FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AH/LRM/2016/0013**
Property	:	**125 Southbrdge Road, Croydon, Surrey CR0 1AJ**
Applicant	:	**Southbride (Croydon)RTM Company Limited**
Representative	:	**The Leasehold Advice Centre**
Respondent	:	**Michael Charles Mark James**
Representative	:	**Artisan Brandt PLC**
Type of application	:	**Application relating to no fault right to manage under the Commonhold and Leasehold Reform Act 2002 s84(3) and a claim for costs under the provisions of the Tribula Procedure (First-tier Tribunal)(Property Chamber)Rules 2013**
Tribunal member(s)	:	**Tribunal Judge Dutton**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**19th October 2016**

DECISION

DECISION

The Tribunal determines that at the relevant date the Applicant Southbridge (Croydon) RTM Company Limited had the right to acquire the management of the premises 125 Southbridge Road, Croydon, Surrey CR0 1AJ (the Property) under the Commonhold and Leasehold Reform Act 2003 s84(3) (the Act) for the reasons set out below.

The Tribunal determines that the Respondent Michael Charles Mark James has not acted unreasonably within the provisions of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 Rule 13 (the Rules) for the reasons set out below.

BACKGROUND

1. This application is two fold. Firstly the Applicant seeks a determination that at the relevant date the Applicant had the right to acquire the right to manage the Property. The second application is for costs under the Rules on the basis that the Respondent has acted unreasonably in defending these proceedings (rule 13(1)(b)(ii)).
2. I will deal with the two matters separately and start with the consideration of the Applicants right to manage under the Act. To assist me I had the application dated 8th August 2016 with a number of exhibits attached. This included a statement and further particulars, the notices served, the Memorandum and Articles of Association and HM Land Registry entries. The important document for this case is the Counter Notice at page 38 of the bundle dated 17th June 2016.
3. Subsequently directions were issued which drew the parties attention to the recent Upper Tribunal case of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2106]UKUT (LC)* relating to costs under Rule 13.
4. Following on from these directions, and in respect of the determination under the Act, I also received a letter from Artisan Brandt Plc dated 16th September 2016 said to be on behalf of the Respondent Mr James and purportedly signed by him. This in turn elicited a response from the Applicant via the Leasehold Advice Centre (LAC) dated 23rd September 2016. I have read these submissions and taken the comments into account in reaching my decision.

THE LAW

5. See section 84 of the Act below and the provisions of the rules relevant to this case.

FINDINGS

Right to Manage

6. The issue raised by the Applicant is that the Counter Notice dated 17th June 2016 is defective and non-operative because it is signed by, it would seem, Yemi Oseni the Property Manager for Brandt Group. His position is stated to be the "Duly Authorised agent of Brandt Computer Systems Ltd". The Claim Notice is served upon the freeholder, the Respondent in these proceedings Michael Charles Mark James. His name does not appear in anyway on the Counter-Notice. This it is said

makes the Counter Notice ineffective and the right to manage should have proceeded without the need to apply to the Tribunal.

7. In further support the Applicant relies on a letter sent by the LAC dated 21st July 2016, raising this point. It does not seem that there was any response until the Respondent, via Artisan Brandt wrote to the Tribunal on 16th September 2016.
8. The letter dated 16th September 2016 does not really address the point on the validity of the Counter Notice. It does seek to address the claim for costs, to which I will return. The letter states that the Respondent's office is in close proximity to the Property and that there should have been contact between the parties, the onus being put on the Applicants to undertake this approach. The letter goes on to give some support to the Counter Notice suggestion that the 'building does not qualify', the purported basis upon which the objection to the right to manage appears to be raised. No further information is contained in the Counter Notice.
9. It is said in the letter of 16th September 2016 that there are 19 flats in 4 blocks, which share a car park, bin area roadway, grassed area and garages in other blocks. It does not state that the Property in anyway fails to meet the criteria in section 72 of the Act. The letter merely alleges that the management of the common areas would create an 'impossible' situation and puts forward the possibility of a new management company being instructed on the basis that the present one is not doing a 'very good job', as appears to be accepted by the Respondent.
10. It is my finding that the Counter Notice is not effective. The Act at section 84 (1) requires the person who is given the Notice to, if so desired, serve a Counter Notice. The person served was Mr James, not Artisan Brandt. Furthermore the Counter Notice is said to be served upon behalf of a third party, not Mr James. I do not consider the County Notice to be ambiguous, which might give some possibility of considering the principles under *Mannai Ltd v Eagle Star Insurance Co Ltd* [1997] AC 749. I find that the Counter Notice must be given by the person upon whom the Notice of Claim was intended to bite, Mr James, and not a third party, in this case Brandt Computer Systems Limited, who are not even the body which now appears to act as Agent for Mr James, that being Artisan Brandt Plc.
11. Accordingly the Applicant is entitled to acquire the right to manage the Property in accordance with section 90 of the Act.
12. If I am wrong on the question of the validity of the Counter Notice I would have determined that the Applicant nonetheless had the right to manage the Property. There is no suggestion that the Property does not fall within the provisions of section 72 of the Act. The concerns of the common areas can easily be dealt with by the existing or replacement management company, with the RTM company/leaseholders making necessary contributions to these expenses through the existing service charge regime. There is no suggestion that the service to the Property are anything other than on the basis that each block is self contained, as is the access arrangements. I do not consider that the issues with regard to garages causes a problem and the right to manage, is, as

