**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2012] UKUT 262 (LC)**
**UTLC Case Number: LRX/180/2011**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – right to manage – claim notice – validity – references to 2003 rather than 2010 Regulations – whether "inaccuracies" – held that they were – signature – whether to be by member of officer of company – held that it need not be – other claimed defects in notice rejected Commonhold and Leasehold Reform Act 2002 ss 79, 80 and 81 – Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 regs 4 and 8.***

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

**BETWEEN** **ASSETHOLD LIMITED** **Appellant**

**and**

**14 STANSFIELD ROAD RTM COMPANY LIMITED** **Respondent**

**Re: 14 Stansfield Road**
**London SW9 9RZ**

**Determination on written representations**

The following cases are referred to in this decision:

*Assethold Ltd v 15 Yonge Park RTM Company Ltd* [2011] UKUT 379 (LC), LRX/15/2011
*Moskovitz v 75 Worple Road RTM Company Ltd* [2010] UKUT 393 (LC), LRX/147/2009
*Cadogan v Morris* [1999] 1 EGLR 59

## DECISION

### Introduction

1. The appellant in this case is the freehold owner of premises, 14 Stansfield Road, London SW9 9RZ, divided into flats. By notice dated 14 June 2011 the respondent, an RTM company, gave the appellant notice of its claim under section 79 of the Commonhold and Leasehold Reform Act 2002 to acquire the right to manage the premises. The appellant by its solicitors served a counter-notice dated 18 July 2011 under section 84(2) of the Act, making some six allegations as to why the company was not entitled to acquire the right to manage the premises; and the respondent then applied to the leasehold valuation tribunal under section 84(3) for a determination that it was so entitled. The LVT in its decision of 10 October 2011 determined that the company was entitled to acquire the premises, rejecting each of the appellant's contentions. The appellant now appeals with permission granted by the LVT. Both parties have made written representations.

2. The contentions, all of a technical nature, that the appellant now pursues through its solicitors, Conway & Co, are as follows:

(a) There was a failure to comply with section 80(8) and (9) of the Act because the claim notice was in the form prescribed by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003, which, at the time when the notice was served, had been replaced by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. I will refer this as the wrong form point.

(b) The notice failed to comply with section 80(8) and (9) because it was not signed by an authorised member or officer of the company as provided for in the form in the 2010 Regulations. (The signature point.)

(c) The company failed to show that it had complied with section 79(5), which requires that the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained. (The membership point.)

(d) The company failed to show that it had complied with section 79(8), which requires that a copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises. (The service of claim notice point.)

I will deal with each of these in turn.

### The wrong form point

3. Section 80 contains the following provisions:

"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 that 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."

4. Regulation 4 of the 2010 Regulations sets out, in accordance with section 80(8), the other particulars that a claim notice must contain. They include:

> "(e) the information provided in the notes to the form set out in Schedule 2 to these Regulations."

And regulation 8(2) provides, in accordance with section 80(9), that claim notices shall be in the form set out in Schedule 2. It should be noted that in regulation 4 in the 2003 Regulations was in all respects the same as regulation 4 in the 2010 Regulations, and the requirement in regulation 8(2) was the same. The only differences between the form in Schedule 2 to the 2010 Regulations and the form in Schedule 2 to the 2003 Regulations are that in paragraph 1 there is reference to the RTM company's registered number under the Companies Act 2006 (instead of the Companies Act 1985); in paragraph 5 the person to whom the notice is addressed is told that he may respond by serving a counter-notice in the form set out in Schedule 3 of the 2010 Regulations (instead of Schedule 3 to the 2003 Regulations); and Note 1 says that a claim notice is one in the form set out in Schedule 2 to the 2010 Regulations (instead of the 2003 Regulations). The only difference in Schedule 3 is that in Note 1, whereas the first sentence in the 2003 Regulations said, "The counter notice is to be given to the company that gave the claim notice (a notice in the form set out in Schedule 2 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 of a claim to exercise the right to manage specified premises)," in the 2010 Regulations the words in brackets are omitted.

