

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL

BETWEEN:

AVON FREEHOLDS LTD

Respondent

-and-

CRESTA COURT E RTM CO LTD

Appellant

STATEMENT OF FACTS AND ISSUES

Introduction

1. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (“CLRA 2002”) establishes a procedure under which qualifying tenants may acquire the right to take over the management of their block of flats through the formation and interposition of a right to manage (“RTM”) company.
2. Prior to acquisition of the right to manage, the only persons who are entitled to become members of the RTM company are qualifying tenants of flats in the premises (s. 74(1)(a)). Landlords may also join once the RTM has been acquired (s.74(1)(b)).
3. The statutory scheme requires the RTM company to give a notice of invitation to participate (“NIP”) to each person who is a qualifying tenant of a flat contained in the premises but neither is nor has agreed to become a member of the RTM company (CLRA 2002, s. 78(1)).
4. The right is exercised by the RTM company giving a claim notice to landlords under leases of the whole or part of the premises and other relevant parties: s. 79(1); (6).

5. Section 79(2) states:

“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.”

6. In *AI Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27; [2025] A.C. 1075 (“*AI Properties*”), the Supreme Court¹ considered the consequence of a RTM company’s failure to give a claim notice to an intermediate landlord in breach of s. 79(6)(a).

7. At para. 69, the Supreme Court considered the requirement to serve NIPs on qualifying tenants, stating: [37/405]

“Section 79(2) provides that until 14 days after that has been done, a claim notice may not be served at all. There will ordinarily be no difficulty in finding or identifying qualifying tenants. The absence of any saving or dispensing provisions of the type found in section 79(7) suggests that this was well understood by Parliament. Section 79(2) imposes a clear consequence of failure in good time to give participation notices: no valid claim notice can be given to anyone.”

8. Within the same paragraph, the Supreme Court continued:

*“For present purposes we leave aside the difficult question whether this has the further consequence that, if a document purporting to be a claim notice is nonetheless given to another stakeholder, such as a landlord, the landlord could rely upon the failure to give a participation notice to a qualifying tenant in order to object to the validity of the purported transfer of the right to manage which followed, even though that tenant might not in fact have any objection to the scheme which is being promoted which they wish to maintain. We were referred to a decision of the Lands Tribunal in *Sinclair Gardens Investments (Kensington) Ltd v Oak Investments RTM Co Ltd* [2005] RVR426 and a decision of the Upper Tribunal in *Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] L & TR 23 which discussed the consequences of a breach of the procedural requirement in section 79(2) and held in each case that such a breach did not in the circumstances invalidate the transfer of the right to manage which followed, and it was*

¹ Lord Briggs, Lord Sales, Lord Hamblen, Lord Leggatt, Lord Stephens JJSC

not suggested that they should be overruled; but this was a peripheral part of the debate before us and we prefer to reserve our opinion on whether they were correctly decided.”

9. This appeal raises the “difficult question” which the Supreme Court expressly left unanswered in *AI Properties*. The Upper Tribunal answered “no” to the question. The Court of Appeal answered “yes”. Each based their conclusion on their analysis of the Supreme Court’s decision in *AI Properties*.

Relevant facts

10. Avon Freeholds Ltd (“the Respondent”) is the registered proprietor of the freehold interest in the residential property known as numbers 7-26 Cresta Court, Hanger Lane, London, W5 3DE (“the Premises”).
11. Cresta Court E RTM Co Ltd (“the Appellant”) is a RTM company, incorporated by leasehold owners of the Premises for the purpose of acquiring the right to manage.
12. On 17 April 2020, the Respondent’s predecessor in title granted a lease of Flat 17 to Ms O’Connor for a term of 150 years from 1 January 2015. This was the first grant of a long lease of Flat 17 out of the registered freehold estate. On 15 July 2021, an application was made to the Land Registry to register the lease.
13. On 4 November 2021, NIPs were served pursuant to s. 78(1) on qualifying tenants who were not, nor had agreed to become, members of the Appellant. No NIP was served on Ms O’Connor despite her not being, and not yet having agreed to become, a member of the Appellant.
14. At the time of the service of the NIPs, Ms O’Connor was still in the “registration gap” as the Land Registry had not yet completed her application to register the lease. As such, she held only an equitable tenancy (Land Registration Act 2002, s. 27(1); (2)(b)(i)).
15. On 21 January 2022, the Appellant served a claim notice on the Respondent giving notice that it intended to acquire the right to manage the Premises. [13/161]

