



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**DECISION ON AN APPLICATION UNDER SECTION 84(3)
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Ref : LON/00BA/LRM/2009/0016

Property: 75 Worple Road, London SW19 4LS

Applicant: 75 Worple Road RTM Company Limited

Respondents: Mr I Moskovitz, Ms C Moskovitz and Mr S Reich as Trustees of Achiezer Arad

Determination date: 7th September 2009

Tribunal: Mr P Korn (Chairman)
Miss M Krisko FRICS

BACKGROUND

1. The Applicant is a 'right to manage' company claiming the right to manage the Property on behalf of the leaseholders and the Respondents are the freeholder owners of the Property.
2. On 16th June 2009 the Applicant served a notice on the Respondents pursuant to Section 79 of the Commonhold and Leasehold Reform Act 2002 ("**CLARA**") claiming to acquire the right to manage the Property.
3. On 9th July 2009 the Respondents served a counter-notice on the Applicant alleging that the Applicant was not, on the relevant date, entitled to acquire the right to manage the Property.

4. On 15th July 2009 the Applicant applied to the Leasehold Valuation Tribunal pursuant to Section 84(3) of CLARA for a determination that it was on the relevant date entitled to acquire the right to manage the Property.
5. Both parties have stated that they are content for the matter to be dealt with as a paper determination without an oral hearing, and accordingly (in the absence of any compelling reason for an oral hearing) this matter is being dealt with by way of paper determination. (The Respondents' statement of 17th August 2009 in fact states that the Respondents "are happy for this matter to be heard orally with no need for a formal hearing ..." but it seems clear from the context and from other information that what was intended was to confirm their agreement to a paper determination.)
6. The Tribunal has restricted itself to dealing with those points raised by the Respondents in their counter-notice and/or statement of case.

THE RESPONDENTS' CASE

7. In their counter-notice the Respondents raised the following objections:-
 - (i) that the Applicant failed to "comply with section 80(5) [by not] giving full details of premises";
 - (ii) that the Applicant failed to "comply with section 80(5) [by] failing to advise of the registered office"; and
 - (iii) that the Applicant failed to "comply with section 80(6) [by a] failure to give 30 days to respond to [the] notice".
8. The Respondents' statement of case dated 17th August 2009 does not substantively expand on the points referred to at (i) and (ii) above but does go into more detail on point (iii). The Respondents' position is that the original notice dated 16th June 2009 requested that a counter-notice be submitted by 16th July 2009 but that the copy of the notice sent by the Applicant to the Tribunal specifies a date for submission of the counter-notice of 25th July 2009. The Respondents conclude that the Applicant seems to have amended the original claim form and altered the response date, and they express themselves to be "shocked" by this action and state that it was done "with the assistance of [the Applicant's] solicitors. This is, of course, a serious allegation.

THE APPLICANT'S CASE

9. The Applicant does not accept that it has failed to give full details of the premises in its notice, nor does it accept that it has failed to give details of the registered office.
10. In relation to the date specified in the notice for submission of the counter-notice, the Applicant accepts that the date specified was 16th

July 2009 and not 25th July 2009. The Applicant's position is that the copy sent to the Tribunal contained a mistake but that the mistake was made in good faith with no intention to mislead the Tribunal. The Tribunal has seen a copy of a statutory declaration dated 21st August 2009 sworn by the trainee solicitor apparently responsible for the error. She states that she intended to specify a date of 25th July when serving the notice on the Respondents but mistakenly in fact stipulated 16th July. She did not realise that she had done this and therefore when preparing the papers for the Tribunal she included the version of the notice specifying the date of 25th July, this being the date that she had believed (wrongly) that was contained in the original notice.

11. The Applicant argues that although 16th July 2009 is the date specified in the notice this still does not fall foul of Section 80(6) of CLARA as the requirement is for the date specified to be not earlier than one month after the 'relevant date' and the 'relevant date' was 16th June 2009 as this is the date on which the notice was "given" (this being the word used in Section 79(1) of CLARA.
12. The Applicant further argues that none of the objections raised by the Respondents referred to in paragraph 6 above are sufficient to invalidate the notice, because of the provisions of Section 81(1) of CLARA (which will be quoted below).