5. There is thus no material difference between the provisions of the two sets of regulations so far as the particulars that they require are concerned or the terms of the forms that they prescribe. It was

this consideration led the LVT to reject the appellant's contention that use of the form in the 2003 Regulations rendered it invalid. It said:

> "26. Regulations issued in 2010 prescribe a new claim form. It is apparent – indeed acknowledged by the Applicant – that the Applicant has issued its claim on the form prescribed by the 2003 regulations. However the differences are minimal and the Tribunal determines that the oversight of the Applicant in using the earlier form is not significant and therefore does not invalidate the claim form."

6. The appellant contends that the LVT erred in law in reaching this conclusion. It says that the reference in the claim form to the 2003 Regulations was an error that could have prejudiced it because it could have induced it to serve a counter notice in the form prescribed by the 2003, rather than the 2010, Regulations. But, as I have noted, the only difference between the Schedule 3 forms is the omission of the words in brackets in Note 3, which are immaterial. The only way, therefore, in which a recipient of a claim notice might be prejudiced by the reference to the earlier Regulations would be if the inclusion in the counter notice of the words in brackets would invalidate the counter notice. This, however, adds nothing to the basic contention that the claim notice was in any event invalid because it referred to the 2003 rather than the 2010 Regulations.

7. The appellant places reliance on the decision of this Tribunal (HH Judge Walden-Smith) in *Assethold Ltd v 15 Yonge Park RTM Company Ltd* [2011] UKUT 379 (LC), LRX/15/2011. The issue in that case was whether, in view of the requirement in section 80(5) that the claim notice "must state the name and registered office of the RTM company", the fact that the claim notice gave an address for the company's registered office which was wrong ("c/o Canonbury Management, One Carey Lane, London EC2V 8AE", rather than "Blackwell House, Guildhall Yard, London") invalidated the notice. The company claimed that it did not do so. It relied on section 81(1) of the Act, which provides:

> "81(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80."

Judge Walden-Smith held that this did not help the company. She said:

> "17…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 section 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…"

8. In its representations in that case the respondent RTM company had drawn attention to regulation 4 of the 2010 Regulations, which provides:

"Additional content of claim notice

4. A claim notice shall contain, in addition to the particulars required by section 80(2) to (7) (contents of the claim notice) of the 2002 Act–

…

(c) a statement that the notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to 80(7) of the 2002 Act or this regulation…"

That provision was significant because of a decision of mine in *Moskovitz v 75 Worple Road RTM Company Ltd* [2010] UKUT 393 (LC), LRX/147/2009, in which the provision had not been referred to and which, in terms of its reasoning, was inconsistent with it.

9. *Moskovitz* was an unopposed appeal determined on the basis of written representations. It concerned the requirement in section 80(6) that the claim notice "must specify a date, not earlier than one month after the relevant date, by which each person who was given a notice under section 79(4) may respond to it be giving a counter-notice under section 84". The relevant date is defined in section 79(1) as the date on which notice of the claim is given. The claim notice specified a date for the purpose of section 80(6) that was earlier (by no more than 3 days) than one month after the relevant date, and the freeholders served a counter-notice that asserted (inter alia) that, because of this, the claim notice was invalid. The RTM company sought to rely on section 81(1), arguing that the error in specifying a date that was too early was an "inaccuracy… in the particulars required by or by virtue of section 80".

10. I rejected the RTM company's argument, basing myself on the Court of Appeal decision in *Cadogan v Morris* [1999] 1 EGLR 59. That case concerned a notice of claim by a qualifying tenant to acquire a new lease under section 42 the Leasehold Reform, Housing and Urban Development Act 1993. Section 42(3) provides:

"(3) The tenant's notice must–

(a) state the full name of the tenant and the address of the flat in respect of which he claims a new lease under this Chapter;

(b) contain the following particulars, namely –

(i) sufficient particulars of that flat to identify the property to which the claim extends,

(ii) such particulars of the tenant's lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,…

(c) specify the premium which the tenant proposes to pay in respect of the grant of a new lease under this Chapter and, where any other amount will be payable by him in

accordance with any provision of Schedule 13, the amount which he proposes to pay in accordance with that provision;

(d) specify the term which the tenant proposes should be contained in any such lease;

(e) state the name of the person (if any) appointed by the tenant to act for him in connection with his claim, and an address in England and Wales at which notices may be given to any such person under this Chapter; and

(f) specify the date by which the landlord must respond to the notice by giving a counter-notice under section 45.

