Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0007/04/13, 0007/04/13, 0008/04/13

In the Matter of Hansen, Ezel and Judkin Court

In the Matter of an Application under S84 (3) Commonhold and Leasehold Reform Act 2002

TRIBUNAL AVS Lobley Chair
R W Baynham FRICS

APPLICANTS Century Wharf (One) RTM Company Limited
Century Wharf (Two) RTM Company Limited
Century Wharf (Three) RTM Company Limited

RESPONDENTS OM Property Management Limited
Fairhold Properties (No 6) Limited

ORDER

1. We were duly convened as a Leasehold Valuation Tribunal on 27th November 2013. We had before us three separate applications by the Applicants as set out below. We inspected the three courts at Century Wharf, a large residential development of houses and flats near the river in Cardiff, prior to the hearing. There are 6 courts and each court contains a number of residential blocks, or houses. Mr. Bates of Counsel and Ms. McQueen Prince of the first Respondent attended the inspection, with representatives of the management company. The Applicants did not attend the inspection. Following the inspection, a hearing was held at the offices of the Tribunal. Immediately before the hearing, the Tribunal was handed by Ms. Mossop (for the Applicants) a detailed skeleton argument consisting of 27 pages, accompanied by a file containing authorities referred to by Ms. Mossop.

BACKGROUND

2. Right to Manage Federation Limited (RTMF), as representative of the First Applicant, applied on 15th April 2013 to the Tribunal seeking a determination that on the relevant date the First Applicant was entitled to acquire the right to manage. It was disputed that the counter notices which had been served by the Respondents were valid. This application was in respect of nos. 1-42, 43-56, 57-72, 73-148, 149-164, Judkin court, nos. 1-36, 37-61, 63-74, 75-88, 89-104 Lynton Court, nos. 1-60, 61 111, 112-181, 182-242 Penstone Court and Nos. 1-69 Taliesin Court. The Freeholder is Frays Property Management (no 5) Limited.

3. RTMF, as representative of the Second Applicant, had applied to the Tribunal for a similar determination on 10th April 2013, on the same grounds, in respect of 1-25, 26-55 and 56-85 Ezel Court. The Freeholder in respect of these properties is the Second Respondent.

4. RTMF, on behalf of the Third Applicant, had applied to the Tribunal for a similar determination in respect of 1-243 Hansen Court on 27th March 2013. The Freeholder of these properties is Quidme Limited.

5. In all three applications, the manager of the property was named as OM Property Management Limited (OPML).

THE CLAIM NOTICES

6. Claim notices were served by RTMF on behalf of the First, Second and Third Applicants on 11th March 2013, 20th February and 7th February 2013 respectively. Each of the notices is signed as follows:

   "*Signed by authority of the company*
   Dudley Joiner, Director, The Right to Manage Federation Limited
   Corporate Secretary of Century Wharf (One, Two or Three) Company Limited
   Nigel Bignell, Director Century Wharf (One, Two or Three) RTM Company Limited".

THE COUNTER NOTICES

7. Counter notices were served by OPML on 11th April, 27th March and 28th March 2013 respectively. Each of these notices was sent under cover of a letter headed "Peverel Property Management" (PPM), with, at the bottom of the page, the address of PPM and a statement that PPM was "a division of Peverel Services Limited", with the Registered Office, Queensway House, 11, Queensway, New Milton, Hampshire. The counter notices served in respect of the First and Second Applicants were stated to be "signed by authority of the company on whose behalf this notice is given" by Ms. McQueen Prince as legal consultant with the address given as Legal Department, PPM, Marlborough house. The counter notice served in respect of the Third Applicant is signed "OM Property Management Limited".

8. The counter notices served in respect of the Third Applicant asserted that the relevant RTM company was not entitled to acquire the right to manage the premises specified in the claim notice, by reason of section 72, 74(1) and 79(5) of the Commonhold and Leasehold Reform Act 2002 (the Act) because the premises are not separate buildings or a self contained building, or that they comprise several premises, there are persons said to be members of the Company who are not entitled to be under section 74(1) and that the RTM Company's membership did not, on the relevant date, comply with section 79(5).

