

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
SECTION 84(3) COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00BJ/LOA/2012/0002

Premises: 8 Cathies Road, London SW12 9LD

Applicant: 8 Cathies Road RTM Company Ltd.

Represented by: Canonbury Management

Respondent: Seamoat Ltd.

Represented by: Conway & Co. Solicitors

**Leasehold Valuation
Tribunal:** Ms F Dickie, Barrister, Chairman
Mr W R Shaw FRICS

Date of determination: 30 March 2012

Summary of Decision

1. The RTM Company is entitled to acquire the right to manage on 5 April 2012.

Preliminary

2. By a claim notice dated 25 November 2011 the Applicant gave notice that it intended to acquire the Right to Manage 8 Cathies Road, London SW12 9LD ("the premises") in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). By a counter notice dated 23 December 2011 the Respondents, being the freehold owner of the premises, alleged that by reason of sections 79(8), 80(8) and 80(9) of Chapter 1 of Part 2 of the Act the Applicant was not entitled on 28 November 2011 to acquire the right to manage the premises.

3. On 23 January 2012 the tribunal received from the Applicant an application under section 84(3) of the Act and on 15 February 2012 it gave Directions to the parties notifying them that the matter was considered suitable for determination on the papers in the absence of a request for an oral hearing. No such request has been received and the tribunal has proceeded to determine this matter on the papers and without an inspection. The premises are understood to be a building containing 5 flats.
4. Section 80 provides, where relevant:
 - (1) The claim notice must comply with the following requirements
 - (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including –
 - (a) The date on which it was entered into,
 - (b) The term for which it was granted, and
 - (c) The date of the commencement of the term
 - (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulation made by the appropriate national authority
 - (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

Section 81(1) provides that "A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80".

5. Regulation 4(c) of the Right to Manage (Prescribed etc)(England) Regulations 2003, provides that the Claim Notice shall include

"a statement that the notice is not invalidated by an inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or this regulation, but that a person who is of the opinion that any of the particulars contained in the claim notice are inaccurate may – (i) identify the particulars in question to the RTM company by which the notice was given; and (ii) indicate the respects in which they are considered to be inaccurate".

Decision and Reasons

6. The counter notice did not state in what respect there had been any failure to comply with section 80(8) or (9). Indeed, the tribunal has received the Respondent's statement of case, which identifies what is in fact an alleged failure to comply with section 80(4). The Respondent's argument is as follows:
 - (a) Section 80(8) requires that the claim notice must contain such other particulars as required by regulations made by the appropriate national authority being the Right to Manage (Prescribed particulars and Forms)(England) Regulations 2010 (the Regulations. Section

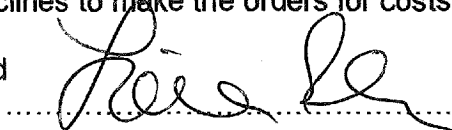
80(9) of the Act requires in addition that the claim notice must comply with such requirements about the form of claim notices as may be prescribed by the Regulations.

- (b) The particulars required of the claim notice include the required details in relation to the Leases of qualifying members. The claim notice dated 25 November 2011 has failed to include correct details for any of the flats listed in relation to the dates of the Leases themselves and commencement dates of the term as follows:
- Flat 1 – date of lease 15/4/74, commencement 29/9/74
Claim notice states date of lease 29/9/74, commencement 12/8/83
 - Flat B – date of lease 6/9/93, commencement 29/9/92
Claim notice states date of lease 29/9/92 and commencement 3/6/94
 - Flat C – date of lease 20/1/99, commencement 29/9/97
Claim notice states date of lease 29/9/97, commencement 7/10/99
 - Flat D – date of lease 12/6/75, commencement 29/9/74
Claim notice states date of lease 29/9/74, commencement 12/8/83
 - Flat E – date of lease 10/3/00, commencement 29/9/99
Claim notice states 29/9/99, commencement 24/3/00

7. Office copy entries have been produced to show that the information in the Claim notice was incorrect. The Respondent relies on the reasoning of the Upper Tribunal (Lands Chamber) in Assethold Limited v 15 Yonge Park RTM Company Limited [2011] UKUT 379. That decision distinguished between inaccuracies and errors which go further. Her Honour Judge Walden-Smith concluded that section 81(1) is capable of applying to any of the details, or particulars, required by any of subsections 80(2) to (8), and could save a claim notice from being invalid if there is an “inaccuracy” in any of those particulars, for example a spelling or typing error in the name or registered office of the RTM company. Providing a wrong name or wrong registered office of the RTM company was not, in her judgement, an “inaccuracy”. It was a failure to provide the mandatory information required by section 80 and such a failure results in the claim notice being invalid.
8. The tribunal has received no statement in reply from the Applicant, who has denied receipt of the Respondent’s statement of case. Having read the submissions on behalf of the Respondent, the tribunal does not consider it necessary to postpone its consideration of this case to invite further submissions from the Applicant.
9. The tribunal has had regard to the authority cited by the Respondents, and to the leading decision of the House of Lords in The Mannai Investments v Eagle Star Life Assurance Co. Ltd. [1997] AC 749. In that case their lordships held (Lord Goff and Lord Jauncey dissenting) that where a tenant served a notice purporting to exercise his contractual right to determine a lease, that notice would be effective to do so notwithstanding the fact that it contained a minor misdescription, provided that, construed against its contextual setting, it would unambiguously inform a reasonable recipient how and when it was to operate. In that case they found there had been a minor misdescription in the notice purporting to determine the lease on 12 January instead of 13 January.

10. The failure to provide information or the inaccuracy in this case (whichever expression applies) relates to dates. In *Mannai Investments* and many authorities concerning the construction of notices containing an error, it is an error as to a date that is at issue. However, this tribunal observes that in the present case it is not the date itself that has any legal effect – such as in a notice to determine a lease from a particular date. In the present case the express purpose of the requirement to include the date of the lease is in order to identify the lease.
11. Section 80(4) requires the notice to contain such particulars of the leases as are sufficient to identify them, including the particulars specified at (a) – (c). The notice under consideration also contained the title number of each flat. Those title numbers were correct, and of course those titles contained the correct dates of the leases and their commencement. Clearly, in the view of this tribunal, there were sufficient particulars in the notice to identify the leases in question.
12. The tribunal observes that the commencement dates were given as the dates of the leases, and that the dates of leases recorded were wrong. When dealing with dates, the distinction in *Assethold Limited* between inaccurate information and a failure to provide mandatory information is less clear – any error in a date will mean the wrong date is specified.
13. This tribunal is of the view that the notice is not invalid by virtue of section 81(1). In the present case, the wrong dates provided were clearly an inaccuracy in identifying the leases. The tribunal considers that in the circumstances, the title number also having been specified, this amounts to a misdescription or inaccuracy, which construed against its contextual setting, would unambiguously inform a reasonable recipient to which leases the notice related.
14. It is noted that the proper course of action for the Respondent on noticing such an inaccuracy on receipt of the notice was to point it out to the Appellant, but this was not done.
15. No other grounds of objection having been particularised in the counter notice or these proceedings, the tribunal satisfied that the Right to Manage will be acquired on 5 April 2012.
16. The tribunal has considered the parties' cross applications for costs limited to £500 under Paragraph 10 or Schedule 12 of the Commonhold and Leasehold Reform Act 2002. Having considered all of the circumstances, the tribunal is of the opinion that the conduct of neither party may be described as frivolous, vexatious, abusive, disruptive or unreasonable. It declines to make the orders for costs sought.

Signed



Chairman

30 March 2012