

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL (WALES)**  
**LEASEHOLD VALUATION TRIBUNAL**

Reference: LVT/0036/09/24

In the matter of Riverview Court, 2 Cowbridge Road West, Cardiff, CF5 5FD

In the matter of an application under Chapter 1 Part 2 of the Commonhold and Leasehold Reform Act 2002: the acquisition of the right to manage

APPLICANT: Riverview Court (CF5) RTM Company Limited

RESPONDENT: MK Freehold Limited

Tribunal: Tribunal Judge Tueje  
Mr D. Evans FRICS (Surveyor Member)  
Ms C. Calvin-Thomas (Lay Member)

Date of determination 16<sup>th</sup> January 2025 on the papers.

**DECISION**

The Tribunal determines that on 27th October 2024, the Applicant was entitled to acquire the right to manage Riverview Court, 2 Cowbridge Road West, Cardiff, CF5 5FD, pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002, and the Applicant will acquire such right within three months after this determination becomes final.

**REASONS FOR DECISION**

**Introduction**

1. This is an application to acquire the right to manage the property known as Riverview Court, 2 Cowbridge Road West, Cardiff, CF5 5FD (the "Property"), under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").
2. The freeholder disputes the Applicant is entitled to acquire the right to manage on the grounds that it claims the Applicant failed to comply with section 79(8) of the 2002 Act.

3. The Applicant maintains it has complied with section 79(78) of the 2002 Act, and that a copy of the claim notice was given to each person who on the relevant date was a qualifying tenant of a flat within the Property.
4. Alternatively, the Applicant submits that even if there has been a technical failure to effect valid service, it is nevertheless entitled to acquire the right to manage the Property.

## **Background**

5. The Property is a residential building comprising 9 flats held by qualifying tenants, and 7 of the leaseholders are members of the Applicant RTM company (the "RTM Company"). The Applicants are represented by Mr Bignell of RTMF Services Limited.
6. The members of the RTM Company are the leaseholders of Flats 1, 2, 3, 6, 7, 8 and 9; the leaseholders of Flats 4 and 5 are not members.
7. The freehold is held by MK Freehold Ltd, the Respondent.
8. The Applicant relies on a Claim Notice dated 13<sup>th</sup> June 2024. The Applicant states the claim notice was e-mailed to the 7 members of the RTM Company on 13<sup>th</sup> June 2024.
9. In response to the claim notice relied on by the Applicant, the Respondent served a counter-notice on 18<sup>th</sup> July 2024. The counter notice contends that the RTM Company was not on the relevant date entitled to acquire the right to manage by reason of its failure to comply with section 79(8) of the 2002 Act.
10. The Tribunal issued an order dated 19<sup>th</sup> September 2024 which included the following directions:
  - 10.1 By 12 noon on 17<sup>th</sup> October 2024, the Respondent was required to send a statement in reply to the application; and
  - 10.2 By 12 noon on 14<sup>th</sup> November 2024 the Applicant was permitted to send a supplementary statement in support of the application.

## **The Respondent's Position**

11. The Respondent did not submit a statement in reply, and has played no active part in these proceedings.
12. However, the Tribunal had the benefit of correspondence exchanged between the parties, which sets out the Respondent's position.
13. Firstly, in a letter to the Applicant's representative dated 16<sup>th</sup> July 2024, Ms Zanelli, the Respondent's solicitors requested the following documents:

- 13.1. Copy certificate of incorporation of the RTM company;
  - 13.2. Copy of the memorandum and articles of association of the RTM Company;
  - 13.3. Certified copy of the register of members as at the date of service of the claim notice;
  - 13.4. Copies of the notices of invitation to participate served on all qualifying tenants who are not members of the RTM Company with signed covering letter with enclosures and certificate of posting;
  - 13.5. Evidence of service of the claim notice on all qualifying tenants with signed covering letter with enclosures and certificate of posting; and
  - 13.6. Confirmation as to whether the claim notice has been served on any other party.
14. Ms Zanelli sent a reminder on 17<sup>th</sup> July 2024, stating a counter-notice would be served unless the RTM Company provided the above requested documents by 12 midday on 18<sup>th</sup> July 2024.
15. Mr Bignell replied by an e-mail sent on 18<sup>th</sup> July 2024 which stated the notice of claim was given to MK Freehold Limited as the landlord of the Property. The e-mail also attached the following documentation:
- 15.1. Copy certificate of incorporation of the RTM Company;
  - 15.2. Memorandum and articles of association of the RTM Company;
  - 15.3. Certified copy of the register of members as at the date of service of the claim notice;
  - 15.4. Copies of notices of invitation to participate, together with proof of second-class postage; and
  - 15.5. Proof of postage for copy claim notices given to non-members posted to Flats 4 and 5 Riverview Court, 2 Cowbridge Road, West Cardiff, CF5 5FD.
16. Finally, Mr Bignell confirmed the claim notice was e-mailed to all members of the RTM Company.
17. On 18<sup>th</sup> July 2024 the Respondent's solicitors served a counter notice disputing the Applicant is entitled to acquire the right to manage by reason of its failure to comply with section 79(8) of the 2002 Act.
18. On 20<sup>th</sup> August 2024 Mr Bignell e-mailed Ms Zanelli providing copies of the e-mails sent to all qualifying leaseholders attaching the claim notice, Land Registry Office Copy registers of title in respect of Flats 4 and 5, and he re-sent the proof of postage in respect of the claim form sent to Flats 4 and 5. His covering e-mail asserted section 79(8) of the 2002 Act had been fully complied with. Alternatively, Mr Bignell stated the Applicant would rely on *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* in the event of any procedural non-compliance. Finally, Mr Bignell invited MK Freehold Ltd to withdraw its counter-notice.
19. Ms Zanelli responded in an e-mail sent on 26<sup>th</sup> August 2024 setting out the Respondent's position as follows:

