



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

Case reference : **CAM/22UE/LRM/2023/0007**

Property : **80 High Street, Hadleigh, Benfleet, Essex
SS7 2PB**

Applicant : **80 High Street RTM Co Ltd**

Representative : **Leasehold Advice Centre**

Respondent : **Assethold Ltd**

Representative : **Scott Cohen solicitors**

Date of Application : **1 June 2023**

Type of application : **Application for determination that on the
relevant date the RTM company was
entitled to acquire the right to manage,
pursuant to s.84(3) of the Commonhold
and Leasehold Reform Act 2002.**

The Tribunal : **Tribunal Judge S Evans**

Date/ place of hearing : **Paper determination**

Date of decision : **29 March 2024**

DECISION

DECISION

- (1) The Tribunal determines that on the relevant date the Applicant was entitled to the right to manage the Property, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.**
- (2) Pursuant to rule 13(2) of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, the Tribunal orders the Respondent to reimburse to the Applicant the application fee of £100.**

REASONS

Background

1. The Applicant is 80 High Street RTM Company Limited, represented by the Leasehold Advice Centre.
2. The Respondent is Assethold Limited, represented by Scott Cohen solicitors.
3. The Application is an Application to determine that on the relevant date the Applicant was entitled to acquire the right to manage a block of 3 self-contained flats held on long leases at 80 High Street, Hadleigh, Benfleet, Essex SS7 2PB (“the Property”).
4. The Respondent became the freeholder of the Property on 18 June 2018.
5. The leaseholders acquired their respective leasehold interests in 2018, 2020, and 2021.
6. For material purposes, the Tribunal does not need to set out all the details of the leases except that in relation to flat 1. A copy of the lease has not been supplied to the Tribunal, but it appears to be common ground that the lease was granted for a term of 125 years from 25 April 2018 in relation to flat 1, which is situated on both the ground floor and the first floor of the Property.
7. For material purposes also, it is sufficient to record that it is common ground that the lease was granted to both Amanda Black and Michael Kirk Douglas Black. The official copy of entry of title supplied to the Tribunal dated 14 March 2023 records that both Amanda Black and Michael Kirk Douglas Black were the registered leasehold proprietors as of that date.
8. However, the Tribunal is informed that in June 2022, Michael Kirk Douglas Black passed away. It is evidenced by the Applicant in its Reply to the Respondent’s statement of case that probate was granted on 19 October 2022 to Amanda Black as sole executor of the estate of Mr. Black.
9. On 17 March 2023 Articles of Association in relation to the Applicant were created, with the subscribers being named as Amanda Black and the other 2 leaseholders of the Property.

10. The Applicant was incorporated as a company on 20 March 2023.
11. On 22 March 2023 a Notice of Claim to acquire the right to manage was served by the Applicant on the Respondent by e-mail and 1st class post at 5 addresses.
12. The Notice of Claim specifies the full names and addresses of persons who are both qualifying tenants and members of the company, in the schedule to the Notice of Claim at part 1, as being “Amanda Black [*Michael Kirk Douglas Black deceased*]” in relation to flat 1, and Gregory Lawrence Morley and Jeanette Georgina Morgan respectively in relation to the other two flats. In Part 2 of the Schedule, the particulars of leases of persons named in Part 1 cite Amanda Black only as the lessee of flat 1.
13. On 5 May 2023 the Respondent served a Counternotice which objected to the Notice of Claim, for 6 generic reasons, citing sections 78(1), 79(1), 80(3), 80(4), 80(8) and 80(9) of the 2002 Act. No point was specifically taken, nor particulars given, as to why the Respondent alleged that the Applicant had not satisfied those sections.
14. On 15 May 2023 the Applicant wrote to the Respondent’s solicitors in relation to the Counternotice, referring the Respondent to a decision of the Tribunal in 2010 which noted it was best practice that a Counternotice should set out details of any objections.
15. The Respondent did not respond to the above letter, so this Application was made to the Tribunal on 1 June 2023.
16. Unfortunately, there was a delay in the giving of directions, due to shortage of staff. On 8 February 2024 procedural directions were given, which the parties have duly complied with.
17. The Tribunal directions indicated that a decision in this case would be communicated in the week commencing 18 March 2024, and the Tribunal apologises that there has been a short delay in the giving of this decision, by reason of the Tribunal’s workload.

