



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

Case Reference : CHI/45UH/LRM/2023/0006

Property : Flats 23, 27a and 29 Tarring Road,
Worthing, BN11 4EP

Applicant : Tarring Road RTM Company Limited

Representative : The Leasehold Advice Centre
pmb@leaseholdadvicecentre.co.uk

Respondent : Assethold Limited and Littlehampton
Properties Limited

Representative :

Type of Application : Application for a determination that on the
relevant date the Applicant was entitled to
acquire the Right to Manage the Property

Tribunal Member(s) : Judge N Jutton

Date of Decision : 17 January 2024

DECISION

1. Background

2. By an application to the Tribunal dated 30 May 2023 the Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) that it was on the relevant date entitled to acquire the right to manage the premises known as the building or part of a building containing flat 23, flat 27a and flat 29 Tarring Road, Worthing BN11 4EP (the Premises).
3. The Applicant relies upon a claim notice dated 1 March 2023 served pursuant to section 79 of the 2002 Act. A form of counter notice pursuant to section 84 of the 2002 Act was served on the Applicant dated 19 April 2023. The counter notice contended that the Applicant was not entitled on the relevant date to acquire the right to manage the premises. The notice stated that firstly the premises were not premises to which section 72 (1) of the 2002 Act applied (and therefore not premises to which the right to manage applied) and secondly that the claim notice served by the applicant was defective because it did not comply with section 80(6) of the 2002 Act because it specified a date which was earlier than one month after the relevant date by which a counter notice should be served pursuant to section 84 of the 2002 Act.
4. Directions were made by the Tribunal on 13 November 2023. They provided that the Tribunal considered that the application was suitable to be determined on the papers alone without an oral hearing and that the Tribunal would proceed to determine the application accordingly unless a party objected in writing within 28 days of receipt of the directions. No objection has been received by the Tribunal and accordingly the Tribunal proceeded to determine the application on the papers alone.
5. The directions also provided for the Respondent to serve on the Applicant a statement of case by 4.00pm on 1 December 2023. The Applicant states that the Respondent has failed to serve a statement of case and there is no statement of case from the Respondent before the Tribunal.
6. There is before the Tribunal a bundle of documents prepared by the Applicant which contains the application to the Tribunal, the directions made by the Tribunal, a statement of case on the part of the Applicant, a copy of the claim notice, a copy of the counter notice, correspondence between the parties and/ or their representatives, Articles of Association for the Applicant company, HM Land Registry official copy entries in respect of the freehold title and leasehold titles for the premises and other documents. References to page numbers in this decision are references to page numbers in the bundle.
7. As at the date that the Applicant served the claim notice there was some confusion as to the correct identity of the Respondent. The freehold title was registered at HM Land Registry in the name of the second Respondent, Littlehampton Properties Ltd but the Applicant had

received correspondence from the first Respondent Assethold Ltd to the effect that it had acquired the freehold interest in the premises . The counter notice (page 65) is signed by Ronni Gurvits who is described as '*Duly authorised agent of Littlehampton Properties Limited*'. In the circumstances the Applicant served the claim notice on both the first and second Respondents. There is in the bundle (page 35) correspondence in the form of an email received by the Applicant's representatives from Scott Cohen solicitors which states that they are instructed by the first Respondent. The email is dated 28 March 2023. There is also correspondence (pages 128-133) between the Applicant's representative and one Peter Verstage who is described as a director of the second Respondent company. There is at page 134 a form of contract of sale between the second Respondent and the first Respondent which is for the sale of the freehold land known as 23 27a and 29 Tarring Rd, Worthing registered under title number WSX99454. The copy of the contract is not dated and does not contain a completion date, nor is it signed. However at page 135 is a form of completion statement which provides for a completion date of 20 November 2020. The correspondence between the applicants representatives and Mr Verstage states that the second Respondent company had been dissolved and further that Ronni Gurvits was not an authorised representative of the second Respondent company.

8. It would appear to the Tribunal from the papers before it that the freehold interest in the premises was sold by the second Respondent to the first Respondent on 20 November 2020. However there was a delay, which unfortunately is not unusual, in completing the registration of the first Respondent as the proprietor of the freehold interest in the premises at HM Land registry. That caused the Applicant some difficulty because it understood that the first Respondent may have acquired the freehold interest but the registered proprietor was still shown at HM Land Registry as at the date of service of the claim notice, as the second Respondent. Hence the decision of the Applicant to serve the claim notice on both Respondents.
9. There is a potential issue in the circumstances as to the validity of the counter notice. As at the date of service of the claim notice the proprietor of the freehold interest (albeit not yet registered at HM land registry) would appear to the Tribunal upon the basis of evidence before it to have been the first Respondent. That would be consistent with the correspondence received by the Applicant's representatives from solicitors acting for the first Respondent dated 28 March 2023 (33). It is not clear why the counter notice is stated to be signed by a duly authorised agent of the second Respondent company. However it is noted that the address on the counter notice is that of a company called Eagerstates Limited and the letter accompanying the counter notice (64) is from that company. The Tribunal understands that Eagerstates Limited is a company that is linked to and/or represents the first Respondent. Further that the issues raised in the counter notice are issues which properly the Tribunal should address when

considering whether or not the Applicant was at the relevant date entitled to acquire the right to manage the premises.

