



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

Case Reference : LON/00AL/LAM/2016/0001

Property : 137 Greenwich South Street, London SE10 8PP

Applicants : (1) Benjamin and Laura Mavely (Flat 4)
(2) Kady Howey Nunn (Flat 3)

Representative : In Person

Appearances for Applicant : (1) Ms Andy Creer, counsel
(2) Michelle Waligora, Wilsons Solicitors
(3) Benjamin Mavely
(4) Kady Howey Nunn
(5) Elizabeth Nunn
(6) Richard Nunn

Respondent : Bickley Investments Limited

Representative : SAS Management

Appearances for Respondent : (1) Mr Barnaby Hope, counsel
(2) Mr S Shaukat, SAS Management

Type of Application : An application for the appointment of Manager

Date and venue of hearing : 1 June 2016 at 10 Alfred Place, London WC1E 7LR

Tribunal : (1) Judge Amran Vance
(2) Ms L West

**Date of Reasons
for Decision** : 13 June 2016

DECISION

Preliminary

1. The full hearing of this application is listed for 15 June 2016.
2. At a hearing on 25 May 2016 the Tribunal determined a preliminary question, namely whether or not the notice under section 22 Landlord & Tenant Act 1987 (the "1987 Act") relied upon by the Applicants had been validly served (no point being taken by the Respondent as to the contents of the notice).
3. The Tribunal determined that the section 22 notice in question had been validly served and that, if this was incorrect, it would in any event have dispensed with service of the said notice. The parties were notified of the Tribunal's decision at the end of the hearing.
4. The Tribunal now sets out the reasons for its decision.

Background

5. This is an application made under section 24 of the 1987 Act for the appointment of a replacement manager in respect of Flats 3 and 4, 137 Greenwich South Street, London SE10 8PP ("the Building"). The Applicants are the long lessees of those flats. The Applicants do not occupy their flats which are sublet to other tenants. The remaining two flats in the Building are retained by the Respondent who is the freeholder owner of the Building. In his skeleton argument Mr Hope states that Flats 1 and 2 were occupied at the material time by SAS Management (who represent the Respondent in these proceedings) and Excel Management Services ("Excel"). Ms Mavely's evidence, however, was that both were let to residential tenants.
6. The Respondent was registered as freehold proprietor of the Building on 9 December 2014. Land Registry Office Copy Entries identify its address as Suites 1-3 Kinwick Centre, 32 Hollywood Road, Central, Hong Kong.
7. On 14 February 2016 the Applicants attempted to effect service of the section 22 notice ("the Notice") in question by the following methods:
 - (a) posting it, by recorded delivery, to the address stated in the Office Copy Entries. The letter enclosing the Notice was not, however, delivered to the Respondent. A Royal Mail tracking

enquiry system report indicates that it was undelivered due to an incorrect address;

- (b) ~~posting a copy, addressed to the Respondent, through the front door of the building~~
 - (c) by email, to excelmanagementsolutions@gmail.com, who the Applicants believed remained the managing agents appointed by the Respondent to manage the Building. Excel ceased to manage the Building on 4 March 2016, when PMS Leasehold Management Ltd ("PMS") were appointed in their place.
8. The question for the Tribunal to determine is whether service by any of the above three methods was effective and if not, whether service should be dispensed with.
9. Clauses 14 of the respective leases contain provisions relating to the service of notices. However, as these provisions concern the services of notices required to be served under the lease, and not statutory notices, Counsel for both parties agreed that the lease provisions were irrelevant to the question of whether or not the section 22 notice in question was properly served.

The Law

10. Section 22 of the 1987 Act provides as follows:
- (1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—
 - (i) the landlord, and
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
 - (2) [.....]
 - (3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

11. The Applicants' leases do not contain obligations relating to the management of the Building by any person other than the freeholder and so section (1)(ii) is irrelevant to this application.

The Hearing

12. Both parties were represented by counsel. We are grateful for their helpful skeleton arguments and oral submissions, received on the morning of the hearing.
13. Mr Hope attached copies of several documents referred to in his skeleton argument including: an email from Laura Mavely dated 10 July 2015; a letter from Excel dated 5 August 2015; two letters dated 30 November 2015 addressed to the Applicant in Hong Kong, one from Laura and Ben Mavely and the other from Kady Howey Nunn and letters from SAS Management to the Applicants dated 19 February 2016. Ms Creer did not object to the Respondent relying upon these documents as evidence and the tribunal granted permission for it to do so.
14. We heard oral evidence from Laura Mavely who had previously submitted a witness statement dated 16 May 2016. No witness evidence was tendered by the Respondent.