The Issues

18. The Respondent’s case, as now set out in its Statement of Case, is simple; and there is really one issue for the Tribunal to decide. That is whether the omission of the personal representatives of Michael Black from the process of the right to manage by the Applicant leads to the conclusion that there has been non-compliance with both section 78(1) and 79(2) of the 2002 Act, and that as a result the particulars in the Notice of Claim are invalid.
19. The Applicant’s Reply to the Respondent’s statement of case, signed with a Statement of Truth, counters as follows:
 - Both parties agree that Mr. Black is deceased.

- His legal interest passed to Amanda Black without registration at the Land Registry.
- Amanda Black and Mr. Black held the lease as tenants in common.
- Mr Black's interest in the lease survived his death.
- Mr Black's interest in the lease forms part of his estate.
- Amanda Black is the sole executor of that estate.
- Mr Black's interest in the lease vested in Amanda Black.
- Amanda Black should therefore be the sole qualifying tenant of flat 1 for the purposes of the Notice of Claim.

Relevant Statute Law

20. See Appendix 1 to this decision.

Discussion and Determination

21. The Respondent in support of its case relies on a number of decisions of the Upper Tribunal: *Assethold Ltd v 7 Sunny Gardens Road RTM Company Ltd* [2013] UKUT 0590 (LC), *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Company Ltd and Canary Gateway (Block B) RTM Company Ltd* [2020] UKUT 358 (LC), *Baron Estate Management Ltd v Wick Hall (Hove) RTM Company Ltd* [2023] UKUT and *Triplerose Ltd v Mill House RTM Co Ltd* [2016] UKUT 80 (LC).
22. The Tribunal has read the above cases in full, and notes that some of them refer to decisions of the Court of Appeal including *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89.
23. The Respondent also relies on s.75(7) of the 2002 Act, which provides:
- “(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall... be regarded as jointly being the qualifying tenant of the flat.”
24. The Applicant, which is noted not to be legally represented, does not rely on any legal authority binding on this Tribunal.
25. Neither party referred the Tribunal to the law of real property as it concerns survivorship upon the death of one of 2 joint tenants/lessees, which is the situation in the instant case.
26. The instant case is therefore distinguishable from *Assethold Ltd v 7 Sunny Gardens Road RTM Company Ltd* [2013] UKUT 0590 (LC), in which the failure to serve a notice of invitation to participate on personal representatives of a deceased sole tenant (Mrs Foskett) was considered. It was held in that

case that the personal representatives of the deceased sole tenant of 1 of 3 flats in a block were a qualifying tenant, and not being members of the RTM Company, they were entitled to receive a notice of invitation to participate pursuant to section 78(1): see decision at paragraph 32.

27. As noted above, the instant case concerns a lease which was originally granted to 2 lessees, Amanda Black and Michael Black.

28. At this juncture, it is sufficient to quote from *Megarry & Wade: The Law of Real Property*, 10th Ed, Chapter 12 - Co-ownership, Part 1 - Joint Tenancy and Tenancy in Common, Section 3. - Creation of the Tenancies, at paragraph 12-014 (emphasis supplied):

“The key to a proper understanding of joint tenancies and tenancies in common is always to consider the legal estate separately from the equitable interest. Thus A and B may be legal joint tenants but equitable tenants in common; that is to say, A and B hold the legal estate jointly upon trust for themselves as tenants in common. Their rights of enjoyment, therefore, are the rights of tenants in common, not the rights of joint tenants. **The effect of A’s death on the legal joint tenancy is that B is solely entitled to the legal estate.** However, A’s equitable interest (his undivided share) passes under his will or intestacy. The result is that B holds the legal estate on trust for himself as to his share, and for A’s personal representatives as to A’s share.”

29. The Tribunal is bound by *Assethold Ltd v 7 Sunny Gardens Road RTM Company Ltd* [2013] UKUT 0590 (LC) at paragraph 29, in which the Deputy President (emphasis supplied) held:

“29. To be the qualifying tenant of a flat a person must be a tenant of that flat. The “tenant” referred to in section 75(1) of the 2002 Act is the person in whom, for the time being, the legal estate created by the lease is vested. **As the LVT correctly observed, the 2002 Act is not concerned with beneficial interests.** At the relevant time the qualifying tenants of flat 7A were therefore Mrs Foskett’s personal representatives (the executors or administrators of her estate) or, in the event of her intestacy, the Public Trustee.”