9. On 15th March 2013, Estates and Management Limited, on behalf of the Second Respondent, served a counter notice dated 13th March 2013 asserting the Second Applicant was not entitled to acquire the right to manage because the premises did not consist of a self contained building or part of a building with or without appurtenant property contrary to S.72 (a) and did not fulfil the criteria of S.72 (3) and (4) of the Act. The stated object of the Second Applicant was to undertake management of 1-25, 26-55 and 58-65 Ezel Court. It appeared it was acknowledged each of the buildings was a separate building and therefore could not consist of a self contained building or part of a building with or without appurtenant property and therefore service of a single claim notice is invalid.

10. It was also asserted the articles of association of the RTM company did not comply with the RTM Companies (Model Articles) (Wales) Regulations 2011 and so the company was not a RTM company under the Act and that the form of the claim notice did not comply with the Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011.

RTMF'S INITIAL OBJECTIONS TO THE COUNTER NOTICES

11. On 27th March 2013, RTMF wrote to the Tribunal stating its view, in respect of the Third Applicant, that the Tribunal did not have jurisdiction under section 84(3) of the Act and that the counter notices were invalid, for the reasons it set out.

12. These were firstly, that the counter notice had to be in the form prescribed by the Regulations. The relevant date was 7th March 2013, the date on which notice was given, not 19th February 2013, shown in the counter notice (at the hearing, Ms. Mossop, for the Applicants confirmed this point was not pursued).

13. Secondly, the counter notices were not in the prescribed form as they did not state "signed by the authority of the company of whose behalf this notice is given" and the signature does not include a statement of position in the company, on whose behalf it was given, as prescribed in the regulations.

14. Thirdly, the counter notices were defective as they referred to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 and not to the Applicants' claim which was issued in accordance with the RTM (Prescribed Particulars and Forms) (Wales) Regulations 2011.

15. The Tribunal was asked to determine as a preliminary issue the question of jurisdiction in the light of the above assertions that the counter notices were invalid.

16. On 10th April 2013, RTMF wrote to the Tribunal on behalf of the second Applicant, stating the same objection to the counter notices in respect of the date in the notices, but also objecting to the counter notices on two other grounds.

17. These were that the claim notice was served on the Respondents, not PPM (a division of Peverel Services Limited) who were not entitled to give a counter notice and were not in the prescribed form, in that they did not specify the provision of the Act relied upon or particularise the objection being made. In her skeleton, Ms. Mossop accepted the Tribunal was bound by the decision of the President of the Upper Tribunal in *Fairhold (Yorkshire) Limited v Trinity Wharf (SE16) RTM Co Limited 2013 (UKUT)0502.*

18. On 15th April 2013, on behalf of the Third Applicant, RTMF sent a letter similar to that sent in respect of the one sent on behalf of the Second Applicant.

FORM OF THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE APPLICANTS

19. Also on 15th April 2013, PPM responded to the points made on behalf of the Third Applicant. It was asserted that the notice served by RTMF was invalid for the reasons set out in its counter notice. In addition, it was asserted that the Memorandum and Articles of Association were in the form prescribed and made reference to the RTM Companies (Model Articles) (England) Regulations 2009, not the RTM Companies (Memorandum and Articles of association) (Wales) Regulations 2011 and therefore the Applicant could not acquire the right to manage. PPM referred to the decision in *Henke Court (Quayside) RTM,* in which the President had held (in February 2012) that an RTM company not constituted in accordance with the prescribed Welsh Regulations could not acquire the right to manage premises in Wales and the Tribunal did not have jurisdiction to consider an application under S. 84(3) of the Act.

20. On 25th April 2013, Mayfield Law, on behalf of the Third Applicant, wrote to the Tribunal in respect of the issue raised by OMPL in their letter dated 28th March 2013, that the Third Applicant was incorporated using the incorrect memorandum and Articles.

