

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPLICATION

BT/65/1991

BETWEEN

RIVERSIDE SNOOKER CLUB LIMITED - APPLICANT

AND

SAMUEL LAMONT (HOLDINGS) LIMITED - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

**Ballymena - 25th September 1991 and
Belfast - 5th November 1991**

This application under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") was made by the Applicant/Tenant on 15th May 1991. It was for a new tenancy of a snooker club premises at the Riverside Factory, Riverside, Antrim, County Antrim.

From the outset, Mr Mark Orr of Counsel (for the Applicant) and Miss Heather Gibson of Counsel (for the Respondent) requested the Tribunal to deal with a preliminary matter. That concerned the valid or invalid service of the Landlord's Notice to Determine Business Tenancy under Section 4 of the 1964 Act. Neither party called any evidence at this hearing but the Tribunal finds the following facts proved or admitted:-

1. The current tenancy was dated 1st August 1989 for a term of two years from 1st September 1989 subject to the payment of £11,000 per annum.

2. The Section 4 Landlord's Notice to Determine Business Tenancy was dated 26th February 1991 and gave notice terminating the tenancy on 31st August 1991. That Notice opposed an application to the Lands Tribunal for the grant of a new tenancy on the ground that:- "on the termination of the current tenancy the Landlord intends that the holding will be occupied for a reasonable period for the purposes, or partly for the purposes, of a business to be carried on by the Landlord or by a Company in which the Landlord has a controlling interest".

A copy of that notice was sent to John Johnson and Sons (Solicitors) on 1st March 1991.

3. That Landlord's Notice was addressed:-

"To Riverside Snooker Club Limited of Permanent House, 3 Railway Street, Lisburn".

It was sent by recorded delivery and the Royal Mail Advice on Delivery card shows that it was delivered on 28th February 1991 and signed for by Elizabeth Graham. The Tribunal was not told who the lady is nor in which capacity she signed but the address was that of a firm of accountants known as W D Doloughan (incorporating) Stanley Woods and Company.

4. Stanley Woods and Company at one time were auditors to the Applicant. The Applicants registered office was at one time in Stanley Woods Company's offices.
5. In the lease dated 1st August 1989 the Applicant's registered office was stated as "Stanley Woods and Company, Permanent House, 3 Railway Street, Lisburn".
6. At the date of the lease the registered office of the Applicant had been changed. Notice of that change had been made on Companies Form No 295 (dated 9th May 1989) received in the Companies Registry of the Department of Economic Development on 15th May 1989 and registered on 23rd May 1989. The Draft Lease was nevertheless signed and sealed without any change indicating that the Registered Office was then No 32 Baronscourt Avenue, Carryduff, Belfast.
7. The registered office was changed a second time to Riverside, Antrim, County Antrim by a Companies Form No 295 on 8th January 1990 - received in the Companies Registry on 15th January 1990 and registered on 24th January 1990.

It was changed a third time to No 20 Upper Main Street, Larne. The Companies Form No 295 was dated 29th January 1991; received in the Companies Registry on 30th January 1991 and registered on 7th February 1991.

In each case of change in situation of a registered office the Companies Registry in accordance with the requirements of the Companies (Northern Ireland) Order 1986 must advertise that change.

8. The Applicant Company changed ownership sometime in 1989. That change took place by transfer of shares.

9. The Applicant's solicitor, when the lease of 1st August 1989 was signed, was John Johnson and Sons. The Applicant's Solicitor at the date of the application to the Lands Tribunal was Messrs Anderson, Agnew and Company. The Tribunal was not informed as to the date of that change of solicitor.
10. The Applicant changed its auditor sometime early in 1991 and Stanley Woods and Company were no longer the auditors for the Applicant.
11. When the Landlord's Notice to Determine Business Tenancy was received in the offices of Stanley Woods and Company, the letter was opened and on 1st March 1991 Stanley Woods and Company wrote to the Directors of the Riverside Snooker Club Limited at the Riverside Factory, Antrim as follows:- "We enclose correspondence and Notice to Determine Business Tenancy received by us today"; enclosing that Landlord's Notice received by them.

(The Tribunal notes that the Post Office Advice of Delivery indicates that the Recorded Delivery letter was delivered on 28th February 1991.)

Miss Heather Gibson of Counsel (for the Respondent) made her submissions in two ways, viz:-

- (a) The substantive submission was that the Landlord's Notice was validly served within the statutory time required.
- (b) If that substantive submission is not accepted by the Lands Tribunal then the Tribunal should exercise its discretion that the Applicant is estopped from taking the point that there was invalid service of the Landlord's Notice or that by its behaviour the Applicant has waived its right to take that point.

