

5210



Residential  
Property  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTIONS 27A & 20C  
OF THE LANDLORD & TENANT ACT 1985**

Ref: LON/00AW/LSC/2009/0840  
LON/00AW/LSC/2009/0796

---

<b><u>Property:</u></b>	11 Draycott Place London SW3 2SE
<b><u>Applicants:</u></b>	11 Draycott Place RTM Company Limited
<b><u>Respondent:</u></b>	Mr and Mrs A Sylianou (Flat 1) Mr and Mrs B Rigby (Flat 2) Mr G Costa (Flat 4)
<b><u>Leasehold Valuation Tribunal:</u></b>	Ms F Dickie, Barrister, Chairman Mr I Thompson FRICS
<b><u>Date of Decision:</u></b>	27 <sup>th</sup> July 2010

**Preliminary**

1. This matter concerns the jurisdiction of the Tribunal to dismiss these applications under Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, which provides:

- (1) *Subject to paragraph (2), where*
- (a) *it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal; or*

*(b) the respondent to an application makes a request to the tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of process of the tribunal,*

*The tribunal may dismiss the application, in whole or in part.*

2. It is not necessary to set out the facts of this matter, which have been adequately rehearsed in decisions of the Tribunal dated 23<sup>rd</sup> March 2010 and 27<sup>th</sup> May 2010, and directions issued on 4<sup>th</sup> May 2010. It is sufficient to summarise that the live issue in dispute between the parties is whether Mr Antoine Bordelais had authority as director of the Applicant RTM Company to issue applications in the Leasehold Valuation Tribunal against the Respondents. Those applications were signed by him purportedly on behalf of the company 27<sup>th</sup> November and 14<sup>th</sup> December 2009.
3. After a preliminary hearing that took place on 10<sup>th</sup> March 2010 the Tribunal determined in its decision of 23<sup>rd</sup> March 2010 that unless and until it is determined Mr Bordelais is not a director of the RTM Company and does not have the authority to make the s.27A application, the applications are live.
4. On 8<sup>th</sup> April 2010 an application was received from Teacher Stern, representing the Respondents, requesting the dismissal of both applications. An oral pre trial review was listed for 4<sup>th</sup> May 2010 and the Tribunal gave notice to the parties it was minded to dismiss the applications under Regulation 11 of the Leasehold Valuation Tribunals (Procedure)(Regulations) 2003.
5. No party attended a hearing of the matter that was listed for 27<sup>th</sup> May 2010. As of that date proceedings against Mr Bordelais were pending in the High Court for a declaration that the Respondents Messrs Rigby, Costa and Stylianou were appointed as directors on 3<sup>rd</sup> November 2009 and that Mr Bordelais was removed as a director on 16<sup>th</sup> December 2009. The hearing in the High Court was listed for 25<sup>th</sup> June

2010. The Tribunal decided to adjourn its decision whether to dismiss the applications under Regulation 11 until after that date. This Tribunal is seized of that adjourned application, listed for 27<sup>th</sup> July 2010. None of the parties attended or was represented at the hearing listed on that date.

6. Under cover of a letter dated 7<sup>th</sup> July 2010 Teacher Stern has provided a copy of the Order of the High Court dated 25<sup>th</sup> June 2010 which declares:

1. That Bruce Rigby, Guiseppe Costa and Stelios Stylianou were all appointed directors of the Claimant at a General Meeting of the company held on 3 November 2009;
2. That the Defendant was removed as a director of the Claimant at a General Meeting of the company held on 16<sup>th</sup> December 2009.

7. The terms of this order make it clear that Mr Bordelais was a director of the Applicant company on the dates when each of these applications was made, but is no longer. By a letter dated 26<sup>th</sup> July 2010 to the Tribunal Mr Bordelais asserts that an application for the default order of 25<sup>th</sup> June 2010 to be struck out and re-heard has been submitted. He regrets to advise the Tribunal that the matter raised by the Respondent in relation to whether he has the necessary authority to make this application has not been fully resolved. He therefore requests the Tribunal's determination of its power under Regulation 11 be postponed for a period of 2 months to allow for the High Court claim to be fully and finally resolved.

### **Determination**

8. It is apparent from the history of this matter that the Company, by its current directors, has no intention of pursuing this application. At the hearing of 23<sup>rd</sup> March 2010 submissions were made by counsel instructed by Teacher Stern for the Respondents (who were by then

also acting for the company) regarding the extent of the powers of Mr Bordelais as director when he issued these applications. However, counsel abandoned those arguments:

“Mr Buttimore did make representations to the Tribunal as to the extent of Directors powers within a limited company and whether Mr Bordelais had the authority to make the applications without consultation with his fellow Directors. However, it was conceded by Counsel at the hearing that the Tribunal has no remit to consider this aspect of the matter”

9. Whether or not Mr Bordelais was a sole director of the company on the date of issue of these applications is not the sole relevant issue. A more obvious one, it appears to this Tribunal, is that (whether or not the then director Mr Bordelais was authorised to make these applications), the company does not now wish to pursue them. In light of the Order of the High Court, the assertion of Mr Bordelais in his letter of 26<sup>th</sup> July 2010 that “the applicant intends to continue to pursue this application” cannot be born out.
10. Mr Bordelais has not provided to the Tribunal a copy of any application made to the High Court to set aside its order of 25<sup>th</sup> June 2010. In any event, in order to pursue these proceedings on behalf of the company Mr Bordelais would have to demonstrate that he continued to have the authority to do so. Plainly he does not presently have it and even if he did he is most unlikely to retain it. Even if he is successful in having the order of the High Court set aside and demonstrating irregularities in his removal as director and the appointment of new directors, the members maintain the ability to change the directorship of the company. These proceedings were issued over 7 months ago and the Tribunal is not persuaded there is any reason why the interests of justice require a further adjournment.
11. The company, by a decision of the current directors (or if indeed Mr Bordelais remains one of them) by a decision of a majority of those

directors, could decide to withdraw these proceedings. Taking as a whole the legal submissions and correspondence on behalf of the 3 directors for the time being, the Tribunal is satisfied that it is the current intention of the Applicant to withdraw these proceedings.

12. In any event, since the current directorship of the company has confirmed that it has no wish or intention to continue with these proceedings, their pursuance has become conduct that is frivolous, vexatious and an abuse of process. Accordingly, the Tribunal orders their dismissal. No application for costs has been made in this matter.

Signed .....  (Chairman)

Dated 27<sup>th</sup> July 2010