



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

Case reference : **LON/00AH/LRM/2022/0019**

Property : **28 Grasmere Road, Purley, Surrey
CR8 1DU**

Applicant : **28 Grasmere Road RTM Company
Limited**

Representative : **Mr Stan Gallagher of Counsel**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of application : **Right to Manage**

Tribunal members : **Judge P Korn
Mr S Mason FRICS**

Date of determination : **30 August 2022**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decisions made are described immediately below under the heading “Decisions of the tribunal”.

Decisions of the Tribunal

- (1) The Applicant was entitled on the relevant date to acquire the right to manage in respect of the Property.

- (2) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, we order the Respondent to reimburse to the Applicant the application fee of £100.00.

The application

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“**the Act**”) that on the relevant date it was entitled to acquire the right to manage the Property.

Background

2. By a claim notice dated 25 January 2022 the Applicant gave notice to Crystal Properties UK Limited (the registered owner of the freehold interest in the Property) and to the Respondent (to whom the freehold interest had been sold but who was not yet registered as owner at the Land Registry) that it intended to acquire the right to manage in relation to the Property on 10 June 2022.

3. The Respondent gave a counter-notice on 7 March 2022 alleging that the Applicant was not entitled to acquire the right to manage, and then on 8 April 2022 the Applicant applied to the tribunal for a determination that it was entitled to acquire the said right on the relevant date.

Respondent’s case

4. The Respondent states as its primary objection that under section 72(1)(b) of the Act the right to manage can only be acquired if the Property contains two or more flats held by qualifying tenants. By section 75(2) of the Act a person is a qualifying tenant of a flat if that

person is the tenant under a long lease. Sections 76 and 77 of the Act then set out the definition of a long lease for the purposes of the acquisition of the right to manage. The Respondent states that there were no registered leases against the freehold title at the date on which the claim notice was given and that nor were there any registered leases as at the date of the Respondent's statement of case, as the newly granted leases were in the course of being registered.

5. The Respondent quotes from the decision of the Upper Tribunal in *Assethold v Sunny Gardens Road RTM Co Ltd (2013) UKUT 509 (LC)*, noting that in its decision on that case the Upper Tribunal stated that *"to be the qualifying tenant of a flat a person must be the tenant of that flat. The 'tenant' referred to in section 75(1) of the 2002 Act is the person in whom, for the time being, the legal estate created by the lease is vested. As the LVT correctly observed, the 2002 Act is not concerned with beneficial interests."*
6. The Respondent goes on to state that section 27 of, and Schedule 2 to, the Land Registration Act 2002 provides that when a compulsorily registrable lease is granted out of registered land the registration requirements must be satisfied in order to vest the legal estate in the tenant. Therefore, until completion of the registration the lease takes effect only in equity and the legal estate "does not arise".
7. The Respondent also notes as a secondary objection that under section 79(3) of the Act the claim notice must be given by a RTM company which complies with sections 79(4) and (5) of the Act, both of which set out requirements as to the number of members needed. If it is correct in relation to its primary objection, the Respondent submits that it follows that there are also insufficient members by reason of the lack of qualifying tenants.

Applicant's case in response

8. The Applicant agrees that a registrable disposition does not operate at law until the relevant registration requirements are met and also agrees that the flat leases are registrable dispositions and that therefore the flat owners do not hold the legal estate in their respective flats until their respective leases have been registered at the Land Registry.
9. However, the Applicant submits that the key issue is how "lease" is defined by the Act. The relevant part of section 112(2) of the Act states that *"In this Chapter 'lease' and 'tenancy' have the same meaning and both expressions include (where the context permits) ... (b) an agreement for lease or tenancy ..."*. Section 112(3) of the Act then states that *"The expressions 'landlord' and 'tenant', and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly"*.

10. It follows, in the Applicant's submission, that the definition of a "qualifying tenant" for the purposes of the Act includes the holder of an agreement for lease. Until the newly granted flat leases are perfected by registration at the Land Registry they do not operate in law and only take effect as agreements for lease. This point is expressly provided for by section 7(2)(b) of the Land Registration Act 2002 which deems a compulsorily registrable lease granted for valuable consideration which has not yet been registered to take effect as a contract pending registration.
11. The Applicant also refers to brief comments on this issue contained in the textbooks *Hague on Enfranchisement* and *Megarry & Wade*. As regards the decision of the Upper Tribunal in *Assethold v Sunny Gardens Road RTM Co Ltd* quoted by the Respondent, the Applicant states that (a) it does not concern a newly granted lease, but rather a lease which had been in existence for a long time in circumstances where the lessee had died and (b) the focus in that case was on certain practical consequences of the death of a registered proprietor.
12. The Applicant also states that, in respect of each lease, the application for registration was made prior to service of the claim notice.

Relevant legislation

13. *Commonhold and Leasehold Reform Act 2002*

Section 72

(1) This Chapter applies to premises if ... they contain two or more flats held by qualifying tenants ...

Section 75

(2) ... a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

Section 79

(3) The claim notice must be given by a RTM company which complies with subsection (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.

Section 112

(2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits) ... (b) an agreement for lease or tenancy ...

(3) The expressions “landlord” and “tenant”, and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly.

Tribunal’s analysis

14. As noted by the Applicant, section 112(2) of the Act defines “lease” as including an agreement for lease and section 112(3) of the Act directs that the expression “tenant” be construed accordingly. We agree with the Applicant that, therefore, a “qualifying tenant” for the purposes of the right to manage sections of the Act includes the holder of an agreement for lease. We also note the contents of the relevant sections of the Land Registration Act 2002 in this regard and the sections from the textbooks quoted by the Applicant.
15. There would be nothing further to add, were it not for the decision of the Upper Tribunal in *Assethold v Sunny Gardens Road RTM Co Ltd*. In that case, the Upper Tribunal does indeed state that “*The ‘tenant’ referred to in section 75(1) of the 2002 Act is the person in whom, for the time being, the legal estate created by the lease is vested*” and that the Land Registration Act 2002 “*is not concerned with beneficial interests.*”
16. However, the context of the decision in *Assethold v Sunny Gardens Road RTM Co Ltd* was clearly different from the present case, as the Upper Tribunal was dealing with an existing registered lease in circumstances where the registered proprietor had died. In particular, it did not have to grapple with the question of how to treat a new lease which is in the course of registration. We are satisfied that there is nothing in the decision of the Upper Tribunal to indicate that its decision was intended also to cover the case of a new lease which is in the course of registration, and in any event the comments of the Upper Tribunal referred to above have to be regarded as ‘obiter’ in the context of the very different factual matrix of the present case.
17. We are therefore satisfied that the term “qualifying tenant” includes for the purposes of the right to manage provisions of the Act someone who has been granted a long lease of a flat in circumstances where that person has applied to register the lease at

the Land Registry but registration has not yet been completed. It therefore follows that the Respondent's primary objection fails. As its secondary objection is entirely dependent on the primary objection succeeding, that objection fails too.

18. Accordingly, the Applicant acquired the right to manage on the relevant date.

Costs

19. The Applicant has applied for an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Respondent to reimburse its application fee of £100.00. Under that paragraph the tribunal "*may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party ...*". The Applicant has been wholly successful in its substantive application and has conducted itself perfectly properly, and it is entirely appropriate in the circumstances for the Respondent to reimburse this fee. Accordingly, we order the Respondent to reimburse this fee to the Applicant.

Name: Judge P Korn

Date: 30 August 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.