



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

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| Case reference | : | CAM/00KA/LRM/2023/0020 |
| HMCTS Code | : | 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 | : | 7 February 2025 |

DECISION ON REVIEW

- (1) The tribunal's decision dated 10 September 2024 is set aside.**
- (2) The application is struck out for want of jurisdiction as the second respondent was not entitled to serve a counter notice.**
- (3) The tribunal orders the second respondent to pay the applicant £100 in respect of their tribunal fees.**

Background

1. The background to this decision on review is set out in the original decision dated 10 September 2024.
2. There are two respondents, the original freeholder and the current freeholder (“Assethold”). For some unknown reason there was a long delay in registering that change of ownership following the transfer dated 31 March 2023. Assethold did not become the registered proprietor until 11 June 2024.
3. On 24 July 2023 the Applicant RTM Co (the “RTM Co”) gave their first Notice of Claim. A copy was sent to Assethold who gave a counternotice objecting to the notice on various grounds, including two errors on the face of the notice. The RTM Co accepted the notice was invalid due to one of those errors in particular (the wrong company registration number) and therefore served a further claim notice dated 29 September 2023. Assethold replied with another counter notice, this time on the sole basis that at the date the second notice was given, an earlier claim notice remained in force, as there had been no formal withdrawal of that notice by the RTM Co. The RTM Co applied to the tribunal on 24 November 2023 for a determination of their RTM and the tribunal joined Assethold as Second Respondent at their request.
4. On 10 September 2024 the tribunal determined that the Applicant was entitled to acquire the right to manage the premises known as Kensington Court, 16-36 South Road, Luton Lu1 3UD pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The tribunal relied on a line of authorities which supported the RTM Co’s claim that they were entitled to treat their first notice as invalid on its face and therefore did not need to withdraw it before serving the second one. It noted the Applicant’s alternative argument that (if the first claim notice remained valid despite the error(s) on its face) the Applicant had already acquired the RTM because only the First Respondent had been entitled to give a counter notice at the relevant time.
5. On 7 October 2024, Assethold applied for permission to appeal, based on the recent decision of the Supreme Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27 which had not been considered by the parties or the tribunal in reaching its decision. The Supreme Court has now set out a very different approach to assessing the consequence of non-compliance with statutory requirements from the previous line of authority relied on by the tribunal.
6. In those circumstances, the tribunal decided to exercise its power of review under rule 55 (see below). In accordance with that rule the tribunal wrote to the parties on 25 November 2024 to ask for representations in the light of *A1 Properties (Sunderland)*, to include

any question as to the validity of the counter-notice given by Assethold to the first claim notice.

7. Before those representations were due, the Court of Appeal published its decision in *159-167 Prince of Wales Road RTM Co v Assethold Ltd* [2024] EWCA Civ 1544, in respect of an application for costs by Assethold following the dismissal of the RTM application by consent. The court decided that as Assethold was not the registered proprietor at the time, it was not a landlord under the 2002 Act and therefore the RTM company in that case had no liability for its costs. Lady Justice Falk also observed at [63] that in those circumstances, Assethold did not fall within the category of persons entitled to serve a counter notice.

The Applicant's case

8. In the light of the *Prince of Wales* case, the RTM Co submitted that “*the shortest and simplest way of disposing with these proceedings*” was for the tribunal to hold that as Assethold was not entitled to give a counternotice and the party so entitled did not do so (the First Respondent J C Gill Developments Ltd), this was a “no counter-notice case”. The RTM Co therefore acquired the RTM on the date specified in the notice of claim, which would have been 9 February 2024 in the case of the second notice and 11 December 2023 in the case of the first one.

The Second Respondent's case

9. Assethold confirmed that there was to be no appeal by them of the decision in the *Prince of Wales* case. Their representations focused on the jurisdiction of the tribunal. They maintained that there was no jurisdiction in respect of the first notice as there had been no application in that regard. If the tribunal agreed it had jurisdiction in respect of the second notice, the application should be dismissed on the basis of their second counter notice: section 80(3) of the 2002 Act stating that no subsequent claim notice may be given while an earlier claim notice remains in force. The effect of *A1 (Sunderland)* is that the first claim notice cannot be treated as void and therefore disregarded by the RTM Co without formal notice of withdrawal.
10. Assethold further argued that the RTM Co were estopped from denying the invalidity of their first notice or the jurisdiction of the tribunal. A similar argument upheld by the Upper Tribunal had been dismissed by the Court of Appeal in the *Prince of Wales* case. Here, Assethold relied on the express acknowledgement by the RTM Co of their position as an “*equitable landlord*” in the claim notices; the issuing of proceedings to include them as second respondent; the RTM Co's election to treat the first claim notice as invalid and the lack of challenge to the tribunal's jurisdiction to date.
11. In the circumstances the tribunal should determine that the Applicant had not acquired the Right to Manage and dismiss the application.

The tribunal's decision and reasons

12. The tribunal's review power is governed by section 9 of the Tribunals, Courts and Enforcement Act 2007 and rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 55 is clear that the tribunal may only undertake a review on an application for permission to appeal where it is satisfied that a ground of appeal is likely to be successful. Section 9 of the 2007 Act makes it clear that the tribunal may set a decision aside when exercising its power of review and then it must either re-decide the matter or refer it to the Upper Tribunal.
13. As set out above, the Supreme Court decision in *A1 Tudor (Sunderland)* cited by Assethold in their application for permission to appeal the decision dated 10 September 2024 makes it clear that an appeal is likely to be successful. In particular, the errors in the first claim notice by the RTM Co can no longer be sufficient to render it invalid on its face and therefore that decision must be set aside.
14. However, the subsequent decision of the Court of Appeal in the *Prince of Wales* case also makes it clear that Assethold, due to the failure to register the transfer of the freehold until 11 June 2024, were not entitled to the claim notice under section 79(6) or to serve a counter notice under section 84(1) in respect of either the first or the second claim notice [63, as noted above]. They did not have a legal (as opposed to a claimed equitable) interest, so they cannot be the "landlord" under section 79(6)(a) [28]. Nor are they a manager or other relevant party under section 79(6)(b) or (c).
15. Since the registered proprietor of the freehold at the relevant time (the only person given the claim notice under section 79(6)) did not serve any counter-notices, there can be "*no dispute about entitlement*" and by section 90 of the 2002 Act the Applicant acquired the right to manage on the date specified in that notice, 11 December 2023, as the Applicant argued (originally in the alternative, before *A1* and *Prince of Wales*).
16. However, the jurisdiction of this tribunal under section 84 of the 2002 Act depends on the service of one or more counter notices by a person given a claim notice "under section 79(6)" objecting to the RTM. In the circumstances and under rule 9(2) of the 2013 Rules, the tribunal must strike out the proceedings.
17. Assethold appear to continue to deny the RTM, despite being on the losing side in the *Prince of Wales* case.
20. Assethold were joined to these proceedings by their own application, not at the behest of the RTM Co and, as in the *Prince of Wales* case have provided no explanation for the extraordinary delay in registering their title, which has led to much of the confusion in this case. In those circumstances the tribunal considers 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 them to reimburse the application fee of £100.

Name: Judge Wayte

Date: 7 February 2025

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).