In reference to (a) above:-

- (i) It is conceded that the last day for service of the Landlord's Notice was 28th February 1991. The lease was being brought to an end on 31st August 1991 and any later date of service would not comply with the requirements of Section 4(2) of the 1964 Act (to be served "not more than twelve nor less than six months before the date of termination specified therein").
- (ii) When the Draft Lease was prepared the registered office of the Applicant was no longer No 3 Railway Street. Although John Johnson and Company were the then retained solicitors, of the Applicant, the change of address of the registered office

was not notified to the Respondent, nor was the old address altered on the Draft Lease prior to the signing by the Applicant.

- (iii) None of the three changings of address of the registered office was notified to the Respondent; although it is accepted that the Companies Registry was notified of each change.
- (iv) The requirement of Section 4(1) of the 1964 Act that the Landlord's Notice is to be served on the Applicant must be read in conjunction with Section 52 which requires the notice to be in writing and permits it to be served on any agent of that person. Miss Gibson submitted that the wording of Section 52 does not say that that agent must be duly authorised in writing.
- (v) Someone in Stanley Wood and Company offices opened the letter and sent the Landlord's Notice to Riverside Factory, Riverside, Antrim on 1st March 1991 - arrival at the Applicant's business must have been either 2nd March or 3rd March 1991. The last known address of the registered office was in Stanley Woods and Company offices and the notice was served there.

Referred to Stylo Shoes Limited v Price's Tailors Limited [1960] Chancery at pages 396, 397, 398 and 406.

- (vi) As far as the Respondent was concerned, Stanley Woods and Company had the authority to receive the Landlord's Notice and they did so. The Advice of Delivery card was signed when the Postman delivered the recorded delivery letter. Not only that, the letter was opened, the Notice was read and was sent the next day to the Applicant's premises.

The Respondent concedes that the delivery of the Landlord's Notice was out of date only if Stanley Woods and Company did not have the authority, but submits that Stanley Woods and Company were holding themselves out as having the authority to receive the Notice.

- (vii) In the absence of any communication from the Applicant the Landlord was entitled to assume that the occupiers of No 3 Railway Street had the actual and ostensible authority to receive properly, validly and effectively the service of documents on behalf of the Applicant/ Tenant.

In reference to (b) above:-

- (i) There was no communication whatsoever in both the Company Secretary's letter dated 8th March 1991 (stating the Tenant's unwillingness to give up possession), nor in the Application dated 15th May 1991 to the Lands Tribunal (applying for the grant of a new tenancy) that any matter was being raised regarding the validity of the Landlord's Notice. It was only on the morning of the first day of this hearing that the matter was raised.
- (ii) Refers to Woodfall Landlord and Tenant 28th Edition Volume 2 at paragraph 22-069 headed "Estoppel and Waiver" and at paragraph 22-068 headed "Services of notices and requests".
- (iii) The Applicant now may be estopped from making the point of invalidity or may have waived his right to take that point because the matter was not referred to prior to the first morning of this hearing. The Respondent/Landlord has been substantially prejudiced for the Applicant/Tenant has had since early March right through until the Application in May to the Lands Tribunal to raise the matter of the invalidity of the Notice.
- (iv) On the other hand the Applicant is in no way prejudiced
- (v) If the Applicant knew that Stanley Woods and Company could not accept service the Applicant made no attempt to take the point at an earlier stage.
- (vi) Submits that in those circumstances the Lands Tribunal should exercise its discretion to find that the Applicant has waived the right to raise the invalidity of the Notice or that the Applicant is estopped from taking the point.

Refers to Tennant v London County Council [1957] 121 JP 428.

Mr Mark Orr of Counsel (for the Applicant) submitted:-

1. There is no duty, either by statute law or case law, incumbent on a Company to notify a change of registered office address to a landlord or other individual.
2. The Company complied with all the statutory requirements of the Companies (Northern Ireland) Order 1986 necessary for a valid change of registered office address.

3. A transfer of shares in a Company is the normal (and advisable) means for a change of Company ownership.
4. The registered office address of a Company will be given by the Companies Registry on a telephone enquiry.
5. The Respondent/Landlord could have served his Notice earlier than he actually did. It could have been served at the holding at Riverside Factory in Antrim. Refers to a decision of the Northern Ireland Lands Tribunal - G/15 John E Richardson v Michael Toal.
6. Section 52 of the 1964 Act requires that if the Notice is served on an agent, that agent is duly authorised in writing in that behalf.

