FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAM/LRM/2017/0005**
Property	:	**Alcock, Barcham, Richard Fox Houses, Queen's Drive, London N4 2TB**
Applicant	:	**AB&R RTM Company Limited**
Representative	:	**Mr N Agmihotri (Counsel) and Mr Roger Ashton, Director of the Applicant Company**
Respondent	:	**Rovergrange Limited**
Representative	:	**Integrity PM Limited** **Mr Paul Simon of Integrity PM Limited** **Mr Andrew Dwyer, Miss Christina Eriksen and Mr Anthony O'Brien**
Type of Application	:	**Application under the Commonhold Leasehold Reform Act 2002 relating to no fault right to manage**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs E Flint DMS FRICS IRRV**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 29th March 2017**
Date of Decision	:	**12th April 2017**

DECISION

DECISION

The Tribunal determines that the Applicant is entitled to recommence the management of the properties 1-7 Alcock House, Queen's Drive, 1-9 Barcham House, Riversdale Road and 1-12 Richard Fox House, Queen's Drive London N4 2TB (the Property) for the reasons set out below.

BACKGROUND

1. This is an interesting case brought by Mr Ashton a director of the Applicant Company. The application dated 30th January 2017 asks us to restore back the control to AB&R RTM Company (the Company) of the management of the three blocks, the Property referred to above as soon as possible. The Company had been struck off the Companies register and dissolved pursuant to Section 1000 of the Companies Act 2006 on 6th May 2014 and from that time the right to manage had ceased to be exercisable pursuant to s105 of the Commonhold and Leasehold Reform Act 2002 (the Act). However, the Company has been reinstated and restored to the register as confirmed by Companies House in a letter dated 29th November 2016. The important element of that letter confirming the restoration is to be found at Section 1716 of the Companies Act 2006 that *"the general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register."*

2. Directions were issued by this Tribunal on 3rd February 2017 where the Judge expressed some concerns as to what exactly this Tribunal's jurisdiction might be. Those directions clearly set out the concerns and we have noted all that is said. We also have before us in the papers given prior to the hearing an email from the Leasehold Advisory Service appearing to indicate that the effect of restoration to the register is as indicated above, namely that the RTM company never lost the right to manage. The letter, however, is not so unequivocal as that because it appears to be predicated on the basis that the strike off did not fall within Sections 1000, 1001 and 1003 of the Companies Act 2006, when it did.

3. In any event, the directions require us to decide what if anything this Tribunal can do to resolve what appears to be an apparent impasse.

4. Before we deal with the evidence before us, it is perhaps appropriate to record some of the chronology. It appears that the Applicant Company was incorporated on 4th July 2008 and acquired the right to manage the premises in July 2009. As a result of administrative failings the company was dissolved on 6th May 2014 but as a result of application to Companies Registry was restored on 29th November 2016. It is clear that such dissolution occurred under Section 1000 of the Companies Act 2006.

5. For the Applicant there is little in the way of written statements in respect of the matter. There is correspondence passing between Mr Ashton and the Tribunal in effect seeking some assistance as to what could or could not be done. In particular, Mr Ashton's letter of 30th January 2017 is relevant and the contents have been noted by us as is the earlier email of 24th January 2017. We have, as we have indicated above, considered the email from Leasehold Advisory Service of 12th January 2017 and we have also seen the email sent by Mr Ashton to Leasehold

Company and that acting on the oral agreement of Mr Rand, confirmation had been sought from a number of lessees about the reinstatement but that permission to so proceed had been withdrawn. It was said, therefore, Mr Ashton had proceeded in good faith with the application which seemed to be an argument addressing the costs. It was suggested that the reason why permission had been withdrawn was because of the possibility of further development on the block, although no real evidence was adduced to support this.

12. Mr Ashton told us that he had spoken to Mr Rand about restoring the company and had been told that that would be acceptable. He believed he had obtained the support of 50% of the leaseholders, although conceded that there was nothing in writing from Mr Rand confirming his acceptance of the route taken by him. He also confirmed that there had been no general meetings for some time, certainly before the company was struck off. It was submitted that Companies Act clearly allowed the restoration of the company and there was no reason why that should not be the case.

13. Mr Simon, acting on behalf of Rovergrange Limited accepted that the Company could be restored and it would be as though it never went away. However, he relied upon Section 105 of the Commonhold Leasehold Reform Act 2002 which says amongst other things the following: *"Sub-section 1. This section makes provision about the circumstances in which, after an RTM Company has acquired the right to manage any premises, that right ceases to be exercisable by it."* It then goes on at sub-section 3 to indicate that the right to manage the premises ceases to be exercisable by the RTM Company if, at sub-paragraph (d) the RTM Company's name is struck off the register under Section 1000, 1001 or 1003 of the Companies Act 2006.

