RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

COMMONHOLD & LEASEHOLD REFORM ACT 2002: SECTION 84(3)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/45UG/LRM/2004/0001
Property:	**Corner House** **Wood Ride** **Haywards Heath** **West Sussex** **RH16 4NJ**
Applicant:	Charton RTM Co Ltd
Respondent:	Longmint Ltd
Date of Application:	20 February 2004
Preliminary hearing:	13 May 2004
Members of the Tribunal:	Mr P B Langford MA LLB (Chairman) Mr J N Cleverton FRICS Ms J Dalal
Date decision issued:	9TH JUNE 2004

CORNER HOUSE, WOOD RIDE/SUNNYWOOD DRIVE, HAYWARDS HEATH

1. **The Application**

This is an application by Chartom RTM Co Ltd under Section 84(3), Commonhold and Leasehold Reform Act 2002 ("the Act") to determine whether on the relevant date that company was entitled to acquire the right to manage Corner House. The application dated 20 February 2004 was actually made to the Tribunal on 24 February 2004. The Respondents to the application are the Landlords of Corner House, Longmint Ltd.

2. **Background to the Application**

On or about 23 October 2003 the Applicants sent to the Respondents a claim notice, in which they asserted their right to manage Corner House with effect from 1 March 2004. This notice was sent to Hayward Fineman Lever the Landlord's Managing Agents, and on the same date a second claim notice was sent to Neil Graham Bellis, who was in fact (and remains) a director of Longmint Ltd. Both the notices were addressed to their respective recipients at "Phoenix House, 84-88 Church Road, London SE19 2EZ". By a counter notice dated 18 November 2003 and received by the Applicants on 19 November 2003, Haywards Fineman Lever Ltd under their new name of Haywards Property Services Ltd, challenged the Applicants' right to manage the Premises on the grounds that the Applicants had failed to comply with Section 79(6)(a) of the 2002 Act. Section 79(6)(a) requires the claim notice to be given to the Landlord of the Premises. The Applicants reacted to that notice by sending a further copy of the claim notice to Longmint Ltd c/o Phoenix House, 84-88 Church Road, London SE19 2EZ, which was received on or about 23 November 2003. The notice was identical to the claim notices sent earlier to Haywards Fineman Lever and Neil Graham Bellis except in one particular, namely that the right to manage was expressed to take effect from

15 March and not 1 March, 2004. On 11 February 2004 Juliet Bellis & Co, Solicitors acting for Longmint Ltd, wrote to the Applicants to point out that the notice served on Longmint Ltd was not, in their view, a claim notice as defined in the Act and that Longmint Ltd would strongly resist any action on the part of the Applicants to acquire the right to manage the property. In their letter, the Solicitors argued that the earlier claim notices sent to the managing agents and to Mr Bellis continued in force until, pursuant to Section 87(1)(a) of the 2002 Act, such notices ceased to have on effect on 18 January 2004. They then relied on Section 81(3) of the Act which provides as follows:-
"Where any premises have been specified in a claim notice, no subsequent claim notice which specifies (a) the premises, or (b) any premises containing or contained in the premises, may be given so long as the earlier claim notice continues in force". The Applicants reacted to that letter by making their application on 24 February 2004 to the Tribunal for a determination under Section 84(3) of the Act.

3. The Hearing

On 13 May 2004 a hearing took place at Haywards Heath Town Hall. The Applicants were represented by Mr Peter Ward, a member of the Applicant company and the leaseholder of 2 Corner House. The Respondents were represented by Mr Lee, Solicitor from Juliet Bellis & Co. Mr Lee's firm had previously filed with the Tribunal a lengthy (7 page) statement of case which was helpfully accompanied by all the relevant supporting documents. We invited him to go through that statement of case.

4. Mr Lee said that he accepted that the Applicants were a properly constituted RTM company as defined in the Act. He claimed that the first claim notice given to the Managing Agents was a valid claim notice since it had been given to agents acting on behalf of Longmint Ltd. Equally he claimed that the service at the same time of the claim notice on Mr Bellis was good service of that claim notice on Longmint Ltd and in this connection he relied on CPR 6.4 and the Practice Direction 6PD6. The former provided that a document was served personally on a company or other corporation by leaving it with a person holding a senior position with the company or corporation. The latter

provided that each of the following persons was a person holding a senior position – *"In respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation.."* Mr Lee accepted that his contentions reversed the arguments previously submitted on behalf of the Respondents to the effect that there had been no valid service of the claim notice on Longmint Ltd. He said that this was due to the fact that originally the Solicitors had thought there was no valid notice but then on further consideration had changed their minds.

