LON/00BE/LOA/2008/0004

LEASEHOLD VALUATION TRIBUNAL

Applicant/tenant:	**55 and 61 TANNER STREET RTM COMPANY LIMITED**
Applicant's representation:	**Mr A. Walder of Counsel** **Mr J. Riding of Underwoods Solicitors**
Respondent/landlord:	**FLAMBAYOR LIMITED**
Respondent's representatives:	**Mr Golstein of Seddons Solicitors** **Ms C. Monroe of Seddons** **Miss J. Garrard of Seddons** **Mrs H. Quinn MIRPA of Estates and Management Limited** **All of whom also represented Avonbraid Limited**
Premises:	**55 and 61 Tanner Street, London SE1 3PN**
Tribunal Members:	**Mr N.M. GERALD** **Mrs H. BOWERS** **Miss J. DALAL**
Date of Application:	**10th September 2008**
Date of hearing:	**26th January 2009**
Date of Decision:	**26th January 2009**

DECISION AND FURTHER DIRECTIONS

1. This is an application by the Applicant-tenant under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") relating to numbers 55 and 61 Tanner Street, London SE1 3PM ("the Premises"). Unless indicated to the contrary, all references to sections or Schedules are to those in the Act

2. The Premises comprise two separate freeholds. Number 55 is owned by Avonbraid Limited ("Avonbraid") and number 61 by Flambayor Limited ("Flambayor").

3. On 20th June 2008, the Applicant served a Claim Notice under section 79 on Flambayor claiming to acquire the right to manage the Premises.

4. On 23rd July 2008, Flambayor served a Counter-Notice under section 84(2)(b) alleging that the Applicant was not entitled to acquire the right to manage for the reasons therein stated.

5. On 10th September 2008, and as a consequence of the Counter-Notice, the Applicant applied to the Tribunal under section 84(3) for a determination that it was entitled to acquire the right to manage the Premises and notified the Tribunal that "the Respondent is Flambayor" and "the freeholder for both premises is Flambayor".

6. On 15th October 2008, the parties attended for and made representations at a Pre-Trial Review at which directions were made by the Tribunal ("the Directions"). There was no application by the Applicant that Avonbraid be joined as a party to the Application or other indication that it was even intended to be a party.

7. At the outset of this hearing, the parties agreed that the Tribunal should determine as a preliminary issue whether the Claim Notice had been served in compliance with section 79(6) which provides *inter alia* that it 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". If it had not been properly so given, it was agreed that the Application must be dismissed.

8. It was common ground that on the relevant date the landlord of number 55 was Avonbraid and the landlord of number 61 was Flambayor. It was also common ground that both Avonbraid and Flambayor must be given the Claim Notice as required by section 79(6).

9. The preliminary issue for determination, therefore, was whether giving the Claim Notice to Flambayor alone was sufficient or should be treated as being sufficient to give notice of it to Avonbraid as.

10. The Applicant submitted that giving notice to Flambayor was sufficient to give notice to Avonbraid because:

    (a) Two previous claim notices in respect of the same premises had been served by the Applicant separately upon Avonbraid and upon Flambayor (albeit to its immediate predecessor in title, but Flambayor responded to it) in relation to Numbers 55 and 61 separately which had been objected to, so that it must have been obvious that the instant Claim Notice which referred to both properties but simply omitted the name "Avonbraid Limited" was intended to refer to and be served upon both freehold landlords.

    (b) Avonbraid and Flambayor shared common, company secretary, agents, solicitors and registered office and the same individuals are directors and company secretary albeit in different roles in each company. The service on Flambayor should therefore be treated as service upon Avonbraid also.

11. The Applicant relied on the following authorities, all of which related to the validity of service of notices which bore the name of the wrong tenant but were served on the actual tenant or its agents: *Townsends Carriers*

Limited v Pfizer Limited (1977) 33 P&CR 361; *Hawtrey v Beaufront Limited* [1946] 1 KB 280; *Lazurus Estates Limited v Beasley* [1956] 1 QB 701; and *Bridges v Stanford* [1991] 2 EGLR 265.

12. The Respondent submitted that whilst both companies share the same directors and so on, they are separate and distinct entities with different shareholders. The Act requires service on both landlords separately, and the Applicant did not as a matter of fact separately name Avonbraid in the Claim Notice and did not intend that Notice to effect service upon Avonbraid as shown by the 10th September 2008 Application.

