Notice of Claim was served. However, no witness statement or Statement of Truth verifying the service of the respondent's counter notice or proof of service was provided even though it was the issue of service that was disputed by the applicant and central to the dispute between the parties.

The tribunal's decision

11. The tribunal finds:

- (1) The counter notice dated 28th April 2023 served by Mr Ronni Gurvits of Eagerstates Ltd on behalf of the previous freeholder PICs Investments Limited was served without authority and is invalid.
- (2) The counter notice alleged to have been served by Mr Gurvits as representative for the respondent Assethold Limited, was not served on the applicant as alleged or at all.

The tribunal's reasons

12. The tribunal accepts the applicant's evidence and finds Mr Ronni Gurvits of Eagerstates Limited did not have authority to serve a counter notice on the previous freeholder's behalf. The tribunal also finds the respondent does not seek to assert in its Statement that Mr Ronni Gurvits was given such authority.
13. The tribunal also accepts the evidence provided by the applicant disputing the service of a counter notice upon them by the respondent. The tribunal finds the respondent has failed to provide proof of the service of the counter notice or a signed witness statement to that effect despite knowing this was a substantive issue and having been requested by the applicant for proof of service.
14. The tribunal finds the respondent was fully aware of the need to disclose to the applicant and to the tribunal the alleged service of the current freeholder's counter notice. The tribunal finds the respondent's failure to address the issue of service of the respondent's counter notice or support any assertion that it was served as alleged or at all with a signed witness statement and Statement of Truth together with proof of service is indicative, the respondent's counter notice was not served at all.
15. In conclusion the tribunal determines no valid counter notice has been served by either previous or the current freeholder and therefore the tribunal does not have jurisdiction to determine the application seeking a 'right to manage'.

Name: Judge Tagliavini

Date: 12 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).