**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**

**Neutral Citation Number: [2016] UKUT 0097 (LC)**
**Case No: LRX/97/2015**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – RIGHT TO MANAGE – address for service of claim notice – whether address notified to RTM company – whether superseded by address on subsequent service charge demands given to company members – consequence of failure to serve claim notice at correct address – section 111(4), Commonhold and Leasehold Reform Act 2002 – section 48, Landlord and Tenant Act 1987 – appeal dismissed***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE THE FIRST TIER TRIBUNAL PROPERTY CHAMBER**

**BETWEEN :**

**GATEWAY PROPERTY HOLDINGS LTD** **Appellant**

**- and -**

**ROSS WHARF RTM COMPANY LTD**

**Respondent**

**Re: Ross Wharf,**
**74 High Street,**
**Benfleet,**
**Essex SS7 1BZ**

**Decision on written representations**

**Martin Rodger QC, Deputy President**

The following cases are referred to in this decision:

*Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 0213 (LC)

*Natt v Osman* [2014] EWCA Civ 1520

*Triplerose Ltd v Mill House RTM Company Limited* [2016] UT 0080 (LC)

**Introduction**

1. This appeal raises a short point on the interaction between sections 47 and 48 of the Landlord and Tenant Act 1987 and section 111 of the Commonhold and Leasehold Reform Act 2002. Each of these provisions is concerned with the address at which notices may be given.

2. Sections 47 and 48 are both found in Part VI of the 1987 Act which applies to premises which consist of or include a dwelling and are not held under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies (section 46(1), 1987 Act). Section 47(1) of the 1987 Act is concerned with information to be included in demands for rent and other sums payable by a tenant to his or her landlord. It says this:

> "47. **Landlord's name and address to be contained in demands for rent etc**
>
> (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely –
>
> (a) The name and address of the landlord, and
>
> (b) If that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant."

3. Section 48(1) of the 1987 Act is a provision for the benefit of tenants to ensure that they are always furnished with an address in England and Wales at which they may communicate with their landlord, including in connection with proceedings; it provides as follows:

> "48. **Notification by landlord of address for service of notices**
>
> (1) A landlord of the premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant."

4. Where a landlord fails to comply with either section 47(1) or 48(1) the consequence is the same: any rent, service charges or administration charges otherwise due from the tenant to the landlord are treated as not being due until the relevant requirement is complied with (sections 47(2) and 48(2)).

5. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 makes provision for the acquisition by a company known as an RTM company of the right to manage premises to which the Chapter applies. A claim to acquire the right to manage is made by giving notice of the claim under section 79(1). A claim notice must be given to

each person who is landlord under a lease of the whole or any part of the premises to which the claim relates (section 79(6)(a)).

6. Section 111 of the 2002 Act makes provision for the giving of notices, as follows:

> "111. **Notices**
>
> (1) Any notice under this Chapter –
>
> (a) must be in writing, and
>
> (b) may be sent by post.
>
> (2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).
>
> (3) That address is –
>
> (a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord) or
>
> (b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).
>
> (4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.
>
> (5) ……"

The reference to "the 1987 Act" in section 111(3) means the Landlord and Tenant Act 1987 (section 179, 2002 Act).

**The relevant facts**

7. The appellant, Gateway Property Holdings Limited, is the owner of the freehold interest in Ross Wharf, a self-contained residential building at 74 High Street in Benfleet. Ross Wharf RTM Company Ltd ("the RTM Company") is, as its name suggests, an RTM

company whose object is the acquisition of the right to manage Ross Wharf.

8. On 11 July 2014 the RTM Company gave notice to the appellant under section 79 of the 2002 Act that it claimed to acquire the right to manage Ross Wharf. On 14 August 2014 the appellant served a counter-notice under section 84(1) disputing that entitlement. The counter-notice was very substantially in the form prescribed by Schedule 3 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010, but with one minor modification. The prescribed form requires the giver of a counter-notice to "give the address to which future communications relating to the subject-matter of the notice should be sent." Rather than simply providing such an address, the appellant's counter-notice included the following more elaborate statement:

> "The address at which future communications in relation to the subject matter of the notice and any further notice which may served under Chapter 1 Part II of the Act should be sent is:
>
> c/o Wallace LLP, 1 Portland Place, London W1B 1PN
>
> Ref: HG3201.19"

