



Residential
Property
TRIBUNAL SERVICE

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 84 OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Reference number: LON/00BH/LRM/2007/0004

Property: 2 Cann Hall Road, London E11 3HZ

Applicant: 2 Cann Hall Road RTM Company Limited

Respondent: Regisport Limited

Appearances: For the Applicant:
Ms N McLeod (Flat 2A) and
Mr J Lipman (Flat 2B)

For the Respondent:
Mr E Andresen, a solicitor with Wallace
LLP, solicitors

Tribunal members: Mr A J Andrew
Mrs J Davies FRICS

Application received: 12 March 2007

Directions: 16 March 2007

Hearing: 4 May 2007

Decision: 1 June 2007

DECISIONS

1. On the basis of the documents contained in the hearing bundles and the oral evidence given at the hearing we found the following facts:-
 - a. The claim notice was given to the Respondent on 4 January 2007;
and
 - b. When the claim notice was sent to the Respondent on 2 January 2007 Ms N McLeod was a member of the Applicant; and
 - c. The memorandum and articles of association of the Applicant comply with the RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (“the Regulations”).
2. We determined that the omission of the letters “RTM” from the description of the Applicant in the claim notice was an “*inaccuracy*” within the meaning of section 81(1) of the Commonhold and Leasehold Reform Act 2002 (“the Act”).
3. We determined that the Applicant was on the relevant date entitled to acquire the right to manage the Property.

BACKGROUND

4. The Property comprises two flats. Both are let under long residential leases the terms of which are immaterial for the purpose of this decision. Ms N McLeod is the lessee of the first floor flat and Mr J Lipman is the lessee of the ground floor flat. The Respondent owns the freehold reversionary title.
5. Ground Rent Managers Limited act on behalf of the Respondent in collecting ground rents and insurance premiums whilst Pier Management Limited act as a managing agent and collect the service charges. Until the end of 2006 the Respondent and Ground Rent Managers Limited shared a common office at 16/18 Warrior Square, Southend on Sea, Essex SS1 2WS. However on 2 January 2007 Ground Rent Managers Ltd moved to

Cottis House, Locks Hill, Rochford, Essex SS4 1BB. Pier Management Limited operates from premises at Phoenix House, Christopher Martin Road, Basildon Essex SS14 3EF.

6. Ms McLeod and Mr Lipman were dissatisfied with the management of the Property and in particular by the service charges demanded on behalf of the Respondent. They therefore decided to exercise the no fault right to manage conferred on long residential leaseholders by Chapter 1 of Part 2 of the Act. To that end they instructed Canonbury Management, a Division of Investment Technology Ltd, to represent them. That company offers a specialist service to long residential leaseholders seeking to exercise the no fault right to manage conferred by the Act and has completed in excess of 1,000 such claims.
7. The Applicant was incorporated under the Companies Act 1985 on 2 January 2007 with company number 06039407. On that day Canonbury Management sent to both the Respondent and Pier Management Limited a notice claiming to acquire the right to manage on 8 May 2007. Paragraph 5 informed the recipients that any counter notice must be given by not later than 4 February 2007.
8. On 1 February 2006 the Respondent's solicitors send a counter notice denying the Applicant's entitlement to acquire the right to manage the Property.

ISSUES IN DISPUTE

9. The Respondent withdrew its suggestion that the claim notice incorrectly described the Property. The remaining four grounds relied on by the Respondent are summarised in the following paragraphs.
10. The Respondent contended that the claim notice was invalid because the date specified for the service of the counter notice (that is 4 February 2007) did not comply with section 80(6) of the Act which provides:-

“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”.

The relevant date is defined in section 79(1) as *“the date on which the notice of the claim is given”*.

11. Mr Andresen on behalf of the Respondent said *“given”* equated to service and thus the claim notice was only given when received by the Respondent. For the reasons discussed below the Respondent asserted that the claim notice had not been received until 11 February 2007 and thus the date specified in the claim notice, for giving the counter notice, did not comply with section 80(6).
12. The second ground advanced by the Respondent was that on 2 January 2007, when the claim notice was sent, Ms McLeod was not a member of the Applicant and thus she should have been given a participation notice pursuant to section 78(1) of the Act: it was accepted that no such notice had been given to her.
13. The third ground relied on by the Respondent requires consideration of the Regulations. Paragraph 2 provides that the memorandum and articles of association of an RTM Company *“shall take the form, and include the provisions, set out”* in the schedule to the Regulations. Mr Andresen said that the Applicant’s articles of association was deficient in two respects:-
 - a. The model articles of association in paragraph 1 provide that *“the Company means [name] RTM Company Ltd”*. This Mr Andresen said required the articles of association to recite the full name of the company whereas the Applicant’s articles simply read *“the Company means the above named Company”*. For the sake of completeness it should be said that the heading to the articles of

association records the name of the Company as “2 Cann Hall Road RTM Company Limited”.