14. Mr Simon also drew our attention to schedule 6 of the 2002 Act which is headed 'Premises Excluded from Right to Manage' and under sub-paragraph 5 headed *'Premises in Relation to which Rights Previously Exercised'* it says as follows: *"5(1) The chapter does not apply to premises falling within section 72(1) at any time if (a) the right to manage the premises is at that time exercisable by an RTM Company or that right has been so exercisable but has ceased to be exercisable less than four years before that time, (b) Sub-paragraph 1(b) does not apply where the right to manage the premises ceases to be exercisable by virtue of Section 73(5), (c) A Leasehold Valuation Tribunal may on application made by an RTM Company determine that sub-paragraph 1(b) is not to apply in any case if it considers that it would be unreasonable for it to apply in the circumstances of the case."* Further, Mr Simon said that if the company was reinstated and allowed the right to manage, it would in effect be managing three separate buildings contrary to the Triplerose case. He drew certain analogies which we noted.

15. During the course of the hearing we heard from Mr Dwyer, Ms Eriksen and Mr O'Brien. They had apparently written to the Tribunal on 10th March 2017 but such letter was not in the bundle before us. The letter indicated that they supported the original RTM Company's establishment due to the poor performance of the then managing agent. However, there is differing advice in that Mr Ashton appeared to believe the RTM could continue as though its dissolution had never occurred whereas Mr O'Brien and his colleagues thought an application had to be made to the Tribunal. In addition also, they had discovered the existence of the Triplerose

case and had spoken to others concerning the existence of the present RTM Company. The letter went on to say that given past failures of the old RTM Company, such as disagreement between directors and the lack of progress and other issues, they felt it would be appropriate to establish their own RTM Company to run Barcham House. They thought that this would lead to a more "harmonious and constructive future for our estate."

16. This letter confirms matters which had in fact been ventilated at the hearing by Mr Dwyer, Ms Eriksen and Mr O'Brien.

THE LAW

17. The law applicable to this case has been to an extent set out above. In addition, also, we take note of the provisions of the Companies Act 2006. We have recited Section 1716 which is the effect of an administrative restoration of the company and Section 1028 which says as follows at sub-section (1): "The general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register." The section then goes on to indicate a lack of liability for certain issues.

FINDINGS

18. It seems to be common ground that the 2002 Act makes no specific reference to the restoration of an RTM Company once it has been dissolved. Section 105 deals with the cessation of management and indicates that the right ceases to be exercised by an RTM Company if it is struck off under Section 1000 of the Companies Act 2006 which is the case here. The Act says the right 'ceases to be exercisable'. In our view that does not necessarily mean that it is not capable of being resurrected. We have considered schedule 6 to the Act and noted the contents of paragraph 5. We find that in the absence of any specific assistance from the 2002 Act, we need to consider the impact of the Companies Act 2006 which clearly states at Section 1028 that the general effect of administrative restoration to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register. Those are clear and compelling words.

19. In this case, as we understand it, no counter notice was served following the RTM Company's initial notice in 2009 seeking to take over the management. We find that it is not now open to the Respondent to raise issues relating to authorities that have arisen since the date of the Right to Manage being acquired. If the application were to come before a Tribunal today, then it may well be that other authorities would impact on any decision made by the Tribunal. However, in the light of the Companies Act which restores the company as though it had not been struck off, we find that we must consider the circumstances as they were when the company originally took over the Right to Manage, which was in 2009. In those circumstances, the provision relating to the management of the various blocks does not seem to us to be a matter that we need to concern ourselves with. If paragraph 5 of Schedule 6 applied then we find that sub-section (3) of that clause gives this Tribunal the power to override any matters contained therein, which we do.

20. We consider it to be in the interest of all parties if the management of the blocks are regularised. It seems clear to us that initially the Respondent Company did not object to the restoration of the company and we were not impressed with Mr Simon's suggestion that the form signed by various leaseholders merely related to the restoration of the company. That does not seem to us to be the sense of the forms signed by a number of lessees. It is clear that the intent was that the company be restored to take over its role as management of the various blocks, why other would it be restored. To read something else into those authorities and indeed into the permission apparently given by the Respondent, is to take the matter too far.

21. We conclude therefore, that as a result of the restoration of the company to the register in November 2016 the right to take back the management of the Property has now arisen and that accordingly the RTM Company should take back the management. It does seem to us, however, that whoever is to run the RTM Company they must consider more frequent meetings in accordance with company legislation and a tighter watch on the requirements of the Companies Act is required to ensure that this problem does not arise again.

22. It is also a matter for Mr Dwyer, Ms Eriksen and Mr O'Brien to consider whether they make their own application for the Right to Manage their particular block. We can give no guidance or advice on that.

Judge: Andrew Dutton

A A Dutton

Date: 12th April 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.