21. S. 74 of the Act provides as follows:

> *(2) The appropriate national authority shall make regulations about the content and form of the (articles of association) of RTM companies.*
> *(3) A RTM company may adopt provisions of the regulations for its (articles).*
> *(4)The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.*
> *(5) A provision of the (articles) of a RTM company has no effect to the extent that it is inconsistent with the regulations.*

22. RTMF assert the above does not oblige an RTM company to copy the articles from the regulations. Any inconsistent provisions in the Applicant's memorandum or articles shall be ineffective to the extent they are inconsistent. There were no material differences between the English and Welsh regulations and it was asserted the Applicant had complied with S. 74 of the Act and satisfied the definition of a RTM Company in S.73. RTMF further contested OPML's assertion the Tribunal lacked jurisdiction because the Applicant's claim notice was invalid and said the only jurisdiction issue arising was whether a valid counter notice had been served so as to trigger S.84(6) of the Act. Once a valid counter notice had been served, the Tribunal

had jurisdiction to determine whether the claim notice was invalid. RTMF referred to *Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Co Ltd*, which was relied upon to show the decision in *Henke* was wrong and further referred to *Continental Property Ventures Inc v White and Canary Riverside Pte v Schilling*. It was asserted the issue of the validity of the counter notice had to be determined as a preliminary issue.

FIRST RESPONDENT'S INITIAL RESPONSE

23. In a letter dated 1st May 2013, PPM asserted that the premises were not premises within the definition of S. 72 of the Act as vertical separation could not be achieved because of the undercroft car park serving the blocks. In relation to RTMF's claims about the validity of the counter notices, it was said that OPML was a member of PPM and the latter's legal department issued the notices on behalf of OPML. The date inserted in the counter notice was the date the notice was received by OPML and pursuant to S. 84(2) b of the Act, OPML was only required to specify a provision in chapter 1 and 2 of the Act in its counter notices. In addition, it was asserted that it had not been determined whether one RTM company can acquire more than one block and this point was due to be heard in two pending appeals in the Upper Tribunal and PPM sought a stay pending the outcome of those two appeals.

DIRECTIONS

24. On 1st July 2013, the Tribunal issued directions that the parties prepare separate bundles in relation to each application and for the exchange of submissions in relation to each of the points raised in relation to the validity of the notices and counter notices. RTMF filed three separate bundles on 19th July 2013.

THE APPLICANTS' WRITTEN SUBMISSIONS

25. In the bundles served by the Third Applicant was included a submission in which it was claimed that the counter notices served on 14th March 2013 were invalid because they were given by PPM and that PPM had not been given a claim notice because it was neither a landlord under a lease, a party to such a lease or an appointed manager and that therefore PPM was not entitled to give a counter notice, and the notice was not correctly executed so that the Tribunal's jurisdiction under S. 84(3) of the Act had not been triggered.

26. It was also asserted that the counter notices did not contain correct particulars about the date on which the claim notice was given (not received) and did not state the specific provisions of chapter 1 and 2 by virtue of which it was alleged that the Applicants were not entitled to acquire the right to manage. It was claimed that because of the above points, the Tribunal did not have jurisdiction to deal with the applications.

27. In relation to the points made by PPM in their letter dated 15th April 2013, it was said that an RTM company may adopt provisions of the regulations for its memorandum or articles but is not obliged to do so, the regulations may include provision which is to have effect for an RTM company whether or not it is adopted by the company and in November 2011, regulations have been made under S.74 (2) about the form and content of the constitution of RTM companies. The articles of association of an

RTM company take the form and include the provisions of the model articles regardless of whether they are adopted by the company or not. It was said that therefore the Applicants' submission was that there was no case to answer because as a matter of law its articles are in the form of the model Welsh articles. It any event, the Applicant was properly constituted because there was no material difference between the content and form of the English and Welsh model articles and it has complied with all aspects of S.74 and satisfied the definition of an RTM company in S.73 and alternatively no prejudice has occurred because of the alleged failure to comply with the procedural requirements and as a result the procedure that was followed did not invalidate the claim.

FIRST RESPONDENT'S SUBMISSIONS

28. In August 2013, a written submission by Mr. Bates on behalf of the 1st Respondent was sent to the Tribunal. Mr. Bates had concluded from the Directions made by the Tribunal in July 2013 that he was not expected to address the substantive merits and no provision was made for the exchange of witness statements or expert evidence, which were in his view necessary to determine whether the buildings come within the provisions of S. 72 of the Act. Mr. Bates repeated that one of the issues was whether one RTM company can acquire the right to manage over more than one block and this issue had recently been dealt with by the Upper Tribunal, whose written reasons were not available on the day of the hearing but which were subsequently sent to the Tribunal and Ms. Mossop and the Applicants. The Tribunal made directions on 27th November 2013 for the parties to file further submissions once the decision was available (see further below, paragraphs 59-63).