stated by the Applicant in its response dated 23rd September 2016 relating to the building.

Costs

13. I turn now to the question of costs. I bear in mind the authority of the Upper Tribunal in the Willow Court case referred to above and by Judge O'Sullivan in her directions of 22nd August 2016. I have considered the provisions of paragraphs 24 – 26 and 28 of the decision in reaching my conclusion on costs. Paragraph 28 says as follows:

28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

14. I have read the statement of case submitted by the Applicant dated 2nd September 2016 and noted such submissions made on behalf of the Respondent in the letter of 16th September 2016.

15. It is appropriate to set the wording of the Upper Tribunal at paragraphs 24 – 26.

24. We do not accept these submissions. An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in Ridehalgh at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?

25. It is not possible to prejudge certain types of behaviour as reasonable or unreasonable out of context, but we think it unlikely that unreasonable conduct will be encountered with the regularity suggested by Mr Allison and improbable that (without more) the examples he gave would justify the making of an order under rule 13(1)(b). For a professional advocate to be unprepared may be unreasonable (or worse) but for a lay person to be unfamiliar with the

substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.
26. We also consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. It is the responsibility of tribunals to ensure that proceedings are dealt with fairly and justly, which requires that they be dealt with in ways proportionate to the importance of the case (which will critically include the sums involved) and the resources of the parties. Rule 3(4) entitles the FTT to require that the parties cooperate with the tribunal generally and help it to further that overriding objective (which will almost invariably require that they cooperate with each other in preparing the case for hearing). Tribunals should therefore use their case management powers actively to encourage preparedness and cooperation, and to discourage obstruction, pettiness and gamesmanship.

16. The Respondent is not represented by solicitors He is said to be a man who mainly retired and aged 81 although I am not sure that these facts are relevant in determining the unreasonable scenario. Although I have found that the Counter Notice is ineffective this is a somewhat tortuous area of law as evidenced by the number of cases that find there way to the Upper Tribunal on the technicalities of the Act. There may have been an arguable point on the issue with regard to the common areas at the development and to be fair to the Respondent the directions identify a single issue for determination at paragraph E. The Respondent could have engaged earlier with the Applicant following the letter sent on 21st July 2016, although it is noted that the Counter Notice was sent on 17th June 2016, over a month before the point is taken. Subsequently the application was made on 8th August to ensure no breach of section 84(4).
17. Taking into account the terms of the Rule, the authority of the Upper Tribunal set out in part above, the facts of the case I find that the conduct of the Respondent is not such that he should be required to pay the costs of the Applicant under the provisions of the Rules.

Andrew Dutton
Tribunal Judge Dutton 19th October 2016

Relevant Law

The Act

84 Counter-notices

(1)A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2)A counter-notice is a notice containing a statement either—

(a)admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b)alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3)Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4)An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5)Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a)on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b)the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6)If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7)A determination on an application under subsection (3) becomes final—

(a)if not appealed against, at the end of the period for bringing an appeal, or

(b)if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8)An appeal is disposed of—

(a)if it is determined and the period for bringing any further appeal has ended, or

(b)if it is abandoned or otherwise ceases to have effect.

The Rules

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(a)under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i)an agricultural land and drainage case,

(ii)a residential property case, or

(iii)a leasehold case; or

(c)in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a)must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b)may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a)a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b)notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a)summary assessment by the Tribunal;

(b)agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c)detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(1), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(2) and the County Court (Interest on Judgment Debts) Order 1991(3) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).