- b. In similar vein paragraph 1 of the model articles also provides that “*the Premises means [name and address]*”. This Mr Andresen said required the Company’s articles to recite the full postal address of the Property whereas the Applicant’s articles simply read “*the Premises means the Premises specified in clause 3 of the Company’s memorandum of Association*”. Again for the sake of completeness it should be said that the full address of the Property is set out in Clause 3 of the Applicant’s memorandum of association.
14. Finally the Respondent contended that the claim notice was invalid because of two inaccuracies, the first of which he conceded could on its own be cured by sub section 81(1) of the Act which provides that “*a claim notice is not invalidated by any inaccuracy in any of the particulars required by virtue of section 80*”.
15. Section 80(5) of the Act provides that the claim notice “*must state the name and registered office of the RTM Company*”. In the claim notice the Applicant was simply described as 2 Cann Hall Road Company Ltd. Thus Mr Andresen argued that by omitting the letters “RTM” the claim notice failed to state the name of the Applicant.
16. The second inaccuracy was said to be the listing of Ms McLeod as a member of the company which was said to be “*clearly inaccurate and misleading*”.
17. Ms McLeod and Mr Lipman did not agree with any of these grounds but to the extent that we found in the Respondent’s favour they relied on sub section 81(1) of the Act.

REASONS FOR OUR FINDING THAT THE CLAIM NOTICE WAS GIVEN TO THE RESPONDENT ON 4 JANUARY 2007

18. We rejected Ms McLeod's argument that the claim notice was "given" on the date that it was posted to the Respondent: that is 2 January 2007. We agreed with Mr Andresen that "given", within the context of the Act, equated to service. Indeed any other interpretation would lead to a plethora of litigation and could cause substantial injustice to landlords (in respect of claim notices) and tenants (in respect of counter-notices).
19. Accordingly the issue turned on the date upon which the claim notice was either received or deemed to have been received by the Respondent. If after 4 February 2007 the Applicant accepted that it was invalid. Mr Andresen relied upon the evidence of Mr William Plumridge, an asset manager for Ground Rent Managers Ltd. At first reading his witness statement appeared compelling. He exhibited a copy of the claim notice which was clearly date stamped "11 January 2007" and he wrote that the date stamp was impressed by the Respondent and was "an accurate record of the date this document was received by the Respondent".
20. Mr Plumridge was a person of obvious integrity and we had no doubt that his witness statement had been made in good faith. However, at the hearing and in answer to our specific questions, he explained that the Respondent sorted all incoming post allocating it to relevant internal departments, Pear Management Limited and Ground Rent Managers Limited. As from 2 January 2007 someone from his company attended the Respondent's offices on a daily basis to collect the post allocated to Ground Rent Managers Ltd. That post was then taken to the office of the Ground Rent Managers Ltd where the date stamp was applied. He accepted, in answer to our question, that incoming post received by the Respondent was occasionally allocated to the wrong department or company resulting in a delay before it was received by Ground Rent Managers Limited.

21. Mr Plumridge's evidence simply confirmed the date upon which the claim notice was received by the Ground Rent Managers Ltd and it was of no assistance in establishing the date upon which it was received by the Respondent. There was no evidence before us which established the date upon which the claim notice was received by the Respondent. In such circumstances we considered that that we should have regard section 7 of the Interpretation Act 1978 which creates a statutory presumption that the claim notice would have been delivered "*in the ordinary course of post*".

22. Mr Andresen pointed out that the statement provided by Mr R McElroy of Canonbury Management, which did not include a statement of truth, was silent as to whether the claim notice had been sent by first or second class post. However we saw no reason to doubt McLeod's unchallenged evidence that Mr McElroy had confirmed to her that the claim notice had been sent by first class post. In such circumstances we concluded that the claim notice would have been delivered and received by the Respondent on the second day after it was posted; that is 4 February 2007. Such an approach was consistent with the deemed service provisions of the Civil Procedure Rules.

REASONS FOR OUR DECISION THAT MS MCLEOD WAS A MEMBER OF THE APPLICANT WHEN THE CLAIM NOTICE WAS SENT ON 2 JANUARY 2007

23. Mr Andresen relied upon two facts. Firstly that the Applicant was formed with only one member: Mr Lipman. Secondly that Canonbury Management had failed to provide a copy of the Applicant's Register of Members despite this having been requested by Mr Andresen on at least two occasions.

24. It was apparent from the documents included in the Applicant's bundle and Ms McLeod's evidence that the exercise of the right to manage had always been a joint enterprise between her and Mr Lipman. Indeed she had, on 15 November 2006, provided by email all the necessary information

required by Canonbury Management for setting up an RTM company. We saw no reason to doubt the contents of Mr McElroy's statement that it was his company's usual practice to form all RTM companies with a single member. Furthermore he confirmed, in two subsequent e-mails, that immediately following incorporation Ms McLeod had been added to the register of members. Mr Andresen agreed that he was requesting us to draw an adverse inference from Mr McElroy's failure to provide a copy of the Register of Members. Given the weight of the evidence before us we show no reason to draw such an inference.