29. Mr. Bates then went on to respond to the Applicants' submission that the counter notices were invalid. It was said that OPML was a party to the lease to all the flats at Century Wharf and was entitled to serve a counter notice. The legal department of PPM (of which, it was said, OPML was a part) acts for OPML and is permitted to serve and receive documents on its behalf. The case of *R v Chief Immigration Officer ex p Begum* was referred to, the counter notice did specify when the claim notice was given to the landlord and there was no requirement for the counter notice to give detailed reasons nor was there space to do so on the prescribed form (and the case of *Gala Unity Limited v Ariadne Road RTM Co Limited* was referred to).

30. In relation to jurisdictional points taken by the Respondents, it was asserted the Applicant companies were not RTM companies and so could not bring the present application. The Articles of an RTM must be in the form provided in the Welsh Regulations. The three Applicants have adopted the Articles in the form provided by the English Regulations. Relying on the *Henke* case, unless the Articles were amended by the Applicants to comply with the Welsh regulations, they were not an RTM company and there was no valid application before the Tribunal.

31. It was also asserted that S 72(1) of the Act only permitted the right to manage to extend to an individual building.

VALIDITY OF THE CLAIM NOTICES-THE SIGNATURE POINT

32. Mr. Bates asserts that the claim notices have not been executed in accordance with S.44 of the Companies Act 2006. The Act provides that the claim notice must be signed and RTMF as a company can only sign a document in one of the methods prescribed by S.44 of the Companies Act.

33. S.44 of the Companies Act provides as follows:

> *(1) Under the law of England and Wales or Northern Ireland a document is executed by a company*
>
> *(a) by the affixing of its common seal, or*
>
> *(b) by signature in accordance with the following provisions.*
>
> *(2) A document is validly executed by a company if it is signed on behalf of the company-*
>
> *(a) by two authorised signatories, or*
>
> *(b) by a director of the company in the presence of a witness who attests his signature.*
>
> *(3) The following are "authorised signatories" for the purposes of subsection (2)-*
>
> *(a) every director of the company, and*
>
> *(b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company.*

34. Mr. Joiner has signed the notices on behalf of RTMF, the secretary of the RTM company. Mr. Bates referred to *Hilmi & Associates v 20 Pembridge Villas Freehold Limited*. Failure to comply with S. 44 of the Companies Act meant the claim notice had not been signed and was not in the prescribed form and could not be saved by the provisions of S. 81(1) of the Act (which provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of S.80). This was not an inaccuracy but the omission of a lawful signature (*Assethold Ltd v 15 Yonge Park RTM Co Ltd*).

35. Mr. Bates then dealt with the substantive arguments. It was agreed by the parties that it would not be necessary at the hearing to address the Tribunal on the substantive issues as the Tribunal's ruling as to the validity of the notices and counter notices was likely to be determinative.

THE APPLICANTS RESPONSE TO THE SIGNATURE POINT

36. Ms. Mossop, in her skeleton argument, referred to the fact that all nineteen notices bore two signatures, of Dudley Joiner and Nick Bignell. The former is a director of RTMF (corporate secretary of the Applicant companies). The latter is a director of the Applicant companies. Ms. Mossop notes that the Act makes no provision as to the signing of notices served pursuant to its provisions. She referred to the RTM (Prescribed Particulars and Forms) (Wales) Regulations 2011 which sets out the form of the prescribed claim notice. The prescribed form sets out at the penultimate page that the form should be signed by authority of the company. She notes that after the space for signing is a brief note in square brackets, "Signature of authorised member or officer". She further asserts that the provisions of the 2002 Act cannot be altered in the light of the subsequent regulations. The correct position was

therefore that there are no statutory requirements concerning the signing of notices under the 2002 Act. Company documents are either those signed on behalf of the company or those signed by the company itself. RTM claim notices are in the category of documents signed on behalf of a company and there are no statutory provisions relating to signature on behalf of a company.

