



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **CAM/00KA/LOA/2022/0001**
HMCTS Code : **P: PAPER REMOTE**

Property : **Kingswood Court, Grove Road,
Luton LU1 1QJ**

Applicant : **Kingswood Court RTM Company
Limited**

Representative : **Premier Solicitors**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of application : **Application in relation to the denial
of the Right to Manage**

Tribunal member(s) : **Judge Wayte**

Date : **26 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not necessary and all issues could be determined on paper. As set out in the directions, the application was regarded as the applicant's case, together with their reply to the respondent's statement of case and bundle of 14 pages. The order made is described below.

The application is dismissed.

Reasons for the decision

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for a determination that, on the relevant date, Regent Street RTM Company Ltd was entitled to acquire the Right to Manage (“RTM”) premises known as Kingswood Court, Grove Road, Luton LU1 1QJ.
2. By a claim notice dated 7 February 2022, the applicant gave notice that it intended to acquire the RTM the premises on 10 June 2022.
3. By counter-notice dated 8 March 2022, the respondent disputed the claim on a number of grounds, including that the date for acquisition of the RTM was less than 3 months after the date given for the counter-notice (10 March 2022).
4. The application was received on 28 April 2022. Directions were issued on 23 June 2022 for a paper determination during the week commencing 8 August 2022 in the absence of a request for a hearing. No such request was received.
5. On 9 August 2022 the applicant’s representative confirmed that the applicant wished to withdraw their claim notice. The respondent replied that they sought dismissal of the application and would not consent to withdrawal, as they wished to preserve the respondent’s ability to claim the costs of the proceedings.
6. On 15 August 2022 the applicant’s response, prompted by the tribunal, dealt only with the ability of the RTM to withdraw the claim notice rather than the question of whether the tribunal should consent to the withdrawal of the application or dismiss it.
7. Rule 22(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states that a notice of withdrawal will not take effect unless the tribunal consents to the withdrawal. Whereas the tribunal is normally a no costs jurisdiction, section 88(3) of the RTM provisions in the 2002 Act provides that a RTM company is liable for the respondent’s costs of the proceedings in the event that the tribunal dismisses the application.
8. The applicant’s representative failed to deal with the ground of opposition set out in paragraph 3 above in her reply to the respondent’s statement of case but in the light of *Windermere Court Kenley RTM Company Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2014] UKUT 420 it is difficult to see how they could have defeated that objection. In the light of the withdrawal of the notice at this late stage and in all the circumstances of the case, I consider that the respondent is entitled to their costs of the proceedings and therefore I do not consent to the withdrawal and dismiss the application.

Name: Judge Wayte

Date: 26 August 2022

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).