9. The claim initiated by the notice given on 11 July 2014 was not pursued by the RTM Company.

10. On 27 February 2015 an associated company of the appellant, Gateway Property Management Ltd, sent invoices to the lessees of flats at Ross Wharf requesting payment of quarterly service charges. I assume the invoices were all in the same form, and that they were simply the latest in a series of routine quarterly demands. They contained the following statement:

> "Your Landlord's address for the service of notices (including notices in proceedings) is:
>
> Gateway Property Holdings Ltd, Gateway House, 10 Coopers Way, Southend-on-Sea, Essex SS2 5TE.
>
> THE ABOVE ADDRESS IS ONLY FOR THE SERVICE OF NOTICES. ALL OTHER CORRESPONDENCE AND PAYMENTS SHOULD BE SENT TO: GATEWAY PROPERTY MANAGEMENT LTD…"

Although they did not say so, the demands were obviously drafted with the requirements of sections 47(1) and 48(1) of the 1987 Act well in mind.

11. On 7 April 2015 the RTM Company made a second claim to acquire the right to

manage. On this occasion the claim notice was delivered by hand by a member of the company to the appellant's registered office which is at Gateway House, the address given in the service charge demand. No copy of the claim notice was given by the RTM Company to the appellant's solicitors, Wallace LLP, whose address had appeared in the 2014 counter-notice. Nevertheless the same solicitors must have been sent a copy by the appellant since, on 1 May 2015, they served a second counter-notice on their client's behalf, which disputed the validity of the claim on the grounds that the claim notice had been given to the appellant at the wrong address.

12. The question whether the RTM Company was entitled to acquire the right to manage Ross Wharf was referred to the First-tier Tribunal (Property Chamber) ("the F-tT") which considered the application on the basis of the party's written representations and issued its decision on 26 August 2015.

**The F-tT's decision**

13. The F-tT decided that the claim notice had been properly given and that the application for a determination of entitlement to acquire the right to manage should succeed.

14. After referring to the decision of the Court of Appeal in *Natt v Osman* [2014] EWCA Civ 1520 and the decision of the Tribunal in *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 0213 (LC), both of which concerned the consequences of a failure to comply with the procedural steps required by a statute, and having noted that the claim notice had in fact been passed to the appellant's solicitors, who had responded to it, the F-tT gave alternative grounds for its decision in the following three short paragraphs:

> "18. Thus it is absolutely clear that no one has been prejudice by what happened and the task of the tribunal could be said to be a simple determination as to whether contravention of sub-section 111(4) of the 2002 Act must be considered fatal or whether prejudice can be considered.
>
> 19. In fact, the tribunal determines that the notice of the 27th February 2015 could be said by any reasonable recipient to countermand the notice given on the 14th August 2014 which means that subsection 111(3) becomes relevant. However, even if it had not come to this conclusion it considers that the guidance in *Osman v Natt* is not relevant to this matter as the right to be acquired is not "a property or similar right". A right to manage does not take any property rights away from the landlord of a property, it merely passes day to day management rights to a third party.
>
> 20. *Avon v Regent* therefore applies and the tribunal finds that as no prejudice has in fact been suffered, it would not have been the intention of Parliament that the

contravention of subsection 111(4) should defeat the right to manage process."

15. Permission to appeal was refused by the F-tT but granted by the Tribunal.

**The appeal**

16. The appeal raises two issues. The first is whether the claim notice delivered to the appellant's registered office was validly given, or whether the effect of section 111(4) of the 2002 Act was that the use of that address was prohibited, the counter-notice of 14 August 2014 having stipulated that future communications in relation to the subject matter of any further notice which may be served under the 2002 Act should be sent to the appellant care of its solicitors, Wallace LLP, at the solicitors' office address. This issue requires consideration of the F-tT's conclusion that the statement in the counter-notice had been "countermanded" by the statement in the service charge demands of 27 February 2015 that Gateway House, the appellant's registered office, was its address for the service of notices, including notices in proceedings.

17. If the address at which the claim notice should have been given was that of Wallace LLP, the second issue is whether the consequence of failing to give the claim notice at that address was that the claim notice was of no effect at all so that the process for acquiring the right to manage will have to be begun again, for a third time, or whether the safe delivery of the claim notice to the appellant itself, was sufficient to enable the infringement of the prohibition in section 111(4) of the 2002 Act to be overlooked.

