FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KA/LRM/2022/0005**
Property	**:**	**Highview Court, Dudley Street, Luton, Bedfordshire, LU2 0FR**
Applicant	**:**	**Highview Court Luton RTM Company Ltd**
Representative	**:**	**Mr Stan Gallagher of Counsel**
Respondent	**:**	**Avon Ground Rents Ltd**
Representative	**:**	**Mr Mark Loveday of Counsel instructed by Scott Cohen solicitors**
Date of Application	**:**	**28 June 2022**
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	**:**	**Remote hearing, 28 August 2024**
Date of decision	**:**	**25 October 2024**

DECISION

DECISION

The Tribunal determines that on the relevant date the Applicant was not entitled to the right to manage the Property, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.

REASONS

Background

1. This is an application under s.84(3) Commonhold and Leasehold Reform Act 2002 to determine whether, on the relevant date, the Applicant RTM company was entitled to acquire the right to manage. The Applicant is the RTM Co, and the Respondent is the freeholder. There is also a management company with management functions under the flat leases, Highview Management Co Ltd ("the ManCo"), but this is not a party to the application.

2. The applications relate to premises at Highview Court, Dudley Street, Luton, Bedfordshire, LU2 0FR. They comprise a modern "L" shaped development in central Luton on 2-4 floors, laid out as 53 flats.

3. The Respondent acquired the freehold interest in the property on 5 October 2016.

4. On 25 January 2022 the Applicant was incorporated.

5. On 31 January 2022 the Applicant served notice of participation in right to manage on all qualifying tenants who were not members of the Applicant company, and on the ManCo on 28 February 2022.

6. On 21 March 2022 the Applicant served a claim notice dated 18 March 2022 on the Respondent in respect of the right to manage the property. Paragraph 5 of the notice states:

   "… you may respond to this claim notice by giving a counter notice under section 84 of the 2002 Act. A counter notice that must be in the form set out in Schedule 3 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. It must be given to the company, at the address in paragraph 1, not later than 7 May 2022 April 2022. [sic]"

7. On 23 March 2022 the Respondent received the claim notice, and responded

via its solicitors, requesting various documents.

8. Documents were disclosed on 30 March 2022, whereupon the Respondents served a counter notice on the Applicant dated 5 April 2022. This alleged 9 points of opposition, including that the claim notice specified a date earlier than one month after the relevant date for response by counter notice.

9. On 14 April 2022 the Applicant wrote to the Respondent in these terms:

   "We accept that the earlier notice with our covering letter dated 21st March 2022 is invalid and of no effect. We therefore serve this further and effective claim notice. Needless to say having already provided substantial quantities of supporting documents we trust no further information will be required or sought."

10. The second claim notice was received by the Respondent at its offices (which it shares with Y&Y Management Ltd) on 19 April 2022.

11. On 21 April 2022 the managing agents Y&Y Management Ltd allege that they received the second counter notice, with covering a letter addressed to the ManCo at 19-20 Bourne Court, Southend Rd, Woodford Green, Essex IG8 8HD, but in an envelope addressed to Y&Y Management Ltd at 2 Timberwharf Road, London N16 6DB.

12. On 18 May 2022 the Respondent served its second counter notice on the Applicant.

13. This takes 10 points of contention, including that the first claim notice remained in force (paragraph 2), the second time notice was not served on every person required by section 79(6), (paragraph 4), and that the second claim notice specified a day earlier one month after the relevant date for response by counter notice (paragraph 6).

The Application

14. On 1 June 2022 the Applicant wrote to the Respondent requesting further and better particulars of the challenges contained in the Respondent's second counter notice.

15. On 28 June 2022 this Application before the Tribunal was filed.

16. On 26 August 2022 Mr Joe Gurvits made a witness statement on behalf of the

Respondent. He is the managing director of Y&Y Management Ltd. In it he contends that he does not believe that the ManCo was served with the second claim notice, because he believes that their notice was delivered to Y&Y's offices in error by the Applicant.

17. On 14 September 2022 Mr Bazin of the Leasehold Advice Centre made a witness statement for the Applicant. In it he explains that he personally signs covering letters to the requisite claim notices and attaches them to the notices; that he personally scans all documents, checking the number of sheets matches the number of sheets in the paperwork; and personally places the notice of claim with the covering letter into each of the envelopes (6 in this case).