The Respondent's Case

15. The Respondent's position is that the reason why the letter sent by recorded delivery was returned undelivered was because the floor number of the Respondent's address in Hong Kong was omitted. Whilst this floor number is not specified in the address registered at the Land Registry Mr Hope contended that the Applicants were aware of the full address.
16. This was because on 10 July, in connection with an intended application for retrospective planning permission, Laura Mavely and Kady Howey Nunn asked Mr James Owen of Excel to provide them with the Respondent's Hong Kong postal address. In Excel's response dated 5 August 2015 it provided a full postal address including, on the third line, "16th Floor". On 30 November 2015 the Applicants then wrote, separately, to the Respondents to the correct postal address specifying the "16th floor". These letters, he said, were received by the Respondent.
17. Mr Hope submitted that the Applicants were therefore on notice of the Respondent's correct address by virtue of Excel's letter of 5 August 2015. Moreover, they had used the correct address in their letters of 30 November 2015. Service of the Notice by recorded delivery was therefore ineffective as an incomplete address was used. It was the Respondent's case that putting a copy of the Notice through the front door of the Property was not proper service and nor was service by email as there is no provision for this in section 22.
18. It was Mr Hope's case that the letter of 5 August 2015 provided a proper address for service in Hong Kong and that this is the address that should have been used in order to effect valid service. It would, in his submission, be improper to dispense with service under section

22(3) as it was reasonably practicable for the Applicants to serve the Respondent at the correct address. The Applicants simply made an error.

Ms Mavely's evidence

19. Laura Mavely is an in-house solicitor. Her evidence was that since she and her husband purchased their flat they had made numerous attempts to obtain a correspondence address for the Respondent in the UK. Emails exhibited to her witness statement showed that she requested the freeholders' details from James Owen at Excel on 9 and 10 July 2015. These were not provided in Mr Owen's email in response. Instead, he states that Excel was the managing agent for the Building and that all communications should be directed for his attention.
20. She denied receiving the letter of 8 August 2015 and said that the first time she saw the letter was when it was emailed by the Respondent's solicitor on 31 May 2016, the day before the hearing. She stated that she had never been provided with an address for the Respondent either in Hong Kong or the UK and that she had only received emails from Mr Owen, never letters.
21. She confirmed that the letter dated 30 November 2015 attached to Mr Hope's skeleton argument was sent by and her husband to the Respondent in Hong Kong but that this address was not obtained from the letter of 8 August 2015. She obtained the address by carrying out at Experian search against the Respondent's name. She did so because she had been informed by the local authority that an enforcement notice was going to be served as there was no planning permission for the Applicants' flats to be used for residential use. The Applicants therefore lodged an application for retrospective planning permission and notified the Respondent, using the address obtained from the Experian search, that they had done so.
22. In January 2016 Mr Ravi Ganesh from SAS Management informed her that the Respondent had not received the notification sent regarding the retrospective planning permission application. Therefore, when it came time to serve the section 22 Notice she carried out a Land Registry search and used the address stated in the Office Copy Entries when writing to the Respondent. She considered this to be the appropriate address to use as it was an up to date, official document.
23. Her evidence was that at no time since the Respondent acquired the freehold interest had she received a demand for service charges or ground rent. She denied receipt of a letter dated 23 September 2015 attached to Mr Hope's skeleton argument from Excel to Mr Mavely in which it is stated that "your previous service charges have been waived". Nor had she ever received any document giving an address for service of notices on her landlord.

The Applicants' Case

24. Ms Creer submitted that whilst the original freeholder's address was provided in the Applicants' leases the Respondent, since acquiring its freehold interest, had failed to provide an address in England and Wales where notices could be served on it. Ms Mavely's attempts to obtain an address for the Respondent from Excel had been rebuffed.
25. In her submission the Applicants were entitled to rely upon the address specified in the Office Copy Entries and it was incumbent on the Respondent to update that information if it was incorrect. Furthermore, delivery to the address of the Building and providing a copy of the Notice by email to Excel was sufficient to amount to proper service as the Notice would have come to the attention of the Respondent.
26. If effective service had not been carried out Ms Creer contended that service should be dispensed with as it was not reasonably practicable to serve the Notice on the Respondent.

