FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/OOBE/LSC/2018/0364**
Property	**:**	**Flat A, 43-45 Grosvenor Terrace, London SE5 0NN ("The Flat")**
Applicant	**:**	**Bodel Investments Limited ("Bodel")**
Representative	**:**	**In person**
Respondent:	**:**	**The London Borough of Southwark ("Southwark")**
Representative	**:**	**In House Legal Representative**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge Angus Andrew** **Mr Michael Taylor FRICS**
Date and venue of hearing	**:**	**9 January 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**8 April 2019**

DECISION

Decision

1. Southwark may recover only £250 from Bodel in respect of the window renewal works completed in 2016.

The application, procedural issues and hearing

2. On 3 October 2018 the tribunal received Bodel's application for a determination of its liability to pay a service charge in respect of two major works' projects. The first project related to roof repairs and the work was completed in 2009/2010. Southwark demanded a service charge of £3,299.23 in respect of the cost of the work. The second project was for the replacement of the windows and the project was completed in 2016/2017. Southwark demanded a service charge of £1,714.88 in respect of the cost of the work. In its application Bodel identified only one issue in respect of both projects. It asserted that its liability for each project was limited to £250 because Southwark had failed to serve the statutory consultation notices even though it was aware of Bodel's address for service.

3. Judge Martynski issued directions on 5 October 2018. The directions confirmed that the only issue for determination was that identified above and the case was listed for a short oral hearing on 9 January 2019.

4. The directions required Southwark to deliver to Bodel by 9 November 2018 its statement of case with any witness evidence. Southwark was also required by the same date to make any application under section 20ZA of the 1985 Act for dispensation. The directions continued by requiring Bodel to deliver to Southwark by 30 November 2018 its statement in response together with any witness evidence.

5. Southwark served its statement of case and witness evidence on 8 November 2018. As an aside Southwark did not make a dispensation application. Bodel served its statement in response on 7 December 2018 so that it was 7 days late. The statement is brief and largely repeats the assertion that the consultation notices had not been served on it. The statement refers to a witness statement of Bamidele Akodu. However, the statement was not served on Southwark until 21 December 2018 and the important exhibit to the statement was not served until the following day.

6. For the first time Bodel raised an additional issue: it asserted that the window replacement works were improvements and that the cost could not be recovered under the terms of its lease. Southwark immediately requested a postponement of the hearing to enable it to deal with the improvement issue. On 3 January 2019 Judge Vance refused a postponement, pointing out that Bodel could seek permission at the start of the hearing on 9 January 2019 to rely upon the additional evidence. In doing so Judge Vance commented that we might decide to exclude the additional evidence on the basis that it had not been provided within the time allowed.

7. At the hearing on 9 January 2019 Bodel were represented by both Bamidele Akodu and her husband Bode Akodu, who are both directors of the company. Mrs Akodu also gave evidence on behalf of Bodel. Southwark was represented by Abdah Khan who is an Enforcement Officer. Ms Lilly Cosgrave is an Enforcement Administration Manager and she gave oral evidence on Southwark's behalf.

8. At the start of the hearing Ms Khan applied to strike out the whole of Bodel's case. We pointed out there that were no grounds striking out Bodel's original case of which Southwark had been aware from the outset. The issue was whether we should allow Bodel to expand its case to include the improvement issue.

9. We explained to Mr & Mrs Akodu that if we permitted Bodel to expand its case to include the improvement issue we would inevitably postpone the hearing to enable Southwark to fully respond to it. That was because the only person capable of responding to the issue was on holiday. We also pointed out that if we postponed the hearing Bodel might be at risk of a rule 13 cost application.

10. We granted a short adjournment to enable Mr and Mrs Akodu to consider their position. On their return they said that they had decided to abandon the improvement issue and that they would proceed with their original case.

11. In its statement of case Southwark conceded that *"the section 20 Consultation requirements were not properly fulfilled"* in respect of the 2009/10 roof repairs and that "*it would only seek to recover £250 of the amount invoiced"*. Consequently, the only costs before us were those incurred in the window replacement project completed in 2016/17.

12. The flat is the only property owned by Bodel and it is an investment property. Mr & Mrs Akodu live at 15 Langford Green, Champion Hill, Camberwell, London SE5 8BX. It is Bodel's correspondence address and both Ms Khan and Ms Cosgrave accepted that it has been registered as such with Southwark so that ground rent and service charge demands are sent to that address.

13. Southwark's case was that the consultation notices were sent to both the flat and the correspondence address. Ms Akodu asserted that the notices had not been sent to either address. Given Ms Cosgrave's evidence (to which we shall shortly refer) Mrs Akodu submitted that sending the notices to the flat alone was not good service because Southwark had been given notice of Bodel's correspondence address.

