**UPPER TRIBUNAL (LANDS CHAMBER)**


**UT Neutral citation number: [2010] UKUT 393 (LC)**
**LT Case Number: LRX/147/2009**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – right to manage – claim notice – validity – contents of claim notice – whether date specified for response too early – held that it was – whether notice inavalid as consequence – held that it was – appeal allowed – Commonhold and Leasehold Reform Act 2002, ss 79, 80 and 81***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

**BETWEEN** **(1) ISRAEL MOSKOVITZ**
**(2) CHAVI MOSKOVITZ**
**(3) SOLOMON REICH**
**(The Trustees of Achiezer Arad)** **Appellants**

**and**

**75 WORPLE ROAD RTM COMPANY LIMITED** **Respondent**

**Re: 75 Worple Road,**
**London,**
**SW19 4LS**

**Before: The President**

**APPEAL DETERMINED ON WRITTEN REPRESENTATIONS**

Cases referred to in this decision:

*Keepers and Governors of John Lyon Grammar School v Secchi & another* [1999] 3 EGLR 49.
*Earl Cadogan v Morris* [1999] 1 EGLR 59

## DECISION

1. This is an appeal by Israel Moskovitz, Chavi Moskovitz and Solomon Reich, the trustees of a charity known as Achiezer Arad, who own the freehold interest in the property the subject of this appeal, 75 Worple Road, London SW19 4LS, which comprises 27 flats, most of which are let on long leases. The appeal is against the decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel (the LVT), determining that the respondent, 75 Worple Road RTM Company Limited, was on the relevant date entitled to acquire the right to manage the property under the provisions of the Commonhold and Leasehold Reform Act 2002. The point in issue is whether the notice of claim to acquire the right to manage served by the respondent under section 79 of the Act was a valid notice. The appellants claim that it was not valid because it specified a date for response that was less than the one month specified for this purpose by section 80(6).

2. The RTM company, the respondent to the appeal, gave the appellants notice of its claim to acquire the right to manage, and the appellants gave the company a counter-notice that raised a number of objections, including the matter now in issue, the alleged failure to specify in the notice of claim a date for response that was less than the one month specified. The company then applied to the LVT under section 84(3) for a determination that it was on the relevant date entitled to acquire the right to manage the premises. LVT's decision, determining that the company was so entitled, was dated 7 September 2009, and on 6 October 2009 it granted permission to appeal. The appellants filed notice of appeal in this Tribunal on 2 November 2009, and the respondent filed notice of intention to respond on 4 December 2009.

3. By letter dated 1 March 2010 the respondent's solicitors, Colemans-ctts, informed the appellants and the Tribunal that their client intended to withdraw its claim notice pursuant to section 86 of the Act, and it appears that the notice was in fact withdrawn on 7 March 2010. Withdrawal of the notice might appear to render the appeal academic and unnecessary, and indeed Colemans-ctts suggested that the Tribunal ought summarily to dismiss the appeal in view of the withdrawal. But the appellants pointed out that this could have the effect of depriving them of costs to which they would be entitled if the appeal were allowed. Under section 88(3) an RTM company is liable for any costs which the landlord incurs as party to proceedings before an LVT only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises. The effect of a successful appeal to this Tribunal would be that the Tribunal, exercising the power of the LVT (see section 175(4)), would dismiss the company's application. The appeal has therefore proceeded, but the company has chosen to take no part in the proceedings.

4. So far as is relevant, the Act provides:

> "79. Notice of claim to acquire right
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> (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a 'claim notice'); 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.

(6) The claim notice must be given to each person who on the relevant date is –

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c 31) (referred to in this Part as 'the 1987 Act') to act in relation to the premises, or any premises containing or contained in the premises.

80. Contents of claim notice

(1) The claim notice must comply with the following requirements.

(2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.

(3) It must state the full name of each person who is both –

(a) the qualifying tenant of a flat contained in the premises, and

(b) a member of the RTM company,

And the address of his flat

(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.

(5) It must state the name and registered office of the RTM company.

(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 premises.

(8) It must also contain such particulars (if any) as may be required to be contained in claim notices by regulations 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.

81. Claim notice: supplementary

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

5. The appellants' counter-notice, given on 9 July 2009, asserted that the respondent, was not, on the relevant date, entitled to acquire the right to manage the property. The reasons given were that section 80 had not been complied with in that it did not "specify the premises",

it did not "state the … registered office of the RTM company" and it did not "specify a date, 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." In its decision the LVT held that, on the facts, the provisions of sections 80(2) and 80(5) were complied with. That part of the decision is not challenged. The LVT also found that the claim notice satisfied the requirements of section 79(6). It is that conclusion, as I have said, which forms the subject of this appeal.

