FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/00KA/LRM/2023/0020** **P: PAPER REMOTE**
Property	**:**	**Kensington Court, 16-36 South Road, Luton LU1 3UD**
Applicant	**:**	**Kensington Court RTM Company Limited**
Representative	**:**	**The Leasehold Advice Centre**
Respondent	**:**	**1.J C Gill Developments Ltd** **2.Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors (second respondent only)**
Type of application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal member(s)	**:**	**Judge Wayte**
Date	**:**	**10 September 2024**

DECISION

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(1) The tribunal determines that the applicant was on the relevant date entitled to acquire the right to manage the relevant premises pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002, and the applicant will acquire such right three months after this determination becomes final.

(2) The tribunal also orders the second respondent to pay the applicant £100 in respect of their tribunal fees.

The application

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination that, on the relevant date, Regent Street RTM Company Ltd was entitled to acquire the Right to Manage ("RTM") premises known as Kensington Court, 16-36 South Road, Luton Lu1 3UD.

2. The application named the first respondent as the landlord but indicated that the second respondent had purchased the freehold. I joined Assethold to the proceedings at their request, not least as the tribunal's jurisdiction depends on their being a valid counter notice and the first respondent has neither replied to the claim notices or these proceedings.

3. The application also involves two claim notices. The first was dated 24 July 2023 and was objected to by Assethold on various grounds, including two errors on the face of the notice, being an incorrect post code for the first respondent and the wrong company number given for the RTM company (13375928 as opposed to 14828640).

4. The applicant accepted that this error rendered the original claim notice invalid and therefore served a further claim notice dated 29 September 2023. Assethold also objected to this notice, this time on the sole basis that at the date the claim notice was given an earlier claim notice remained in force.

5. The application was dated 24 November 2023. Directions were issued on 29 July 2024 for a paper determination in the absence of a request for a hearing. No such request was received. Both active parties have submitted statements of case as summarised below.

The second respondent's case

6. The second respondent's statement of case is dated 19 August 2024, their argument concerns the interpretation of sections 81(3) and (4) of the 2002 Act, which read:

> *(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 premises*
>
> *may 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 provision of this Chapter, or

(b) ceased to have effect by reason of any other provision of this Chapter.

7. The second respondent accepts that there are two ways of reading these provisions: namely as limited to cases where there is a valid claim form or to cases where any claim notice is given. They argue that the correct approach is the latter, for two primary reasons.

8. The first reason is that the pre-legislative material refers to withdrawing a claim notice by serving a notice of withdrawal or being deemed withdrawn in the event of a failure to apply to the tribunal within two months of receipt of a valid counter-notice. There is no reference to a valid claim notice by contrast with the reference to a valid counter-notice.

9. The second reason given is that interpreting the provisions narrowly would be contrary to Parliament's intention, which they argue was that a claim notice which does not comply with the 2002 Act has continuing validity unless and until the tribunal holds otherwise or it is withdrawn under section 86 or 87 of the 2002 Act. Reference is made to the Upper Tribunal decision of *Plintal SA v 36-48 Edgewood Drive RTM Company Ltd* (LRX.16/2007), a case dealing the costs of a RTM application, where George Bartlett QC made that observation.

10. The second respondent asserts that the Upper Tribunal decision in *Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freeholds Co Ltd* [2007] EWHC 1776 should not be followed as it concerns a different statutory scheme relating to collective enfranchisement, where there is an inhibition on giving a further notice for a year following withdrawal or deemed withdrawal of a claim notice. There is no such detriment in RTM cases and therefore no detriment to the tenants in construing the 2002 Act strictly.

11. In the circumstances, as there was nothing which could be interpreted as withdrawal of the first claim notice pursuant to the provisions of the 2002 Act, the second claim notice was of no effect and the application must fail.

The applicant's case

12. In response, the applicant argues that the first claim notice did not need to be withdrawn as it was defective on its face and therefore invalid and of no effect. Reliance is placed on the *Poets Chase* case and *Alleyn Court RTM Company Ltd v Hamdan* [2012] UKUT 74 (LC) where Judge Walden-Smith drew a distinction between claim notices which are defective on their face (and hence invalid and of no effect) and failures to follow the mandatory procedure under the 2002 Act which do not render the claim notice ineffective.

13. The applicant also argues that having asserted in its first counternotice that the first claim notice was invalid, it was estopped from setting up that notice as a bar to the service of a second notice.

14. Their alternative argument was that if the first claim notice remained valid, despite the error on its face, since the second respondent only became the registered proprietor on the freehold on 11 June 2024, it was not entitled to serve a counter notice and therefore the applicant had already acquired the RTM as the first respondent had not responded at all.

The tribunal's decision and reasons

15. The serious error in this case made on the first claim notice was to quote a completely incorrect company registration number, that of the Prince of Wales RTM Company Ltd. The applicant accepted that this invalidated the notice and made that point in its letter serving the second notice. The question is whether the applicant should have formally withdrawn that notice before serving the second one.

16. This was the same issue addressed by the Upper Tribunal in *Avon Freeholds Ltd v Regents Court RTM Co Ltd* [2013] UKUT 213. The President, Sir Keith Lindblom, held that given the similarity in the language between the 1993 and 2002 Acts, *Poets Chase* was of equal application to RTM claim notices. There was nothing in *Plintal SA* to undermine that conclusion. *Plintal* was authority for the proposition that an invalid claim notice could still trigger a costs application by the landlord while having no "continuing force" as a valid claim notice which triggered the RTM. Where the first claim notice was clearly invalid, there was no bar to a second claim notice being served, despite the wording of section 81(3) of the 2002 Act.

17. In this case, the second respondent has not resiled from their previous objection to the notice on the basis of the error in relation to the company registration number (and others). Although it claims that *Avon Freeholds* is "wrong", Upper Tribunal decisions are of course binding on this tribunal. I also reject the idea that a "bright line" should be drawn between the 1993 and 2002 Acts. There are many examples of the almost identical wording leading to the application of cases across both jurisdictions, of which the Court of Appeal decision in *Assethold Ltd v Eveline Rd RTM Co Ltd* [2024] EWCA Vic 187 is the latest example.

18. For the avoidance of doubt, I accept that the original claim notice is invalid on its face. Although there is a saving provision for inaccuracies in the particulars in section 81(1), *Assethold Ltd v 15 Younge Park RTM Co Ltd* [2011] UKUT 379 is authority that a serious error in respect of the company details can invalidate a notice. Here, the error was to give the registered number of a different RTM company entirely, which I consider is indistinguishable from the wrong company address in Younge Park.

19. In the circumstances, I agree with the applicant that as their first claim notice was invalid on its face, there was no requirement to formally withdraw it before serving the second notice. As that was the sole ground of objection raised by the second respondent to the second notice, it follows that the applicant is entitled to the RTM. It also follows that there is no need to consider the applicant's alternative arguments.

20. In accordance with section 90(4), the acquisition date is the date three months after this determination becomes final. According to section 84(7):

> "(7) A determination on an application under subsection (3) becomes final—
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> (a) if not appealed against, at the end of the period for bringing an appeal, or
>
> (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of."

20. In the light of the clear Upper Tribunal authorities in support of the applicant's case I also consider it is appropriate to exercise the tribunal's discretion under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the second respondent to reimburse the application fee of £100.

Name: Judge Wayte **Date:** 10 September 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).