The Tribunal's Decision and Reasons

27. The tribunal determines that proper service of the Notice took place on 14 February 2016 by the Applicants hand-delivering a copy of the Notice to the Building.
28. Section 54 of the 1987 Act makes provision for the giving of notices, as follows:

“(1) Any notice required or authorised to be served under this Act—

 - (a) shall be in writing; and
 - (b) may be sent by post.”
29. The purpose of Section 48(1) of the 1987 Act is to ensure that tenants are provided with an address in England and Wales at which they may communicate with their landlord, including in connection with proceedings. It provides as follows:

“48. Notification by landlord of address for service of notices

 - (1) A landlord of the premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.”
30. Section 60(1) of the 1987 Act defines 'notices in proceedings' as meaning notices or other documents served in, or in connection with, any legal proceedings.

31. We accept Ms Mavely's evidence and conclude that the Respondent has failed to comply with its obligation under section 48 to provide an address in England and Wales at which notices may be served on it by the Applicants. No evidence to the contrary was before us and Mr Hope did not contend otherwise.
32. In the absence of the provision of such an address we determine that valid service was effected by sending a copy of the Notice by email to Excel who were the Respondent's managing agent at the time. We accept Ms Mavely's evidence that this email did not bounce back and are satisfied on the evidence that it was delivered to Excel. Whilst there is no specific provision in Section 54 of the 1987 Act for service by email the Act was drafted before email became a common method of communication. The Notice was in writing and was delivered to the landlord's managing agents. That, in our view is valid service.
33. If that is wrong we determine that valid service was effected by posting a copy of the Notice through the front door of the Building in which the Respondent had retained two of the flats and which was, therefore, its place of business. We accept Ms Mavely's evidence that both flats were let to residential tenants.
34. However, we do not consider valid service was effected by posting the Notice to Hong Kong using an incomplete address for the Respondent when such Notice was never received.
35. In any event, we order that the requirement to serve the Notice on the Respondent be dispensed with under section 22(3).
36. We accept as truthful the evidence tendered by Ms Mavely. We found her a credible and honest witness and one who appreciated her professional obligation, as a solicitor, not to mislead the tribunal.
37. We accept her evidence that she did not receive any letters from Excel, including the letters dated 5 August 2015 and 23 September 2015. This might be because they were sent to the address of her flat in which she has never lived. Or it may be because they were never sent at all. As Mr Owen had not provided any witness evidence and was not present to give oral evidence to the tribunal we were unable to explore this point further.
38. We accept, therefore, that she was not informed of the Respondent's Hong Kong address by Excel. We also accept her evidence that in January 2016 Mr Ganesh of SAS Management informed her that the Respondent had not received the letter sent by her regarding her retrospective planning permission application.
39. We accept her evidence that she first identified the Respondent's address in Hong Kong through carrying out an Experian search. The tribunal viewed that report on her mobile telephone. It contained two addresses for the Respondent. One matched the address specified in the Office Copy Entries. The other matched the address used by the

Applicants in their letters of 30 November 2015. We accept that her use of the address specified in the Office Copy Entries was a genuine attempt to use what she considered to be the most appropriate address for the Respondent.

40. We accept Ms Mavely's evidence that no postal address for the Respondent whatsoever was provided to her either by the Respondent itself or by its managing agents.
41. We also accept her evidence that at no point has she received a demand for ground rent or service charges from the Respondent or their managing agents. No evidence to the contrary was tendered by the Respondent.
42. In circumstances, therefore, where no address for the service of notices in England and Wales has been provided by the Respondent, we cannot see what else the Applicants could have done in order to effect valid service. They attempted to send it to what Ms Mavely believed to be the Respondent's official address in Hong Kong. Reliance on the address specified in the Office Copy Entries when seeking to serve the Notice was understandable. A copy was sent by email to the managing agents and a copy delivered to the Building.
43. In all the circumstances if these steps were not sufficient to effect valid service then, set against the background of the Respondent's non-compliance with section 48 and Ms Mavely's unsuccessful efforts to secure a postal address for the Respondent, we are satisfied that it was not reasonably practicable for the Applicants to serve the Notice on the Respondent.

Application under s.20C

44. In their application form the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Amran Vance

Date: 13 June 2016

ANNEX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.