18. He states that it would be impossible for any notices not to be served. He states that he takes these to the Post Office and obtains certificates of posting. He states that the notices sent included 2 sent to the ManCo at 19-20 Bourne Court, Southend Rd, Woodford Green, Essex IG8 and also at another address. He ends his statement by saying he would entirely refute that a letter with a notice was placed in an incorrect envelope.

19. The proceedings were thereafter stayed on 10 October 2023 until about May 2024, pending the outcome of the appeal in *Assethold Ltd v Eveline Road RTM Co Ltd* [2024] EWCA Civ 187.

The hearing

20. The hearing took place remotely, and the Tribunal had the benefit of a bundle numbered up to page 472, as well as representations by 2 specialist counsel in this area of the law. The Tribunal is indebted to Mr Gallagher and Mr Loveday for their clear and succinct written and oral submissions.

21. The Applicant sought to rely on the witness statement from Mr Philip Bazin dated 14 September 2022, which was not in the bundle. The Respondent did not object.

22. The Tribunal therefore heard evidence from Mr Bazin for the Applicant and Mr Joe Gurvits for the Respondent.

23. Mr Bazin confirmed his witness statement, and that he deals with a large volume of right to manage applications, in the region of 100 to 150 per year. He accepted that he dealt with multiple notices of claim between April and September 2022. He stated that the covering letters dated 14 April 2022 would have been sent on that day. When asked why he did not have the

certificates of posting, he responded that he had six certificates of posting showing all letters had been sent on 14 April 2022, 2 of which were sent to the Respondent at various addresses, and 2 were sent to the ManCo at the address including its registered company address of 19 to 20 Bourne Court, Southend Rd, Woodford Green, Essex.

24. He confirmed that all letters were kept electronically, and his practice is to scan the covering letter with the documents enclosed, so in this case he would have scanned 6 x 14 pages into 1 file. He stated that not all the 84 pages or so had been included in the bundle, because he did not want to increase its size unnecessarily.

25. Mr Loveday put to Mr Bazin that the document at page 419 of the bundle, being the second claim notice and covering letter addressed to the ManCo was received at the offices of the Respondent / Y&Y, but not at the Manco's registered office of 19 to 20 Bourne Court. Mr Bazin's response was to say that Mr Gurvits was mistaken and incorrect. He asked the question, how would I have 6 certificates of posting which include one to Bourne Court all date stamped 14 April 2022?

26. Mr Gurvits, manager of Y&Y Management Ltd, confirmed his witness statement. He confirmed that they have 1 member of staff at their offices (situated at Avon House, 2 Timberwharf Rd, London N16) who is allocated for the Respondent's post, and 1 for Y&Y's post. He confirmed that the letter on page 419 of the bundle arrived in an envelope addressed to Y&Y, and was opened by the member of staff allocated to such post, then date stamped 21 April 2022. He confirmed the letter was not forwarded by the ManCo to his office. He said that he had inquired of the accountants at Bourne Court, and they had confirmed they had not forwarded the letter.

27. He confirmed that if they had forwarded it, they would have emailed it. He confirmed that the address was handwritten on the envelope because he remembered that fact from the time when he looked into the issue. On the day, the envelope was put on his desk. He had been intrigued, because he does not usually get envelopes put on his desk, and the covering letter was for the ManCo at 19-20 Bourne Court. He went down to speak to the member of staff concerned and asked how this had arrived. There was an envelope handwritten to Y & Y. He then inquired whether the document had been forwarded. He could not say what had happened to the envelope nor did he think to keep it.

28. When the 2 day difference (between the receipt by the Respondent of the second claim notice on 19 April 2022 and the receipt alleged by Y&Y on 21

April 2022) was drawn to his attention, Mr Gurvits drew to the Tribunal's attention that Easter Sunday was 17 April 2022, and Monday 18 April 2022 was a bank holiday.

29. Finally, Mr Gurvits was asked whether Mr Moskovitz was a director of the ManCo as well as the Respondent. Mr Gurvits answered that he believes to him to be so, but he is not 100% sure, and that a perusal of Companies House could be made.