37. Ms. Mossop then asserts that Mr. Bates has wrongly stated that Mr. Joiner signed on behalf of a company, RTMF. She says that Mr. Bates' argument cannot succeed as a matter of law because there is no requirement in the Act for participating tenants to sign the claim notice personally. She also says that Mr. Bates' argument cannot succeed as a matter of fact because it is based on the assumption that RTMF signed the claim notices, not Mr. Joiner. She asserts that as a matter of evidence Mr. Joiner and Mr. Bignell had the Applicants' authority and signed the claim notices in their personal capacity on behalf of the Applicants. She asserts it is clear that Mr. Joiner signed the document in his personal capacity. She says the Respondents' mistake is probably due to the fact Mr. Joiner added his position under his signature. If RMTF was signing, instead of Mr. Joiner, its name would appear under the signature. She refers as an example to how the First Respondent purported to sign the counter notice for Hansen Court (this was signed, without a name but is Ms. McQueen Prince's signature, above OM Property Management Limited, Named manager of the leases of the flats in the premises).

38. Ms. Mossop further asserts Mr. Bates' argument cannot succeed even on its own case. Assuming the claim notices were signed by a company, the requirements of S.44 were met because there was no need for a second signature because a corporate secretary can sign by an authorised individual in accordance with S.44(7) of the Companies Act (this provides that references to a document being signed by a director or secretary are to be read, in a case where that office is held by a firm, as references to its being signed by an individual authorised by the firm to sign on its behalf). She concluded if the Respondents' arguments succeeded then the counter notices would be invalid too, having been signed by an individual as opposed to two authorised signatories in accordance with the provisions of S.44 of the Companies Act. She says the only question for the Tribunal to determine on the validity of the claim notices on the signature point is whether Mr. Joiner and Mr. Bignell had authority to sign on behalf of the Applicants and the witness statements prove that they did.

39. Mr. Joiner's affidavit states that he is a director of RTMF and that RTMF and its staff were given full authority to act on behalf of the RTM companies in all matters relating to the RTM claim and to sign notices and other relevant documentation. Mr. Bignell's affidavit repeats this and states that he is an employee of RTMF and director of the three Applicants.

40. Ms. Mossop referred to the case of *Assethold Limited v 14 Stansfield Road RTM Company Limited*, in which the claim notice was signed by a person authorised to do so by all three directors of the company but was not a member or officer of the company. It was held that all that was required under the Act was that the person signing had authority of the RTM company to do so.

41. Ms. Mossop also disagreed that, as a matter of law, a company is required to sign the claim notices in accordance with S.44 of the Companies Act. No reference is made in the Act, the Regulations or the prescribed form to the requirements of S.44 of the Companies Act. She asserts that if parliament had intended that S.44 should apply it would not have prescribed that the form could be signed by a member since a company member is not an authorised signatory for the purposes of S.44 of the Companies Act and the prescribed form would have adopted a different format for the signing. She distinguished the *Hilmi* case, which related to a notice served under S.13 of the Leasehold Reform Housing and Urban Development Act 1993, served by 4 qualifying tenants, one of which was a limited company. It was held the company had not complied with S.36 of the Companies Act 1985(now S.44 of the Companies Act 2006) so that the notice was invalid.

THE FIRST RESPONDENT'S RESPONSE

42. At the hearing, Mr. Bates, in response, pointed the Tribunal to the last page of the claim notice. It could not be said that the first signature was a personal signature. Mr. Joiner describes himself as a director of RTMF, a body corporate, itself the corporate secretary of RTMF, he is purporting to sign on behalf of a company, there is no reference to personal capacity. It is the RTMF trying to sign as the corporate secretary. In his submission, the only way RTMF can sign a document is in accordance with S.44 of the Companies Act. He submitted the *Hilmi* case was on point and helpful.

43. The *Hilmi* case concerned the validity of a notice served by 4 tenants seeking to exercise their right to acquire the freehold under S.13 of the Leasehold Reform Housing and Urban Development Act 1993, which requires that a claim to exercise the right the collective enfranchisement must be made by giving notice. S99 (5) provides that a notice given under S.13 (or S.42) must be signed by each of the tenants and any other notice given under this act may be signed by or on behalf of the tenants. One of the tenants was a company and the notice was signed by one of its directors, as director, who was also authorised to sign the notice on behalf of the company. The issue was whether his signature amounted to signature of the notice by the company. The Court of Appeal held (paragraphs 31 and 32) that sS.36a of the Companies Act 1985 prescribed how a company could sign a document which was required for some formal legal purpose and a notice under S.13 of the 1993 Act was such a document. The notice had been signed by only one director and did not have the company's common seal attached and therefore was not signed by the company. It was not sufficient for the company to give authority even to a single director to sign and to sign the document, it had to follow the legal process either by affixing its common seal, or by using the signature of two directors or a director and the secretary.

