

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 84(3) OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002

Property: Southall Court, Lady Margaret Road, Southall, Middlesex

Applicant: Southall Court RTM Company Limited

Respondent: Southall Court (Residents) Limited

Date heard: 10 April and 25 May 2007

Appearances: Mr Tim O'Keefe of Buy Your Freehold Limited
Mr R Guraya
Mrs B Olagunju

for the applicant

Mr Peter Ward
Mr J S Chohan

for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr C F Kane FRICS
Mr T M Sennett MA FCIEH

Date of the tribunal's decision: 15 July 2007

- iii. that the claim notice did not comply with section 80(1) and (2) of the Act;
- iv. that the claim notice did not comply with section 80(1) and (3) of the Act;
- v. that the claim notice did not comply with section 80(1) and (5) of the Act;
- vi. that the claim notice did not comply with section 80(1) and (6) of the Act; and
- vii. that the claim notice did not comply with section 79(5) of the Act.

6. At the hearing Mr Ward elected not to proceed with the grounds set out at (ii) and (iv) above.

7. We accept that, where there is any doubt as to the entitlement of the company to acquire the right to manage, the burden of proof is on the company and the standard of proof is the balance of probabilities. Mr Ward questioned the motives of a number of leaseholders who had supported the claim, but their motives are irrelevant to our determination, as are any questions as to the suitability of the members of the company to manage the block.

The issues

i. Was the claim notice given to the landlord in accordance with section 79(6)(a) of the Act

8. The relevant part of section 79(6) of the Act provides:

The claim notice must be given to each person who on the relevant date is –

(a) landlord under a lease of the whole or any part of the premises

9. Mr O’Keefe said that the claim notice was served by first class recorded delivery on 4 January 2007 both at the registered office of the landlord as recorded at Companies House, namely 3 Southall Court, Lady Margaret Road, Southall,

(1) Any notice under this Chapter –

(a) must be in writing, and

(b) may be sent by post.

(2) A company which is a RTM company in relation to premises may give notice under this Chapter to a person who is a landlord ... at the address specified in subsection (3) (but subject to subsection (4) -

(3) That address is –

(a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or

(b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).

(4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given such notice.

12. It is clear that the company did all it could to serve the claim notice on the landlord at its registered office which is the address contained in demands for rent and was the correct place of service. We are satisfied on the balance of probabilities that an attempt was made by the Royal Mail to deliver a copy of the notice to the company's registered office on 5 January 2007 by first class recorded delivery and that Mr Ward refused to accept it. There is no merit in Mr Ward's argument that service by recorded delivery is not good service. The Civil Procedure Rules do not apply to the service of notices under the Act, but even if they did, we have no doubt

the company was, on the relevant date, and is, 4 Southall Court, which is Mr Guraya's flat.

16. Mr Ward said that the address given in the notice was not sufficiently precise because it omitted the number of the flat which was the registered office and that if, which he denied, the address was sufficiently precise, the company had "compromised its own compliance" by accepting the counter-notices at a different address, which was the business address of Buy Your Freehold Limited. Mr O'Keefe said that the landlord suffered no prejudice by the failure to give the full address of the company's registered office because it in fact served counter-notices at his office, the address of which was given at the foot of the claim notice. He said that the registered number of the company was given in the claim notice and that Mr Ward was in fact aware of the address of the company's registered office as his letter dated 6 February 2007 (at page 13B of the company's bundle) showed. He said that the omission of "Flat 4" was an inaccuracy in the particulars within the meaning of section 81(1) of the Act which did not invalidate the claim notice.

17. We are satisfied that the omission of "Flat 4" from the address of the company's registered office was an inaccuracy which, in the circumstances, should be not taken to invalidate the claim notice. The relevant circumstances are that the landlord was in fact aware of the full address of the company's registered office as Mr Ward's letter dated 6 February 2007 shows, and was accordingly not misled or prejudiced by the omission of the flat number of the registered office of the company.

iv. Did the claim notice comply with section 80(1) and 80(6) of the Act

18. Section 80(6) of the Act provides that the claim notice *must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.* Mr Ward submitted that since the notice was not received by the landlord there was no relevant date within the meaning of section 79(1). We have determined in paragraphs 10 and 11 above the landlord received a copy of the claim notice and we accordingly reject this submission.

23. Mr Ward submitted that, as “membership” and “member” are not defined by the Act, the general rules as to what constitutes membership of a company apply. These are contained in section 22 of the Companies Act 1985, which provides that a member of a company is a person who subscribed to the company’s memorandum and “every other person who agrees to become a member of a company, and whose name is entered in its register of members”. Mr O’Keefe agreed that membership of the company is governed by the Companies Act and we also agree. The question, then, is whether the company has established on the balance of probabilities that on 4 January 2007 at least 23 leaseholders in addition to Mr Guraya had agreed to become members of the company.

24. Mr Ward submitted that it had not been established that a register of members conforming with the requirements of the Companies Act existed on the relevant date, nor had it been established that anyone other than Mr Guraya was a member of the company on that date. He did not accept that the undated document headed “Register of Members” included at page 36 of the landlord’s bundle was a register of members or, that any register existed on 4 January 2007.