14. Perhaps inadvisably we drew Ms Khan's attention to Akorita 36 Gensing Road Ltd LRX/16/2008 and indicated that it supported Ms Akodu's submission and the hearing proceeded on the assumption that it was correct. After the hearing we read the Akorita decision in full. In doing so we noted that HH Judge Huskinson said that leaving the notice at the flat itself would be good service if that was a permissible means of service under the terms of the lease itself. In this case the lease incorporates section 196 of the Law of Property Act 1925. Section 196 (3) provides: *"Any notice……shall be sufficiently served if it …….. in case of a notice required or authorised to be served on a lessee or mortgagee, is affixed or left for him on the land or any house or building in the lease or mortgage…"*.

15. Consequently, we gave both parties the opportunity to make further submissions and they have done so although Southwark do not appear to have fully understood the point in issue. We have taken those submissions into account in reaching our decision.

Issues

16. The issues may be encapsulated in the following questions: -

    a. Were the notices sent to Bodel at its correspondence address?
    b. Were the notices served in accordance with section 196 (3) of the Law of Property Act 1925?

Reasons for our decision

Were the notices sent to Bodel at its correspondence address?

17. For each of the following reasons we find as a fact that the notices were not sent to Bodel at its correspondence address: -

    a. We accept Mrs Akodu's evidence that the notices were not received at the correspondence address. That evidence is substantiated by her subsequent correspondence from which it is apparent that she knew nothing about the work until she received a demand for payment on 29 September 2017; and

    b. Southwark accept that it did not send the 2009/10 consultation notices to Bodel's correspondence address: in common parlance it has form for this omission; and

    c. At Mrs Akodu's request a copy of the intention notice was sent to her on 2 November 2017. The notice was addressed to the flat and not to Bodel's correspondence address. Mrs Akodu took the point explicitly. Although Southwark maintained that a copy was sent to the flat it did not provide a copy with the correspondence address until it lodged its statement of case. The copy eventually provided with the statement of case was in a different font and omitted some words that are included in the copy notice sent to Mrs Akodu on 2 November 2017. Ms Cosgrave's explanation that these inconsistencies must have resulted from the printing process does not strike us as credible; and

    d. In answer to Mrs Akodu's enquires Southwark relied in part on a Quality Control Sheet. Rather than support Southwark's case it wholly undermines it. Against the action *"Correspondence address been checked"* are the initials *"N/A"* in contrast to *"LC"* for Lilly Cosgrave, which indicate that other actions have been done; and

e. Not surprisingly Ms Cosgrave's recollection of events was not entirely clear. As she said at the hearing she could not remember *"100%"* sending the notices to the correspondence address because *"it has been a while"*. In this context we do not criticize Ms Cosgrave: she presented as an honest witness doing her best to assist us.

Were the notices served in accordance with section 196 (3) of the Law of Property Act 1925?

18. 43-45 Grosvenor Terrace consist of 4 flats. It has a common front door with a communal hall. Although not tested under cross-examination we have no reason to doubt Mrs Akodu's submission that the flat itself does not have its own letter box and that all letters to flats in the building are delivered through the letterbox on the front door.

19. Ms Cosgrave's evidence was that "*The notices were placed in envelopes and hand delivered to both flats A and D, 43-45 Grosvenor Terrace, London SE5 0NN personally by me on 1 February 2016"*. In support of that evidence she produced a *"Statement of Delivery"*. The statement however commences *"I confirm that the Notices of Intention were posted for;"*

20. The statement of delivery does not confirm hand delivery to the flat. We are also conscious of Ms Cosgrave's evidence that she could not remember *"100%"*. That is not surprising given the number of notices for which she must be responsible and the passage of nearly two years since these notices were delivered.

21. We consider it more likely than not that and we find as a fact that the notices were hand delivered by placing them through the front door of 43-45 Grosvenor Terrace.

22. Is that sufficient for the purposes of section 196 (3)? The section refers to *"the land or any house or building"*. It does not contemplate a flat. That is not surprising because in 1925 there were very few long leasehold flats. It is however clear that the section envisages that where the notice relates to a leasehold property it must be *"affixed or left"* at or on the property comprised in the lease. That interpretation is logical because there is a high degree of risk that a notice left in a communal area or otherwise outside the demise will not come to the attention of the intended recipient. We therefore consider that good service under section 196 (3) requires the notice to be *"affixed or left"* on or at the flat: as this was not done it was not served in accordance with section and by extension the lease provisions.

Conclusion

23. For each and all of the above reasons we find that the consultation notices were not served on Bodel and that Southwark can recover no more than £250 from the applicant in respect of the window renewal works completed in 2016.

Name: Angus Andrew **Date: 8 April 2019**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).