*Whilst I confirm receipt of your email, the attachments to your email do not demonstrate that the RTM has discharged its statutory duty under section 79(8) of the 2002 Act.*

*Your email attaches a number of pdf copies of emails sent. However, you have failed to provide any evidence as to the attachments to those emails.*

*Further and in addition, so far as flats 4 and 5 are concerned, you have simply attached the registers of title and bulk certificate of posting. You have not provided copies of the actual documents you seemingly say were sent.*

*The burden of proving that the RTM company has complied with and discharged its statutory duty sits with the RTM company.*

*As matters stand, you have not provided evidence to demonstrate this.*

*Whilst I note your reliance the recent Supreme Court decision, that case concerned failures under section 79(6), whereas the failures in the present case are by reason of section 79(8).*

20. The parties reiterated their respective positions in e-mails exchanged on 28<sup>th</sup> August 2024.

### **The Application**

21. The Applicant subsequently submitted its application to the Tribunal, which is dated 13<sup>th</sup> September 2024. The Application was accompanied by the following documents:

- 21.1 A copy of the RTM Company's Certificate of Incorporation;
- 21.2 A copy of the RTM Company's Articles of Association;
- 21.3 The claim notice dated 13<sup>th</sup> June 2024; and
- 21.4 The counter-notice dated 18<sup>th</sup> July 2024.

### **The Applicant's Evidence**

22. In a statement of case dated 28<sup>th</sup> October 2024, which is supported by a statement of truth, Mr Bignell sets out the history of the case contained at paragraphs 13 to 20 above.

23. The following documents are exhibited to the statement of case:

- 23.1 The letter from Ms Zanelli dated 16<sup>th</sup> July 2024 (exhibit 1);
- 23.2 Ms Zanelli's reminder letter dated 17<sup>th</sup> July 2024 (exhibit 2);
- 23.3 Mr Bignell's e-mail to Ms Zanelli sent on 18<sup>th</sup> July 2024, which shows the description of the documents he attached to that e-mail (exhibit 3);

- 23.4 Mr Bignell's e-mail to Ms Zanelli sent on 20<sup>th</sup> August 2024, plus copies of the documents he attached to that e-mail (exhibit 4); and
- 23.5 Ms Zanelli's e-mail to Mr Bignell sent on 26<sup>th</sup> August 2024, Mr Bignell's e-mail to Ms Zanelli sent on 28<sup>th</sup> August 2024, and Ms Zanelli's e-mail in response also sent on 28<sup>th</sup> August 2024 (exhibit 5).

**The Issue Between the Parties:**

**Has the Applicant complied with Section 79(8) of the 2002 Act?**

24. The requirement to serve a notice of claim to acquire the right to manage is set out at section 79 of the 2002 Act, which reads as follows:

- (1) *A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.*
- (2) *The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.*
- (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.*
- (6) *The claim notice must be given to each person who on the relevant date is—*
- (a) *landlord under a lease of the whole or any part of the premises,*
  - (b) *party to such a lease otherwise than as landlord or tenant, or*
  - (c) *a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.*
- (7) *Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.*
- (8) *A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.*
- (9) *Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.*

