SOUTHERN LEASEHOLD VALUATION TRIBUNAL

In the matter of sections 71-113 of the Commonhold & Leasehold Reform Act 2002 and in the matter of "Woodbury" Castle Road, Horsell, Woking, Surrey.

Case number: CL/131/04/SY

BETWEEN:

Woodbury Management Company Limited

Applicant

and

Mr J. Hay-Arthur

Respondent

Determined, with the consent of the parties, upon consideration of written representations from or on behalf of both parties, and without an oral hearing, on 19th October 2004

Statement of the tribunal's decision

Date of Issue: 19th October 2004

Tribunal:

Mr R P Long LL B

Decision

1. For the reasons set out below I have concluded that the notice of claim purported to be given by Woodbury Management Company Limited on 30th May 2004 was not effectively given, and that that company is not consequently entitled to assume management of "Woodbury" in accordance with the claim it contains.

Reasons

2. The parties have consented to this matter being determined without an oral hearing in accordance paragraph 13 of the Leasehold Valuation Tribunal (Procedure) England) Regulations 2003 (No.2099 of 2003) ("the Regulations"). I am a member of the Southern Rent Assessment Panel, which is one of the Panels provided for in Schedule 10 of the Rent Act 1977, and was appointed to that Panel by the Lord Chancellor. Accordingly I am entitled to exercise the functions of the Leasehold Valuation Tribunal in this matter by virtue of the provisions of paragraph 13(5) of the Regulations.

3. On 30th May 2004 Woodbury Management Company Limited ("the Applicant") sent a Claim Notice bearing that date asserting its right to manage "Woodbury" to John Hay Arthur, the landlord of "Woodbury" ("the Landlord). The notice was sent to 2 Trafalgar Crescent, Bridlington Yorkshire YO15 3NR. It was sent (according to page 3 of the letter from Miss Skuse to the tribunal dated 27th September 2004) by first class post.

4. The notice was in the form envisaged by section 80 of the Commonhold & Leasehold Reform Act 2002 ("the Act"), and set out the Applicant's claim to manage "Woodbury" with effect from 6th October 2004. The notice required that any counter notice under section 84 of the Act be given by 6th July 2004, and stated that the Applicant intended to acquire the right to manage the premises on 6th October 2004.

5. On 5th July 2004 the Landlord's solicitors sent counter notice on his behalf to the Applicant stating that by reason of section 111 and section 80 of the Act the Applicant was not on 30th May 2004 entitled to acquire the right to manage "Woodbury". An application was made to the tribunal pursuant to section 84(3) of the Act to determine the resultant dispute on 12th June 2004. It has been followed by extensive written representations received from both parties up to the beginning of this month.

6. There is no suggestion in the papers before me that the Claim notice given by the Applicant is in any way defective, neither has it been suggested for the purposes of the present case that the Applicant would not be entitled to assume the management of "Woodbury" if it followed the correct formalities. The Landlord's case in essence is that the claim notice was not properly "served" upon him and so is of no effect. The Applicant's case, again reduced to its essentials, is that the matter plainly came to the Landlord's attention because he was to able arrange for the giving of a counter notice by the date mentioned for that purpose in the Claim Notice, and that even if that were not so the

Landlord was clearly not prejudiced because he was able to give a counter notice in time.

7. A statement dated 13th August 2004 by Mr John Gray (who shows his address as "Galebaron Limited, PO Box 58, Bridlington, East Yorkshire, YO15 3YW" rather than giving his residential address) shows that Mr Gray has been a close personal friend of the Landlord since 1952, and that the Landlord is permanently resident in the United States of America. It makes four factual points that do not appear to have been disputed:

   a. that the above mentioned address of Galebaron Limited is shown on all demands for ground rent or service charge sent to lessees at "Woodbury" as the landlord's address for service of notices pursuant to sections 47 and 48 of the Landlord & Tenant Act 1987.
   b. that he, Mr Gray, collects the mail from the mail box at that address each day.
   c. that the address at 2 Trafalgar Crescent Bridlington was an address at which the Landlord stayed temporarily on a visit to this country at the end of March and beginning of April 2004, and
   d. that the Claim Notice was forwarded unopened to the Landlord in the United States and that on 30th June 2004 the Landlord told Mr Gray that he had just received a Claim Notice by surface mail to the United States (the communication containing it having been forwarded to him unopened from 2 Trafalgar Crescent).