30. In the instant case it is thus necessary to identify the legal owner of Flat 1 in the Property, not the beneficial owner, at the time the notice of invitation to participate had to be served. The Applicant states that Amanda Black and the deceased Michael Kirk Douglas Black held the lease to Flat 1 as tenants in common. In the Tribunal’s determination, the person solely entitled to the legal estate in Flat 1 was therefore Amanda Black, pursuant to the rules of survivorship: see paragraph 28 above. It matters not that she may have been holding the legal estate on trust for Mr Black’s personal representatives as to

his share of the lease. She still held the legal estate. And, the Tribunal notes, in any event she was Mr Black's personal representative.

31. It follows that, in the Tribunal's determination, Amanda Black alone was the qualifying tenant of Flat 1, being the person in whom, for the time being, the legal estate created by the lease was vested. There was accordingly no need to serve a notice of invitation to participate on anyone else pursuant to section 78(1) and 79(2) of the Act.
32. For sake of completeness, in answer to the Respondent's reliance on s.75(7) of the 2002 Act, the Tribunal determines that at the relevant time flat 1 was no longer "being let to joint tenants under a long lease". Mr Black was deceased. The legal estate was being held by Amanda Black alone.
33. It follows that there was no defect, in the Tribunal's determination, in procedure in naming Amanda Black alone as the member in Part 1 of the Notice of Claim and as the lessee in Part 2 thereof. Section 80(3),(4),(8) and (9) of the 2002 Act were, the Tribunal finds, satisfied.

Conclusions

34. The Tribunal determines that on the relevant date the Applicant was entitled to the right to manage the Property, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.
35. Pursuant to rule 13(2) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, the Tribunal orders the Respondent to reimburse to the Applicant the application fee of £100.

Name: Tribunal Judge S Evans

Date: 29 March 2024.

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).

Appendix 1

The Commonhold and Leasehold Reform Act 2002

Section 74 makes provision for the membership of RTM companies. Section 74(1) provides:

“The persons who are entitled to be members of a company which is a RTM Company in relation to premises are –

- (a) qualifying tenants of flats contained in the premises, and
- (b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.”

Section 75 identifies qualifying tenants and provides, so far as it relevant, as follows:

“75 Qualifying tenants

(1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this chapter and, if so, who it is.

(2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

...

(5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly;

...

(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall... be regarded as jointly being the qualifying tenant of the flat.”

A long lease is defined in section 76 and includes a lease granted for a term of years certain exceeding 21 years.

It is the policy of the Act that membership of an RTM Company should be open to all qualifying tenants. To that end section 78(1) provides as follows:

“78 Notice inviting participation

- (1) Before making a claim to acquire the right to manage any premises, a RTM Company must give notice to each person who at the time when the notice is given –
 - (a) is the qualifying tenant of a flat contained in the premises, but
 - (b) neither is nor has agreed to become a member of the RTM Company.”

Such a notice is referred to as a notice of invitation to participate and, amongst other things, is required by section 78(2) to inform recipients of the company’s intention to acquire the right to manage and to invite them to become members of the company.

Claims to acquire the right to manage are commenced by giving notice under section 79, which, so far as is relevant, provides as follows:

“79. Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given until each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM Company which complies with sub-section (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM Company.
- (5) In any other case, the membership of the RTM Company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is –
 - (a) landlord under a lease of the whole or any part of the premises,
 -
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.”

“80. Contents of the Claim Notice

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
 - (a) the qualifying tenant of a flat contained in the premises, and
 - (b) a member of the RTM company,
and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
 - (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It 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](#).
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.”

The Administration of Estates Act 1925

The Administration of Estates Act 1925 makes provision for the devolution of real property on death. So far as relevant, section 1 provides as follows:

- “1. Devolution of real estate on personal representative
 - (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.”

By section 9(1) of the 1925 Act it is provided that

“Where a person dies intestate, his real and personal estate shall vest in the Public Trustee until the grant of administration.”

Land Registration Act 2002

Section 27 of the Land Registration Act 2002 makes provision for registrable dispositions of estates in land. Certain dispositions of a registered estate must be registered if they are to take effect at law and not merely in equity, but there is an important exception to that principle relevant to this appeal. Section 27 provides, so far as relevant, as follows:

- “27. Dispositions required to be registered.
- (7) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.
 - (8) In the case of a registered estate, the following are the dispositions which are required to be completed by registration –
 - (a) a transfer,
 - ...
 - (5) This section applies to dispositions by operation of law as it applies to other dispositions, but with the exception of the following –
 - (a) a transfer on the death or bankruptcy of a individual proprietor,
 - (b) ...”