11. The tenant's notice was held to be invalid because it failed to comply with section 42(3)(c), since it specified a nominal figure rather than the amount that the tenant actually proposed to pay. The tenant had sought to rely on paragraph 9(1) of Schedule 12 to the 1993 Act, which provides that:

> "9(1) The tenant's notice shall not be invalidated by any inaccuracy in any of the particulars required by section 42(3) or by any misdescription of any property to which the claim extends"

The Court of Appeal did not accept that this provision saved the notice from invalidity. Stuart-Smith LJ, with whom Otton and Tuckey LJJ agreed, said this (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)."

12. In the light of this I reached the conclusion in *Moskovitz* that section 81(1) only applied to such particulars as might be required under subsections (4) and (8) of section 80. (In consequence the claim notice was not saved from invalidity since the failure to comply was in respect of the requirement imposed by subsection (6).) That conclusion was clearly inconsistent with the statement that regulation 4(c) of the 2010 Regulations requires each claim notice to contain. Although the Regulations could not confer on the statute a meaning that it would not otherwise bear and could not, in my view, legitimately be used as an aid to its construction, it is manifestly undesirable that section 81(1) should be construed in a way that is in conflict with what the Regulations require to be stated. They are clearly sufficient to prompt a reconsideration of my conclusion in *Moskovitz*.

13. Three points appear to me to be relevant in this context. Firstly, the approach adopted by the Court of Appeal in relation to paragraph 9(1) of Schedule 12 to the 1993 Act is obviously not binding in relation to section 81(1) of the 2002 Act. Secondly the two provisions, although very similar, are not in identical terms. And thirdly, and most importantly, there is section 80(8), which provides that the claim notice must "contain such other particulars (if any) as may be required" by regulations. If one asks, "Other than what?" the answer must, I think, be, "Other than those required by subsections (2) to (7)," rather than, "Other than those required by subsection (4)." That is the apparent implication of the words used in the context of the section as a whole. Moreover if the second of these alternatives had been what was intended one would have expected the content of subsection (8) to be included within subsection (4) or to be inserted immediately after it since subsection (8) makes provision for further particulars to be required by regulations. Section 42(3) by contrast contains no provision equivalent to section 81(8). My conclusion, therefore, is that the

statement that regulation 4(c) requires to be included in a claim notice does correctly state the effect of section 81(1).

14. *Moskovitz* was wrong, therefore, in approaching the meaning of section 81(1) on the same basis as the Court of Appeal had approached the meaning of section 42(3) in *Cadogan v Morris*. Under section 81(1) a distinction falls to be drawn between the failure to provide the required particulars and an inaccuracy in the statement of the particulars. A claim notice is saved from invalidity only in the case of the latter. That was the basis of Judge Walden-Smith's decision in *Assethold Ltd v 15 Yonge Park RTM*, and I respectfully agree with her approach. The application of it to the facts in *Moskovitz*, it should be noted, would produce the same result as the result that was in the event produced: the specification of a date that is earlier than one month after the relevant date is not an inaccuracy but is a failure to specify what section 80(6) requires to be specified.

15. In the present case the alleged invalidity arise from the fact that the claim form differed from the form in Schedule 2 to the 2010 Regulations. The differences were that it referred to the 2003 (rather than the 2010) Regulations and the Companies Act 1985 (rather than 2006). Since there was no material difference, however, between these sets of provisions the errors are properly in my judgment to be regarded as inaccuracies for the purpose of applying section 81(1). The appeal on this ground therefore fails.

