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HM Courts & Tribunals Service

Residential Property
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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER s.84(3) OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00AH/LRM/2011/0052
Premises:	Lyndhurst Prior, 297 Whitehorse Lane, London SE25 6UQ
Applicant(s):	Lyndhurst Prior RTM Company Ltd
Representative:	Dean Hilborne
Respondent(s):	W F (Trustees) Ltd and David Glass Lakeside Developments Ltd (landlords)
Representative:	Trust Property Management
Date of hearing:	Paper determination 15 February 2012
Appearance for Applicant(s):	Written representations
Appearance for Respondent(s):	Written representations
Leasehold Valuation Tribunal:	Mr G M Jones Mr J C Avery FRICS
Date of decision:	15 February 2012

Decisions of the Tribunal

(1) The Tribunal declares that the Applicant was on the relevant date, namely, 28th October 2011 entitled to acquire the right to manage the property situate at and known as Lyndhurst Prior, 297 Whitehorse Lane, London SE25 6UQ

(2) The Tribunal dismisses the application of the Respondent landlords for a declaration that the Applicant's Notice of Claim was invalid.

The Application

0.1 The application relates to a former priory which has been converted into a block of six flats, all of which are held by qualifying tenants for the purposes of Part 2 Chapter 1 of the Commonhold & Leasehold Reform Act 2002 (Right to Manage). The qualifying tenants of three of the flats have set up a Right to Manage Company (the Applicant) after inviting the other qualifying tenants to participate as required by the Act. A claim to acquire the right to manage must be made by giving due notice under section 79 of the Act.

0.2 The Applicant, through its agent Dean Hilborne, served on the Respondent landlords W F (Trustees) Ltd and David Glass Lakeside Developments Ltd notice pursuant to section 79 of the Applicant's claim to acquire the right to manage the block. The notice was dated 25 October 2011 and stated that the Applicant intended to acquire the right to manage the block on 25 February 2012. The notice specified a date, namely 25 November 2011 by which the Respondents might give a counter-notice under section 84.

0.3 Section 80(6) requires an applicant to specify a date not earlier than one month after the "relevant date". The relevant date is defined in section 79(1) as the date on which notice of the claim is given. The Respondents say they received the Applicant's notice on 28 October 2011 (according to their date stamp) and in fact served a counter-notice on 21 November 2011. The Applicant does not dispute that the notice was received by the Respondents on that date. In any event, unless the notice was served (presumably by hand) on 25 October 2011 (which the Applicant does not allege) it is clear that the Respondents were given short notice.

0.4 The Respondents served a counter-notice within the specified period. It is not alleged that any prejudice resulted from the fact that the notice period was three days too short.

0.5 In their counter-notice the Respondents took only one point, namely, that, by reason of the short notice given to them, the Applicant was not on the relevant date entitled to acquire the right to manage the block. There is no suggestion that the Applicant's right to manage is barred for any other reason.

The Issue

1. The question before the Tribunal is whether the Applicant acquired the right to manage the block. If there is no valid notice under section 79 then there is no "relevant date" and the Applicant's application to the Tribunal would be a nullity. The Applicant would not be entitled to acquire the right to manage because that right can be acquired only by giving a valid claim notice. In that event, the Tribunal must decline to make a determination and must dismiss the Application. Of course, in that event, the Respondent would no doubt seek to recover costs under section 88(3).

2. So far, the matter appears quite straightforward. However, one must view the legislation as a whole. Section 80(8) and (9) provide that the claim notice must contain such other particulars (if any) as may be prescribed by Regulations and must also comply with any requirements about the form of claim notices prescribed by the Regulations. The relevant Regulations are the Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2003. Regulation 4 requires that the notice must contain a statement in the form actually included at clause 9 of the Applicant's notice: -

> "This notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or regulation 4 of the [2003 Regulations]. If you are of the opinion that any of the particulars contained in the claim notice are inaccurate you may notify the [RTM] company of the particulars in question, indicating the respects in which you think that they are inaccurate."

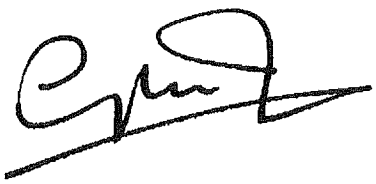
3. Regulation 4 appears to fly in the face of the requirement in section 80(1) that the claim notice must comply with the requirements of the section. However, under section 107 of the 2002 Act the County Court may, on the application of any person interested, make an order requiring a person who has failed to comply with any requirement imposed upon him under Chapter 1 of Part 2 of the Act to make good the default. Before making such an application, the person aggrieved must first serve notice on the defaulting party (in this case the Applicant) and allow him 14 days to remedy the defect. This is a sensible provision which appears designed to prevent applications from failing on technical grounds.

4. Section 80(6) contains only one requirement, namely, to specify a date, not earlier than one month after the relevant date, for service of a counter-notice. The inclusion of section 80(6) in Regulation 4 means that Regulation 4 applies to that requirement. It seems to follow quite clearly that, unless Regulation 4 is ultra vires, the Applicant's notice was not invalidated by its failure to comply with section 80(6). It is not for this Tribunal to say whether Regulation 4 is ultra vires; but the Regulation seems in keeping with the overall scheme of the Chapter.

5. The recipient of a section 79 notice would be prejudiced in the event he wished to challenge the applicant's claim to acquire the right to manage but failed to serve a counter-notice in the time specified in the notice because short notice was given. In that event, he could invite the applicant to amend the claim notice so as to allow him more time or, indeed, to serve a fresh claim notice. If the applicant could not or would not comply, the recipient could apply to the County Court for an order requiring the applicant to take steps to ensure that the recipient of the notice was given a reasonable opportunity to serve a counter-notice.

6. However, in this case, the Respondents have not been prejudiced because they had time to serve and did serve a counter-notice. They did not take up the opportunity offered by clause 9 and, in the judgment of this Tribunal, having elected to serve a counter-notice, cannot now complain of the defect in the claim notice of 25 October 2011; nor can they make an application to the County Court under section 107.

7. No other ground of objection being stated in the counter-notice, the Tribunal's course of action in clear. We must make a declaration under section 84(3) that the Applicant was on the relevant date entitled to acquire the right to manage the block.



Chairman: Geraint M Jones MA LLM (Cantab)

Date: 22 February 2012