30. At this point in time of the hearing, the Applicant made an application to adduce the additional documentary evidence of the certificates of posting x6 which had been referred to by Mr Bazin, dated 14 April 2022.

31. Mr Gallagher advanced a submission that the documents were relevant and had been referred to in oral evidence in response to cross examination by Mr Loveday, and that the Tribunal should have a complete picture. He could give no explanation to the Tribunal why the Applicant had not disclosed these documents before, but drew to the Tribunal's attention that the case had progressed in fits and starts over the previous 2 years, including a lengthy stay. He candidly accepted that the Applicant was in difficulty insofar as the stay had been lifted for at least 3 months and the documents could have been produced beforehand. The Applicant had been hampered by postponements and operating on a limited budget. But he frankly accepted that he couldn't say it was impossible nor impracticable for these documents to have been adduced. However, they added to Mr Bazin's credibility. He said the certificates of posting would prove that the documents were put into the post on 14 April 2022, but he accepted they would not prove what was in the letter.

32. The Tribunal determined that in accordance with the overriding objective of Rule 3 of the 2013 Procedure Rules, it would not admit these certificates of posting into evidence at this late stage. Dealing with the case fairly and justly includes dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs, and the resources of the parties and of the Tribunal. Whilst it is important to avoid unnecessary formality and to bring as much flexibility as possible to proceedings, so enabling parties so far as practicable to participate fully in the proceedings, it would have been wrong to have required the Respondent to deal with this evidence at such a late stage, necessitating the taking of instructions and delay in a case which involved several issues and was listed for only one day. Further, there was no reasonable explanation for the Applicants not having exhibited this documentation to Mr Bazin's witness statement nor disclosed it previously. Lastly, while the Tribunal is not concerned about Mr Bazin's credibility, having heard from him, the additional

evidence would be of limited value: it would show the date of posting and to where, but not what was in each individual envelope.

The Issues

33. All references to statutory provisions are to the Commonhold and Leasehold Reform Act 2002 unless otherwise stated. See Appendix 1 to this decision for the key sections under consideration.

34. As mentioned above, the Applicant served 2 claim notices. The Respondent says that, on the date of the second claim notice, the first claim notice was still in force, and the second notice was therefore invalid – see s.81(3) of the Act.

35. The Respondent says that in any event, the Applicant failed properly to serve the second claim notice on the ManCo -see s.79(6).

36. Finally, the Respondent says the second claim notice was invalid because the date it specified for service of counter-notices was less than one month from the relevant date – see s.80(6).

Discussion

(1) The section 81 issue

37. In essence, the Respondent's case is that on 12 April 2022 the first claim notice had not "been withdrawn or deemed … withdrawn by virtue of any provision of this Chapter" within the meaning of s.81(4)(a). The first claim notice was still "in force" on 12 April 2022. Section 81(3) spells out the consequences of this, namely that "no subsequent claim notice may be given". The Respondent says the second claim notices are consequentially invalid, and of no effect.

38. Developing this argument, the Respondent contends there had been no deemed withdrawal under s.87 and no express withdrawal under s.86(1), which prescribes how a claim notice should be withdrawn, namely by giving a "notice of withdrawal" to various persons listed in s.86(2)(a) to (d). An informal express withdrawal is insufficient.

39. The Respondent further contends that the covering letters to the notices were not valid notices of withdrawal because:

(1) They do not expressly state that the RTM company is withdrawing the earlier claim, but merely state that the notices were "invalid and of no effect";

(2) Withdrawal notices must be given to the landlord at the solicitors' address for service given in the First Counter-notice. S.111 deals with the address for service. A solicitors' address given in a counter-notice meets the s.111(4) notification requirement: *Assethold Ltd v 429 New Cross Road RTM Co Ltd* [2024] UKUT 113 (LC) at [28] to [29]. In this case, none of the covering letters dated 14 April 2022 were posted to the solicitors' address specified in the First Counter-Notice.