**The signature point**

16. Regulation 8(2) of the 2010 Regulations, as I have noted, provides, in accordance with section 80(9), that claim notices shall be in the form set out in Schedule 2 to the Regulations. The form so set out ends with the following:

> "Signed by authority of the company,
>
> [Signature of authorised member or officer]
>
> [Insert date]".

17. What happened in the present case was that the claim notice was signed by a person who was authorised to do so by all three directors of the company but was not herself a member or an officer of the company. The appellant claims that this invalidates the notice. Unsurprisingly the LVT was not attracted by this contention and it rejected it, noting that the authority to sign was evidenced by emails produced by the RTM company from each of the directors to the signatory prior to the sending of the claim form.

18. The appellant's contention has force, it is clear, only if the words in square brackets "[Signature of authorised member or officer]" are to be treated as imposing a limitation on who may sign the form. The appellant says that they are to be so treated because that is what the notice "clearly provides". In my judgment, however, that is not correct. If the form had provided for the status of the signatory to be stated (for example "[Insert as appropriate 'member' or, if officer, position held]"), there would be obvious force in the contention. The fact that it does not do this, however, suggests that the words are not to be treated as imposing a limitation on who may sign. My

conclusion is that it is sufficient that the person signing "by authority of the company" does in fact have that authority. This second ground of appeal therefore fails.

**The membership point**

19. The third ground of appeal concerns section 79(5), which requires that the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained. The appellant's case before the LVT was that the claim notice had not been given by an RTM company that complied with this provision. It said that the RTM company's solicitor had provided a copy of the register of members of the company but that this was not a valid register of members and therefore compliance with section 79(5) had not been shown. The LVT said (at paragraph 31 of its decision) that Assethold did not specify the defect in the section 79(5) requirements that, it argued, invalidated the claim: the tribunal had considered the requirements and the claim notice, and it determined that the notice complied with the provision.

20. The appellant's case consists of a challenge to the validity of the register of members, which, it says, does not include the information required by section 113 of the Companies Act 2006. That required information includes "(a) the names and addresses of the members, (b) the date on which each person was registered as a member, and (c) the date at which any person ceased to be a member". Appended to its statement of case is a document headed "Register of Members", which, it says, was provided to it by the RTM company's solicitor under cover of a letter dated 16 June 2011. The document lists the names of three lessees, identifies the flat of each of them and notes that each is a director.

21. The appellant's case, therefore, has always been, not that the RTM company does not comply with section 79(5), but that the register of members that was supplied was not valid and therefore the company had failed to show that it did comply with this provision. However, despite the LVT having said that the appellant had failed to specify the defect that it said invalidated the claim, its statement of case still fails to do this. It does not even hint at any particular defect. The appeal must necessarily fail for this reason, since the LVT's decision has not been shown to be wrong. In any event a defect in the register would not be sufficient to show that section 79(5) was not complied with, and indeed it could be insufficient even to raise a doubt as to compliance.

**The service of claim notice point**

22. Under section 79(8) a copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises The appellant's case in the LVT was recorded in the decision as follows:

> "17. The "Respondent puts the Applicant to strict proof of its compliance with s 79(8) of the Act."

The LVT recorded the RTM company's response, which was that the claim notice had been served on all three RTM directors/members on 14 June 2011, as evidenced by an email, which it produced. The tribunal's conclusion (at paragraph 32) was that the proof of compliance provided by the RTM company was sufficient. The appellant now says that for the company to prove its case it needed to

show not just that the email had been sent but also that it had been received or come to the attention of each of the persons to whom it was sent; and there was no confirmation of receipt from two of the qualifying tenants. There is nothing to suggest that this was a contention that it advanced before the LVT or that it had been raised with the RTM company.

23. The appeal on this ground fails. The LVT was entitled to conclude on the material before it that the requisite notice had been given. The appellant's approach on this (as with the membership point) shows a misunderstanding of the process. It is not sufficient for a landlord who has served a counter-notice to say that it puts the RTM company to "strict proof" of compliance with a particular provision of the Act and then to sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to proof does not create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied.

24. The appeal is dismissed.

Dated 30 July 2012

George Bartlett QC, President