

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2011] UKUT 379 (LC)  
UTLC Case Number: LRX/15/2011

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LANDLORD AND TENANT – right to manage – claim notice – validity – contents of claim notice – whether failure to provide correct address of RTM was an inaccuracy – held that it was not – whether particulars refers to subsections 80(4) and 80(8) or subsections 80(2) to 80(8) of the Commonhold and Leasehold Reform Act 2002 – sections 80 and 81 of the Commonhold and Leasehold Reform Act 2002*

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE  
LEASEHOLD VALUATION TRIBUNAL

BETWEEN

ASSETHOLD LIMITED

Appellant

and

15 YONGE PARK RTM COMPANY LIMITED

Respondent

Re: 15 YONGE PARK  
LONDON  
N4 3NU

Before: Her Honour Judge Walden-Smith

Decision on Written Representation

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The following cases are referred to in this decision:

*Moskovitz v 75 Worples Road RTM Company Ltd* [2010] UKUT 393 (LC)

*Cadogan v Morris* (1999) 31 HLR 732

*Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749

## DECISION

### Introduction

1. This is an appeal by way of review from the decision of the Leasehold Valuation Tribunal for the London Assessment Panel dated 5 November 2010 under section 84(3) of the Commonhold and Leasehold Reform Act 2002. Permission was granted by the President on 6 April 2011.

2. The Respondent company concedes that the address of the RTM company was wrongly stated. The address of the RTM company was stated on the claim form to be c/o Canonbury Management, One Carey Lane, London EC2V 8AE. In fact, the correct address was Blackwell House, Guildhall Yard, London as at the date of the claim. The registered office given was therefore incorrect.

3. By reason of the wrong address for the RTM being included on the claim form, that claim notice was, prima facie, invalidated by reason of a failure to comply with the provisions of section 80(5) of the Commonhold and Leasehold Reform Act 2002 (CALRA 2002) which provides that the claim notice "*must state the name and registered office of the RTM company,*" and the LVT was therefore wrong to conclude that the address on the claim notice was correct.

4. The Respondent further concedes that the LVT were wrong to conclude that as there was no evidence of prejudice suffered by the Appellant in connection with the inaccuracy of the address, this avoided any issue with respect to any inaccuracy in the address. There is no balance of prejudice test and, as is properly recognised by the Respondent, the reference to it by the LVT was misconceived.

5. The issue for determination is whether the notice complied with the statutory provisions in sections 80 and 81 of CALRA 2002 and whether the error in the address set out in the notice of claim was saved by virtue of the provisions of section 81(1). Permission to appeal the decision of the LVT was limited to the question whether the wrong address invalidated the notice.

### The Statutory Provisions

6. Section 80 of CALRA 2002 provides as follows:

- (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 other 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.”

7. 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”.

8. The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010/825, Regulation 4 provides at Reg 4(c) that “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.” Regulation 8 provides, at paragraph 9, that “this notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act. If you are of the opinion that any of the particulars contained in the claim notice are inaccurate you may notify the company of the particulars in question, indicating the respects in which you think that they are inaccurate.”

## The Argument

9. It is the contention of the Respondent that the President, in *Moskovitz v 75 Worple Road RTM Company Ltd* [2010] UKUT 393 (LC) erred in finding that there was a restrictive approach to be applied to the word “particulars” in section 81(1) of the CALRA 2002 so that an inaccuracy as to the date required to be stated by section 80(6) CALRA 2002 was not an inaccuracy that could be saved from invalidity by virtue of section 81(1). The President had relied upon the finding in *Cadogan v Morris* (1999) 31 HLR 732, a decision relating to the Leasehold Reform, Housing and Urban Development Act 1993. The Respondent says that such an interpretation is inconsistent with the wording of section 81(1) and the Regulations.

10. The Appellant relies upon *Moskovitz v 75 Worple Road RTM Company Ltd* as support for the proposition that “particulars” relates only to the particulars referred to in sub-section 80(4) and sub-section of CALRA 2002 where it expressly says “such particulars”.