(3) The Respondent denies the covering letter containing the second claim notice was properly sent to the ManCo (see the s.79 issue below);

(4) The sequencing of the notices and the letters is in any event all wrong. It is essential that notices of withdrawal are given to all the persons listed in paras 86(2)(a) to (c), which includes both the Respondent and the ManCo: *Spire House RTM Co v Eastern Pyramid Group Corp SA* [2021] EWCA Civ 1658; [2022] 1 W.L.R. 503 at [42-3]. And it is also essential all the notices of withdrawal are given to all the relevant persons listed in s.86(2)(a) to (c) before any new claim notices are given. In this case, the notice of withdrawal was received by the Respondent *after* the claim notice was purportedly given to the ManCo;

(5) There is no evidence that the Applicants notified the qualifying tenants that it was withdrawing the first claim notice.

40. The Respondent disagrees with the Applicant's reliance on *Poets Chase Freehold Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2007] EWHC 1776 (Ch); [2008] 1 WLR 768 as being wholly inconsistent with the outcome in *429 New Cross Road*. Parliament has laid down a clear framework. Under this scheme, even a claim notice based on ineffective grounds remains "in force" until it is withdrawn, deemed withdrawn or otherwise disposed of: s.81(4). Indeed, a claim notice which fails to achieve the right to manage remains "in force" until the 28-day period for appeal has passed: see s.84(7). Statements made by either party as to the validity of notices of claim cannot affect the statutory provisions about whether notices are "in force". The importance of the requirement for a formal notice of withdrawal is shown by s.89.

41. The Respondent contends there is no estoppel, because the actions of both

parties were consistent with their mutual expectation that any challenge to the effectiveness of the claim notice would be made via the statutory procedure. The statements made by the Respondent in paras 1-7 of the first s.84 counter-notice were in the context of the statutory scheme and cannot be taken in isolation. Indeed, paras 9-10 of the counter-notice specifically say the Applicant was expected to apply to the FTT to determine whether it was entitled to acquire the right to manage. The Respondent therefore never stated the first claim notice was "of no legal effect". It merely stated that the Applicant had not acquired the right to manage, and that it could apply to the FTT to decide the point.

42. Moreover, the Respondent argued, the reasoning in *Poets Chase* supporting that decision can no longer be applied, at least in relation to right to manage claims. The very recent decision of the UKSC in *A1 Properties (Sunderland) v Tudor Studios RTM Co Ltd* [2024] UKSC 27 explains that the consequence of a procedural defect with an RTM claim notice is to render the transfer of the right to manage voidable at the instance of the relevant landlord or other stakeholder: [87]-[88]. A procedural defect does not therefore automatically render a right to manage claim notice invalid. In this case, it was up to the Respondent (not the Applicant) to treat the notice as void, and the Respondent's counter-notice simply did not say the claim notice was invalid or of no effect.

43. The Applicant, by its Reply to the Respondent's Statement of Case, and as developed by Mr Gallagher orally, contends that:

(1) The Respondent, by its counter notice of 5 April 2022 in response to the Applicant's first claim notice, contended that the Applicant's earlier notice was ineffective for want of compliance with various statutory requirements, and the Applicant has accepted this contention as to its first claim notice being effective; and in reliance on this contention, the Applicant served the second claim notice;

(2) That the covering letters to the second claim notice accepted that the earlier notice was invalid and of no effect;

(3) The parties have mutually agreed and acted upon a common basis, namely that the earlier claim notice was ineffective;

(4) As such the first notice of claim need not be withdrawn in order to clear the road for the service of the second notice. As such no notice of withdrawal was required;

(5) *Poets Chase* is still good authority.

(2) The section 79 issue

44. The Respondent contends that this issue concerns service of the second claim notice on the ManCo under s.79(6)(b); that the Applicant appears to rely on 2 copies purportedly posted to the ManCo on 14 April 2022 at 19-20 Bourne Court, Southend Road, Woodford Green, Essex IG8 8HD and to Room 201-203 Endeavour House Wrest Park, Silsoe MK45 4HS. Only the first seems to be material, since the Bourne Park address is the ManCo's registered office.

45. The Respondent further contends that the point here is essentially one of fact. There is no evidence of posting in the hearing bundle. But Mr Joe Gurvits does give evidence for the Respondent: the Bourne Court notice (and covering letter) were inadvertently inserted into an envelope addressed to the Respondent's agents Y&Y Management. This was received on 21 April 2022, date stamped by the agents. There is no evidence it was ever received by the ManCo at their address.