**Issue 1: The address for service of the claim notice**

18. In its written representations on this issue the appellant said that by its first counter-notice it had given notice to the RTM Company of an address other than its registered office at which it wished to receive any future notices for the purposes of the 2002 Act. The effect of section 111(4) was therefore that the only permissible address at which a claim notice could be given was the address of Wallace LLP.

19. It was then submitted that the F-tT had been wrong to treat the inclusion of the appellant's registered office in the service charge demand as countermanding the address of the appellant's solicitors stipulated in the first counter-notice. There was nothing in section 111(4) to suggest that a notification of an address at which a landlord wished to be given notices for the purposes of the 2002 Act would cease to have effect simply because the landlord complied with its statutory obligation under section 47 of the 1987 Act. It was also said that such an approach to the relationship between the statutory provisions was precluded by section 111(3). This provided that service at a section 47 address was

only permitted where a landlord had not furnished a section 48 address. If a landlord had furnished a section 48 address and had also given notice of a different address under section 111(4) the subsequent service of periodic demands with the section 47 address could not have the effect of countermanding a landlord's notice of a different address because a section 47 address may be used to give a notice of claim only where no section 48 address has been furnished.

20. The appellant also pointed out that if service charge demands which include the address required by section 47 have the effect of countermanding a notice of a different address previously given for the purpose of communications concerning the 2002 Act, a landlord wishing to make use of section 111(4) would be required to give a separate notice under section 111(4) after each service charge demand had been sent out.

21. In its submissions the RTM Company argued that, by delivering the claim notice to the registered office of the appellant it had complied with the requirement of section 79(1) and the claim had been properly initiated. Section 111 contained permissive provisions relating to service by post. The purpose of the section was to identify circumstances in which proof of receipt of a notice would not be required. Section 111(1) permitted any notice to be sent by post, and section 111(2) was ancillary to that permission and allowed either of the addresses specified in section 111(3) to be used for giving a notice by post. That entitlement was qualified by section 111(4) but because the section as a whole was concerned with the giving of notices by post, section 111(4) did no more than prohibit the giving of a notice at one of the addresses in section 111(3) by post if a different address had previously been supplied, and did not preclude the delivery of a notice personally to the registered office of a corporate landlord. If a notice was given by some method other than by post, the only relevant question was whether it had been received by the person to whom it was required to be given. In this case there was no dispute that the notice had been received by the appellant.

22. The RTM Company also supported the F-tT's conclusion that the address notified in the counter-notice had been superseded or countermanded by the statement in the service charge demand. The prescribed form of counter-notice was not intended to allow an address to be specified at which any subsequent claim notice was to be served, but was restricted to communications in relation to a claim notice which had already been received. It would be impractical for such an address to be the only address at which any claim notice could be served in the future, no matter how remotely. If two different addresses had been given an RTM company was entitled to treat the latest address as the address at which notices should be given.

23. I do not accept the RTM Company's submissions on the effect of section 111. Whilst I agree that the section is generally permissive I cannot read sections 111(2), (3)

and (4) as confined in their application to notices given by post. Subsection (1) allows a notice to be "sent" by post; in contrast, subsection (2) permits an RTM company to "give" a notice at the address specified in subsection (3) and subsection (4) describes circumstances in which a company "may not give" a notice at such an address. Had the intention been that the addresses in subsection (3) and the prohibition in subsection (4) applied only to postal delivery, references to notices being "sent" would have been used consistently throughout the section. It follows that if an address has been given in compliance with section 48 of the 1987 Act, section 111(3)(a) permits a notice to be given at that address by any method. Similarly, if no address for the service of documents has been given in compliance with section 48(1), section 111(3)(b) permits an address given in a rent or service charge demand to be used for any mode of service. The prohibition in section 111(4) on the use of an address provided in accordance with section 47 or 48 of the 1987 Act if an RTM Company has been notified by a landlord of a different address at which it wishes to be given notices under the 2002 Act, seems to me to be of general application whatever method of delivery of the notice is chosen.

24. Nevertheless, despite my inability to accept the RTM Company's approach to section 111, I agree that the delivery of the claim notice to the Company's registered office was an effective giving of the claim notice for the purpose of section 79(1). My reasons for that conclusion are, first, that the appellant's registered office had been identified without qualification or restriction as its address for the service of notices in the service charge demands received by members of the RTM Company, and, secondly, that reliance on that address was not prohibited by section 111(4) because no different address had been identified by the appellant to the RTM Company itself as its address for the service of future claim notices.

