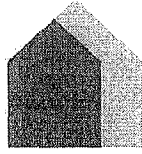


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Residential  
Property  
TRIBUNAL SERVICE

Case reference: LON/00AZ/LRM2010/0014

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL AS  
TO ITS JURISDICTION UNDER CHAPTER 1 OF PART 2 OF THE  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Property:** 21 Gillian Street, London SE13 7AH

**Applicant:** 21 Gillian Street RTM Company Limited

**Respondent:** Assethold Limited

**Date of hearing:** 18 October 2010

**Appearances:** Dudley Joiner, Right to Manage Federation,  
for the applicant

J Gurvits, Eagerstates Limited, for the respondent

**Tribunal:** Margaret Wilson  
Michael Taylor FRICS MAPM

**Date of decision:** 18 October 2010

## ***Introduction***

1. This case is concerned with the extent of the tribunal's jurisdiction under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the Act") which relates to the no-fault right to manage.

## ***Background***

2. 21 Gillian Street is a building divided into two flats, the leaseholders of each of which have formed 21 Gillian Street RTM ("the company") for the purpose of acquiring the right to manage the building. On 19 February 2010 they gave notice of their claim to exercise the right to manage to the landlord, Assethold Limited, under section 79 of the Act. In accordance with section 80(6) of the Act the claim notice specified 22 March 2010 as the date by which the landlord should serve a counter-notice and, in accordance with section 80(7), the notice specified 22 June 2010 as the date upon which the company intended to acquire the right to manage.

3. The landlord asserts that no later than 22 March 2010 it served on the company, by post, a counter-notice under section 84 of the Act in which it disputed the company's right to acquire the right to manage. The company says that it did not receive any counter-notice until 24 May 2010, when, having received from the company a notice under section 93 of the Act requiring the landlord to provide the company with information, Mrs E Gurvits, who is a director of Eagerstates Limited, the landlord's agent, sent by fax and post a copy of a counter-notice said to be dated 1 March 2010 together with a copy of a covering letter, also dated 1 March. In her letter dated 24 May 2010 Mrs Gurvits asserted that the claim to acquire the right to manage was deemed to have been withdrawn because the company had not, as required by section 84, applied to the tribunal within two months beginning on the date when the counter-notice was served. Section 87(1) provides that if an RTM company has been given a counter-notice containing a statement alleging

that, by reason of a specified provision of this Chapter, the RTM company was not on the relevant date, which is the date when the claim to exercise the right was given, entitled to acquire the right to manage, the claim notice is deemed to be withdrawn.

4. Under cover of a letter dated 17 June 2010 the landlord demanded payment of the costs said to be payable to it on the deemed withdrawal which, if the claim was indeed deemed to have been withdrawn, the company and its members were liable to pay by virtue of section 89.

5. On 22 June 2010 Dudley Joiner of the Right to Manage Federation wrote to Eagerstates Limited rejecting the claim for costs and asserting that the landlord had not served a counter-notice in time and that the document which purported to be a counter-notice dated 1 March 2010 had, together with the purported covering letter dated 1 March 2010, been prepared retrospectively.

6. By an application received on 26 August 2010 the company purported to apply to the tribunal under section 84(3) of the Act for a determination that it was on the relevant date entitled to acquire the right to manage.

7. Directions for the hearing were made by the tribunal on 3 September 2010. The directions identified the issue for determination as the date when the counter-notice was given to the company. In a letter to the tribunal dated 15 September 2010 Mrs Gurvits questioned whether the tribunal had jurisdiction to determine the question.

### ***The hearing***

8. At the hearing on 18 October 2010 the company was represented by Mr Joiner and the landlord by Mr Gurvits, Mrs Gurvits' husband, who is a director of the landlord and of Eagerstates.

8. Mr Gurvits submitted that the issue was not one in respect of which the tribunal had been given jurisdiction by the Act. Mr Joiner submitted the tribunal had jurisdiction to determine issues which were "necessary or incidental to" an issue properly within its jurisdiction, and he relied on observations made by H H Judge Rich QC in *Continental Property Ventures Inc v White* (LRA/60/2005) and *Canary Riverside Pte v Schilling* (LRX/65/2005). In Mr Joiner's submission the question which had arisen was incidental to the issue of whether the company had acquired the right to manage, which, he submitted, Parliament had clearly intended to be given to the tribunal.