6. The facts relating to this issue are these. The document accompanying the respondent's application to the LVT included what purported to be a copy of the original notice. This stated that the date required to be specified by section 80(6) was 25 July 2009. On 17 August 2009 Y&Y Management Ltd, the appellants' agents, wrote to the LVT, pointing out that the date stated in the original notice had been 16 July 2009 and not 25 July 2009. On 21 August 2009 Colemans-ctts submitted a statement of case to the LVT, in which they accepted that an incorrect notice had been filed with the original application and that the date specified under section 80(6) had, in fact, been 16 July 2009. The difference between the two dates is significant. The appellants submit that the notice was defective because, they say, by specifying a deadline of 16 July 2009 they were not given at least one month to respond. That objection, of course, would not have been open to the appellants if the date specified had been 25 July 2009.

7. The case of the company on this issue was recorded by the LVT in its decision in the following terms:

> "10. In relation to the date specified in the notice for submission of the counter-notice, the applicant accepts that the date specified was 16 July 2009 and not 25 July 2009. The applicant's position is that the copy sent to the Tribunal contained a mistake but that the mistake was made in good faith with no intention to mislead the Tribunal. The Tribunal has seen a copy of a statutory declaration dated 21 August 2009 sworn by the trainee solicitor apparently responsible for the error. She states that she intended to specify the date of 25 July when serving the notice on the respondents but mistakenly in fact stipulated 16 July. She did not realise that she has done this and therefore when preparing the papers for the Tribunal she included the version of the notice specifying the date of 25 July, this being the date that she had believed (wrongly) was contained in the original notice.
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> 11. The applicant argues that although 16 July 2009 is the date specified in the notice this still does not fall foul of section 80(6) of CLARA as the requirement is for the date specified to be not earlier than one month after the 'relevant date' and the 'relevant date' was 16 June 2009 as this is the date on which the notice was 'given' (this being the word used in section 79(1) of CLARA).
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> 12. The applicant further argues that none of the objections raised by the respondents referred to in paragraph 6 above are sufficient to invalidate the notice, because of the provisions of section 81(1) of CLARA …
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> 15. Under section 81(1) of CLARA 'a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80'."

8. The LVT's conclusions on this issue were as follows:

> "20. … As this is a paper determination the Tribunal is forced to rely on the relatively brief written submissions made on behalf of the parties, but it appears to be common ground between the parties that the notice was dated and posted on 16 June 2009 and that the date specified for submission of the counter-notice was 16 July 2009.
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> 21. Section 80(6) of CLARA, in combination with 79(1), requires the date specified to be not earlier than one month after the date on which the notice was 'given'. The applicant argues (as the Tribunal understands it) that the date on which it was 'given' means the date on which it was put in the post. The respondents argue (again, as the Tribunal understands it) that it means the date of receipt.
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> 22. In the Tribunal's view, the word 'given' does not have an absolutely clear-cut meaning. There is much case law and statutory law on the meaning of 'service' and 'served' in the context of notices. The words 'received' and 'receipt' are also much clearer, in the Tribunal's view, because if one gives these words their ordinary meaning it would seem clear that received or receipt refer to the point at which an item comes into the recipient's possession. In the Tribunal's view, one could argue that 'given' refers to the point at which the giver of the notice has done all that he or she needs to do, for example by placing the notice in the post, or it could refer to the point of receipt or (conceivably) it could refer to the point at which it is reasonable to **deem** receipt. As, in the Tribunal's view, a plausible interpretation is that it means the date of posting and as there is no evidence that the respondents were actually prejudiced by not having a later date specified for the counter-notice the Tribunal is of the view that the applicant's notice is valid.
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> 23. The Tribunal notes the serious allegation made by the respondents in relation to the applicant having sent a copy of the notice to the Tribunal containing a different date for submission of the counter-notice. Without a hearing the Tribunal does not feel that it is able to judge with any confidence whether or not this was merely an honest mistake. On the one hand it is puzzling that there should be in existence two versions of what presumably is a 'word' document which are identical save for the date for submission of the counter-notice, but on the other hand it is hard to see what the applicant would have felt that it would have gained by such a strategy, given that the respondents were in possession of the original notice and were always in a position to contest this point."

9. The appellants point out that the date specified under section 80(6) must be "not earlier than one month after the relevant date". Section 79(1) provides that 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". The appellants submit that, in this context, the term "given" equates to service (whether deemed or actual) or receipt, and not posting. Any other interpretation, it suggests, would lead to a plethora of litigation. It would lead to a substantial injustice to landlords (in respect of claim notices) and tenants (in respect of counter-notices). In support of this submission the appellants rely on the judgment of the Court of Appeal in *Keepers and Governors of John Lyon Grammar School v Secchi & another* [1999] 3 EGLR 49.

