



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/21UD/LRM/2016/0004

Property : 125, London Road, St Leonards-on-Sea,
East Sussex TN37 6AU

Applicant : 125 London Road Management RTM
Company Limited

Representative : Sussex Independent Financial
Advisers Limited

Respondent : R G Securities (No 2) Limited

Representative : Pier Legal Services

Type of Application : Objection to Right to Manage

Tribunal Members : Judge J Tarling
Judge S. McGrath
Judge D. Agnew

**Date and venue of
Hearing** : 21st July 2016
The Magistrates Court and Tribunals
Centre, Chichester

DETERMINATION

Background

1. By an application dated 8th April 2016 the Applicant applied to the Tribunal for a determination under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that on the relevant date the Applicant was entitled to acquire the right to manage the property known as 125 London Road, St Leonards-on-Sea, East Sussex TN37 6AU (“the Premises”).
2. Amongst the documents filed with the application form were a copy of the Applicant’s Claim Notice dated 25th February 2016 and a copy of the Respondent’s Counter-notice dated 22nd March 2016.
3. Directions were issued by the Tribunal requiring the parties to serve statements of case and witness statements and for the preparation of a hearing bundle. This was duly carried out. The matter came before the Tribunal for determination by way of an oral hearing at the Respondent’s request on 21st July 2016.
4. Those attending the hearing were as follows:
For the Applicant, Mr Darren Young who is the leaseholder of Flat 6 at the Premises and also a Director of the Applicant RTM Company together with Mr Mark Thomas of Sussex Independent Financial Advisers Limited, the Applicant’s representative for these proceedings. Mr Thomas had also provided a witness statement.
For the Respondent Ms Laura Cleasby, an in-house solicitor employed by the Regis Group PLC, the parent company of the Respondent. Ms Cleasby had also provided a witness statement. This witness statement superseded one made by Miss Jaswinder Veratch who had subsequently left the employ of Regis Group PLC.

The hearing

5. At the outset of the hearing the Tribunal Chairman sought confirmation from Ms Cleasby that a point mentioned in the statement of case prepared by Miss Veratch but not repeated in the witness statement of Ms Cleasby was no longer a point in issue. The point in question was that the Notice of Claim had been signed by a person said to be “by authority of the company” but no printed name appeared underneath the signature. Ms Cleasby did confirm that this point was not being pursued by her.

The Respondent’s case

6. The Respondent challenged the Applicant’s right to manage the Premises on the ground that the Claim Notice was invalid in that it failed to comply with the requirements of section 80 of the 2002 Act. In particular, there were two defects in the notice. The first was that insufficient time had been given in the Claim Notice for the Respondent to serve a Counter-notice. The Act requires a date to be specified in the Claim Notice for the Respondent to serve a counter-notice which must be “not earlier than one

month after the “relevant date” (section 80(6) of the Act). The “relevant date is defined in section 79(1) of the 2002 Act as being “the date on which notice of the claim is given.” In this case Ms Cleasby asserted that the Claim Notice was received at the Respondent’s registered office “no earlier than 7th March 2016”. As the date specified in the Claim Notice as the date by which the Respondent had to respond to the Claim Notice was 31st March 2016 this was less than one month after service of the Claim notice (24 days, in fact) the section had not been complied with. Consequently the notice was invalid and the Tribunal could not therefore make a determination that the Respondent was entitled to acquire the right to manage the Property.