THE TRIBUNAL'S FINDINGS ON THE VALIDITY OF THE NOTICES-SIGNATURE POINT

44. It was not clear to the Tribunal what was intended by Mr. Joiner and Mr. Bignell's signatures. If they were signing in their personal capacities, it was not clear why Mr. Joiner's title was being "added". Mr. Joiner and Mr. Bignell must have had it in mind that two signatures were required on the notice, but Mr. Joiner, or Mr. Bignell, both of whom were authorised to sign for the Applicants could have signed alone.

45. Following the conclusion of the hearing, the deputy President of the Upper Tribunal handed down his decision in *Pineview Limited v 83 Crampton Street RTM Company Limited (2013) UKUT 0595*. He held that a claim notice was not invalid by reason only of having been signed by an RTM Company's solicitor or other authorised agent. He considered the conclusion of the Tribunal in *14 Stansfield Road* was convincing.

46. It appears to the tribunal that this case is fatal to Mr. Bates' submission about signature of the claim notice by a company. His argument about S44. of the Companies Act does not appear to have been advanced to the Upper Tribunal. However, in *14 Stansfield Road* it was held that it was sufficient that the person signing the claim notice "by authority of the company" did in fact have that authority. In *83 Crampton Street* it was held that a completed version of the prescribed form, bearing the signature of a person who has the authority of the company will comply with the requirements of S. 80. The witness statements of Mr. Joiner and Mr. Bignell both state the staff of RTMF are authorised to act on behalf of the Applicant companies. The claim notices have been signed by a person who has the authority of the company and the claim notices are therefore valid.

VALIDITY OF THE COUNTER NOTICES

47. The Applicants claim these notices are invalid for the reasons set out in paragraphs 11-18 and 25-26 above. Mr. Bates' response is referred to at paragraph 29 above. In her skeleton, Ms. Mossop says that the notices do not state the name of the company on whose behalf they were given. She refers to S.79 of the Act which provides that a claim to acquire the right to manage any premises is made by giving notice of the claim.

48. Subsection (6) provides that

> *"the claim notice must be given to each person who on the relevant date (the date on which the claim notice is given) is a Landlord under a lease of the whole or any part of the premises, party to such a lease otherwise than as a landlord or tenant or a manager appointed under part 2 of the Landlord and Tenant Act 1987".*

49. Ms. Mossop says in her skeleton that the Applicants gave 19 claim notices to each landlord and other parties to the lease (Frays Property Management (No.5) Limited, Fairhold and Quidme and to OPML and Westbury Homes Holdings Limited). No claim notices were given to Ms. McQueen Prince or PPM as neither was a landlord, a party to the leases or a manager. As a result, she asserts, Peverel Services Limited (PSL) were not entitled to give counter notices pursuant to S.84 of the Act. No evidence has been provided to establish PSL is authorised to act on behalf of OPML. The Applicants had stated their position in a letter to the Tribunal dated 15th April 2013. Still no evidence was provided to show OPML had authorised PPM to serve and receive notices or sign counter notices on its behalf. It was only on 1st May 2013 that PPM had written to the Tribunal and stated that the counter notices were served by OPML, a member company of PPM, a division of PSL but no evidence in support of this assertion had been submitted and in any event, the Tribunal could not go behind the corporate veil. She noted Mr. Bates' submission on

this point (paragraph 29 above) but did not refer to any evidence proving that in fact OPML authorised PSL to sign the counter notices on its behalf. The *Begum* case referred to by Mr. Bates did not assist as there was no evidence that PSL was acting on behalf of OPML. PSL is in fact an entirely separate company and she asserted the Respondent could not win on this argument without evidence in support. So OPML had failed to establish that it served counter notices and the Applicants are entitled to acquire the right to manage the premises specified in the counter notices, save for the three counter notices served by *Fairhold Properties Limited.* Ms. Mossop said further in oral submissions that the Applicants were faced with confusion as there was no evidence as to the relationship of PSL or PPM to any of the three parties upon whom claim notices were served. The *Begum* case did not assist, whether a solicitor's clerk can receive documents on behalf of a client has nothing to do with who can serve a counter notice and in the absence of any evidence the Tribunal had no option but to find that the counter notices were not valid and did not comply with S. 84(1) of the Act.