THE LAW

13. Under Section 79(1) of CLARA "a claim to acquire the right to manage any premises is made by giving notice of the claim ... and in this Chapter the 'relevant date' , in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given".
14. Under Section 80 of CLARA, the claim notice must comply with certain requirements, the ones relevant to our case being as follows:-

 “(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
 ...

 (5) It must state the name and registered office of the RTM company.

 (6) It 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.”
15. Under Section 81(1) of CLARA "a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80".

16. Under Section 84(3) of CLARA “where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) [*alleging that the RTM company was not on the relevant date entitled to acquire the right to manage the premises*], the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises”.

APPLICATION OF LAW TO FACTS

17. The Respondents in their counter-notice refer to a failure by the Applicant to comply with Section 80(5) of CLARA in not giving full details of the premises, but presumably the Respondents intended to refer to Section 80(2).
18. On examining the notice (i.e. the version that both parties agree was sent to the Respondents), it seems clear that it does specify the premises and a statement of the grounds on which it is claimed that the relevant sections of CLARA apply (see paragraphs 1 and 2 of the notice).
19. It also seems clear that the registered office of the Applicant is stated (see paragraph 1 of the notice). It is true that it does not expressly state **that** it is the registered office but the details have been provided, the Respondents will not have been misled, and even if there is a technical defect on this point the notice is not, in the Tribunal’s view, invalidated by it in view of the contents of Section 81(1) of CLARA which is set out in paragraph 14 above.
20. The most challenging issue raised is whether the date specified for the submission of a counter-notice falls foul of the relevant provisions of CLARA. As this is a paper determination the Tribunal is forced to rely on the relatively brief written submissions made on behalf of the parties, but it appears to be common ground between the parties that the notice was dated and posted on 16th June 2009 and that the date specified for submission of the counter-notice was 16th July 2009.
21. Section 80(6) of CLARA, in combination with 79(1), requires the date specified to be not earlier than one month after the date on which the notice was “given”. The Applicant argues (as the Tribunal understands it) that the date on which it was “given” means the date on which it was put in the post. The Respondents argue (again, as the Tribunal understands it) that it means the date of receipt.
22. In the Tribunal’s view, the word “given” does not have an absolutely clear-cut meaning. There is much case law and statutory law on the meaning of “service” and “served” in the context of notices. The words “received” and “receipt” are also much clearer, in the Tribunal’s view, because if one gives these words their ordinary meaning it would seem clear that received or receipt refer to the point at which an item comes into the recipient’s possession. In the Tribunal’s view, one

could argue that “given” refers to the point at which the giver of the notice has done all that he or she needs to do, for example by placing the notice in the post, or it could refer to the point of receipt or (conceivably) it could refer to the point at which it is reasonable to deem receipt. As, in the Tribunal’s view, a plausible interpretation is that it means the date of posting and as there is no evidence that the Respondents were actually prejudiced by not having a later date specified for the counter-notice the Tribunal is of the view that the Applicant’s notice is valid.

23. The Tribunal notes the serious allegation made by the Respondents in relation to the Applicant having sent a copy of the notice to the Tribunal containing a different date for submission of the counter-notice. Without a hearing the Tribunal does not feel that it is able to judge with any confidence whether or not this was merely an honest mistake. On the one hand it is puzzling that there should be in existence two versions of what presumably is a “Word” document which are identical save for the date for submission of the counter-notice, but on the other hand it is hard to see what the Applicant would have felt that it would have gained by such a strategy, given that the Respondents were in possession of the original notice and were always in a position to contest this point.

DECISION

24. It is determined that the Applicant was on the relevant date entitled to acquire the right to manage the Property.
25. The Respondents have argued that costs should be awarded against the Applicant in relation to this matter. As the Tribunal has determined in favour of the Applicant it is not considered appropriate to make a cost award against it. There is a question mark as to whether the Applicant and/or its solicitors were trying to mislead the Tribunal in providing an inaccurate copy of the notice, but this point is not proven and it is hard to see logically why the Applicant would deliberately do this, given that the Respondents were at all times in a position to contest the date and that – once it was contested – the Applicant conceded the point.

Chairman:  (P Korn)

Dated: 7th September 2009