



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

Case Reference : LON/00BE/LRM/2024/0016

Property : 171 Tower Bridge Road, London,
SE12AW

Applicants : 171 Tower Bridge Road RTM Company
Limited

Respondents : **Assethold Limited**

Type of Application : **Application in relation to the denial
of the Right to Manage under s.84(3)
of the Commonwealth and Leasehold
Reform Act 2002**

Tribunal Member : **Judge Shepherd
Sarah Phillips MRICS**

Date of decision : **10th October 2024**

DECISION

1. In this case the parties are in dispute about the best way to conclude the proceedings. The Applicants want to withdraw the proceedings and want the Tribunal to formally accept the withdrawal. The Respondent want the Tribunal to dismiss the claim.

2. The proceedings have already had a tortuous route. Suffice to say that the First Tier Tribunal made a decision in relation to the Application brought by the Applicants on 25th September 2023. The Tribunal decided that the notice of claim relied upon by the Applicants was valid and that the Applicants were therefore entitled to acquire the Right to Manage premises at 171 Tower Bridge Road (“The premises”). This decision was overturned by the Upper Tribunal on 16th May 2024 ([2024] UKUT 113 (LC)) who relied partly on decisions of *Natt v Osman* [2014] EWCA Civ 1520 and *Elim Court RTM Ltd v Avon Freeholds Limited* [2017] EWCA Civ. Both of these decisions have now been put into doubt by *A1 Properties Sunderland Limited v Tudor Studios RTM Company Limited* [2024] UKSC 27 a decision of the Supreme Court.

3. As a result of the Upper Tribunal decision the Applicants sought to withdraw their notice of claim on 9th July 2024. They now invite the Tribunal to make an order consenting to the withdrawal on the basis that the Applicant pays (a) the Respondent’s reasonable costs of the proceedings up to the date of the service of the Notice of Withdrawal; and (b) such other costs as the Respondent may be entitled to under section 88(1) of the Commonhold and Leasehold Reform Act 2002. They say that this is the appropriate way to deal with the case in accordance with Rule 22 of the Tribunal Rules (Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013). The relevant parts of this Rule state the following:

22(1) Subject to paragraph (2) a party may give notice of the withdrawal of its case or any part of it- (a) orally at a hearing; or (b) by sending or delivering to the Tribunal a written notice of withdrawal.....

(3) Notice of will not take effect unless the Tribunal consent to the withdrawal

(4) The Tribunal may make such directions or impose such conditions on withdrawal as it considers appropriate.

4. The Respondents say the Tribunal should dismiss the application instead and rely on the case of *Post Box Ground Rents Limited v Post Box RTM Company Limited* [2015] UKUT 0230 (LC) in which HHJ Stuart Bridge said the following at [41-43]:

41. I consider that these paragraphs, read in context, emphasise and expand upon the point made earlier in the judgment. An application, once made under section 84(3), may be withdrawn, as is contemplated by section 87(1)(b). Although the statute does not expressly state what the consequences of the withdrawal are, the tribunal retains jurisdiction unless and until it is satisfied that the application ‘should be dismissed by reason of the withdrawal’. The tribunal may, in exercising the jurisdiction it retains, go on to consider the merits, although it is difficult, as Lewis J himself indicates, to think of circumstances where any purpose would be served in doing so.

42. I therefore conclude that the withdrawal of an application does not, without more, bring that application to an end. The application ends only when the tribunal formally dismisses it. This construction of section 89 has the desired effect in policy terms of imposing liability for costs on the company. If and when dismissal occurs, the RTM company will become liable for the reasonable costs incurred by the freeholders (or any other party to the proceedings) as the restriction placed on its liability by section 88(3) will be removed.

43. The respondent contends that such a conclusion will prevent the RTM company from raising any misconduct in the proceedings on the part of the freeholders (for example, in deliberately refraining from putting a decisive counter-argument until the last minute) as a reason why they should not be liable to pay the freeholders’ costs. I do not accept this contention. Section 88 restricts the liability of the RTM company to ‘reasonable costs’. That term is

sufficiently wide to allow the RTM company to raise any objections concerning the conduct of the freeholders on the ground that the costs claim being made is not reasonable, and in the event of dispute the tribunal has jurisdiction to make a determination under section 88(4).

5. The Applicants say that the *Post Box* case pre-dated the rules. This is questionable. The decision was dated 1st June 2015 and the rules came into force on 1st July 2013 albeit they were subject to amendment. They say that the rules are not mentioned in the decision. This is not determinative because there was no dispute that a withdrawal had taken place in *Post Box*. The important part of the *Post Box* decision is the recognition that the liability for costs in this area is entirely statutory. It is not dependent on a costs order being made. Liability arises in accordance with the terms of s.88 of the 2002 Act. The only task of the Tribunal is to determine the amount of costs payable in default of the parties' agreement – s.88(4).

6. The Applicants say the Tribunal should make a withdrawal on the condition that the Applicants pay (a) the Respondent's reasonable costs of the proceedings up to the date of the service of the Notice of Withdrawal; and (b) such other costs as the Respondent may be entitled to under section 88(1) of the Commonhold and Leasehold Reform Act 2002. It's not clear why they think the Tribunal has jurisdiction to make such an order in light of the clear decision in the *Post Box* case.

Summary

7. The Tribunal makes the following order:

Upon receiving and consenting to the Applicants' notice of withdrawal dated 9th July 2024 the application is dismissed.

Judge Shepherd

10th October 2024

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.