7. The basis upon which the Respondent asserted that the Claim Notice was not served earlier than 7th March 2016 was that it was received by the Respondent on 9th March 2016. Ms Cleasby was present in the Respondent’s office when it was received. The Claim Notice had, however, quite properly been sent to the Respondent’s registered office. The arrangement between the Respondent and its registered office (which is an accountant’s office) is that correspondence received at the registered office is forwarded to the Respondent within 2 days of receipt. From this Ms Cleasby felt able to assert that the Claim Notice could not have been received at the registered office earlier than 2 days before 9th March 2016 (that is, no earlier than 7th March 2016). She accepted that she was unable to produce the envelope in which the Claim Notice arrived at the registered office and she could adduce no evidence from anyone at the registered office who could say when exactly the document was received. Under cross-examination from Mr Thomas, she accepted that it was an assumption on her part that the Claim Notice was not received earlier than 7th March 2016.
8. Ms Cleasby sought to rely on the case of *Calladine-Smith v Saveorder Limited [2011] EWHC 2501 (Ch)* in support of her case. Mr Thomas did not object notwithstanding that neither he nor the Tribunal had been given any prior notification that she wished to do so. In that case the judge accepted the evidence of the recipient of a notice that the notice had not been delivered and found that the presumption of delivery in the ordinary course of the post had therefore been rebutted.
9. The second limb of the Respondent’s challenge to the validity of the Claim Notice was that insufficient time had been allowed between the date specified in the Claim Notice by which the Respondent could respond to the Notice by way of a Counter-notice and the date stipulated in the Claim Notice to be the date when the Applicant would acquire the right to manage.
10. Ms Cleasby pointed out that the date specified in the Claim notice as being the date by which any Counter-notice had to be given was 31st March 2016. The date specified in the Claim Notice as the date upon which the Applicant intended to acquire the right to manage was 30th June 2016. This is less than three months after 31st March 2016. In order to comply with the Act this date should have been 1st July 2016 or later.

The Applicant's case

11. Mr Thomas who is a Director of Sussex Independent Financial Advisers Limited presented the Applicant's case. He personally had prepared the Claim Notice and had placed it in his company's mail system for franking and delivery to the Royal Mail sorting office. He had marked the envelope in which the notice was sent to indicate that it should be sent by first class mail. Once a letter is franked it has to be posted the same day, otherwise the Post Office will not accept it. He is as sure as he can be that although he did not personally see the envelope containing the Claim Notice franked and handed over to the Post Office that it was sent by first class mail on 25th February 2016. There was therefore sufficient time for the Notice to have been delivered and still give one clear month between receipt of the Notice at the Respondent's registered office and the date specified in the notice by which any Counter-notice was to be given. No evidence had been given by the Respondent as to the actual date of receipt of the Notice at the registered office and, as Ms Cleasby had admitted, it was only an assumption on her part, because of the arrangement her company has with the accountants whose address the Respondent's registered office is, that the Claim Notice was not received before 7th March 2016.
12. With regard to the second limb of the Respondent's objection to the validity of the Claim Notice, the facts were not in dispute. The date by which any Counter-notice was to be served was stated to be 31st March 2016 and the date when the Applicant intended to acquire the right to manage the property was stated to be 30th June 2016. Mr Thomas accepted that "months" in the relevant part of the Act meant "calendar months". He had calculated that the relevant three months took one to midnight on 30th June 2016.
13. Mr Thomas asked the Tribunal to determine that both limbs of the challenge to the validity of the Claim Notice had no merit and that the Applicant were entitled to acquire the right to manage the Premises on 30th June 2016.

The Tribunal's determination

14. The relevant legislation, save where it is given in the text to these reasons, is set out in the Appendix to this determination.
15. With regard to the first ground of the Respondent's challenge to the validity of the Claim Notice the Tribunal finds that, on a balance of probabilities, the Claim Notice was placed in the post in an envelope franked with first class postage on 25th February 2016. The Tribunal therefore accepts Mr Thomas's evidence on this point. This means that in the ordinary course of post the Claim Notice would have been received at the Respondent's registered office on Monday 29th February 2016 (2016 being a leap year) at the latest. There was no positive evidence from the

Respondents as to the actual date of receipt of the Claim notice. Ms Cleasby was forced to rely on an assumption that it had not arrived prior to 7th March 2016 because of the arrangement her company has with the accountants whose office is the registered office of the Respondent company that all letters are to be forwarded to the Respondent within two days of receipt. Ms Cleasby had no knowledge, however, as to whether or not that arrangement had been adhered to in this case.