25. I agree with the appellant's submission that an address given in a rent demand to satisfy section 47(1) of the 1987 Act may only be used for the service of documents under the 2002 Act if no address for the service of notices has been given to a member of the RTM company in compliance with section 48(1); that is the effect of section 111(3)(b). Moreover, an address given to members of the RTM company for the purpose of section 48(1) may not be used if a different address has been identified to the RTM company itself as the address for giving notices under the 2002 Act; that is section 111(4). But I reject the appellant's submission that any address which appears on a service charge demand is a section 47(1) address (which was the basis of its argument that a notice given for the purpose of section 111(4) could not be countermanded by an address contained in a service charge demand). Section 47(1) requires only that a demand for rent or other sums given to a tenant must contain the name and address of the landlord, and that if that address is not in England and Wales, an address must be given which is in England and Wales and at which notices may be served on the landlord by the tenant. The requirement to include an address at which notices may be served arises only if the landlord's address is not in England and Wales. If the address is in England and Wales then, although that

address must be stated, it need not be an address at which notices may be served.

26. The statement in the service charge demands in this appeal therefore went further than section 47(1) requires by identifying an address at which notices could be served on the appellant. It was not necessary for each quarterly service charge demand to give an address for the service of notices at all; section 48(1) needs to be satisfied only once, and the required information need not be contained in a demand for payment.

27. If the service charge demands had been given to the RTM Company there would have been a very strong case for saying, as in effect the F-tT did, that having stipulated one address for service of notices, without limitation, it should not be open to the appellant to contend that service at that address was ineffective. But it is essential to remember that rent demands and notices under sections 47 and 48 are given to tenants, not to RTM companies; and that a notification given by a landlord for the purpose of section 111(4) is not given to the members of an RTM company, but to the company itself. Section 111(4) allows a landlord to provide an RTM company with a different address for the service of notices from that previously given to the company's members in compliance with the landlord's obligation under section 48. The 2002 Act imposes no equivalent obligation on landlords to give an address at which an RTM company may give notices; instead, the Act allows a landlord the opportunity to do so. If a landlord does not take that opportunity the RTM company may fall back on an address given to its members. But if a landlord has given notice of a specific address for the purpose of the 2002 Act, section 111(4) prohibits the use of a different section 47 or 48 address which will have been provided to a different person and for a different purpose.

28. A company and its members are distinct persons, and a notification given to a company is not notice to its members. Because a notification for the purpose of section 111(4) is given for a different purpose and to different recipients from notices under sections 47 or 48, it is not possible to regard a statement made in service charge demands sent to a number of tenants as countermanding or superseding a statement previously made to an RTM company that notices under the 2002 Act should be served at a specific address. I do not consider that the fact that the tenants are also members of the RTM company undermines that proposition. In my judgment the F-tT was wrong to base its decision on the conclusion that the service charge demands of February 2015 "could be said by any reasonable recipient to countermand the notice given" on 14 August 2014; that conclusion depends on both documents being intended to communicate information to the same recipient, which they were not.

29. The question on which this appeal therefore turns is whether the appellant had notified the RTM Company of an address at which it wished to be given any notice under the 2002 Act. The statement relied on by the appellant was contained in the counter-

notice given in response to the RTM Company's first claim notice of July 2014, and was that:

> "The address at which future communications in relation to the subject matter of the notice and any further notice which may served under Chapter 1 Part II of the Act should be sent is: c/o Wallace LLP …
>
> Ref: HG3201.19"

(It is clear that something has gone wrong with the syntax and the word "be" ought probably to be interpolated so as to read "… any further notice which may [be] served …"). It should be observed that the statement does not say that any further notice which may be served under the Act should be sent to Wallace LLP, but rather that communications in relation to any such notice (or perhaps in relation to the subject matter of any such notice) must be sent there. "The notice" which is first referred to in the statement is obviously the claim notice of July 2014. Communications in relation to the subject matter of that notice were to be sent to Wallace LLP. Communications in relation to the subject matter of any further notice which might be served under the Act were also to be sent to the same destination. The appellant suggests that the "further notice" which might be served included any future claim notice under section 79 of the 2002 Act, but that does not seem to me to be the natural reading of the statement at all. The natural meaning is that any further notice in relation to the subject matter of the first claim notice must be sent to the solicitors who are acting in relation to that claim notice.