## The Issue of Notice

25. The issue of whether the Applicant has complied with section 79(8) in respect of the non-members of the RTM Company is the issue before the Tribunal in this case.
26. Ms Zanelli's e-mail sent on 26<sup>th</sup> August 2024 raises two issues: firstly, that the Applicant has failed to demonstrate that it attached the required documents to the emails sent to leaseholders on 13<sup>th</sup> June 2024; and secondly, it has failed to provide copies of the documents posted to the leaseholders of Flats 4 and 5.
27. In its statement of case, Mr Bignell states that the notice of claim was given in accordance with section 79 of the 2002 Act on 13<sup>th</sup> June 2024. And at paragraph 8 of the statement of case it says he sent Ms Zanelli evidence confirming section 79(8) had been complied with by sending her the documentation at exhibit 4 to the Applicant's statement of case.
28. Exhibit 4 includes 7 emails sent to the 7 leaseholders who are members of the RTM Company. The copy emails show there was an attachment to those emails. It was a single attachment labelled "*Riverview Court (CF 5) Section 79 13 June 2024.*"
29. The text of the covering email states that a claim notice has been given and is enclosed. The email also states that unless a counter notice is received by 20<sup>th</sup> July 2024, the RTM will acquire the right to manage on 27<sup>th</sup> October 2024.
30. Also at exhibit 4 is a bulk certificate of posting. It is date-stamped 28<sup>th</sup> June 2024. It indicates a document was sent by second-class post to Flats 4 and 5 Riverview Court. The names of the recipients correspond to the names of the leaseholders shown on the title documents for Flats 4 and 5, which Office Copy entries are also at exhibit 4.
31. We are satisfied that the Applicant has complied with section 79 in respect of the emails sent to the members of the RTM Company on 13<sup>th</sup> June. This is because we have been provided with a copy of those emails. From that copy, it shows there was an attachment to those emails. The email attachment is described as "Riverview Court C5 Section 79." As stated, a copy of the claim notice has been provided to the Tribunal at the same time that the Application was submitted.
32. We consider it more likely than not that the attachment was, in fact, the claim notice, particularly as the title of the attached document makes express reference to the relevant statutory provision. In further support of that conclusion is the fact that the email itself refers to the claim notice being enclosed. We note this is exhibited to a statement of case which is supported by a statement of truth, and the Respondent has given no specific grounds to doubt the attachment was the claim notice as the Applicant contends. Therefore, as we have been given no reason to disbelieve the information contained in the statement of truth, we do not see any reason why we should

disbelieve it. Accordingly we accept the information contained in the statement of truth is accurate.

33. As to the second issue raised by the Respondent, we are also satisfied that the claim notice was sent to the leaseholders of Flats 4 and 5, because this is supported by the certificate of bulk posting.
34. The Applicant has not provided the covering letter that was sent to these leaseholders, and we consider the position would have been clearer if the Applicant had done so. Nonetheless, the Applicant states in a statement of case, supported by a statement of truth, that the documents posted on 28th June 2024 to the leaseholders was the claim form. Again, we have been given no reason to dispute the Applicant's account of what was posted, and we accept it is more likely than not that copies of the claim notice were enclosed with the documents posted.
35. We note that the documents posted to the leaseholders of Flats 4 and 5 were posted on 28th June 2024. This post-dates the date the claim notice was e-mailed to the other leaseholders, which was 13th June 2024.
36. To the extent that the time elapsing between the claim notices e-mailed to members of the RTM Company and the claim notices posted to non-members is relevant, we have considered the case of *A1 Properties (Sunderland) Ltd*. In particular, we have focused on the position of the parties directly affected by any procedural omission. Those parties would be the leaseholders of Flats 4 and 5. We have considered to what extent those leaseholders may have suffered any prejudice as a result of receiving the claim notice on 28th June 2024. We do not consider the leaseholders would have suffered any, or any material, prejudice as a result. The leaseholders were provided with the claim notices, albeit around 2-3 weeks after 13th June 2024. Nonetheless, the leaseholders would still have had sufficient time to object by serving a counter notice if they wished to, because the date for doing so expired on 20th July 2024, as stated in the claim notice itself.
37. We have no evidence to indicate that either leaseholder did serve a counter notice. Therefore, having regard to paragraph 92 of *A1 Properties (Sunderland) Ltd*, we take into account that the party with a potential objection about the timing of service of the claim notice, has not objected. Therefore, we consider it would be disproportionate to allow the timing of the notices posted to the non-members to fatally undermine the acquisition of the right to manage. We also note that the Respondent has not raised any issue in respect of the timing of the documents posted to the non-members, the issue it raises is with regard to the what documents were actually sent.

### **Conclusion and Decision of the Tribunal**

38. Having carefully considered each parties' position and the documentation provided, we have concluded that the Applicant has complied with section 79(8) of the 2002 in respect of the claim notices given to members of the RTM

Company on 13<sup>th</sup> June 2024, and the claim notices posted to non-members on 28<sup>th</sup> June 2024.

39. Accordingly, the Tribunal determines that on 27th October 2024, the Applicant was entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the 2002 Act, and the Applicant will acquire such right within three months after this determination becomes final.

Dates this 3<sup>rd</sup> day of February 2025

Tribunal Judge Tueje