Stanley Woods and Company were not authorised in writing at that time; neither did they hold themselves out as agents. When the letter containing the Notice arrived they sent it by ordinary post to the Applicant's premises but by then it was already too late.

Submits the authority must have been ostensible and relied on before Stanley Woods and Company sent the letter to the Applicant's premises.

The onus is on the Respondent to show that the Notice was served in time. The Respondent did not call a representative of Stanley Woods and Company.

7. There is nothing to assist the Respondent to show that the Notice was validly served on Stanley Woods and Company, Accountants in Lisburn.

The requirements as to service must be complied with strictly as must be the statutory dates. A large number of accountants allow their address to be used as a Company registered office address.

8. The Applicant accepts the decision in Stylo Shoes Limited v Prices Tailors Limited [1960] Ch 396, for that refers to service on the person to whom notice should be given. The Applicant, who was that person in this case, did not receive that Notice until after the due statutory date. Service was not valid until the receipt of the Respondent's Notice from Stanley Woods and Company.
9. There is no evidence of any detriment to the Respondent which was encouraged by the Applicant; for all the Applicant did was to comply with the 1964 Act.

In Woodfall Landlord and Tenant Volume 2 paragraph 22-069 a distinction is made between patent and latent defects as to whether the defect may be considered to be waived. In the Respondent's Notice there is no patent defect (other than the wrong address for the registered office). All other matters are correct and the Applicant accepts that they are correct. The defect is a latent one ie the time of valid service.

The Company's registered office is a matter of record and there was no direct misrepresentation by the Applicant.

There is no detriment to the Respondent and it is difficult for the Respondent to raise the matter of waiver or estoppel where the defect in the Notice is latent and not patent. Stanley Woods and Company letter of 1st March 1991 to the Applicant must be accepted by the Lands Tribunal as carrying the correct date.

DECISION

Those parts of the 1964 Act relevant to this case are as follows:-

Section 4(1) - "Subject to section 9 the landlord may terminate a tenancy to which this Part applies by a notice to determine served on the tenant in the prescribed form specifying the date at which the tenancy is to come to an end (in this Part referred to as "the date of termination")."

It is common case that the Respondent's notice was in the prescribed form and was served on the tenant. It specified the date of determination as 31st August 1991. The only minor error was that the Applicant's registered office address was stated as "Permanent House, 3 Railway Street, Lisburn". The correct address for the Company's registered office was No 20 Upper Main Street, Larne, Co Antrim. The address of the premises occupied by the Applicant was correctly stated.

Section 4-(2) "A notice to determine shall not have effect unless it complies with the provisions of this section and, subject to subsection (3), is served not more than twelve nor less than six months before the date of termination specified therein."

Again, it is common case that as the date of termination was 31st August 1991 the last day for service under this sub-section was 28th February 1991.

The facts show that the letter containing the Notice was delivered to Stanley Woods and Company on 28th February 1991, posted to the Applicant at Riverside Factory (the holding)

by Stanley Woods and Company on 1st March 1991 and received by the Applicant on either 2nd March 1991 or 3rd March 1991.

Section 4-(5) "In the case of a tenancy, other than a tenancy referred to in subsection (3) or subsection (4), a notice to determine under this section shall not specify a date of termination earlier than the date on which, but for this Part, the tenancy would have come to an end by effluxion of time."

The term of the lease was two years from 1st September 1989. No matter was raised in terms of this sub-section.

Section 52 "Any notice, request or other instrument required or authorised by this Act to be served on or by any person shall be in writing and, without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954, the person on or by whom it is to be served shall include any agent of that person, duly authorised in writing in that behalf."

The Respondent stressed the permissive nature of the wording whereas the Applicant submits that, if a Notice is to be served on an agent of the Applicant, that agent must be duly authorised in writing to accept that service.

The Authority of Stylo Shoes Limited v Prices Tailors Limited [1960] Ch 396 is followed by this Tribunal.

In the headnote it was held:- "(2) That there had been a valid service of the notice under section 23(1) (of the Landlord and Tenant Act, 1927). The purpose of the section was to ensure that a notice was given and actually received, and its requirements were satisfied if a letter containing the notice was delivered to and in fact received by the person to whom the notice was given; in the case of a limited company "place of abode" meant "place of business"; so far as the second mode of service was concerned the act of sending a letter through the ordinary post was equivalent to "leaving it ... at his last known place of abode"; and that since the letter was in fact delivered and received, the landlord's failure to specify the correct address did not invalidate the service under the section.

