

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BK/LRM/2005/0010

IN THE MATTER OF 1 UPPER BROOK STREET, LONDON, W1K 6PA

BETWEEN:

UPPER BROOK STREET RTM COMPANY LIMITED

Applicant

-and-

MRS B C AYLWEN

Respondent

**THE TRIBUNAL'S DECISION
ON THE PRELIMINARY ISSUE**

Background

1. This is a paper determination of the preliminary issue raised by the Applicant's solicitors in their letter of application dated 13 September 2005, namely, that the counter notice served by the Respondent pursuant to s.84(2) of the Commonhold and Leasehold Reform Act 2002 ("the Act") was invalid ("the preliminary issue"). If the Applicant's assertion was correct then it would follow that the Tribunal would not have jurisdiction to hear the Applicant's Right to Manage application.
2. The factual background of this matter can be set out shortly. On 16 June 2005, the Applicant served a claim notice ("the claim notice") pursuant to s.79

of the Act, exercising the right to manage the subject property, on the Respondent and four other companies, all of whom had reversionary interests in the property. The Respondent is the immediate landlord of the qualifying tenants. By a letter from the Respondent's solicitors dated 18 July 2005, the Respondent purported to serve a counter notice ("the counter notice"). The counter notice denied the Applicant's entitlement to acquire the right to manage the property because it was not a self-contained building or part of a building with or without appurtenant property within the meaning of s.72(1)(a) of the Act. Of all of the parties with reversionary interests, only the Respondent served a counter notice.

3. In their letter of application to the Tribunal dated 13 September 2005, the Applicant's solicitors submitted that the Respondent's counter notice was invalid for two reasons. These were:
 - (a) that the counter notice was not in the form prescribed by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 ("the Regulations"). In particular, the counter notice failed to comply with Regulation 5 by not giving the requisite information to enable the Applicant to understand the allegation being made and the steps which should be taken.
 - (b) that the counter notice did not sufficiently particularise the objection being made.
4. At the pre-trial review hearing on 5 October 2005 it was directed that the validity of the Respondent's counter notice should be determined as a

preliminary issue as the Tribunal's jurisdiction to deal with the Applicant's Right to Manage application turned solely on this point.

Decision

5. The "paper hearing" took place on 3 November 2005. At the commencement of the hearing, the Tribunal was handed a faxed letter from the Respondent's solicitors dated 2 November 2005, which stated that the Respondent withdrew the counter notice and any objection to the Applicant's right to manage the property. It went on to say that the Respondent's understanding was that the right to manage took effect three months after the date of the letter and would only apply to 1 Brook Street as the claim was not being made in relation to any other property held by the Respondent.
6. By a faxed letter in reply dated 3 November 2005, the Applicant's solicitors nevertheless urged the Tribunal to make a ruling on the preliminary issue because if the counter notice was held to be invalid, the Applicant could immediately assume responsibility for the management of the property. Not to make a ruling would possibly result in a period of three months when there would be no effective management of the property. By a further faxed letter of the same date, the Respondent's solicitors stated that the only issue to be determined by the Tribunal was the date on which the Applicant acquired the right to manage the property. They contended that, having regard to s.90(5), the acquisition date was 2 February 2006 because the Respondent's agreement to the Applicant's right to manage under s.84(5)(b) was given on 2 November 2005.

7. On the basis of the written representations made by the parties, the only issue to be determined by the Tribunal was the relevant date on which the Applicant acquired the right to manage the property under s.90 of the Act. In the Tribunal's view, that determination could only be made by making a finding of fact about whether or not the letter from the Respondent's solicitors dated 18 July 2005 amounted to a counter notice within the meaning of s.84 of the Act. If it did not, then the acquisition date would be the date specified in the Applicant's claim notice (s.90(2)). If the counter notice was valid, then the acquisition date would be three months after the Respondent's agreement in writing was given (s.90(5)). However, it is implicit that any agreement subsequently given under s.84(5)(b) is preceded by the service of a valid counter notice within the meaning of s.84.
8. Section 84(2), *inter alia*, provides that the counter notice shall "*contain such other particulars (if any) as may be required to be contained in counter notices, and complying with such requirements (if any) about the form of counter notices, as may be prescribed by regulations...*". There is, therefore, a mandatory requirement that any valid counter notice served in accordance with s.84 **must** also comply with the Regulations in addition to meeting the other requirements of the section.
9. The relevant statutory provisions regarding the form and content of what amounts to a valid counter notice within the meaning of s.84 of the Act is contained in the Regulations. Specifically, Regulation 8(3) provides that "*counter notices shall be in the form set out in Schedule 3 of these*

Regulations". Again, this is a mandatory requirement and gives no discretion on the party serving a counter notice as to its form. For a counter notice to amount to a valid counter notice within the meaning of s.84, it must be in the prescribed form as set out in Schedule 3 of the Regulations. It is clear that the Respondent's solicitors letter of 18 July 2005 purportedly served as a counter notice was not in the form prescribed by Schedule 3, despite otherwise complying with the requirement of s.84(2)(b). For a counter notice to amount to a valid counter notice within the meaning of s.84(2), all of the elements of the section must be met and the Respondent's counter notice does not do so.

10. Accordingly, the Tribunal found that the counter notice relied on by the Respondent in this matter does not amount to a valid counter notice within the meaning of s.84 of the Act. Section 84(5)(b) cannot be relied upon by the Respondent because her subsequent agreement that the Applicant was entitled to acquire the right to manage was not preceded by a valid counter notice. It follows that the acquisition date of three months after any such agreement, as provided by s.90(5), has no effect. As the Tribunal has found the Respondent's purported counter notice to be invalid then it was deemed that no counter notice was served under s.84. In those circumstances, s.90(3)(a) provides that there was no dispute about the Applicant's entitlement to acquire the right to manage the property. Under s.90(2), the acquisition date of the Applicant's right to do so was the date specified in the claim notice, namely, 1 November 2005. The Applicant's entitlement to acquire the right to manage the property is, therefore, immediate. It follows that the Tribunal has no

CHAIRMAN.....*J. Mohan*

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