

SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL

Case No: CHI/24UC/LRM/2008/0006

BETWEEN:

WYKEHAM HOUSE RTM CO LIMITED

Applicant

- and -

SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LIMITED

Respondent

JURISDICTION DETERMINATION

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr D M Nesbit JP FRICS FCI Arb

PREMISES: Wykeham House
Alexandra Road
Farnborough
GU14 6DE ("the Premises")

1. Background

- 1.1 On 2nd September 2008 the Applicant served a Claim Notice on the Respondent claiming that the Applicant, an RTM Company was entitled to acquire the right to manage the Premises.
- 1.2 On 9th September 2008 the Respondent sent to the Applicant a Counter Notice stating that the Applicant was not entitled to acquire the right to manage. In Paragraph 2 of the said Counter Notice the Applicant was advised that the Applicant may apply to a Leasehold Valuation Tribunal for a determination as to whether, on a date the notice of claim was

given the Applicant was entitled to acquire the right to manage the Premises. Note 2 appended to the said Counter Notice stated that an application to the Leasehold Valuation Tribunal must be made within the period of two months beginning with the day on which the Counter Notice was given.

- 1.3 The Applicant prepared an application to the Leasehold Valuation Tribunal and the application dated 7th November 2008 was received at the Leasehold Valuation Tribunal's office in London on 3rd December 2008. This was then forwarded to the Southern Leasehold Valuation Tribunal where it was received on 4th December 2008.
- 1.4 The Respondent contends that the said application was not made in time and the Tribunal therefore arranged a jurisdiction hearing for 3rd February 2009. Both the Applicant and Respondent submitted written representations to the Tribunal. The Applicant by letter dated 9th January 2009 stated that it did not intend appearing at the hearing. Counsel was instructed to appear on behalf of the Respondent but due to the severe weather and transport difficulties contacted the Tribunal Office prior to the hearing to advise that she was unable to make it to the hearing but would be content for the Tribunal to proceed on the basis of her written submissions.

2. The Respondent's Case

- 2.1 The Respondent's case was that the Application had not been made within two months of the Counter Notice and was therefore out of time. It should have been made by 9th November 2008 or 11th November 2008 at the latest. The receipt stamp showed that it was not received by the tribunal until 3rd December 2008. The time limit of 2 months from Counter Notice is laid down in Section 84(4) of the Commonhold & Leasehold Reform Act 2002. The time limit is strict and the Tribunal has no jurisdiction to extend the time limit. The Application is "made" when it is received by the Tribunal office.
- 2.2 The Interpretation Act 1988 provides that service of a notice or other document is effected on the day when in the ordinary course of post the document would be delivered but this only applies where the contrary is not proved. Here, the Respondent says, the contrary is

proved by the document having been date-stamped as received by the Tribunal well after two days from the date of alleged posting.

- 2.3 The Respondent also counters any argument that the Civil Procedure Rules might save this application. The Civil Procedure Rules do not apply to Leasehold Valuation Tribunal proceedings and, in any event, CPR Part 7.2.2 provides that a Claim Form is issued on the date it is stamped by the Court. The Respondent cited *Mucelli v Government of Albania* [2009 UKHL 2] for the proposition that if a time limit is statutory there is no basis upon which it can be extended.
- 2.4 The Respondent pointed out that there was no proof of posting provided by the Applicant who was vague as to the date of actual dispatch of the Application.

3. The Applicant's case

- 3.1 It was the Applicant's case that the Application was "made" two working days from 7th November 2008, the date when, it was suggested, the Application was posted. This is because it was deemed to have been served two days after posting. The application had, therefore, been "made" in time. The Applicant suggested that the Application must have been delayed in the post.

4. The Law

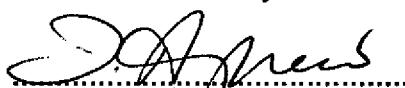
- 4.1 Section 84(3) of the 2002 Act states:-

"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.
- 4.2 Section 84(4) states that: "An application under Subsection 3 must be made not later than the end of the period of two months beginning with the day on which the Counter Notice was given."

5. The determination

- 5.1 It is clear, on the evidence, that the Application was not received at the Tribunal offices until 3rd December 2008. Section 84(4) of the 2002 Act required the Application to have been made not later than 9th or 11th November 2008 at the latest. The Application is "made" when it is received at the Tribunal Office. The Application in this case was not therefore made in time and the Tribunal has no jurisdiction to hear it.
- 5.2 The Tribunal finds that the Civil Procedure Rules have no application to leasehold property tribunal proceedings. There is nothing in the Leasehold Valuation Tribunal (Procedure)(England) Rules 2003 which enables the tribunal to extend a time limit imposed by statute. The time limit has therefore to be strictly adhered to and it was incumbent upon the Applicant to ensure that its Application was received at the Tribunal Offices in time. Even if the rules as to deemed service of documents applies, which it does not in this case, there was no convincing evidence from the Applicant as to the date of posting the Application. The Interpretation Act 1988 does not operate to save the Application because this would only apply if there were no evidence to contradict the presumption that the document was received two days after posting. In this case there is evidence that the documents were received on the 3rd December 2008 when date-stamped by the Tribunal Office. No proof of posting or method of posting had been provided.
- 5.3 In all the circumstances the Tribunal found that it did not have jurisdiction to hear the Application and that the Applicants would need to complete and issue a further application.

Dated this 12th day of February 2009



D. Agnew LLB/LLM (Chairman)