13. The Tribunal determines that the Claim Notice was given to Flambayor and was not and can not be treated as having been given to Avonbraid so that the Application is dismissed. The reasons are as follows.

14. The Claim Notice is addressed to "Flambayor Limited" alone. There is no indication in the body of the Claim Notice that it is intended to be addressed to or given to anyone else. Indeed, paragraph 5 states "If you are (a) landlord under a lease of the whole or any part of the premises", from which a reasonable recipient of the Claim Notice such as Flambayor could perfectly properly conclude that the giving of the Claim Notice was intended to be effected upon it alone as it was indeed the landlord of part of the Premises.

15. Flambayor and Avonbraid are different and unconnected legal entities. The fact that they share common directors and so on does not take the matter any further: there is no reason why a director in receipt of such a notice addressed to one company of which he is a director should consider whether or not it is intended to be given to another company of which he is also a director. Further, there is no suggestion let alone evidence that Flambayor had any authority to accept service on behalf of Avonbraid.

16. More fundamentally, the 10th September 2008 letter to the Tribunal is sufficient evidence that the Applicant only intended the Claim Notice to be given to Flambayor alone and, therefore, that it was in fact only given to Flambayor. It is difficult to understand how Flambayor as recipient of the Claim Notice should have concluded that it was intended to be given to Avonbraid as well as itself and be treated as having accepted service on behalf of itself and Avonbraid when that is not what the giver (the Applicant) intended.

17. The fact that previous claim notices have been served in respect of the both Numbers 55 and 61 does not take matters any further. If anything, in the view of the Tribunal, they serve to confirm the conclusion of a reasonable recipient that the instant Claim Notices were to be served upon the person to whom they were addressed and not otherwise.

18. The Tribunal also notes that not only has the Applicant at no stage sought to amend the Application so as to join Avonbraid but it has served a further Claim Notice dated 4th November 2008 which, the Respondent and Avonbraid accept, was duly given and has been responded to by Counter-Notice dated 8th December 2008. This Claim Notice was marked as being without prejudice to the validity of the instant Claim Notice.

19. The authorities cited by the Applicant are all distinguishable on the facts because they deal with the situation where the relevant notices state the wrong name of the tenant but were served upon the correct tenant. Whilst the same principles no doubt apply to the service of notices on a landlord, they do not deal with the situation where the notice (a) does not identify even incorrectly or generically (such as "the landlord of number 55") the landlord upon whom it is intended to be served and (b) as a matter of fact it was not served upon that landlord.

20. The Tribunal indicated that if the parties agreed it would be content to use the rest of the hearing to hear a new application based on the 4th November 2008 Claim Notice which could be issued over the short adjournment. The Respondent and Avonbraid were content for that to happen, and the Applicant indicated that it would avail itself of that opportunity: that application is the subject of further Directions given in LON/00BE/LRM/2009/0002 ("the Second Application").

21. After the Tribunal issued directions in the Second Application, the Tribunal raised the issue of costs of the Claim Notice and the ensuing Application to be determined under section 88. The Applicant submitted that that application should be dismissed because the Respondent had failed to comply with Direction 6.

22. The Tribunal rejects that submission and adjourns the determination of the application for costs to be heard at the same time as the Second Application because (a) the parties (and Avonbraid) must attend the Tribunal on the Second Application in any event; (b) the costs of this Application may well overlap with those of the Second Application, so it is convenient that they be considered at the same time and in context; (c) there will or may well be further costs applications relating to the earlier Claim Notices which it will also be convenient to deal with at the same time as the other ones; (d) there is no material prejudice to the Applicant in the adjournment; (e) it would be harsh and unfair to dismiss the costs application merely because the Respondent had failed to comply with an order which itself was not a final, or unless, order.

23. The Tribunal therefore directs, in summary, that:

    (a) The Application be dismissed;

    (b) The application for costs be adjourned to be heard at the same time as the application in LON/00BE/LRM/2009/0002;

(c) The directions in relation to the provision of details of costs made in LON/00BE/LRM/2009/0002 shall be treated as if made in this Decision.

Chairman .....Tuesday 26th January 2009