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The law as stated in this webinar is as at 20th September 2016

RIGHT TO MANAGE- PART 2



Alero Orimoloye
20th September 2016



Learning Objective

By the end of this training, you will gain knowledge of:

- Negative counter notices
- Application to appropriate tribunal
- Post-acquisition & gathering Information
- Getting uncommitted service charges
- Management functions
- Costs of proceedings
- Termination of RTM



Relevant legislation

- Statutory Authority
- Commonhold and Leasehold Reform Act 2002
 - ss71 -113
- Right to Manage
 - Prescribed Particulars and Forms (England) Regulations 2010
 - Prescribed Particulars and Forms (Wales) Regulations 2011
- RTM Companies
 - Model Articles (England) Regulations 2009
 - Model Articles (Wales) Regulations 2011



Relevant litigation legislation

- Tribunal (First-tier Tribunal) (Property Chamber) Rules
- Leasehold Valuation Tribunal Procedure (Wales) Regulations 2004
- Civil Procedure Rules and Practice Directions



Counter-notice

- **Section 84**
- By date specified in claim notice
- Prescribed form - **Schedule 4 regulations**
- Not mandatory



Anticipating opposition

- Possible objections
- The building does not qualify
- The RTM company does not comply with the legislative requirements
- The members of the RTM company do not represent half the flats in the building



Why oppose RTM?

- Landlord may be resentful
 - Especially where resident
- Two or more blocks
- Landlord wants to avoid disruption

Negative counter-notice



- There is no requirement to serve a counter-notice at all

Negative counter-notice



- St Stephens Mansions RTM Co Ltd v (1) Fairhold NW Ltd (2) OM Property Management Ltd (1) Fairhold NW Ltd (2) OM Property Management Ltd v St James Mansions RTM Co Ltd [2014] UKUT 541 (LC),
 - January 08, 2015
 - Conjoined appeals

Negative counter-notice



- The Upper Tribunal allowed both appeals
- The error in the St James Mansions counter-notice was minor and obvious. In particular, it had been sent with a covering letter which made the matter clear
- Applying Mannai, any reasonable person receiving the notice would have understood that it was intended to refer to St James, not St Stephens

Negative counter-notice



- Upper Tribunal held that the approach in Mannai Ltd v Eagle Star Insurance Co Ltd [1997] AC 74 applies to defects in counter-notices in the Right to Manage process under the Commonhold and Leasehold Reform Act 2002

Negative counter-notice



- Upper Tribunal agreed with the LVT in the St Stephens case, that it was correct to conclude that the water supply was not already provided independently to each building as it was clear that the pump room and equipment was one service

Negative counter-notice



- The real question was whether the supply could be made independent for each building, without requiring significant interruption in the services to either
- The evidence showed that it would be relatively simple to provide a separate storage tank, pump and metering facilities

Late counter-notice



- Strict time limit
- *Gateway Property Holdings Limited v 6-10 Montrose Gardens RTM Company Limited [2011] UKUT 349 (LC)*
 - Counter-notice was faxed and received in time – valid method of service
 - The hard copy, received out of time, would not have been valid
- No power under CLRA 2002 for extension of time to be granted by Court or Tribunal

Application to appropriate tribunal



- First-tier Tribunal (Property Chamber)(FTT) in England
- Leasehold Valuation Tribunal (LVT) in Wales
- Negative counter-notice
 - **2 months** to apply

Application to appropriate tribunal



- Suspension of acquisition date
 - Final disposal of Tribunal application
 - Date agreed
- Costs powers

Post acquisition and gathering information (1)



- **Section 93**
- All information “which the company reasonably requires (the landlord) to provide in connection with the exercise of the right to manage”
 - Within **28 days**
 - Not before acquisition date

Post acquisition and gathering information (2)



- Default notice – county court
- Draft Section 93 notice in advance
- Can be served at any time
- **Section 83**
 - Right of access for inspection

Post acquisition and gathering information (3)



- **Sections 91/92**
- Contractor notice – served on contractor
- Contract notice – served on RTM company
- Prescribed in **Wales**

Post acquisition and gathering information (4)



- Served on **determination date** or as soon as reasonably practicable thereafter
- **Determination date**
 - Date for counter notice
 - Date Tribunal determination becomes final

Contractors



- Frustration of contracts
- Do you want to keep them?
 - May have good contractors
- Bear in mind Transfer of Undertakings (**TUPE**) risk

Getting uncommitted service charges



- Section 94
- Requires accrued uncommitted service charges to be paid to the RTM company
- Tribunal determines the amount to be paid over in default of agreement

Getting uncommitted service charges



- OM Ltd v New River Head RTM Co. Ltd
- [2010] UKUT 394 (LC)
- RTM company brought proceedings in the LVT for the payment of accrued uncommitted service charges following long-running dispute
- LVT agreed with this argument and ordered the money to be paid over, together with interest at 4% p.a.