16. On 26 January 2022, Ms O'Connor gave written consent to become a member of the Appellant. Within the consent form, Ms O'Connor indicated her support for the claim to acquire the right to manage. [21/212]

17. On 24 February 2022, the Respondent served a Counter-notice. The Counter-notice alleged that the Appellant was not entitled to acquire the right to manage for various reasons. All but one have now been decided in the Appellant's favour. The only remaining objection is that the Appellant failed to serve a NIP on Ms O'Connor. [14/166]

Proceedings in the First-Tier Tribunal (Property Chamber)

18. On 16 March 2022, the Appellant made an application to the First-tier Tribunal (Property Chamber) ("the FTT") for a determination pursuant to CLRA 2002, s. 84(3) that it was entitled to acquire the right to manage the Premises. The FTT heard the application alongside five related applications made by residents of other parts of Cresta Court and Hill Court. None of those other applications form part of this appeal. [15/169]

19. On the Respondent's objection to acquisition based on the Appellant's failure to serve a NIP on Ms O'Connor, there were two issues before the FTT:

(1) Was Ms O'Connor a "qualifying tenant" upon whom the Appellant was required to serve a NIP ("the Qualifying Tenant Issue")?

(2) If so, did the Appellant's failure to serve a NIP on her invalidate its right to manage claim ("the Consequences Issue")?

20. On 11 May 2023, the FTT determined that the Appellant had acquired the right to manage the Premises. It decided the issues as follows:

(1) Ms O'Connor was a qualifying tenant (paras 31-32). [12/158]

(2) The Appellant's failure to serve a NIP on her did not invalidate its claim. The FTT held that a failure to give a NIP to a tenant whose lease has not been registered will not invalidate a claim notice if the RTM company has no actual knowledge of the existence of the lease and where the only way it would know about the lease would be by following up a note on the freehold title about pending applications (paras 33-37). [12/158-159]

21. The Respondent applied to the Upper Tribunal (Lands Chamber) (“UT”) for permission to appeal the finding that the failure to give a NIP to MS O’Connor did not invalidate the claim notice. The Appellant cross-appealed the finding that Ms O’Connor was a qualifying tenant. On 10 July 2023, the UT granted permission to appeal. [9/111]

Proceedings in the Upper Tribunal (Lands Chamber)

22. On 8 February 2024 the Supreme Court heard the appeal in *AI Properties*, reserving judgment.
23. On 6 June 2024, the one-day appeal hearing took place before Upper Tribunal Judge Elizabeth Cooke. She reserved judgement.
24. On 26 June 2024 Judge Cooke wrote to the parties and indicated that she wished to wait until the Supreme Court had delivered judgment in *AI Properties* before making her decision as she considered *AI Properties* may be relevant to the present case. The Judge invited the parties to submit written submissions on the effect of *AI Properties* when handed down by the Supreme Court. The parties duly did so.
25. On 28 October 2024, the UT gave its decision. It upheld the FTT’s determination that the Appellant was entitled to acquire the right to manage. [11/116]
26. On the Qualifying Tenant Issue, the UT held that Ms O’Connor was a qualifying tenant. That was because:
- (1) s. 75(2) is capable of including both legal and equitable tenants (para. 56); [11/129]
 - (2) where there was both a legal and an equitable lease of the same flat, the tenant under the legal lease was the qualifying tenant (para. 59); [11/130]
 - (3) however, where a flat is let on an equitable long lease and there is no corresponding legal lease, as in the case of Ms O’Connor, the equitable tenant was a “qualifying tenant” within s. 75(2) (para. 69); and [11/131]
 - (4) as a result, Ms O’Connor was a qualifying tenant upon whom the Appellant was required to serve a NIP (para. 70). [11/131]