30. The 2002 Act provides for the service of a number of different types of notice after a claim notice has been given: the right of access to any part of the premises conferred by section 83(1) is exercisable on giving ten days notice; notice of withdrawal of a claim must be given to a landlord under section 86(1); a landlord may be required by notice given under section 93 to provide any information which the RTM company reasonably requires in connection with the exercise of the right to manage. The Act contemplates a good deal of communication in the form of notices passing between an RTM company and a landlord before the acquisition is completed.

31. In my judgment a reasonable recipient of the first counter-notice would read the notice in that light and as referring to communications relating to the current claim; they would not understand it to mean that the address of Wallace LLP must be used as the appellant's address for service of any future claim notice which the RTM Company may wish to give, with the same reference as was then being used for the first claim notice. Any future claim would only be in contemplation if the current claim was unsuccessful and, in that event, it would be expected to be the subject of a counter-notice of its own (assuming objection was taken to it) which would provide the landlord's current service address and the reference under which the new claim was being dealt with. The recipient of the counter-notice would reasonably have assumed that if the landlord wished future

claim notices to be sent to it at a specific address it would make that clear in a letter or formal notice, rather than buried in the middle of a counter-notice responding to a specific claim. As the RTM Company points out, a future claim may not have come until after a considerable lapse of time, and it would be surprising for a commercial landlord to nominate a professional representative potentially years in advance of a claim being made.

32. For these reasons I consider that the F-tT came to the right conclusion when it decided that the claim notice had been given at a permissible address. I have reached that conclusion by a different route, because I do not read the counter-notice of July 2014 as a notification for the purpose of section 111(4), leaving the RTM Company free to communicate with the appellant, in reliance on section 111(3)(a), at the address given to its members in their service charge demands. For that reason the appeal on the first issue fails.

**Issue 2: The consequence of non-compliance with section 111(4)**

33. The F-tT's alternative ground of decision arose only if it was wrong in concluding that the appellant's registered office was its proper address at which notices, including notices under the 2002 Act, could be given. As I have found that its primary conclusion was correct, it does not matter whether its secondary reason was valid or not. Nevertheless I should make it clear that I do not think the F-TT was entitled to take the approach which it did to the issue of non-compliance. In particular I disagree with the suggestion that the right to manage provisions of the 2002 Act do not involve the acquisition of a "property or similar right" and that, as a result, a more relaxed approach may be taken to compliance with the statutory procedures. That approach seems to me to be wrong in principle.

34. If the procedural requirements laid down by the 2002 Act are properly implemented the right to manage is acquired by operation of law, and the entitlement to custody of substantial sums of money and the responsibility for the performance of important obligations are transferred to the RTM company. The company does not acquire the landlord's property, but it acquires many of the rights and obligations which are the consequence of the landlord's ownership of the property, and in doing so it divests the landlord and others of contractual rights. Parliament has identified the steps to be taken to acquire that status, and it is not for tribunals to confer the same status by something less than complete compliance with those steps.

35. The Tribunal has recently considered the proper approach to non-compliance with the procedures under the 2002 Act in the light of the decision of the Court of Appeal in *Natt v Osman* (see in particular *Triplerose Ltd v Mill House RTM Company Limited*

[2016] UT 0080 (LC). That approach requires the procedural rule in question to be considered in the context of the Act as a whole in order to determine, as a matter of construction of the statute, what Parliament intended to be the consequences of a failure of compliance. In considering that question prejudice to any of the parties interested in the procedure is immaterial. Only if it is concluded that Parliament did not intend non-compliance to be fatal is it appropriate to consider whether something less than complete compliance may have the same effect.

36. Section 111(4) is explicit that an address for service provided to members of an RTM company may not be used as the landlord's address if the landlord has notified the RTM company of a different address. That prohibition is easy to understand and any failure to comply can be promptly rectified by the re-service of the original notice at the correct address. It is not necessary for me to decide whether a claim notice served in breach of the section 111(4) prohibition is a nullity, as the issue does not arise in this appeal, but in future, if such a point is taken against an RTM company in a counter-notice, the swiftest, cheapest and safest response is likely to be to re-serve the claim notice.

37. For these reasons I dismiss the appellant's appeal, with the result that the RTM Company will acquire the right to manage Ross Wharf on the date which is three months from the date on which this determination becomes final.

Martin Rodger QC
Deputy President

26 February 2016