25. Mr Andresen also relied on an LVT decision in *Trinity Court RTM Company Limited v Metropolitan Properties Co (FCG) Limited* (LON/00AG/LEE/2006/0002) in which a differently constituted tribunal (but with a common member) concluded that all the qualifying tenants were not on the relevant date members of the RTM company. Although that decision deserves respect it turned upon completely different facts and it is in any event well settled that we should not have regard to other tribunal decisions. In that case there were 51 qualifying tenants and the applicant relied on a database of participants that was maintained not by those responsible for forming and running the RTM company but by a firm of managing agents.

26. In any event section 78(1), relied on by Mr Andresen, provides that a participation notice must be given to each person *"who at the time when the notice is given -*

- a. is the qualifying tenant of flat contained in the premises, but*
- b. neither is nor has agreed to become a member of the RTM Company".*

27. It was beyond doubt that Ms McLeod had from at least 15 November 2006 *"agreed to become a member of the RTM Company"*. Consequently there was in any event no obligation to give a participation notice to her.

28. Consequently and for each and all of the above reasons we concluded both that Ms McLeod was a member of the Applicant on 2 January 2007 and that in any event the Applicant was under no obligation to give her a participation notice.

REASONS FOR OUR FINDING THAT THE MEMORANDUM AND THE ARTICLES ASSOCIATION COMPLIED WITH THE REGULATIONS

29. We agreed with Mr Andresen's opening comment that the intention of the legislation was to provide tenants with an "easy, cheap and accessible" means of acquiring the no fault right to manage their properties. In the context of that remark we were surprised that the Respondent should take these pedantic points. We doubted that Parliament had intended that landlords and their professional advisers should trawl through the constitutional documents of the RTM company to identify minor errors or mistakes that could not conceivably prejudice either the landlord or anyone else. We equally doubted the Parliament had intended that the participating tenants, through the RTM company, should have to pay for the cost of such an exercise.

30. In any event we did not agree with Mr Andresen that the constitutional document failed to comply with the regulations. Applying a degree of common sense to the interpretation to those documents it was reasonable to incorporate into the relevant provisions of paragraph 1 of the articles the words identified and found elsewhere. Applying such an interpretation the relevant provisions of paragraph 1 read "*the Company means 2 Cann Hall RTM Company Limited*" and "*the Premises means 2 Cann Hall Road, Leytonstone, London E11 38Z*". Consequently the regulations had been complied with.

**REASONS FOR OUR DECISION THAT THE OMISSION OF THE LETTERS
"RTM" WAS AN "INACCURACY" WITHIN THE MEANING OF SECTION
81(1) OF THE ACT.**

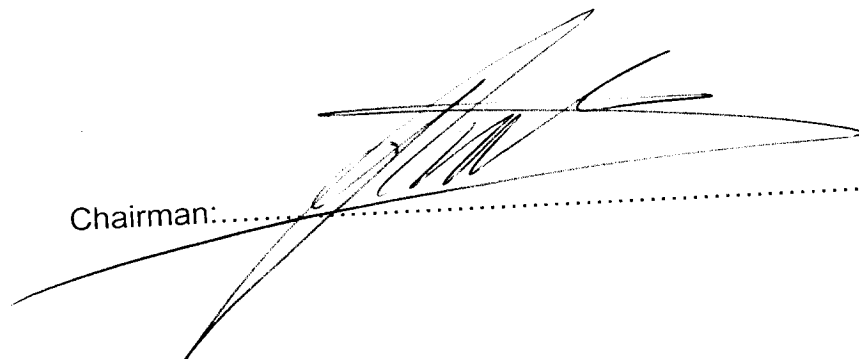
31. We had some difficulty in understanding Mr Andresen's argument that the omission of the letters "RTM" did not amount to an "inaccuracy" within the meaning of section 81(1). Indeed in his skeleton argument he wrote that the Applicant's failure to state its own name correctly "*is self explanatory as a failure by A to produce proper **Particulars***": emphasis added. We understood him to suggest that the cumulative effect of a number of alleged mistakes including the inaccuracies, referred to above, deprived the Applicants of the benefit of section 81(1). Although we rather doubted that proposition it was unnecessary for us to consider it because we concluded that there had in fact been only one mistake or inaccuracy.

32. The second inaccuracy referred to in paragraph 16 above clearly fell away on our finding that Ms McLeod was in fact a member of the company.

Conclusion

33. Having found against the Respondent on all the grounds upon which it objected to the Applicant's claim we concluded that, at the relevant date, the Applicant was entitled to require right to manage the property.

Chairman:.....



.....(A J Andrew)