   Mr Gray does not indicate who then instructed the solicitors to prepare and serve the counter notice.

8. It is the Landlord's case that the Claim Notice was not properly "served". The Act specifies that such a notice should be "given". I was referred to no authority on the point although the Applicant suggested that "given" implied a lesser obligation. It appears to me that the point is resolved by the decision in Re 88 Berkley Road [1971] CH 648, where it was held, albeit in connection with a notice of severance under section 36(2) of the Landlord & Tenant Act 1925 ("the 1925 Act")), that there is no distinction between the two expressions. It followed in that case, as I consider it must by analogy follow in this, that the provisions of section 196 of the 1925 Act (which relate to the service of notices, and are relevant here by virtue of the provisions of section 196(5)) applied to a notice that was "given".

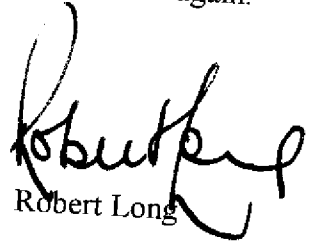
9. There is no question but that if the Claim Notice had been sent to the address of Galebaron Limited referred to above it would have been properly served. It is not contested that that is the address for service, given in accordance with the statutory requirements, shown in the demands to which Mr Gray refers. The Landlord has nominated it, and would have to accept any delay that occurred as a result of his choice. A notice given to him there would have been deemed to be sufficiently served by the joint operation of section 196(5) of the 1925 Act and section 48 of the 1987 Act.

10. The Applicant suggests that the address is a smokescreen and that a postal box number is not a proper address, that it is not the Landlord's residential address and is in fact the address of the managing agent. The fact is that it is the address that the landlord nominated for specific statutory purposes, including service of notices, and that the Applicant knew (or, rather, Miss Skuse as its representative knew) that it had done so. It is a valid postal address, and there is nothing in the legislation that suggests that the address mentioned in section 48 of the 1987 Act has to be anything more.

11. Instead, the Applicant chose to give its Claim Notice at the address in Trafalgar Crescent. The representations before me show that this was an address that the landlord had given earlier in 2004 in connection with a case that he was then pursuing against Miss Skuse in the County Court. I accept that this was the last residential address of the Landlord in the United Kingdom known to Miss Skuse. Mr Gray says that the Landlord stayed there earlier in 2004. Section 49 of the 1987 Act allows service at such an address, in addition to the address provided under section 47 or section 48, pursuant to section 196(4) of the 1925 Act. However, that section of the 1925 Act, as amended by the Recorded Delivery Service Act 1962, requires that such a notice shall be sent to the last known address by recorded delivery. As I have mentioned in paragraph 3 above, this letter was sent by first class post.

12. I am therefore driven to the conclusion that, although this appears on the face of it to have been a perfectly valid claim notice in its form, it was not effectively given for rather technical reasons. In short they are that it was not sent to the address statutorily notified for such purposes, and that although it was sent to the last known place of residence in the UK of the Landlord it did not comply with the requirements for giving it at that address.

13. With a little reluctance, therefore, I have accepted the Landlord's contention that a Claim Notice has not been validly given on this occasion. The element of reluctance arises from the fact that the notice plainly came to the Landlord's attention insufficient time for him to take steps to cause a counter notice to be given, but I have to accept that he might have been prejudiced in having insufficient time properly to consider the Claim Notice in ways that may have caused him to be able to identify other reasons for contesting it. I regret that, if the parties are so minded, they will simply have to start all over again.



Robert Long

A member of Southern Rent Assessment Panel appointed by the Lord Chancellor

19th October 2004