### ***Decision as to jurisdiction***

9. We are satisfied that we do not have jurisdiction to decide the question which arises, namely the date upon which the landlord's counter-notice was served. In our view the tribunal's jurisdiction in relation to the right to manage is limited to those disputes in respect of which it is expressly given jurisdiction by Chapter 1 of Part 2 of the Act, namely under sections 84(3), 85(2), 85(6)(b), 85(8)(b), 88(4), 94(3) and 99(1)(b). This dispute does not arise under any of these subsections, including section 84(3) under which the application was expressed to be made.

10. If the landlord did not serve a counter-notice by the date specified in the notice of claim, the company acquired the right to manage without the intervention of the tribunal on 22 June 2010, the date specified in the notice of claim, by virtue of section 90(2) and (3)(a) of the Act which provides:

*(2) Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under section 80(7)*

*(3) For the purposes of this Chapter there is no dispute about entitlement if ... no counter-notice is given under section 84.*

To be *given under section 84* the counter-notice must be given no later than the date specified in the claim notice.

11. If, on the other hand, the landlord served a counter-notice by 22 March 2010, the date specified in the claim notice, the application to the tribunal is out of time because it was not made within the period of two months specified in section 84(4), and the notice is deemed to have been withdrawn.

12. The date of service of the counter-notice is not in our view a question which is incidental to a matter within our jurisdiction. We entirely accept that if, in the course of an application which falls within our jurisdiction, questions arise which are ancillary or incidental to the matters falling within our jurisdiction, we may, if appropriate, determine them. Thus, for example, as was considered by H H Judge Rich in the *Canary Riverside* case, a question arises in the course of an application under section 27A of the Landlord and Tenant Act 1985 under the *Unfair Terms in Consumer Contracts Regulations 1999*, the tribunal has jurisdiction to determine it (although it may decide not to do so if it considers that it would be more appropriately dealt with in another forum). The reason why the tribunal has the power to determine such ancillary matters is that its jurisdiction to determine liability to pay under section 27A of the 1985 Act is wide, liability to pay being a broad concept. In the present case, on the other hand, while we accept that it might have been desirable for Parliament to have conferred on the tribunal the jurisdiction to determine all questions arising under Chapter 1 of Part 2 of the Act, we are satisfied that such is not the effect of the Act.

### ***The merits***

13. At the request of Mr Joiner and Mr Gurvits, we proceeded to consider the date of service of the counter-notice in case we are found to be wrong on issue of jurisdiction.

14. In support of its case the landlord lodged a witness statement signed by Mrs Gurvits in which she said *"I received a completed counter-notice from Assethold Ltd dated 1 August 2010 [sic] and on the same day I prepared a cover letter to [the company] and counter notice and sent it out first class post as per attachments numbered 1,2"*. Now it may well be, as Mr Gurvits submitted, that "1 August 2010" was an error and that Mrs Gurvits intended to say "1 March 2010", but her witness statement can hardly be said to provide support for the landlord's assertion that the counter-notice was served by 22 March 2010, and she did not attend the hearing to give oral evidence. Nor is there any other evidence before us that the counter-notice was in fact posted to or otherwise served on the company within the period allowed by the notice of claim. It is clearly the case, as Mr Gurvits accepted, that the onus is on the landlord to satisfy the tribunal (assuming that we have jurisdiction) that the counter-notice was served in good time if the issue is raised, which it was. On the evidence before us we are not satisfied that the counter-notice was given in time and in these circumstances, if the matter fell to us to decide, we would say that the company acquired the right to manage without the intervention of the tribunal on 22 June 2010.

15. That is not to say that we would hold, if the question was open to us to decide, that the landlord was guilty of concocting a backdated counter-notice and covering letter. That has certainly not been established. If, as may well be the case, the counter-notice was not given in time, it is not improbable that it was sent but did not arrive. On the evidence before us, however, we remain not satisfied that it was sent by 22 March 2010.

**CHAIRMAN**.....

**18 October 2010**