46. The Respondent also contends that that the Applicant cannot rely on the deeming provisions of s.111, nor the Interpretation Act 1978 s.7. The evidence shows the letter to the ManCo was not "properly address[ed]" and it did not "contain… the document" required by s.79.

47. The Applicant contends:

(1) Its agents the leasehold advice centre have rigorous procedures, such that it is very unlikely indeed that the claim notice was not served by post on the ManCo;

(2) There is no evidence from the ManCo;

(3) Section 7 of the Interpretation Act 1978 may be relied on, and since Mr Bazin says the claim notice was put in the post, it must be presumed to have been served on the ManCo in the ordinary course of post, unless the statutory presumption is rebutted;

(4) The Respondent did not raise this point before;

(5) Therefore the Tribunal should find as a fact that the claim notice was placed in an envelope addressed to the ManCo at its Bourne Court

registered office on 14 April 2022, and was served on the ManCo at its registered office shortly after that date in the ordinary course of post.

48. The Applicant further contends that, in any event, the ManCo and the Respondent share a common director. Since the claim notice was received by the Respondent directly at Timberwharf Rd, it should be treated as given to the ManCo, as it was given to Mr Moskovitz on 19 April 2022. Avon House was therefore a good address for service on Mr Moskovitz as director of the ManCo.

The section 80 issue

49. The Respondent contends that the date specified in the Notices as 21 May 2022 "earlier than one month after the relevant date". Under s.79(1) the "relevant date" means "the date on which the notice of claim was given". The issue is therefore whether the notices of claim were "given" on or after 21 April 2022 (if at all). If they were, the notices of claim are defective, and the Applicant has not acquired the right to manage.

50. The Respondent contends the point is an evidential one, and again the Respondent relies on the evidence of Mr Gurvits. If the notice to the ManCo was properly posted, it was still only received on 21 April 2022, when it was date stamped by the agents, Y&Y. The period for responses was one day short.

51. The Respondent finally contends that under the Interpretation Act 1978 s.7, it is still open to it to show the claim notice was served late: *Calladine-Smith v Saveorder* [2011] EWHC 2501 (Ch); 2012] L.&T.R. 3 at [21].

52. In response, the Applicant relies on its contentions under the second issue.

Determination

The section 81 issue

53. In the Tribunal's determination, the Respondent's argument that the covering letters dated 14 April 2022 do not satisfy section 86(1) is a good one. The section requires a withdrawal of claim notice to give "notice to that effect". The covering letters here merely stated "the earlier notice…is invalid and of no effect." In the Tribunal's determination that was insufficient. Relief cannot be gained from the facts of the decision in *429 New Cross Road RTM Co Limited,* because in that case there would have been a valid statutory withdrawal (but for the failure of service) because the covering letter expressly stated the claim notice was "*withdrawn* and is no longer of any effect".

54. The Tribunal does not determine that a notice under section 86(1) must always contain the word "withdraw" or "withdrawal", or any variation of that word, but it must have the effect of withdrawal. For example, an Applicant might legitimately say we "discontinue" our claim notice. In this case, the Applicant did not serve a notice having the necessary effect. It merely communicated that the Applicant considered the earlier notice defective. Not that the claim was being withdrawn.

55. The Tribunal turns to the question whether the decision in *429 New Crossroad RTM Company Limited* is fatal to the Applicant's case. In that decision, the withdrawal notice was addressed to the landlord at its registered office, instead of being sent to its solicitors, whose address had been placed at the end of the counter notice, accompanied by the following words:

    "Being the address to which future communications related to the subject matter of the notice shall be sent."

56. The Upper Tribunal held:

    (1) It was crucial for the RTM company that its withdrawal of the first claim notice, in its covering letter, should have taken effect before the 2nd claim notice was given to the landlord;

    (2) The counter notice contained "a different address in England and Wales which [the landlord] wishes to be given any such notice", for the purposes of s.111(4);

    (3) The section 111(4) notification in the counter notice was effective to mandate an address for service of notice of withdrawal of the first claim notice. There was no need for it to refer specifically to a notice of withdrawal;

    (4) Accordingly, the notice of withdrawal of the first claim notice was not served at the correct address;

    (5) It is important that the entitlement to the right to manage remains governed by a statutory scheme which is clear, and interpreted consistently, so that all parties know where they are; by stating in section 111(4) that an RTM company "may not give a notice" at an address different from that notified by the intended recipient for the purpose, Parliament has given a very clear steer that a failure to do so would be fatal to the acquisition of the RTM.