25. In relation to Mr Ward’s first point, Mr O’Keefe said that he had replied to the landlord’s fax dated 16 February 2007 (page 45 of the landlord’s bundle), offering to provide a copy of the register of members upon payment of the appropriate fee of £2.50, and that on 23 March 2007 he had sent to the landlord a document headed “Register of Members”, included in the landlord’s bundle at page 36. He accepted that this document did not exist on 4 January 2007 (which is clear, since it contains the name of a leaseholder who is said to have become a member of the company after that date). He said that a sufficient number of qualifying tenants were members of the company on the relevant date, as the claim notice showed, and that was sufficient for the purpose of section 79(5) of the Act.

26. We are satisfied that a failure to have at the relevant date a register of members complying section 352 of the Companies Act does not invalidate a claim notice. Had the maintenance of such a register been required we would have expected such a requirement to be included in Chapter 1 of Part 2 of the Act. We have before us a document prepared after the relevant date (page 36 of the landlord’s bundle) which

29. We turn, then, to the leaseholders of the five flats (other than the leaseholder of Flat 39 who was conceded not to have been a member) whose membership the landlord challenged. At the end of the first day's hearing we indicated to the parties that we required oral evidence to be given by or on behalf of any of the leaseholders whose membership of the company on the relevant date the landlord still wished to challenge, and Mr Ward said that he wished to pursue the challenge in respect of Mrs Olagunju (Flat 20), Mr Harbans Singh Dhillon and Mrs Harbans Kaur Chohan (Flat 21) and Mr Navjinder Singh (Flat 40). He made no submissions and did not pursue any objections in relation to the membership of Miss Maria Timuri (Flat 12) or of Mr Biswa Nath Bimali (Flat 22) and we accordingly accept that they were members on the relevant date since there is no evidence to contradict the prima facie case raised by their signatures on the agreements to participate in the claim to acquire the right to manage and to join the company which are included in the company's bundle.

30. So far as Mrs Olagunju is concerned, Mr Ward disputed that she was the leaseholder of Flat 20, and on the first day of the hearing he gave evidence that he believed the signature on the agreement to participate to be a forgery, and that English was not her first language so that if she had indeed signed the form there must be doubt as to whether she understood what she was signing.

31. Mrs Olagunju was called by the company to give evidence on the second day of the hearing. She confirmed that she was the leaseholder of Flat 20 (as the proprietorship register at page 90 of the company's bundle shows) although she did not live there. She said that she had kept her home address from Mr Ward because she did not like him and did not wish him to contact her. She said that she had signed the invitation to participate on 20 December 2006 at Mr Guraya's flat when she visited him to discuss the proposed claim to acquire the right to manage of which she had been informed. She said she was fully aware of what she was signing and that she totally supported the company's claim. She said that English was her first language and that she could read and write English very well. She said that she was not coerced into signing by Mr Guraya or anyone else and that she was given a full opportunity to consider the implications of acquiring the right to manage, which she did indeed understand.

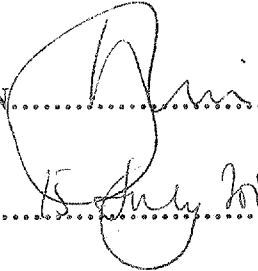
but he said that he had not written Mr Chohan's witness statement or made any contribution other than that described by Mr Chohan.

35. Having heard Mr Chohan we were unable to accept the veracity of much of his evidence. It was patently untrue that his written statement had been written without significant input from Mr Ward, for it bears very many hallmarks of Mr Ward's style and, having heard Mr Chohan, we could not accept that he had written the statement largely unaided. Asked why his wife and brother-in-law had not attended the hearing, he said that they had not been asked to attend, which we also did not accept, because Mr O'Keefe confirmed that he had asked them to do so. Mr Chohan said that he had been "annoyed" that his wife had signed the invitation to participate without his knowledge or consent. It emerged from the cross-examination of Mr Chohan that prior to the relevant date his brother-in-law had attended at least one meeting about acquiring the right to manage.

36. In the light of all the evidence we have come to the conclusion, on the balance of probabilities, that Mr Harbans Singh Dhillon and Mrs Kaur Chohan were willing members of the company on the relevant date and we have no material from which we can properly conclude that they did not understand the significance of membership. Their signatures on the documents by which they agreed to participate in the claim and to become members of the company are not disputed to be genuine and the evidence called to suggest that the required knowledge and will was lacking did not in our view demonstrate on the balance of probabilities that they were. Although it appears that Mr Dhillon's and Mrs Chohan's command of English is not good, our conclusion from all the evidence we had on the issue, including the evidence that Mr Dhillon had attended a meeting about acquiring the right to manage, is that he and his sister willingly joined the company and were members of it on the relevant date. We can only speculate about why they subsequently resigned from it, but that is not relevant to this application, just as it is irrelevant that at least one other leaseholder has joined the company after the relevant date.

37. It is accepted that the document containing the agreement of the leaseholder of Flat 40 to join the company was signed not by the leaseholder, Mr Navjinder Singh, but by Mr Bhupinderpal Grewal. By a document dated 30 December 2002, a copy of

quantified, or, indeed, incurred. Mr Ward requested an award of up to £500 under paragraph 10 of Schedule 12 to the Act on the ground that Mr Guraya had been a dishonest witness and had been late for both hearings. We did not find Mr Guraya to be dishonest and, although he arrived late, his lateness did not significantly impede the proceedings because the company was represented.

CHAIRMAN.....
DATE.....