27. On the Consequences Issue, the UT held that the FTT had been correct, albeit for different reasons:

- (1) It was clear from the decision in *Al Properties* that the Supreme Court endorsed the continuing authority of *R. v Soneji* [2005] UKHL 49; [2006] 1 A.C. 340, with its twin focus in cases of procedural failure on both an examination of the statute and a consideration of the individual circumstances of a case (para. 126). Further, that Parliament did not intend landlords and other persons to be able to thwart the acquisition of the right to manage on the basis of procedural objections that had not done them any harm, for example where the person potentially offended by that failure (for example an intermediate landlord who had not been given a claim notice) had no objection to the RTM company's proposal (para. 127). [11/143]
- (2) The whole of para. 69 of the Supreme Court's decision in *Al Properties* was *obiter dicta* and the Upper Tribunal was therefore not bound by it (paras 95-96; 114; 128-129). [11/137-138; 141; 143-144]
- (3) Were the Tribunal to hold that the failure to serve a NIP on Ms O'Connor rendered the claim notice invalid and required the Appellant to start again, it would give rise to all the consequences that the Supreme Court in *Al Properties* deplored and said were not Parliament's intention in the context of s. 79(6) (para. 133). [11/144-145]
- (4) There was an important difference in function between s. 78 and s. 79(6). Unlike a landlord served with a claim notice under s. 79(6), a qualifying tenant served with a NIP under s. 78 cannot give a counter-notice to challenge acquisition. It cannot have been Parliament's intention that the landlords and other stakeholders within s. 79(6) should be relied upon to raise the matter on behalf of a tenant who cannot do so. That would be a perverse and ineffective way to protect tenants, since landlords will only raise points in their own interest. The Supreme Court's objections to the landlord taking advantage of a windfall are as applicable here as they are to the failure to comply with s. 79(6) and it cannot have been Parliament's intention (paras 136 and 138). [11/145]
- (5) On its proper interpretation, the effect of s. 79(2) was that a claim notice given before a qualifying tenant entitled to receive a NIP had been given one was neither wholly valid nor wholly invalid, but voidable at the instance of the tenant.

However, no one else could take advantage of that procedural failure (para. 139; 141). [11/145-146]

(6) The Appellant was therefore entitled to acquire the right to manage (para. 145). [11/146]

28. The neutral citation of the UT decision is [2024] UKUT 335 (LC). It is reported at [2025] 1 W.L.R. 1262, [2025] L. & T.R. 4, [2025] 4 C.L. 131 and [2024] EGLR 39.

29. On 28 November 2024, Judge Cooke granted the Respondent permission to appeal to the Court of Appeal on the Consequences Issue.

30. By a Respondent's Notice, the Appellant sought to uphold the UT decision on the basis that it was wrong to find that Ms O'Connor was a qualifying tenant; therefore, there was no requirement to serve Ms O'Connor with a NIP and no question of the consequences of non-compliance should have arisen. However, if that were wrong, it supported the UT's conclusion on the Consequences Issue.

Proceedings in the Court of Appeal

31. On 19 June 2025, the one-day appeal hearing took place before the Court of Appeal (Newey, Jeremy Baker LJ, and Sir Launcelot Henderson).

32. By its decision dated 30 July 2025, the Court of Appeal unanimously allowed the Respondent's appeal and held that the Appellant was not entitled to acquire the right to manage. The sole judgment was given by Sir Launcelot Henderson.

33. On the Qualifying Tenant Issue, the Court of Appeal held that Ms O'Connor was a qualifying tenant, effectively for the reasons given by Judge Cooke (para. 56). [5/97]

34. On the Consequences Issue, the Court of Appeal held that:

(1) Where the language used by Parliament to state the consequence of non-compliance with a procedural requirement is clear, unambiguous and does not produce absurdity, it is the duty of the court or tribunal to interpret and apply that language accordingly. This is required by the rule of law. A court or tribunal cannot substitute for the language of Parliament an interpretation which in its view would produce a more reasonable result on the facts of the individual case before it (para. 77). [5/103]

