IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AL/LOA/2005/0002

BETWEEN:

32 SOUTHEND CRESCENT RTM COMPANY LIMITED

Applicant

-and-

VERGARA PROPERTIES LIMITED

Respondent

THE TRIBUNAL'S DECISION

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1. This is an application made by the Applicant company under s.84 (3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") to acquire the right to manage the property known as 32 Southend Crescent, Eltham, London, SE9 2SB ("the subject property"). The freeholder and Respondent to this application is Vergara Properties Ltd. The current managing agents are Goldspring Management ("Goldspring") who are authorised to act on behalf of the Respondent in this matter

2. A preliminary hearing took place on 18 March 2005. The purpose of the hearing was to determine whether the Tribunal had jurisdiction to entertain the application because Goldspring had failed to serve a counter notice in prescribed form pursuant to s.84(1) of the Act on behalf of the Respondent.

Under s.90(2) and (3)(a), the consequence of this is that the Respondent is deemed not to dispute the Applicant's entitlement to manage and the acquisition date is the date specified in the claim notice pursuant to s.80(7), namely, a date at least 3 months after the date by which the Respondent was required to serve a counter notice. In the event that the Applicant's claim is not disputed by the Respondent, the Tribunal has no jurisdiction to deal with the application.

3. At the hearing the Applicant was represented by Ms Walker and Mr Eades, who are the lessees of Flats 1 and 4 respectively in the subject property. The Respondent did not appear and was not represented. Prior to the hearing the Tribunal was informed of Goldspring's inability to attend the hearing. No reasons were given for this. In the absence of any such reasons and, the Tribunal having been satisfied that Goldspring had received sufficient notice of the hearing, it decided to proceed and hear the matter.

4. The Tribunal was told that there were 6 flats in the subject property, of which 5 of the tenants were lessees with long leases. They were Ms Walker, Miss Pamma, Ms Varney, Mr Eades and Ms Ciabatti ("the lessees") who occupy Flats 1, 2, 3, 4 and 6 respectively. The remaining tenant of Flat 5, a Mrs Glanville, has a regulated tenancy as she had resided there for approximately 40 years. Only Messrs Walker, Varney, Eades and Ciabatti are both qualifying tenants under the Act and members of the Applicant company.

5. The Tribunal explained to Ms Walker and Mr Eades that before it could determine the issue of jurisdiction, it had to be satisfied that a valid s.79 claim notice that met with the requirements of s.80 had in fact been served on the Respondent. If the claim notice was invalid, then there was no requirement on the Respondent to serve a counter notice because, as a matter of law, the Applicant could never acquire the right to manage until a valid notice had been properly served. Ms Walker informed the Tribunal that a copy of the claim notice had not in fact been retained by her and that a copy would have to be obtained from one of the other lessees. The Tribunal adjourned the hearing and directed that a copy of the claim notice be filed. When this had been done the Tribunal would determine the issue of jurisdiction on the papers before it. On 22 March 2005, a copy of the claim notice ("the claim notice") was filed in accordance with the direction given.

6. It is not challenged by the Respondent that the subject property are "premises" within the meaning of s.72 to which Chapter 1 of Part 2 of the Act applies. The Respondent also does not challenge that the lessees are all qualifying tenants with long leases within the meaning of ss. 75 and 76 of the Act. Under s.79(2), the Applicant is required to serve a notice of invitation to participate on any qualifying tenants to become members of the Applicant company at least 14 days before any notice of claim is served on the Respondent. The Applicant's claim notice states that the only qualifying tenant who is not a member of the Applicant company is Miss Pamma. Although the Tribunal heard no evidence as to whether any notice of invitation to participate was served on Miss Pamma by the Applicant, again, no challenge was made by

Goldspring on this basis. The inference to be drawn is that the relevant notice had been sent to Miss Pamma.