5. Mr Lee then went on to refer to the counter notice given on behalf of Haywards Property Services Ltd (formerly Haywards Fineman Lever Ltd). This counter notice was sent on 23 November 2003 by 1st class post and therefore was served on the Applicants before the date stipulated in the claim notice i.e. 28 November 2003. That counter notice made it clear that the RTM company was not entitled to acquire the right to manage the Premises on the relevant date. He said that, although the grounds for disputing the right to manage were incorrect, that in itself did not mean that the counter notice could not qualify as a counter notice. Mr Lee then said that an application by a RTM company under Section 84(3) of the Act for a determination regarding its entitlement to manage the Premises had to be submitted, under Section 84(4) "not later than the end of the period of 2 months beginning with the day on which the counter notice (or, where more than one, the last of the counter notices) was given. The counter notice was dated 18 November 2003 and therefore in Mr Lee's submission the Applicants should have made their application to the Tribunal by 18 January 2004. Therefore the application made by the Applicants dated 20 February 2004 and received by the Tribunal on 24 February 2004 was too late. The result was that the Tribunal had no jurisdiction to decide the issue.

5. The original claim notices served on the Managing Agents and on Mr Bellis in November 2003 remained in force until 18 January 2004 and under the terms of Section 81(3) and (4), a subsequent claim notice could not be served so long as the earlier claim notices continued in force. Therefore the purported service of the notice on Longmint Ltd or or about 21 November 2003 was

invalid. In this context Mr Lee said that the Applicants' contention that the third claim notice received on or about 21 November 2003 was simply a copy of the other claim notices was not correct, because it specified a different date when the management would be acquired i.e. 15 March 2004 rather than 1 March 2004.

6. Mr Ward replied shortly to Mr Lee's submissions. He relied on the written submissions already put forward on behalf of the Applicants. There was effectively only one claim notice, copies of which had been served on three different parties. Any other interpretation would render the Act unworkable. The original counter notice was no longer relevant because the claim notice had now been served on the Landlord. It was not the counter notice but the Landlord's Solicitor's letter of 11 February 2004 which had prompted the application to the Tribunal.

7. **Consideration**

The first point we had to consider was whether, as the Respondents now claimed, the service of the claim notice had been validly effected on the Landlord by virtue of the claim notices which were sent by post on or about 23 October 2003 to Neil Graham Bellis, a director of Longmint Ltd, and to Hayward Fineman Lever who were (albeit under a fresh name) Longmint Ltd's Managing Agents. In the case of Mr Bellis, the Respondents relied on the civil procedure rules and the Practice Direction referred to above (6PD.6). However rule 6.4 and the Practice Direction were concerned with effecting personal service on a registered company. In the present case it was accepted that the service had been by post. Furthermore, it was clear that the notice given to Mr Bellis was given in his own name. It was not given to "Longmint Ltd c/o Neil Graham Bellis". In other words it did not even purport to be a notice to Longmint Ltd. In our view the claim notice had not been served on Longmint Ltd. Secondly, it was noted that, when acknowledging the claim notice in the counter notice, Juliet Bellis & Co had been careful to state that they acted for "Haywards Property Services Ltd" and that their grounds for disputing the claim notice were that the landlord itself, Longmint Ltd, had not

been served with the claim notice. Mr Lee confirmed to us expressly that, although the counter notice did not in terms say that Longmint Ltd had not been served, that was what Juliet Bellis & Co had in mind and indeed Section 79(6)(a) specified exclusively "the landlord". It was clear therefore that the Managing Agent's Solicitors were distancing themselves from the Landlords and were certainly not accepting service on their behalf. We concluded therefore that in October 2003 the claim notice had not been validly served on Longmint Ltd.

8. The next event, in chronological order, which we had to consider, was the giving of the counter notice on 18 November 2003 by Juliet Bellis & Co expressly on behalf of the Managing Agents, Haywards Property Services Ltd. Section 84(1) of the Act of 2002 provides as follows:-

"A person who is given a claim notice by a RTM company under Section 79(6) may give a notice (referred to in this Chapter as a 'counter notice') to the company no later than the date specified in the claim notice under Section 80(6)".

Haywards Property Services Ltd, albeit under its former name of Haywards Fineman Lever, had indeed been given a notice but was it a notice under Section 79(6)? Section 79(6) provides as follows:-

"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,

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

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c.31) (referred to in this part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises".

Haywards Property Services Ltd were not the landlord under a lease of the whole or any part of the premises. They were not, as Mr Lee had conceded, a "party to such a lease otherwise than as landlord or tenant". They certainly had not been appointed as a manager under Part 2 of the Landlord and Tenant Act 1987. In other words they were not a person entitled to receive a notice under Section 79(6) and the giving of a notice to them was entirely otiose. The RTM company, by serving a notice on a person, when it was not required by the Act, could not confer any status on that person. The Managing Agents

had no standing in the matter and they could not give in their own right a valid counter notice. Moreover they were precluded from claiming that they were giving the counter notice on behalf of the landlord by their express assertion in the purported counter notice that the landlord had not been given the claim notice.