57. Here, the first counter notice by the Respondent contained identical wording to that in *429 New Cross Road RTM Company*. Accordingly, if bound by the Upper Tribunal's decision, this Tribunal might determine that the Applicant's

withdrawal of claim notices should have been served on the landlord at its solicitors' address in order to be effective.

58. There is reason to be cautious, however The Upper Tribunal in *429 New Cross Road RTM Company*, in considering the effect of the notice of withdrawal which was served on the incorrect address, at paragraph 30 relied on *Natt v Osman* [2014] EWCA Civ 1520, a case which has received the highest of judicial scrutiny recently in the Supreme Court: see *A1 Properties Ltd v Tudor Studios RTM Co Ltd* [2024] 3 WLR 601 ("*A1*"), itself a leapfrog decision which applies *R v Soneji* [2005] , a case which was not cited in *429 New Cross Road RTM Company*.

59. Whilst in *A1* the Supreme Court did not overrule *Natt v Osman,* that CA case now needs to be treated with considerable caution, especially its suggestion that there are watertight categories of outright validity and outright invalidity. A more flexible approach is required, as *A1* shows.

60. The following 6 paragraphs are a summary of *A1*, taken from the decision of the Upper Tribunal recently (4 October 2024) in *Atesheva v Halifax Management Ltd* [2024] UKUT 314 (LC):

61. A1 Sunderland concerned a claim by residential leaseholders to acquire the right to manage a block of flats under the Commonhold and Leasehold Reform Act 2002. The main issue was whether a failure to serve a claim notice on an intermediate landlord as required by section 79(6)(a) would always have the effect of invalidating a right to manage claim. A second issue was whether, on the facts of the case, the failure to serve the claim notice on one of the relevant landlords had invalidated the claim.

62. The decision of the Supreme Court was given by Lord Briggs and Lord Sales (with whom Lord Hamblen, Lord Leggatt and Lord Stephens agreed). They held that the leaseholders' failure to serve a claim notice on the intermediate landlord did not invalidate the transfer of the right to manage. They explained by reference to the decision of the House of Lords in *R v Soneji* [2005] UKHL 49 that the correct approach to a failure to comply with a statutory provision requiring that some act be done before a power was exercised was to ask whether it was a purpose of the legislature that an act done in breach of that provision should be invalid.

63. At paragraph [61] of their judgment they explained that the effect of earlier authorities had been:

> "[…] to move away from a rigid category-based approach to evaluating the consequences of a failure to comply with a statutory procedural requirement and to focus instead on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be

caused or whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement."

64. The Court went on, at paragraph [62], to place limits on this approach:

"This does not mean that application of procedural rules in every statutory context turns on detailed examination of the consequences arising from the particular facts of the case, nor that a test of substantial compliance is properly to be applied in relation to every procedural rule. Examination of the purpose served by a particular statutory procedural rule may indicate that Parliament intended that it should operate strictly, as a bright line rule, so that any failure to comply with it invalidates the procedure which follows."

65. The correct approach was explained, at paragraph [68]:

"In our view the correct approach in a case where there is no express statement of the consequences of non-compliance with a statutory requirement is first to look carefully at the whole of the structure within which the requirement arises and ask what consequence of non-compliance best fits the structure as a whole."

66. The Court had earlier cautioned against simplistic shortcuts, at paragraph [63]:

"But we would observe that reference to "substantial compliance" begs the question of what purpose was supposed to be served by the rule and expresses a conclusion arising from the relevant analysis, rather than stating a test in itself. Statutory regimes involving procedural obligations are many and are highly varied, and there is no simple shortcut which avoids the need to undertake the analysis referred to in Soneji having regard to the particular provisions, scheme and purposes served by the statute in question."

67. Applying those dicta to the instant case, the Tribunal must ask whether the act here (of service of a withdrawal notice) done in breach of a provision (section 111(4)) renders the scheme invalid. Whilst *429 New Cross Road RTM Company* says it does, was that decision reached per incuriam *R v Soneji*, or alternatively should the Tribunal decline to follow it or distinguish it, in the light of *A1*?

