



## Press Summary

16 August 2024

### **A1 Properties (Sunderland) Ltd (Appellant) v Tudor Studios RTM Company Ltd (Respondent)**

**[2024] UKSC 27**

*On appeal from [2023] UKUT 27 (LC)*

**Justices:** Lord Briggs, Lord Sales, Lord Hamblen, Lord Leggatt, Lord Stephens

#### **Background to the Appeal**

This appeal concerns the operation of the regime in the Commonhold and Leasehold Reform Act 2002 (the “CLRA”) 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. The acquisition process requires the RTM company to serve a claim notice to acquire the right to manage their block on, among others, each person who is a landlord under a lease of the whole or any part of the premises: section 79(6)(a). Save in limited circumstances not applicable to the present appeal, the CLRA does not contain a provision which expressly stipulates what is to happen if a claim notice is served on some, but not all, landlords.

The dispute in this appeal concerns the right to manage Tudor Studios, a former factory in Leicester now converted into student accommodation. The building comprises 237 “study studios” and three larger flats. It also consists of communal areas, including a common room, a communal laundry, a reception and a gym. The study studios and the flats are held by investor tenants on 250-year leases in tripartite form between the freeholder, the investor tenant and the management company. Since 2019, the investor tenants have let the study studios and the flats to students directly. The appellant, A1 Properties (Sunderland) Limited, holds the communal areas on four 999-year leases. The appellant underlet the communal areas to the management company in 2019 at market rents.

The investor tenants sought to acquire the right to manage Tudor Studios pursuant to the CLRA through the respondent RTM company, Tudor Studios RTM Company Limited. The respondent gave the claim notice required by section 79(6)(a) to the freeholder and to the management company, but not to the appellant. The management company served a counter-notice pursuant to section 84(1) stating that the respondent was not entitled to acquire the right to manage Tudor Studios because it had not complied with section 79(6)(a).

The question which arises is what is the effect of a failure to comply with section 79(6)(a). There is Court of Appeal authority which provides that a failure to serve a claim notice will not always invalidate the RTM company's acquisition of the right to manage the premises: *Elim Court RTM Co Ltd v Avon Freeholders Ltd* [2017] EWCA Civ 89 ("**Elim Court**"). In that case, the failure to serve a claim notice on the intermediate landlord of a single flat with no management responsibilities did not invalidate the notice. The first issue in this appeal is whether that decision is correct. If it is, the second issue is whether nevertheless the failure to serve the claim notice in this case on the appellant had the effect of invalidating the purported acquisition of the right to manage the premises.

The respondent applied to the FTT for a determination. The FTT held that the failure by the respondent to serve notice on the appellant did not invalidate the transfer of the right to manage. The Upper Tribunal dismissed the appellant's appeal. As *Elim Court* is binding on the Court of Appeal, the Upper Tribunal granted the appellant a "leapfrog" certificate to appeal directly to the Supreme Court to allow it to raise the issue of whether that decision was correctly decided.

## **Judgment**

The Supreme Court unanimously dismisses the appeal. It holds that the respondent's failure to serve a claim notice on the appellant did not invalidate the transfer of the right to manage. The Court upholds the result in *Elim Court* but departs from its reasoning. Lord Briggs and Lord Sales give the only judgment, with which the other Justices agree.

## **Reasons for the Judgment**

The correct approach in a case where there is no express statement of the consequences of non-compliance with a statutory requirement is to consider the whole of the structure within which the requirement arises and ask what consequence of non-compliance best fits the structure as a whole [68]. In each case, the focus is on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute, and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement [61].

Applying this approach to the CLRA, in evaluating whether a procedural failure has the effect of invalidating the process of the transfer of the right to manage, the question to be addressed is whether a relevant party has been deprived of a significant opportunity to have their opposition to the making or an order to transfer the right to manage considered, having regard to, firstly, the substantive force of the objections they could have raised and would have wished to raise, and secondly, whether, despite the procedural omission, they in fact had the opportunity to have their objections considered [91], [100]. The focus is on the position of the party directly affected by the procedural omission. There is no good reason to suppose that Parliament intended that a person which has not itself been affected by a procedural omission in relation to another should acquire, by a windfall, a power to thwart the operation of the statutory process which it would not otherwise have enjoyed [92].

In that context, the Court considers that a failure to give a claim notice under section 79(6) of the CLRA renders the transfer of the right to manage voidable, i.e. valid but liable to be set aside at the instance of the relevant landlord or other stakeholder who was entitled to, but not given, a claim notice. It does not render it void, i.e. automatically invalid from the outset [87].

The transfer is voidable unless, or until, the tribunal approves the transfer scheme [87]. The transfer of the right to manage to an RTM company should not be invalidated for the purely procedural reason that a landlord was deprived of the valueless opportunity to make a hopeless

objection to the validity of a scheme which has in fact been tested by a tribunal and found to be compliant [85], [96]. The critical point on the facts of the present case, therefore, is that the issue as to the substantive validity of the scheme made its way to the FTT by a route sanctioned under the statutory framework, and was then determined in favour of validity. Moreover, while not determinative, the appellant had in fact been joined to the FTT proceedings and therefore had the same opportunity of participation which it would have had if it had been given a claim notice in the first place in accordance with section 79(6)(a) [86], [96]. The way to challenge a scheme that has taken effect, either without dispute or following a determination by a tribunal, would be by proceedings in the High Court [88].

The Court therefore holds that the result in *Elim Court* was correct. The tribunal had sanctioned the scheme, and the landlord whose procedural rights had been affected had not sought to be joined in the proceedings to assert their rights [93]. However, the approach of the Court of Appeal in that case should not be endorsed in full. It is usually to be inferred that Parliament intends that there should be a reasonable degree of certainty regarding property rights and contractual rights. It is also usually to be inferred that Parliament intends that a person should not be deprived of property or contractual rights without being afforded a fair opportunity to enter objections. That inference is reinforced in the present context by the requirement of service of a claim notice on the wide range of persons identified in section 79(6) of the CLRA [64]. It is not sufficient to say, therefore, in relation to persons whose property or contract rights are to be taken away or subject to significant qualification, that their right to participate may be ignored if they are an intermediate landlord with no power of management [66]-[67], [96].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**