9. The next development was the receipt on or about 21 November 2003 by the Respondents of a claim notice. Mr Lee had argued that the Applicants were prevented from serving a valid claim notice on Longmint Ltd in November 2003 by virtue of the fact that there was another claim notice in force (Section 81 of the Act). We accepted Mr Lee's submission that the claim notice given in November 2003 was not simply a copy of the two earlier notices but was in substance different from those notices i.e., the date upon which the right to manage would become effective was 15 March 2004 and not, as stated in the earlier notices, 1 March 2004. Nevertheless in our view the operation of Section 81 did not preclude the service of the notice on Longmint Ltd in November 2003 because at that time there was not in being any effective claim notice within the scope of Section 79 of the Act i.e., there was no notice which had been served on one of the parties specified in Section 79(6) of the Act. The position was therefore no different from a claim notice having been drafted by the RTM company, remaining undelivered to any relevant party. Therefore in our view the giving of the notice to Longmint Ltd in November 2003 was valid.

10. It was common ground between the parties that no counter notice had been given to the Applicants in respect of the claim notice served on Longmint Ltd in November 2003.

11. If we are wrong in our view that the claim notice was not served, as the Respondents claim, in October 2003 by virtue of its service on a Director and the Managing Agents of the landlord company, then in fact the result would still be the same. If, as the Respondents claim, the notices were validly served in October 2003, there was still no valid counter notice given by the Respondents. It was quite impossible for the Respondents to contend that the

notice given by their Managing Agents was given on their behalf when in fact, in express terms, the Managing Agents were saying that they were giving the notice in their own right and on the specific ground that their principals, the Landlords, had not been given notice. Section 90 of the Act of 2002 provides as follows:-

(i) *This section makes provision about the date which is the acquisition date where a RTM Company acquires the right to manage any premises.*

(ii) *Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under Section 80(7).*

(iii) *For the purposes of this chapter there is no dispute about entitlement if –*

(a) *no counter notice is given under Section 84, or*

(b) *the counter notice given under that section.....contains a statement such as is mentioned in sub-section(2)(a) of that section.*

In the Tribunal's view, therefore, the RTM company acquired the right to manage the premises on 15 March 2004, since there was no counter notice served in respect of the claim notice served on Longmint in November 2003. In the alternative, if the Landlords were correct in asserting that the claim notice was validly given to the Respondents by virtue of either of the notices served in October 2003, then the so called counter notice given on behalf of the Managing Agents was not a valid counter notice. Therefore there was no dispute about entitlement and the acquisition of the right to manage would occur on the date specified in the claim notice i.e. 1st March 2004.

12. However, the Respondents after their detailed analysis of the legal position, had presented a further argument, namely that the application to this Tribunal was out of time and therefore the Tribunal had no jurisdiction to consider the matter. Section 84(3) of the Act of 2002 provides as follows:-

"Where the RTM company has been given one or more counter notices containing a statement such as is mentioned in sub section (2)(b), the company

may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises".

A statement under Section 84(2)(b) is one "alleging that, by reason of a specified provision of this chapter, the RTM company was on that date not so entitled". The purpose therefore of Section 84(3) is clearly to enable the RTM company to obtain an authoritative ruling from the Tribunal where there is a dispute as to entitlement. If there is no dispute, then the right to acquire the right to manage occurs automatically under the provisions of Section 90 of the Act and there is no reason for an application to be made to the Tribunal.

In deference to the very detailed argument presented by the Respondents, we have considered each of their contentions and expressed our views. However the narrow point that we now have to consider is simply whether the application made under Section 84(3) was made, in accordance with the provisions of Section 84(4) – "not later than the end of the period of 2 months beginning with the day on which the counter notice..... was given". In our view no valid counter notice was given in this case.. Therefore the Applicants are prevented by the terms of Section 84(3) from making an application to the Tribunal for a determination. However, the Applicants had no need to make an application because, in accordance with Section 90 of the Act, there was no dispute as to the Applicants' entitlement to manage on the date specified in the valid Claim Notice. If the Landlords were correct in asserting that a valid counter notice was given on 18 November 2003, then the Applicants' right to apply to the Tribunal would cease on 18 January 2004. Thus the application made to the Tribunal on 24 February 2004 was indeed too late. Whichever way the matter is looked at therefore, the Applicants were not entitled to make an application under Section 24(3) of the Act and it follows that the Tribunal cannot give an authoritative determination on the issue of entitlement because it has no jurisdiction to consider it and the application will have to be dismissed.

13. **Decision**

For the reasons given, the Tribunal hereby dismisses the application.

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P B LANGFORD (Chairman)