68. In this Tribunal's determination, it cannot be said that the decision in *429 New Cross Road RTM Company* would necessarily have been different had *R v Soneji* been cited before it. Whilst breach of procedure in propriety rights cases no longer merits special categorisation and treatment, section 111 of the Act under consideration here does expect the withdrawal notice to be served on the "different" address if so requested; indeed, in saying the RTM company "may not" give a notice other than at the "different address", the unstated

consequence of not doing so is that there is no proper withdrawal of the claim, the Tribunal finds. This consequence best matches the statutory scheme, particularly since withdrawal leads to an entitlement to costs pursuant to s.89 of the Act. Accordingly, the Tribunal considers the decision in *429 New Cross Road RTM Company* survives *A1,* and that it is bound by it.

69. The Tribunal does not accept the Applicant's submission that because the Respondent and Y&Y Management share a common director, service on the former's offices was good service on the ManCo, whether at law (the ManCo and the Respondent are separate legal entitles) or in fact (there is no evidence Mr Moskovitz even saw the document).

70. Thirdly, it is essential that notices of withdrawal should have taken effect before the second claim notice is given. In this case it was not so.

71. As to the contention that there was no evidence that the Applicant notified the qualifying tenants of withdrawal, the Tribunal does not need to decide that issue, and the Tribunal has doubts that the Respondent might be able to take advantage of such a failure, for the same reasons as given under paragraph 84 below.

72. Lastly, the Tribunal rejects the Applicant's arguments of estoppel/ reliance on *Poets Chase*. The Tribunal agrees with the Respondent that the reasoning supporting that decision can no longer be relied on. The dicta of Morgan J in paragraph 54 must be treated with great caution in the light of *A1*, at least as regards the proposition that, "generally speaking, if a mandatory… statutory provision requires a party to give notice in a particular form in order to achieve a result identified in the… statute, and if a purported notice given by that party fails to comply with the mandatory… statutory provision, then the normal position is that the notice has no legal effect." That smacks of a category-based approach denounced in *R v Soneji.* In so far as Morgan J was purporting to say that an examination of the purpose served by a particular statutory procedural rule *may* indicate that Parliament intended that it should operate strictly, as a bright line rule, so that any failure to comply with it invalidates the statute, then his words are not in tension with *R v Soneji,* as applied in *A1*.

73. Nonetheless, it is difficult to see that the Court took the correct approach of looking carefully at the whole structure within which s.13 of the Leasehold Reform Housing and Urban Development Act 1993 arises and asking what consequences of non-compliance best fits the structure as a whole. Morgan J's searching (see paragraph 55 of the decision) for a provision in the Act in question which reverses the "normal result" is not the approach advocated in *A1*. Whether the result would have been different had Morgan J applied the approach in *A1* was not the subject of argument before this Tribunal, and given that *A1* concerns the very provision of CLRA with which this Tribunal is concerned, there is little to be gained in treading that path.

74. As to estoppel, the remedy is equitable, and requires this Tribunal to examine the following ingredients. Did the Respondent make a relevant representation? Did the Applicant rely on that representation? Was the Applicant's reliance sufficiently detrimental? In all the circumstances is it inequitable for the Respondent to go back on any representation?

75. The Tribunal determines that the Respondent here made no representation in its first counternotice on which the Applicant might rely. It merely disputed that section 79(6) had been complied with. It did not expressly accept the first claim notice was "of no legal effect". Further, even if the Applicant relied on the contents of the counternotice, the Tribunal agrees that the only true expectation the parties had was that they would be expected to comply with the statutory scheme, and that the Applicant would not acquire the right to manage the property unless and until, on an application to the Tribunal, it was finally determined that the Applicant was so entitled. It was therefore not inequitable for the Respondent to rely on its strict legal rights.

76. For all the above reasons, the Tribunal agrees with the Respondent that, pursuant to section 81(3), the earlier claim notice in this case continued in force, and the second claim notice could not therefore be given by the Applicant.

The section 79 issue

77. The Applicant's statement of case does not rely on service on the ManCo at any address save for the registered address at Bourne Court.

