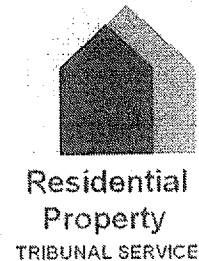


**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

**DETERMINATION BY THE LEASEHOLD
VALUATION TRIBUNAL**

**LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993: SECTION 24**



REF: LON/00BE/OCE/2009/0166

Address: 98 Copleston Road
London
SE15 4AG

Applicant: 98 Copleston Road Management Limited
(Nominee Purchaser)

Respondent: Mr B. Englander (Reversioner)

Tribunal: Mrs J S L Goulden JP
Mrs E Flint DMS FRICS IRRV

Background

1. On 1 October 2009 the Leasehold Valuation Tribunal ("the Tribunal") received an application dated 24 September 2009 under S.24 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act").
2. The application was acknowledged on the date of its receipt, namely 1 October 2009, and a copy was sent to Messrs Vizards Tweedie LLP, Solicitors for the Respondent Reversioner.
3. On 2 October 2009, the Respondent's solicitors wrote to the Tribunal stating, inter alia:-

"Under the provisions of the Leasehold Reform Housing and Urban Development Act 1993, an application under Section 24 of that Act must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

By the nominee purchaser's solicitors' own admission, they would have received such counter-notice by at least 27 March.

The Section 24 notice served by the Lessees solicitors should therefore have been served by 26th September if it was to be served in time. The notice served on your offices would have been out of date if it was only received at your offices 1 October...

There is absolutely no reason why the Section 24 notice should not be served at any time within the six-month period. Whilst we appreciate that negotiations may well be continuing, there is no reason why the application to the LVT should be made at "the last minute". Further if it is to be served so late in the day a prudent person would serve either by fax, e-mail or by hand so as to protect their client's position.

We are therefore concerned that our client should be prejudiced should this application be accepted.

Clearly the Lessees' solicitors could have made an application at any time in the preceding six months. If they had, then the application would have been received in time and our client would be bound by the act.

The application, not having been received by your offices until after the due date, should have, in our view, been rejected.

By accepting the notice this will prejudice our client. If the notice had been rejected then the Tenants would not be able to revisit the situation for a period of 12 months, by which time the valuation date would have changed. The valuation would be much later date than the original valuation date contained within the existing proceedings and, in our client's view, the prices will have improved by then. Further, the reversion would be that much shorter.

By accepting the notice now, then our clients are prejudiced as to having to accept a valuation at a date much earlier than they would if the application had been rejected and at prices which are, my client believes, substantially lower than what they will be if the claim is rejected."

4. On 6 October 2009 the Tribunal wrote to the Respondent's solicitors (with a copy to the Applicant's solicitors) to advise that in the circumstances a determination by the Tribunal as to jurisdiction would be necessary.
5. The hearing took place on 18 November 2009 at which Mr M Betts, Solicitor of Guillaumes Gosling & Wilson, for the Applicant attended. There was no attendance for or on behalf of the Respondent but written representations were received from Mr S Jones of Counsel.

6. The salient points of the case for either side are given under the appropriate headings.

Applicant's case

7. Mr Betts, for the Applicant, said that since the application had been issued by the Tribunal, the Tribunal had exercised its discretion it should continue to do so in view of the fact that there had been an "accidental delay". He had not expected that the proceedings would be issued late and since the application was dated 24 September 2009 it was not unreasonable to expect it to have been received on either 25 or 26 September 2009. The documents had been sent through the DX system which "usually works" although he conceded that he had not used the tracking system.
8. Mr Betts said he wished the papers had been sent earlier.

Respondent's case

9. In written submissions on behalf of the Respondent, it was stated:-

"It is submitted that the statutory prescribed procedure (and the consequence of failure to comply with the procedure) is clear.

In the present case, the reversioner served a counter-notice admitting the claim (section 21(2)(a)). That notice was received on 27 March 2009.

Terms of acquisition had not been agreed by 27 May 2009 (being the date of expiry of the period of two months after the giving of the counter-notice). It was therefore open to the nominee purchaser to apply to the Tribunal to determine the matter in dispute (section 24(1)).

Any such application must (emphasis added) be made not later than the end of the period of 6 months beginning with the date on which the counter-notice was given (section 24(2)).

The period for applying therefore expired on 27 September 2009.

The application is made when it is received by the Tribunal not when it is posted.....

The application was received on 1 October 2009. It was therefore made too late.

There is no provision in the statute for extending the prescribed time for making the application.

Where, in the case to which section 24(1) applies, no application is made within the period specified in section 24(2).... the initial notice is

deemed to be withdrawn at the end of the period expiring on 27 September 2009 (section 29(2)).

The application was therefore already deemed withdrawn by the time the Tribunal received documents purporting to constitute an "application" on 1 October 2009. There is no provision in the statute for overriding the deemed withdrawal. It follows that, by the time documents were received by the Tribunal".

The Tribunal's Determination

10. S.24 of the Act states, inter alia:-

"(1) Where the reversioner in respect of the specified premises has given the nominee purchaser -

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section....

But any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser."

11. S.29 of the Act (deemed withdrawal of the Initial Notice) states, inter alia:-

"Where-

(a) in a case to which subsection (1) of section 24 applies, no application under that subsection is made within the period specified in subsection (2) of that section

The initial notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a)....."

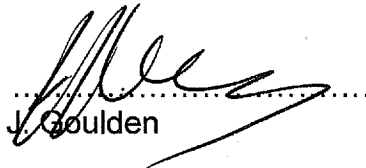
12. Only a Tribunal can make a determination as to jurisdiction. The Act is clear and the application to the Tribunal was received out of time in that although it was dated on the face of it 24 September 2009 the date of receipt (as shown by the date stamp) was 1 October 2009.

13. The application must be made not later than the end of the period of six months beginning with the date of service of the counter-notice admitting the right. Consequently there is, in effect, a further period of four months to apply to the Tribunal following the failure to agree

terms. If no application is made during the six-month period, the initial notice is deemed to have been withdrawn at the end of it (section 29(2) of the Act. There is no power to extend the time for making the application, so it is vitally important that the nominee purchaser ensures that an application is made. The application is made when it is received by the Tribunal, not when it is put in the post.”

14. Accordingly the Tribunal determines that it has no jurisdiction and the Initial Notice is deemed to have been withdrawn.

Chairman:


.....
J. Goulden

Dated: 24..November 2009.....