## The Authorities

11. In *Cadogan v Morris* the Court of Appeal held that paragraph 9(1) of Schedule 12 to the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) only applied to section 42(3)(b) of the Act. Section 42(3) of the 1993 Act provides that in order to exercise the right to a 90-year extension of a long lease of flat, the tenant must serve a notice which must state the full name of the tenant and the address of the flat in respect of which he claims a new lease (section 42(3)(a)); contain a number of particulars (section 42(3)(b)) and specify the premium which the tenant proposes to pay in respect of the grant of a new lease (section 42(3)(c)). Paragraph 9(1) of Schedule 12 to the 1993 Act provides that “*The tenant’s notice shall not be invalidated by an inaccuracy in any of the particulars required by section 42(3) or by any misdescription of any of the property to which the claim extends.*”

12. Lord Justice Stuart-Smith held that paragraph 9(1) of Schedule 12 of the 1993 Act has no application to section 42(3)(c), namely the premium that the tenant proposes to pay, or any other requirement of section 42(3) other than those that are specifically called particulars, that is those in section 42(3)(b). “*That 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 subparagraph (c-f) of section 43(3).*”

13. In *Moskovitz v 75 Worple Road RTM Company Ltd*, the Appellants contended that the notice served under CALRA 2002 was not valid as the date specified for a response was less than the one month specified for this purpose by section 80(6). The LVT had determined, on the facts, that the provisions of section 80(2) and 80(5) had been complied with and that part of the LVT decision was not challenged. The

Respondents contended, amongst other things, that section 81(1) resulted in the notice not being invalidated.

14. In response to that contention, the Appellants argued that the error in the date was not a “particular” for the purpose of section 81(1) of CALRA 2002 relying on the decision of the Court of Appeal in *Cadogan v Morris* that “particulars” meant those matters expressly referred to as “particulars” by the relevant section. Further that “inaccuracy” in section 81(1) should be given a narrow meaning and only cover matters such as obvious typing errors in the claim notice. It was argued that to interpret section 81(1) otherwise would be at odds with the use of the mandatory term “must” in section 80.

15. The President accepted the Appellants contentions in *Moskovitz* and held that section 81(1) only applies to such particulars as may be required under subsection (4) and (8) of section 80 of CALRA 2002 and does not have any application to the other subsections. He further held that the notice given could not be saved on the basis that it was an inaccuracy.

16. The Respondent sets out in its representations that the President had not had argued before him the point that Regulation 4 of the Right to Manage Regulations provides that “particulars” refers to “particulars required by section 80(2) to (7) of the 2002 Act” and that regulation 8 “this notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act ...”. Both these regulations give strong support for the correct statutory interpretation of section 81 being that “the particulars” refers to sub-sections 80(2) to 80(8) inclusive and not merely subsections 80(4) and (8) where the phrases “such particulars” and “such other particulars” are used.

## **Conclusion**

17. In my judgment section 81(1) is capable of applying to any of the details, or particulars, required by any of the sub-sections 80(2) to (8) of the 2002 Act. Regulation 4(c) of the Right to Manage Regulations expressly provides that the claim notice must include a statement that the notice is not invalidated by any inaccuracy in any of the particulars (my emphasis) required by section 80(2) to (7). In my judgment, section 81(1) could save a claim notice from being invalid if there is an “inaccuracy” in any of the particulars set out in any of the subsections 80(2) to 80(8).

18. However, section 80 sets out mandatory requirements of what must be included in the claim form. A failure to provide those details would clearly prevent the claim form from being valid, otherwise there would be no purpose in the statute providing that those inclusion of those details is a mandatory requirement. If, for example, the claim form did not include the name and registered office of the RTM Company it would be invalid. All that section 81(1) does is save the claim notice from invalidity if there is an “inaccuracy” in those mandatory details. So, for example, if there was a spelling or typing error in the name or registered office of the RTM company then that would be, in

my judgment, an “inaccuracy” that section 81(1) would bite upon so that the claim notice would be saved from invalidity.

19. Providing the wrong name or the wrong registered office of the RTM company is not, in my judgment, an “inaccuracy”. It is a failure to provide the mandatory information required by section 80. As Stuart-Smith LJ said in *Cadogan v Morris*: “*the expression inaccuracy is hardly appropriate to be used in what must be specified or stated [in subparagraph (c-f) of section 43(3)]*”.

20. In my judgment, a failure to provide the information required in paragraphs 80(2) to 80(8) results in the claim notice being invalid. Section 81(1) cannot save it from invalidity. All that section 81(1) does is save from invalidity a claim notice that has an “inaccuracy” or “lack of exactness” in those particulars. This interpretation is consistent with the reasoning of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749.

21. In this matter, the failure of the claim notice to include the registered office of the RTM company cannot be saved by section 81(1). It is not an “inaccuracy” in a particular. By giving the wrong registered office, the information has not been provided and the notice is therefore invalid.

22. In those circumstances, therefore, this appeal is allowed . I determine that the respondent RTM company was not on the relevant date entitled to acquire the right to manage the premises.

Dated 27 September 2011

Her Honour Judge Karen Walden-Smith