Getting uncommitted service charges



- OM Ltd had argued that these sums were not "uncommitted service charges" given that (a) they had been spent; (b) were not currently held by OM Ltd; and, (c) the LVT had no power to award interest

Getting uncommitted service charges



- Upper Tribunal held that an RTM company stepped into the shoes of the previous landlord/manager such that it was entitled to whatever monies were on hand at the date of the transfer
- It had no power in respect of any service charge matters that crystallised before that date, such that it could not sue for "old" service charges; nor could it exercise (effectively) restitutionary remedies that rightly belonged to leaseholders

Getting uncommitted service charges



- The right was to the money that the manager actually had, not what he should have had or had at one stage but no longer had
- The LVT also had no power to award interest

Management Functions



- Sections 96-97
- Management functions revert to RTM co. on acquisition
 - Services, repairs, maintenance, improvements, insurance and management
- Sections 98-99
- Functions relating to approvals

Approvals



- Sections 98-99
- RTM given the right to grant approvals under the leases.
- Give notice to the landlord (and any superior landlord)
- at least 30 days before it grants approval to requests concerning:
 - assignment, underletting or otherwise parting with
 - possession of the whole or any part of the tenant's
 - flat or other part of the premises; or
 - mortgaging a tenant's lease; or
 - making structural alterations or improvements; or
 - changing the use of the tenant's premises.

Approvals



- For other requests for approval the RTM company must give at least 14 days
- Notice to the landlord before granting that approval.
- Landlord can object or require conditions to be imposed if approval is to be granted
- Objections are made by notice to the tenant who made the request

Costs of proceedings



- S88(1)
- RTM co liable for **reasonable** costs incurred by
- The landlord under a lease of the whole or any part of any premises
- A party to such a lease otherwise than as landlord/tenant
- A tribunal-appointed manager in relation to the premises, or any premises containing or contained in the premise

Costs of proceedings



- S89(1)
- RTM co liable for **reasonable** costs
- Where claim notice withdrawn or deemed withdrawn
- Or otherwise ceases to have effect



Reasonable costs

- S88(2)
- Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him **if the circumstances had been such that he was personally liable for all such costs**



Professional services

- RTM company liable for any costs incurred in respect of professional services
- Legal expenses
 - Dealing with notice
- Accountancy/audit costs
 - Providing accounts or transferring monies
- Solicitor/managing agent
 - Hand-over of management records and functions



Termination of RTM

- Express withdrawal
- Deemed withdrawal
- Winding up of RTM company
- Tribunal decides company not entitled to RTM

Withdrawal of claim notice etc



- RTM company liable for costs down to time of withdrawal or notice ceasing to have effect
 - S89(2)

Liability for cost of proceedings where application to tribunal withdrawn



- *Post Box Ground Rents Ltd V The Post Box RTM Co. Ltd [2015] UKUT 230 (LC)*
- RTM co notified tribunal of its decision to formally withdraw its application on 12 Nov 2012
- Tribunal informed landlord on the same day
- Tribunal wrote to RTM co on 20 Nov 2014 confirming case withdrawn

What did the FTT decide?



- Determined that RTM Co was liable for cost for the period between date of claim notice and date of application to tribunal
- RTM Co not liable for costs after this date as per S88(3)
- Claim was withdrawn with the landlord's consent, and so no costs liability thereafter



What did the Upper Tribunal decide?

- Costs liability is statutory as per S88
- Withdrawal of an application does not without more, bring the application to an end
- Application ends only when tribunal formally dismisses it.
- RTM Co liable for reasonable costs incurred by freeholder
 - Restriction on costs liability by S88(3) removed



If costs are disputed

- Apply to the Tribunal where cannot agree
- Either party
- S88(4)



Costs of proceedings before the Tribunal

- RTM Company only liable for costs incurred in proceedings before tribunal if tribunal dismisses application for determination that entitled to acquire RTM
 - S88(3)
- RTM claim can only be withdrawn with tribunal's consent in order to preserve its jurisdiction to award landlord's costs under S88
 - *R (on the application of O Twelve Baytree Limited) v Rent Assessment Panel [2014] EWHC 1229 (Admin)*



Tribunal costs

- Tribunal cannot award costs to RTM co if landlord fails to resist application by the company
- Rule 13 of Property Chamber Rules
 - Person acting unreasonably in bringing/defending/conducting proceedings
 - Reimbursement of fees
 - Wasted costs order against a representative
- S20C of the Landlord and Tenant Act 1985?



Tribunal costs

- When costs awarded against a landlord
- *Stanford Lodge RTM Company Limited v Anstone Properties Limited* CAM/00KA/OCE/2004/0022
- *Enville Manor RTM Company Limited v SM Properties (21) Limited* BIR/41UFLRM/2004/0001



What are reasonable costs?

- *Plintal SA v 36-38 Edward Drive RTM Co Limited* LON/00AF/LCP/2006/0002
- How should reasonableness of costs be assessed?
 - Standard or indemnity basis?



Recovery of costs

- Liability extends to all members of the RTM company
- Everyone who is or has been a member of the RTM company is jointly and severally liable with the company and every other such member for these costs
 - S89(3)
- Unless lessee assigned lease to another person who has become a company member, including
 - Assent by personal representatives
 - Assignment by operation of law
 - Trustee in bankruptcy
 - Mortgagee in possession



Don't end up like this...





Questions?

The Leasehold Advisory Service
 020 7832 2500
 info@lease-advice.org
 www.lease-advice.org
 Fleetbank House, 2-6 Salisbury Square
 London EC4Y 8JX

Next webinar: 11 October 2016



Much obliged – A guide to residential leasehold covenants (2016)

An introduction to common obligations imposed on a landlord and leaseholder by the terms of a lease, including the following topics:

- Payment of ground rent and service charges
- Repair and maintenance
- Taking out building insurance
- Sub-letting
- Alterations
- Keeping of pets
- Nuisance and annoyance
