



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

**Case reference** : **LON/00BJ/LRM/2020/0008**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPER**

**Property** : **21 Standen Road, London SW18 5TH.**

**Applicant** : **21 Standen Road RTM Company**

**Representative** : **The Leasehold Advice Centre.**

**Respondent** : **Assethold Limited.**

**Representative** : **Scott Cohen, Solicitors.**

**Type of application** : **For the reimbursement of the  
application fee.**

**Tribunal members** : **Judge Hamilton-Farey**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **31 July 2020.**

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**DECISION**

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### **Covid-19 pandemic: description of determination:**

This has been a remote determination on the papers which has been consented to by the parties. The form of determination is described by the code P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle, the contents of which I have noted. The order made is described at the end of these reasons.

### **Decisions of the tribunal**

- (1) The tribunal determines that the RESPONDENT shall reimburse the £100.00 application fee to the APPLICANT within 28 days of the date of this decision.

### **The application**

1. By an application dated 7 May 2020 the applicant sought a determination of their Right to Manage the premises known as 21 Standen Road London SW18 5TH. The premises are a two-storey terraced property, divided into two flats.
2. The application included copies of the Notice of Claim and Counter Notice, submissions by the parties in relation to the refund of fees, of authorities on which the applicant wished to rely, and copies of the company documents showing the formation of the company, the members at the time of the claim and subsequent changes.
3. The Notice of Claim was served on 17 March 2020 and gave the respondent two months in which to agree or deny the claim. The landlord sought some clarification on the membership of the company and those claiming the Right to Manage on 19 March 2020, and the applicant responded with the details on 25 March 2020.
4. However, on 24 March 2020 the respondent served a counter-notice denying the Right to Manage setting out seven different grounds of opposition, i.e. prior to the receipt of the applicants reply to the queries raised.
5. The applicant was therefore in the position that it had to make an application to the tribunal under S.84(3) of the Commonhold and Leasehold Reform Act 2020, as a protective measure, but sought to make an agreement with the respondent that the applicant had the Right to Manage the premises after the application had been made.
6. The tribunal issued directions on 22 May 2020 that required the parties to make submissions in respect of their positions. In particular the

respondent was required to provide any argument against the Right to Manage by 22 June 2020. No response was received from the respondent, although in the bundle there is an email to the applicant setting out the reasons for the respondent's disagreement with the application for return of the fees, which were that it was reasonable for the respondent to ask for clarification of the participating parties in the application, citing *Elim Court RTM Co. Ltd v Avon Freeholds [2017] EWCA Civ 89*. No comment is made regarding the timing of this request for clarification and the service of the Counter-Notice.

7. The respondent subsequently withdrew the Counter-Notice and now the applicant seeks the reimbursement of the application fee paid to the tribunal (£100.00).
8. The applicant says that it was unreasonable for the respondent to deny the Right to Manage without waiting for responses to questions raised, and in doing so, so quickly after the Notice of Claim, which meant that the applicant was required to make the application to the tribunal, before any negotiation could take place. The applicant also cites the Elim Court case and points to the fact that this respondent was in those proceedings, and where it was held that minor mistakes in Notices of Claim would not invalidate the RTM process. In this case, the mistake in the applicant's Notice of Claim was to include the name of one of the leaseholders who subsequently assigned their interest to their co-leaseholder. This was clarified by the applicant to the respondent in the letter of 25 March 2020. The applicant says that, given the respondent's involvement in the Elim Court case, they should have been aware that minor mistakes in notices would not be sufficient reason to invalidate the RTM process, and it was therefore unreasonable to continue with any opposition to the claim on this basis, and that doing so, resulted in the applicant incurring costs.

### **Reasons for the tribunal's decision**

9. The tribunal is aware that the respondent is a professional landlord, represented by solicitors in this matter. Several cases have been dealt with by the Upper Tribunal and Courts in relation to this respondent and the effect of Notices of Claim/Counterclaim under the RTM legislation. Therefore, the respondent is well versed in the case law.
10. In this instance, the respondent made enquiries of the applicant, but before receiving a reply, that would have answered those enquires, served a counter-notice. This then made an application to the tribunal necessary to protect the applicant's position.
11. Had the respondent waited for the replies to the queries, it appears that any argument against the RTM would have fallen away, and it would not have been necessary for an application to have been made to this tribunal. Although the respondent is perfectly within their right to serve

a counter-notice, it would be unreasonable, in this tribunal's view, to serve one, when questions have been asked, without waiting for the replies, especially where it appears the respondent's representative were working, during the Covid-19 pandemic and correspondence was being dealt with by e-mail, as well as post.

12. In the circumstances and given that the Notice of Claim was not invalid, the tribunal considers it reasonable for the respondent to reimburse the applicant's cost of applying to the tribunal, and this should be paid within 28 days of the date hereof.

**Name:** Judge Hamilton-Farey

**Date:** 31 July 2020.

### **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).