10. The appellants further argue that the "relevant date" is either the date upon which the notice was received or served (19 June 2009) or deemed to have been received or served. As to the latter, section 7 of the Interpretation Act 1978 provides 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 a letter containing 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."

If, therefore, the relevant date is the date of deemed service, it would be 17 June 2009 (which was a Wednesday). In either event, the relevant date was later than 16 June 2009, and so the notice was defective for not complying with the mandatory requirements of section 80.

11. As to the respondent's argument, relying on section 81(1), that the error in the date was an "inaccuracy in … the particulars required by or by virtue of section 80", the appellants point out that, in dealing with similar saving provisions in the Leasehold Reform Act 1967 and the Leasehold Reform Housing and Urban Development Act 1993 the Courts have taken a restrictive approach to the meaning of "particulars" (as, for example, in *Earl Cadogan v Morris* [1999] 1 EGLR 59). In that case it was held that, as a matter of ordinary construction, "particulars" meant those matters expressly referred to as "particulars" by the relevant section or regulation.

12. Further, "inaccuracy" in section 81(1) should be given a narrow meaning and only covers matters such as obvious typing errors in the claim notice, where it would be facetious for the landlord to argue the notice was invalid as a result. To interpret section 81(1) otherwise would be at odds with the mandatory terms used in section 80. Section 81(1) was not intended to be used as a shield by RTM companies to provide wrong important and crucial information, whether knowingly or mistakenly, which they must provide under section 80. Section 80(6) specifically requires that the landlord be allowed one month from the date of receipt of the claim notice. For example, in *Secchi* it was held that a tenant's notice which specified an incorrect date for the giving of the counter-notice did cause the landlord prejudice, because he had not been given his statutory minimum two months period to serve a counter-notice.

13. The appellants summarise their case by saying that, in the absence of receipt of the same, a notice served by post cannot be "given" the same day, nor can the date of posting be the "the relevant date" for the purposes of section 80(6). A notice sent by post on 16 June 2009, giving a date of 16 July 2009, does not comply with section 80(6). This deficiency is sufficient to invalidate the notice and is not saved by section 81(1) as it is not an "inaccuracy in the particulars".

14. I accept these submissions. Under section 79(1) notice of the claim had to be "given" to the landlords ("by giving notice of the claim"). Section 111(1) provides that any notice under Chapter 1 of Part 2 of the Act "(b) may be sent by post". That was the method that the

company chose to adopt for the giving of notice. Section 7 of the Interpretation Act 1978 (see paragraph 10 above) provides that where an Act authorises a document to be served by post service is deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post; and this necessarily means that where the expression used is "give" (rather than "serve") notice is deemed to have been given at such time. Such, clearly, was the view of the Court of Appeal in *Secchi*. Under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 notice had to be "given" to the landlord, and the notices in question were sent by post on 11 February 1997. Aldous LJ said ([1999] 3 EGLR 49 at 50F):

> "They were sent by post to the landlord and therefore service was effected on 12 February 1997."

15. The claim notice in the present case thus was not given to the appellants until 17 June 2009, when it would have been received in the ordinary course of post. In specifying 16 July 2009 as the date for response it therefore did not comply with the requirements of section 80(6). Nor could it be saved from invalidity by section 81(1) on the basis that it was an "inaccuracy". In *Cadogan v Morris* the Court of Appeal had to consider provisions similar to those in section 80 (in section 42(3) of the 1993 Act) and section 81(1) (in paragraph 9(1) of Schedule 12 to the 1993 Act), and Stuart-Smith LJ, with whom Otton and Tuckey LJJ agreed, said ([1999] 1 EGLR 59 at 60F-G):

> "In my judgment, para 9(1) has no application to section 42(3)(c) or indeed any of the other requirements of section 42(3) other than those that are specifically called particulars, that is to say those in section 42(3)(b). This is so as a matter of ordinary construction, quite apart from the fact that, in my view, the expression 'inaccuracy' is hardly appropriate to be used in relation to what must be specified or stated in sub-paras (c) to (f) of section 42(3)."

Thus section 81(1) only applies to such particulars as may be required under subsections (4) and (8) of section 80, and it does not have application to any of the other subsections.

16. The result is that the appeal must be allowed. The claim notice was not a valid notice, and thus the company was not entitled at the relevant date to acquire the right to manage the premises. Its application for a determination to this effect is therefore dismissed.

Dated 27 October 2010

George Bartlett QC, President