

LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00BK/LOA/2012/0004

Premises: Barrie House, 93-94 Lancaster Gate,
London W2 3QJ

Applicant: Barrie House RTM Company Limited

Represented by: Mr C Fain, counsel
Instructed by Charles Russell LLP

Respondent: Merie Bin Mahfouz Company (UK) Limited

Represented by: Ellodie Gibbons, counsel
Instructed by Seddons Solicitors

Date of hearing: 8 May 2012

Leasehold Valuation Tribunal: Ms F Dickie, Chairman
Mrs J Davies, FRICS

Date of determination: 12 June 2012

Summary of Decision

1. The RTM Company is entitled to acquire the right to manage and by virtue of section 90(4) of the Act, the acquisition date will be the date three months after this determination becomes final.

Preliminary

2. By a claim notice dated 26 January 2012 the Applicant gave notice that it intended to acquire the Right to Manage Barrie House, 93-94 Lancaster Gate, London W2 3QJ ("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 28 February 2012 the Respondent, being the freehold owner of the premises, alleged that by reason of sections 78, 79, 80 and 81

of Chapter 1 of Part 2 of the Act the Applicant was not entitled on 3 June 2012 to acquire the right to manage the premises.

3. On 13 March 2012 the tribunal received from the Applicant an application under section 84(3) of the Act and on 15 March 2012 it gave Directions for the determination of the matter at after an oral hearing on 8 May 2012. The premises comprise 39 flats, 37 of which are let on long leases, together with a garage / car park, two telecom masts and associated plant rooms and a transformer chamber.

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. By the date of the hearing there was only a single issue in dispute between the parties – whether the Claim Notice was invalid by virtue of its failure to specify the date on which the lease of each qualifying tenant was entered into as required by section 80(4) of the Act. The Claim Notices at Part 2 each state, in respect of each person named in Part 1, their name, address and “Term” and “Date of Commencement” of their lease.

7. The Applicant argued that the Claim Notice did contain particulars of the leases that are sufficient to identify them and did include the date on which each lease was entered into, even though those dates were misdescribed as a result of a typographical error as the “Date of Commencement” of the term in each case. The Applicant averred that this error was an inaccuracy in the particulars which did not invalidate the claim pursuant to section 81(1) of the Act, relying on 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 Applicant argued that this inaccuracy was obvious to a reasonable recipient who had knowledge of the three previous Claim Notices and recent proceedings between the parties. This was the Applicant’s fourth attempt to acquire the right to manage under the Act. The first two Claim Notices were formally withdrawn by the Applicant at an LVT hearing on 23 September 2011 and the third on 19 December 2011. All of the details required by section 80(4) had been correctly provided in at least one of those previous notices.
9. It was not disputed by the Respondent that the details provided were sufficient to identify the leases in question. The Respondent’s case was the notice does not specify the dates when any of the leases were entered into, and that this was not an obvious typing error or simply a case of mislabelling the correct dates, since these “Dates of Commencement” of the leases were correctly specified in the Notice and are not in all cases the same as the dates the leases were entered into. In respect of Flat 5, the lease was entered into on 7 February 1966 and the term commenced on 25 March 1963. In respect of Flat 14, the lease was entered into on 27 July 1965 and the term commenced on 25 March 1963.
10. This was more than a mere typographical error according to the Respondent. The correct information required by section 80(4) was omitted, and whilst section 81(1) provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by virtue of section 80, it does not save a notice which omits to include any of the required particulars.
11. Office copy entries were produced to show that the information in the Claim Notice was incorrect as asserted by the Respondent, who relied on the decision of the President of the Upper Tribunal (Lands Chamber) in Moskovitz v 75 Worples Road RTM Co. Ltd. [2010] UKUT 393. In that case it was held that a failure to give a date in accordance with section 80(6), which was not earlier than one month after the relevant date, was sufficient to

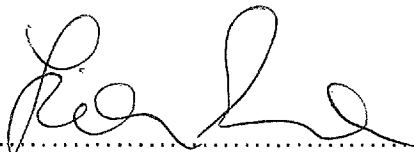
invalidate the notice. The President held that such a deficiency was not an “inaccuracy in the particulars” and could not be saved by section 81(1). The Respondent observed that, as set out at paragraph 4 of the Assethold decision “there is no balance of prejudice test”.

12. The Respondent considered that the leading decision of the House of Lords in The Mannai Investments v Eagle Star Life Assurance Co. Ltd. [1997] AC 749 was not applicable to the present case, since the notice in that case was not required to be given in any particular form. 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.
13. In the present case the failure to provide information or the inaccuracy (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, it is not the date itself that has any legal effect in the requirements of section 80(4), such as in a notice to determine a lease from a particular date. The express purpose of the requirement in section 80(4) to include the date of the lease is in order to identify the lease. The commencement dates were given as the dates of the leases, and in respect of two flats those dates were not the same. The Assethold distinction between inaccurate information and a failure to provide mandatory information is not as clear when dealing with dates – most errors in a date, typographical or otherwise, will mean the wrong date is specified.
14. It is for the tribunal to determine on the particular facts of this case whether the notice provided inaccurate information and can be saved by section 81(1). Having considered the competing arguments, the tribunal is of the view that the notice is not invalid, by virtue of that saving provision. The misdescription of the dates as “dates of commencement” rather than “date of lease” falls within the meaning of an inaccuracy, as was the provision of the wrong date in respect of two leases. These inaccuracies would be obvious to the reasonable recipient.
15. Furthermore and in any event, construed against its contextual setting, the notice would unambiguously inform a reasonable recipient to which leases the notice related. The tribunal considers this a relevant consideration notwithstanding that it is considering a statutory requirement for the notice to be in a particular form. The decisions in Assethold and Moskovitz (both decided on written representations) relate to the effect of section 81(1) as it applies to all of the requirements of section 80. However, in neither case was consideration given to subsection (4), which amongst all the section 80 requirements is unique in its drafting, since it is the only subsection which specifies the purpose for the information must be provided. That purpose is

the identification of the leases and it would be wrong in the view of the tribunal to overlook this.

16. 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 use of the word "including" means that these three pieces of information are not in all cases an exhaustive list in any event. It cannot be said that failure to provide information which is not exhaustively specified by the statute can invalidate a notice.
17. It is the view of the tribunal that the proper reading of section 80(4) it is a mandatory requirement that "it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it". A failure to provide such sufficient particulars will invalidate the notice and cannot be saved by section 81(1). Where the particulars provided in purported compliance with subsections (a) to (c) are sufficient to identify the leases but contain an error or omission, this can be saved by section 81(1) and will not invalidate the notice. In the present case, and in particular given the history between the parties, there is no dispute that the particulars in the notice were sufficient to fulfil this purpose. In *Mannai Investments* the condition in question related solely to the meaning which the notice had to communicate, and in the opinion of the tribunal when section 80(4) is read properly, this is the case here.
18. No other grounds of objection have been maintained, and for the reasons above the tribunal finds that the Claim Notice was valid and that the Applicant is entitled to acquire the Right to Manage.

Signed



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Chairman

12 June 2012