16. Section 7 of the Interpretation Act 1987 is relevant to this case. It states that:-
“Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”.
17. Section 111 of the 2002 Act provides that *“Any notice under this Chapter (a) must be in writing and (b) may be sent by post.”*
Accordingly section 7 of the Interpretation Act 1978 is engaged. Having found that the Notice was put in the post franked with first class postage on 25th February 2016 the question the Tribunal has had to decide therefore is whether the Respondent has proved, on a balance of probabilities, that the Claim Notice was not received in the ordinary course of post which would be Saturday 27th February or Monday 29th February 2016 at the latest. As the Respondent was forced to rely on an assumption that the document had been forwarded from the registered office within the agreed two day period without any evidence that the arrangement had been adhered to, the Tribunal does not find that the “contrary has been proved” to rebut the presumption of delivery on 27th or 29th February 2016. This distinguishes the instant case from Calladine-Smith v Saveorder Limited referred to by Ms Cleasby, where the court found that on the facts of that case the contrary had been proved.
18. The Tribunal therefore finds that the Claim Notice is not invalid due to the date of 31st March 2016 for the giving of a Counter-notice being too early a date.
19. Turning now to the second ground of objection to the Claim Notice, the Tribunal does find that the date of 30th June 2016 as being the date upon which the Applicant intended to acquire the right to manage was a day too early. Three calendar months would not have elapsed between the date specified for any Counter-notice to be given and the proposed acquisition of the right to manage. The Act states that this date must be at least three months after (emphasis added) the date specified for the giving of the Counter-notice. If there had been 31 days in June then that would have been the appropriate date. As there are not, the appropriate date is 1st July 2016. Mr Thomas accepted that it should be three calendar months. He simply, and unfortunately for him and his clients,

miscalculated the period. He could have specified any date after 1st July 2016 and, if he had been in any doubt it would have been safer to do so, but he did not.

20. It follows that the Claim Notice does not comply with section 80(7) of the 2002 Act. Does this thereby invalidate the Notice? Mr Thomas did not seek to rely on section 81(1) of the 2002 Act which states that:-

“A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.” However, for the sake of completeness the Tribunal did consider it.

The question the Tribunal has asked itself is whether a date which does not comply with section 80(7) can be regarded as “an inaccuracy” such that the Notice may be saved by this provision. The Tribunal finds that this is not an “inaccuracy” within the meaning of the section. It is an error but not an inaccuracy. It is a failure to provide the required particulars as specified in section 80(7) of the 2002 Act rather than an inaccuracy in the statement of the particulars. (*See Assethold Ltd v Yonge Park RTM [2011] UKUT 379 (LC) and Assethold Ltd v 14 Stansfield Rd RTM Co Ltd [2012] UKUT 262 (LC)*). Accordingly the validity of the notice is not saved by the defect being an “inaccuracy”.

21. Consequently, the insertion of the date 30th June 2016 as the date by which the Applicant intended to acquire the right to manage, being one day too short, is fatal to the validity of the Claim Notice and for this reason the Tribunal determines that the applicant was not entitled to acquire the right to manage the Premises on 30th June 2016 or on any other date pursuant to the Claim Notice dated 25th February 2016. There is nothing to prevent a fresh compliant notice being served at any time.

Dated the 28th July 2016

Judge J. Tarling

Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –
 - (a) identify the decision of the Tribunal to which it relates
 - (b) state the grounds of appeal; and
 - (c) state the result the party making the application is seeking.
4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –

- (a) The application must include a request for an extension of time and the reason why the application was not received in time; and
- (b) unless the Tribunal extends time for the application the Tribunal must not admit the application.

APPENDIX

Commonhold and Leasehold Reform Act 2002

Section 79(1)

“A claim to acquire the right to manage any premises is made by giving notice of the claim.... and in this Chapter the “relevant date” in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

Section 80(1)

“The claim notice must comply with the following requirements.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the property.

Section 84(2)

“A counter-notice is a notice containing a statement either –

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) (b) alleging that, by reason of a specified provision of this Chapter the RTM company was on that date not so entitled....

Section 84(3)

“Where an RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection 2(b), the RTM company may apply to a [First-tier Tribunal (Property Chamber)] for a determination that it was on the relevant date entitled to acquire the right to manage the premises.”