7. The claim notice relied upon by the Applicant and served on the Respondent is dated 23 July 2004. There are a number of difficulties with the notice. The Tribunal was not told when service of the notice had been effected on the Respondent. There is a letter dated 29 January 2005 from the lessees that appears to have been written to Goldspring, which makes reference to it receiving and signing a letter on 30 July 2004 when they exercised their right to manage. Curiously, the reply from Goldspring is dated 25 January 2005 and refers to *"your notice dated 30 July 2004"*. The inference to be drawn here is that Goldspring is referring to the date service was effected and not the actual date of the claim notice. On balance, the Tribunal is prepared to find that the correct date of the notice is 23 July 2004 and that service had been effected on 30 July 2004, which is the "relevant date" within the meaning of s.79(1). The Tribunal also finds that on the relevant date the membership of the Applicant company comprised four of the potential five qualifying tenants, which is more than one half of the total number of flats as required by s.79(5).

8. Turning to the contents of the claim notice itself, the Tribunal noted that it was addressed to Goldspring instead of the Respondent. S.79(6)(a) provides that:

> *" 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,"*

However s.79(6)(b) provides that service of the claim notice could also be effected on a:

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

In the view of the Tribunal s.79(6) offered a number of alternative parties upon whom service of a claim notice could be validly effected. The section is phrased in the alternative. Clearly, s.79(6)(b) is intended to allow service of a claim notice to be effected on a non-contractual party to a lease, for example, managing agents who act on behalf of landlords such as Goldspring. The Tribunal finds that even though the Applicant's claim notice was addressed to and served on Goldspring, it was not fatal to the validity of the notice as s.79(6)(b) allowed service to be validly effected in this way. In all other respects, the contents of the Applicant's claim notice appears to comply with the requirements of s.80 of the Act. The date stated for the service of a counter notice by Goldspring was 8 September 2004, which was not earlier than a month after service had been effected (s.80(6)). The date specified in the claim notice on which the Applicant intended to acquire the right to manage was 8 December 2004, and is 3 months after the date for the service of the counter notice (s.80(7)). The claim notice also contained the additional information required by Regulation 4 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 ("the Regulations"). The Tribunal, therefore, finds that Applicant's claim notice to be valid.

9. S.84(1) required Goldspring to serve a counter notice on or before 8 September 2004 either admitting or denying the Applicant's right to manage

the subject property. As already stated above, a failure to do so on or before the date specified in the claim notice would mean that the Respondent did not dispute the Applicant's entitlement to do so and the acquisition date was 8 December 2004. In it's letter to Ms Walker dated 25 January 2005, Goldspring challenged the validity of the Applicant's claim notice on the advice of it's legal department and it was for this reason a counter notice was not served. No explanation was given at this stage as to why it considered the notice invalid. There is no evidence before the Tribunal of Goldspring having responded to the claim notice before this date. In a subsequent undated letter received by the Tribunal dated 9 March 2005, Goldspring stated that the claim notice was invalid because it did not include the right to manage Flats 3 and 5 as those tenants had not joined in the application and the management of the property must include its totality. That approach is a misconception of the legal position. The Applicant's application is in relation to the right to manage the entire property and the Act grants this right as long as the statutory requirements set out above have been met. The Tribunal has already found in those terms for the Applicant. Even if the letter from Goldspring dated 25 January 2005 was regarded as a counter notice within the meaning of s.84(1), it was still served out of time. In any event, it was not in prescribed form nor did it contain the information required by Regulation 5 and Schedule 3 of the Regulations.

10. Accordingly, the Tribunal finds that it does not have jurisdiction to deal with the Applicant's application for the right to manage the subject property. As a result of Goldspring's failure to serve a counter notice to the Applicant's claim

notice on or before 8 September 2004, the Respondent was deemed not to dispute the Applicant's entitlement to manage the subject property. When there is no dispute about entitlement, the acquisition date is the date specified in the claim notice. The Applicant, therefore, acquired the right to manage the subject property on 8 December 2004.

CHAIRMAN..... J Norbury .....

DATE..... 14/4/05 .....