50. Ms. Mossop had accepted in her written and oral submissions that the above points related only in respect of the first and second Applicants. The counter notice in respect of the third Applicant was signed by OPML.

51. Mr. Bates submitted at the hearing that Peverel OM Limited, named as manager in the lease, is now OPML, with the same registered office and registration number. A restructuring had taken place over time and the Applicants had served the correct party. They knew which company they had to serve. It was not necessary to set out the intricacies of the holding arrangements. The notice did not have to state who was giving the counter notice and agents can give a notice on behalf of a principal. A letter from PPM coming from an address of the registered office of Peverel OM Property Management to any reasonable recipient was a notice given by the relevant company. If it was suggested Miss. McQueen Prince had no authority to sign the notice, Mr. Bates insisted this had to be put to her as this amounted to an allegation of serious professional misconduct.

52. Ms. Mossop, in response, said they were unable to suggest anything as there was no evidence. The only information in the counter notice was the name of the person who signed the form. There was no evidence of the relationship of the solicitor to any of the companies served. This was a matter of evidence and she objected to such evidence being given at this stage as it would prejudice her client.

53. The Tribunal asked Ms. McQueen Price to confirm she was authorised to serve the notices on behalf of OPML. She stated she was employed by OPML as in house solicitor. PPM was the collective name given to several management companies within the group. She had been authorised to prepare the counter notices on behalf of OPML.

THE TRIBUNALS FINDINGS ON THE VALIDITY OF THE COUNTER NOTICES

54. The Tribunal found that the counter notices had been validly served by a solicitor authorised to sign on behalf of the company.

55. Ms. Mossop made a further point on the validity of the counter notices (that the Respondent should state the specific grounds upon which it disputes the Applicants claim to acquire the right to manage but did not pursue this point at the hearing in the light of the decision in *Fairhold (Yorkshire) Limited v Trinity Wharf (SE16) RTM Co Ltd.*

FORM OF THE RTM COMPANIES AND REFERENCES TO THE PRESCRIBED NOTICES REGULATIONS (THE WELSH/ENGLISH REGULATIONS POINT)

56. This point was initially raised by PPM in its letter dated 15th April 2013 (see paragraph 19) above and in Mr. Bates' written submission at paragraph 14. The Applicants responded in their written submission at paragraphs 16 to 26 (see paragraph 27 above). In her skeleton, Ms. Mossop repeated her submission and conceded that the articles are in the form prescribed by the RTM Companies (Model Articles) (England) Regulations 2009, which differed slightly from the model articles prescribed by the RTM Companies (Model Articles) (Wales) Regulations). She submitted at the hearing that the Tribunal was bound by the decision in *Fairhold Mercury Limited v HQ (Block 1) Action Management Company Limited 2013(UKUT) 0487*. Mr. Bates in response said the cases were conflicting and this was not a minor error, the wrong forms of regulations had been referred to, it had to be the Welsh authority. He conceded the *Fairhold* case did indicate that a company wins so long as the S.73 requirements were met regardless of the terms of the articles but that the Tribunal could uphold the *Henke* case.

57. In the *Fairhold* case the sole issue was whether the Respondent was prevented from being an RTM company as the letters "RTM" did not appear in its name. Mr. Bates, representing the Freeholder in that case, had argued that a company will only be an RTM company if its articles of association correspond exactly to the prescribed articles. The LVT had rejected this argument and the deputy President agreed the LVT's decision was correct. He held whatever must be in its articles of association, a company will be an RTM company if it satisfies the requirements of section 73(1) and is not excluded by any of the provisions of sections 73(3)-(5). He referred to sections 74 (4) and (5) of the Act:

> *"which make it clear that to the extent that the adopted articles of an RTM company are inconsistent with the prescribed articles, the adopted articles have no effect. It follows that if the omission of the words "RTM" is to be regarded as an inconsistency between the respondent's adopted articles and the prescribed articles, the omission is of no effect"*

58. This was exactly Ms. Mossop's argument. The *Henke* decision is very short and it does not appear the Tribunal was addressed on the argument raised by Ms. Mossop. In any event, the Tribunal is bound by the Upper Tribunal decision. The Applicant companies are RTM companies and can bring the applications.

