

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

Case No	CHI/43UB/LRM/2007/0004
Property	26 Avondale Avenue, Esher, Surrey
Applicant	26 Avondale Avenue RTM Company Ltd
Respondents	(1) Birballa Chandra (2) Reg Laxman
Members of the Tribunal	Ms H Clarke (Barrister) (Chair) Mr D Lintott FRICS
Date of consideration	5 December 2007
Date of decision	6 December 2007

THE APPLICATION

1. The Applicant is a Right to Manage (RTM) Company and seeks a determination from the Tribunal as to whether it was entitled to acquire the right to manage in the light of a Counter-Notice served by the Second Respondent.

DECISION

2. The Tribunal determined that the Applicant was entitled to acquire the Right to manage the premises with effect from 17 October 2007.

THE CONSIDERATION

3. Directions for a paper consideration were given on 7 September 2007. In accordance with those directions the matter was determined on the basis of the documents and written representations submitted to the Tribunal.

## THE LAW

4. The relevant law is set out in Part 2 Chapter 1 of the Commonhold and Leasehold Reform Act 2002. In particular section 84 deals with Counter-Notices;

### *“84 Counter-notices*

*(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a counter-notice) to the company no later than the date specified in the claim notice under section 80(6).*

*(2) A counter-notice is a notice containing a statement either (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or (b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled, and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.*

*(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), 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”.*

5. Furthermore the The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 SI 1988 apply to the process and contain details of the forms which the parties must use for claim and counter-notice.

## THE EVIDENCE AND SUBMISSIONS

6. The Claim Notice was dated 6 June 2007 and was sent by recorded delivery on 7 June 2007 to the Respondents. In the Application the First Respondent Birballa Chandra is described as the landlord, and the Second Respondent Reg

Laxman is described as 'unofficial managing agent'. No further details were provided as to the status or interest of Reg Laxman in the matter, and the relevant Leases were not provided to the Tribunal. The Tribunal observed that the contact address was the same for both Respondents. Reg Laxman sent a document headed 'Counter-Notice' to the Applicant dated 7 July 2007 which stated:

*"I allege that by reason of forfeiture of leases/disputes proceeding in progress on 7 June 2007 the Applicant was not entitled to acquire the right to manage".*

7. The Counter-Notice was accompanied by a letter from Reg Laxman which stated:

*"I do not have an objection to handover of right to manage..however the following issues must be resolved...therefore I serve a counter notice. All lessees must discharge their ground rent/service charge before claiming the right to manage the above property..."* The letter set out various figures said to be amounts outstanding for each lessee. The letter also asserted that Flat B's garden fence must be relocated before the right to manage could be acquired.

8. The Applicant provided a short statement in support of the Application. The Respondents made no submissions.
9. The case for the Applicant was that the Counter-Notice did not comply with the requirements of the Act because it did not specify any provision under Chapter 1 of Part 2 by reason of which the right to manage did not arise. Furthermore, the disputes alleged by the Second Respondent related to the liabilities of individual tenants and not the RTM Company itself.

#### REASONS FOR DECISION

10. The Tribunal firstly considered the position of Reg Laxman the Second Respondent. As stated above, the information before the Tribunal was that the Second Respondent was an 'unofficial managing agent'. Under s84(1) above, a counter-notice may be given by "*a person who is given a claim notice under section 79(6)*" of the Act. Section 79(6) states that a claim notice shall be given to each person who is;  
*"a) landlord under a lease of the whole or any part of the premises,*  
*b) party to such a lease other than as landlord or tenant, or*

*c) a manager appointed under Part 2 of the Landlord & Tenant Act 1987...*”

11. The Tribunal considered that the natural meaning of s84 is that only those persons listed in s79(6) are entitled to give a counter-notice. As a matter of fact, the evidence showed that a copy of the claim notice was sent by the Applicant to Reg Laxman. However, the claim notice was addressed to Birballa Chandra, the Landlord. There was no evidence indicating that Reg Laxman fell into any of the categories in s79(6). In the circumstances, it appeared that Reg Laxman was given a copy of the claim as a courtesy and not under s79(6). The Tribunal therefore took the view that Reg Laxman was not a person capable of giving a counter-notice and that as a consequence, the purported counter-notice had no effect under s84.
12. The Tribunal noted that under the Prescribed Forms etc Regulations there is provision under Schedule 3 for a counter-notice to be signed by an agent of the landlord. However, the prescribed form includes a statement that the signature is that of the agent of the person on whom the claim form was served. It is clear that the authority to sign must be that of the landlord (or other person under s79(6)). In the present case, the letter and the purported counter-notice were both expressed to be in the sole name of Reg Laxman, and indeed the letter stated *“I do not have an objection to handover of right to manage..”*. The Tribunal decided that the evidence did not indicate that the documents were given on behalf of the landlord.
13. The Tribunal then considered whether, aside from the status of the giver, the counter-notice itself was valid under s84. The Tribunal agreed with the submission for the Applicant that such a notice must specify a provision of Chapter 1 Part 2 of the Act as being the reason why the claim was said not to be valid. This is the ordinary and natural meaning of the statute. The Tribunal directed itself that the statute creates a self-contained scheme for the mandatory acquisition of the right to manage. Objections to the acquisition of that right must be made within the terms of the statutory scheme.
14. The Tribunal noted that the purported counter-notice made no reference to the Act. Moreover the grounds upon which an objection were raised were not grounds which appeared anywhere in the Act.
15. The Tribunal noted that in any event, there was ambiguity about the allegations made by Reg Laxman. The covering letter stated; *“I do not have an objection to handover of right to manage”*. However the purported counter-notice stated: *“I allege that ...the company was not entitled to*

*acquire the right to manage...*”. The Tribunal took the view that as both documents bore the same date, they should be read together and the letter should be treated as giving particulars of the allegation set out in the counter-notice. Assuming this to be so, the allegations were themselves ambiguous. It appeared that Reg Laxman was alleging that the tenants of each flat owed money but the sums were described as ‘ground rent/service charge’. No distinction had been made between the two. The Tribunal observed that the obligation to pay ground rent remained an obligation owed by each lessee to the Landlord, rent being a reservation from title. As such, it had no bearing on the right to manage. The Act makes specific provision for service charges and the exercise of management functions under sections 94-97 and Schedule 7. In particular a landlord or RTM company could apply to the tribunal for a determination of what sums should be paid in respect of accrued service charges. This fortified the Tribunal in its view that the grounds relied on by Reg Laxman were not grounds contemplated by the Act as a reason why the right to manage should not be acquired.

16. In all the circumstances the Tribunal determined that the purported counter-notice did not fulfil the requirements of section 84(2) b) and did not disclose a reason for the Applicant not to be entitled to acquire the right to manage.

17. The Tribunal then considered what was the relevant date on which the right to manage arose. Section 90 of the Act makes provision for the acquisition date. By s90(2), where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice. By s90(3), there is no dispute about entitlement if ‘(a) no counter-notice is given under s84’.

18. The Tribunal interpreted the statute to mean that if no counter-notice complying with the requirements of s84 was validly given, then the claim should proceed under s90(2) on the basis of there being no dispute. For the reasons given above, the Tribunal took the view that the counter-notice was itself invalid as it was not given by a person capable of giving it, and further it did not disclose a reason of the sort required by s84(2). The documents given by Reg Laxman in the present case did not constitute a counter-notice given under s84. Consequently the relevant date of acquisition was the date specified in the claim notice, namely 15 October 2007.

Signed           HMC           Chair A Clarke

Dated           6 December 2007