78. When and where the second claim notice was served is a matter of fact from the Tribunal. I have had the benefit of reading and hearing the evidence of Mr Bazin and Mr Gurvits.

79. The Tribunal is not satisfied that, on balance of probability, the ManCo was served at Bourne Court. The Tribunal finds both witnesses to have been trying to assist the Tribunal and honest. The Tribunal does not doubt that Mr Bazin believes that he posted the claim form on 14 April 2022 to the ManCo at that address, but the evidence from Mr Gurvits was more compelling. Mr Gurvits had directly inquired of Bourne Court whether the claim notice had been forwarded. He was told it had not been forwarded. Given that the processes are that all correspondence is forwarded by the accountants to Y&Y, the Tribunal concludes the claim notice was not received by the ManCo at Bourne Court.

80. However, that is not the end of the matter. The Tribunal, following *A1*, must consider what the effect of a breach of section 79(6) is, as between the

Applicant and the Respondent, in circumstances where the ManCo has not ostensibly raised any objection to the RTM. In other words, should the scheme be invalidated (with the consequence that the Applicant is required to pay costs and start again, or simply give up) because the ManCo had been deprived of the opportunity of serving a counter-notice?

81. There is an obvious difference between this case and *A1*. In the latter case A1 Sunderland could not have included any valid objection to the scheme. It was a "case C" scenario, to use Lord Briggs' categorisations (see decision at [83]). The instant case is more akin to a "case B" situation (decision at [81]). Whilst this is not a case of 2 visible landlords, it is a situation of a visible ManCo and a visible landlord (Respondent). It is no answer to this difficulty to say that the ManCo could just apply to the Tribunal on the basis that it should have been served with a claim notice. The Tribunal is a statutory body, and the paths by which its jurisdiction can be invoked are clearly laid down (i.e. by serving valid notices): see *A1* at [82]. In effect, the Supreme Court was saying the service of a claim notice is a fundamental gateway entry requirement to participation in the scheme.

82. That this is so, is emphasised by paragraph 85 of *A1*:

"…In case B, the visible landlord who was not given a claim notice has its right to make a valid objection overridden in the same way as the invisible landlord in case A, if the failure to give it a claim notice was not fatal to the validity of the scheme. That cannot, we think, have been Parliament's intention, since it would render nugatory the carefully drawn boundaries of the dispensation from the obligation to give a claim notice, which only apply to invisible landlords and other stakeholders."

83. Accordingly, this Tribunal concludes in this case that the consequences of non-compliance of service on the ManCo which best fits the structure of the scheme as a whole is that non-service is fatal to the validity of the scheme.

84. For the above reasons, it is unnecessary for the Tribunal to decide whether the Respondent can opt whether non-service on the ManCo renders the validity of the scheme voidable or void. The Respondent was not the stakeholder deprived of being given a claim notice- it was the ManCo. Whilst paragraph 87 of *A1* holds that "the failure renders the transfer of the right to manage voidable, at the instance of the relevant landlord or other stakeholder who was entitled to, but not given, a claim notice, but not void", Lord Briggs was not considering the instant situation of a landlord contending non-service on another stakeholder. Whether the Respondent could waive the ManCo's rights would be a surprising development of *A1*. It is doubtful that the void/voidable distinction in *A1* is of any assistance in this case.

The section 80 issue

85. I can deal with this issue briefly, because Mr Loveday, following an interchange with the Tribunal, did not pursue this issue further.

86. The reasons for the interchange were that it appeared to the Tribunal that the wording of section 80(6) was clear: 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 counter notice under section 84. And the "relevant date" is "the date on which the notice of claim was given": s.79(1).

87. The Respondent's contention was that, *if* the notice to the ManCo was properly posted, it was still only given on 21 April 2022 as a matter of fact. The date stated in the claim notice was 21 May 2022, so it was served short.

88. However, the Tribunal considers that the date 21 May 2022 is not "earlier than 1 month" after 21 April 2022. On this narrow issue, the Respondent's argument must fail.

Conclusions

89. The Tribunal determines that on the relevant date the Applicant was not entitled to the right to manage the Property, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.

Name: Tribunal Judge S Evans **Date**: 25 October 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

"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."

"81 Claim notice: supplementary

...

(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."

Interpretation Act 1978

7 References to service by post.

Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.