10. The First Issue.

11. The first issue raised in the counter notice is whether or not the premises are premises to which chapter 1 of Part 2 of the 2002 Act applies. More particularly whether the premises fall within the definition of premises as set out in section 72.
12. The counter notice provided no detail as to why the first Respondent contended that the premises did not comply with the requirements of section 72. That section provides as follows:
 - (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 the 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 a part of a building if the relevant services provided for 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. There is a photograph of the premises at page 16. Marked on the photograph are the numbers of the flats 23, 27a and 29. At pages 109 - 116 is a copy of the official copy of the register of title for the freehold land described as 'Flats 1 and 2, 15, Tarring Road, 17, 23 - 25, 31, 13A, 23A Tarring Road, 69 and 71 London Street, Worthing', title number WSX99454. The schedule of notices of leases at the end of the register (115) describes flat 23 as 'ground, first and second floor', flat 27a as 'first and second floors' and flat 29 as 'ground floor flat'. That is consistent with the photograph at page 16. That is annotated to show flat 23 is occupying part ground floor part first floor, flat 27 as occupying the first floor and flat 29 as occupying the ground floor. Taken together, and upon the basis of the evidence before it (and in the absence of any submissions or evidence from the Respondents) the Tribunal is satisfied that for the purposes of section 72(3) that the

premises constitute a self-contained part of the overall building as the Applicant contends. There would appear from the photograph at page 16 to be a vertical division between the premises and the rest of the building/neighbouring property, and structure of the premises is such that it could be redeveloped independently of the rest of the building. Further that for the purposes of section 72(4) the relevant services (as defined subsection 5) serving the premises are as the Applicant contends by stating that the premises are a self-contained part, provided independently or could be so provided without involving the carrying out of works which would result in a significant interruption in provision of such services for the occupiers of the rest of the building.

14. Second Issue

15. The second issue raised in the counter notice is that the claim notice is defective because it does not comply with section 80(6) of the 2002 Act. That subsection provides that the claim notice 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.
16. The counter notice states that the claim notice specifies a date that is earlier than one month after the relevant date by which a counter notice could be served.
17. The claim notice is at pages 27 – 31. It provides at paragraph 5 that a counter notice must be given no later than 20 April 2023.
18. Section 79(1) provides that in Chapter 1 of Part 2 of the 2002 Act states ‘... *“relevant date” in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given*’.
19. The claim notice is dated 1 March 2023. The Applicant says that it was posted by first class post on 6 March 2023 and has produced copy certificates of posting with that date (21-22). Mr Gurvits contends in an email dated 11 May 2023 to the Applicant’s representative that the claim notice was received on the 21 March 2023 and thus the date specified in the claim notice by which a counter notice may be served which was 20 April 2023 was earlier than one month after the relevant date.
20. The Tribunal accepts the evidence of the Applicant that the claim notice was served by first class post on the 6 March 2023. Allowing two working days it would be deemed to have been served on 8 March 2023. There is no witness statement or statement of case from the Respondent or other evidence before the Tribunal to suggest otherwise. The Tribunal does not accept the contents of Mr Gurvits email dated 11 May 2023 which contends that the notice was received (conveniently for the Respondent) on 21st of March 2023 just one day short of a full month to 20 April 2023.

21 In the circumstances, on the basis of the evidence before it, the Tribunal is satisfied that the claim notice complies with the requirements of section 80 (6) of the 2002 Act.

22 **The Decision**

23 For the reasons stated having carefully considered the evidence before it the Tribunal determines pursuant to section 84(3) of the 2002 Act that the Applicant was on the relevant date entitled to acquire the right to manage the premises known as flats 23, 27a and 29 Tarring Rd, Worthing BN11 4EP.

24 In its statement of case the Applicant seeks an order that the first Respondent reimburse it the application fees paid to this Tribunal. The Tribunal is minded to make an order that the first Respondent reimburse the Applicant fees of £100 within 28 days from the date of this decision. The reasons are (1) the Applicant has been successful (2) the first Respondent did not submit a statement of case. The first Respondent is entitled to make written representations to the Tribunal copied to the Applicant within 14 days of the date of this decision. If no representations are made then the first Respondent is ordered to reimburse the Applicant fees of £100 within 28 days of the date of this decision without further order.

Dated this 17th day of January 2024

Judge N Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.