SUBSTANTIVE ARGUMENTS

59. As referred to in paragraph 28 above, pending finalisation of the decision *in Ninety Broomfield Road RTM Company Ltd v Triplerose Ltd, Garner Court RTM Company Ltd v Freehold managers (Nominees) Ltd and Holybrook RTM Company Ltd v Proxima GR Properties Ltd (2013) UKUT 0606 (LC)*, the Tribunal did not hear further submissions at the hearing on 27th November 2013. Mr. Bates provided a copy of the final decision on 3rd December 2013.

60. On 18th December 2013, in a further submission, Ms. Mossop said the above decision confirmed their submission that there was no statutory restriction on the number of premises to which one RTM Company could relate. That case also confirmed that one right to manage claim can extend to multiple blocks of flats and appurtenant property. She further asserted that the Respondent was wrong to argue that the blocks did not qualify under S.72 of the Act because of the undercroft car parking beneath some of the blocks. The fact that the premises shared appurtenant property did not prevent the separate blocks being self contained within S. 72. She said the language of S.72 envisaged premises can contain a self contained building or several self contained buildings in addition to appurtenant property, but only the buildings have to be self contained as opposed to the appurtenant property or the premises as a whole. She also asserted that where buildings were self contained there was no further requirement for them to be vertically divided. The Applicants had served claim notices for whole buildings not for parts of these buildings. The fact that self contained blocks are subdivided into smaller parts was irrelevant as long as the block as a whole was self contained, which, it was said, the Tribunal's visit had established. The Tribunal was asked to find in the Applicant's favour in respect of the arguments advanced in Ms. Mossop's skeleton.

61. Mr. Bates responded in a further submission that following the Upper Tribunal decision in *Ninety Broomfield Road* case, the Tribunal was bound to find that it was lawful for one RTM company to acquire the right to manage over more than one property, so long as every property meets the qualification conditions in the Act and that the right to manage over more than one property can be claimed either on one or two claim notices, the test is whether it is sufficiently clear what is being claimed on the face of the notice. Mr. Bates asked the Tribunal to issue decisions on the issues of the validity of the counter notices, whether the Applicants are valid RTM companies and whether the claim notices were validly signed. No argument or evidence had been heard on the substantive issues and Mr. Bates submitted it was wrong for Ms. Mossop to suggest there was no need to hear any evidence on the issue of whether the individual buildings were within the scope of S.72 and if neither party achieved a knock out success on the preliminary issues, then the Tribunal was asked to give further directions for the production of evidence with a view to a final hearing. Mayfield Law, in a letter dated 9th January 2014, objected to this and sought a directions hearing, the costs of which, it was submitted, should be borne by the Respondents.

SUMMARY

62. In the light of the above case, the Tribunal found that one RTM company could acquire the right to manage over more than one property.

63. The Tribunal found that the Applicants are RTM companies and claim notices served on their behalf are valid, as are the counter notices. One of the substantive arguments has been dealt with but there remain other substantive arguments, which although referred to in the parties' submissions, were not fully developed at the hearing as the full decision in *Ninety Broomfield Road RTM Company Limited* was awaited. The Tribunal, following the hearing, considered it likely it would not be necessary to consider fully the substantive issues as its findings on the validity of the claim notices and counter notices were likely to be conclusive. However, following the decision of the deputy President in *83 Crampton Street RTM Company,* the Tribunal was forced to a conclusion that the claim notices were valid and so some of the substantive issues were still live. Accordingly, the Tribunal considers a further hearing may be necessary. However, it is also possible that the Applicants or the Respondents may seek to appeal the Tribunal determination's in respect of the validity of the claim notices and counter notices. In the circumstances, the Tribunal directs a further directions hearing on a date to be arranged through the clerk.

DATED this 17th day of February 2014

CHAIRMAN