- (2) It is only where Parliament has not expressly stated the consequence that the *R v Soneji* analysis can be undertaken (paras 78 and 81). [5/103; 104]
- (3) The language used in s.79(2) is a clear and unambiguous consequence of non-compliance with s.78(1). The Supreme Court in *AI Properties* formed this same opinion in para. 69 of its judgment (para. 79). [5/103-104]
- (4) The Court of Appeal considered (para. 75) that “if it matters” the first part of para. 69 of *AI Properties* is *ratio decidendi* because it was an integral and necessary part of the Supreme Court’s very full and careful reasoning. The Court further considered that, even if the passage is *obiter*, it constitutes a correct statement of the law (paras 75 and 85). However, the Court of Appeal agreed with the UT that the second part of para. 69 of *AI Properties* is *obiter* (paras 83 and 85). [5/102] [5/105-106]
- (5) Therefore, the failure to give a NIP to Ms O’Connor rendered the claim notice invalid, or in other words a nullity (para. 74). [5/102]
- (6) This construction of s.79(2) does not produce any absurdity. There is nothing absurd about a rule which in effect requires strict compliance with the procedural requirements for service of participation notices before a valid claim notice may be given (para. 79). [5/103-104]
35. The neutral citation of the Court of Appeal decision is [2025] EWCA Civ 1016. It is reported at [2026] 1 W.L.R. 166, [2026] 1 All E.R. 861, [2026] L. & T.R. 3, [2025] H.L.R. 44, and [2025] EGCS 131.
36. The Appellant sought permission to appeal from the Court of Appeal on two grounds. Ground 1 challenged its decision on the Qualifying Tenant Issue. Ground 2 challenged its decision on the Consequences Issue. On 29 August 2025, the Court of Appeal refused permission to appeal.

The Supreme Court

37. On 25 September 2025, the Appellant applied to the Supreme Court for permission to appeal on the same two grounds. On 27 November 2025, the Supreme Court² granted [25/236]

² Lord Briggs, Lord Hamblen and Lord Richards JJSC

the Appellant's application for permission to appeal on ground 2 only (the Consequences Issue).

Issue for determination

38. The issue for determination by the Supreme Court is therefore whether the Court of Appeal erred in law in holding that the Appellant's failure to give a NIP to Ms O'Connor invalidated its claim to acquire the right to manage the premises.

Justin Bates KC

Justin Bates KC
Landmark Chambers

Winston Jacob

Winston Jacob
Lamb Chambers

Sophie Gibson

Sophie Gibson
Landmark Chambers

Christian Fox

Christian Fox
Lamb Chambers

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ANNEX

CHRONOLOGY

17 April 2020	Dorrington Residential Ltd grants lease of Flat 17 to Ms O'Connor for 150-year term from 1 January 2015
15 July 2021	Application to Land Registry to register lease of Flat 17
19 October 2021	Appellant incorporated
04 November 2021	NIPs served on the qualifying tenants but not Ms O'Connor
21 January 2022	Claim notice served on the Respondent
26 January 2022	Ms O'Connor signs consent form agreeing to become a member of the Appellant
24 February 2022	Counter-notice served on the Appellant
16 March 2022	Appellant's application to FTT under s. 84(3) for determination that entitled to acquire the right to manage

24 April 2023	FTT hearing
11 May 2023	FTT decision
10 July 2023	UT grants Respondent permission to appeal
06 June 2024	UT hearing
16 August 2024	Supreme Court delivered judgment in <i>AI Properties</i> .
13 September 2024	Respondent filed and served its written submissions on the effect of <i>AI Properties</i>
20 September 2024	Appellant filed and served its written submissions in response
27 September 2024	Respondent filed and served its written submissions in reply
28 October 2024	UT decision
28 November 2024	UT grants Respondent permission to appeal
19 June 2025	Court of Appeal hearing
30 July 2025	Court of Appeal decision
29 August 2025	Court of Appeal refuses permission to appeal
27 November 2025	Supreme Court grants Appellant permission to appeal on ground 2
7 July 2026	Appeal hearing before the Supreme Court