Held, further, that section 23(1) was permissive as to the mode of service, and the modes set out therein were not exhaustive, and that, as the clear intention of the legislature that the notice should be received by the person intended to receive it had been achieved, it was immaterial that the letter had reached the tenants by way of their old address."

Applying the facts in this case, the letter containing the Respondent's Notice was dated 28th February 1991, was received at the Applicant's old registered address on 28th February

1991, was posted to the Applicant's place of business (the holding) on 1st March 1991 and was received there on the 2nd March 1991 or 3rd March 1991. In the words of the Stylo case it had then been "received by the person intended to receive it;" and "it was immaterial that the letter had reached the tenants by way of their old address".

Whether that date of service was 2nd March 1991 or 3rd March 1991 is not material for on either date the Notice was served less than six months before the date of termination of the tenancy specified therein ie it did not comply with the provisions of Section 4 of the 1964 Act and therefore is of no effect.

But of course that is not the end of the matter for the Respondent's Notice was received (and signed for by an employee) by Stanley Woods and Company, Accountants at an old registered office of the Applicant at Permanent House, 3 Railway Street, Lisburn. If Stanley Woods and Company were any "agent of that person, duly authorised in writing in that behalf", (Section 52 of the 1964 Act) then service of the Notice took place on the last possible day (viz 28th February 1991) in order to comply with the requirements of the 1964 Act. (The Tribunal notes that a copy of that Notice was sent to the Applicant's previous solicitors, John Johnson and Company, but the Tribunal was not told when that Notice arrived at those solicitors offices and nothing appears to turn on that matter.)

On the agreed facts Stanley Woods and Company never held themselves out as agents. They had been at one time the Applicant's auditors and the Applicant's registered office address was at one time at their offices. Much was made of the fact that in the Draft Lease sent to the Applicant for signature that was the stated registered office address even though by that time the registered office had been moved. None of those facts lead the Tribunal to hold that Stanley Woods and Company held themselves out as agents. Nor for that matter did any of those facts indicate that Stanley Woods and Company were, in the words of Section 52 of the 1964 Act, "any agent of that person, duly authorised in writing in that behalf". On the contrary, even the registered office had changed address for the third time on 29th January 1991 to No 20 Upper Main Street, Larne and was registered with the Companies Registry on 7th February 1991. The Companies Registry, in accordance with the requirements of the Companies (Northern Ireland) Order 1986 had advertised that registration of change of registered office. A simple telephone call to the Companies Registry could have enabled the Respondent to discover the correct registered office if they wished to make valid service on the Applicant at that office; but by far the simplest way was to make valid service at the Applicant's snooker club at Riverside Factory, Riverside, Antrim - the holding in this case and the subject matter of the Lease. They chose not to do either and therefore the Tribunal is satisfied that valid service only took place on 2nd March 1991 or 3rd March 1991 at the Applicant's snooker club, and as the Tribunal said earlier, that was too late to satisfy the requirements of Section 4(2) of the 1964 Act.

Finally comes the question of whether the Applicant is estopped from or had waived the right to take the point that the Notice was invalid.

The authority of Tennant v London County Council [1957] 121 JP428 decided that where a duly authorised officer of the London County Council had not himself signed a notice under the Landlord and Tenant Act 1954 but had instructed (either verbally or in writing) a member of his staff to sign it "per pro" on his behalf, that was a legal and proper method. Romer LJ at page 443 said :- "That being so, I agree that the notice in question was a perfectly valid notice, and it becomes unnecessary to decide the other question which was raised, the question as to whether the tenant waived any objection he might have had by issuing his summons. I would only desire to say that I agree with the judgment of the learned judge and the observations that my Lord has made on it, and I think that the principle enunciated by Henn Collins, J, in Davis (Spitalfields) Limited v Huntley [1947] 1 All ER 246; [1947] 2 All ER 371 n is applicable to the circumstances of this case, but I would add that it does not seem to me that it would be necessarily of universal application. I can imagine a case where a notice terminating a tenancy might be subject to a latent or concealed defect which did not come to light and was not apprehended by the tenant until after he had taken some step which might be construed as accepting the validity of the notice. In such a case I do not myself think that he would be subjected to the operation of the principle."

While that is obiter, with respect the Tribunal would adopt the Lord Justice's opinion. In the Respondent's Notice there was no patent defect and the Company's Secretary had written on the 8th March 1991 of the Applicant's unwillingness to give up possession - ie within five or six days of the service on the Applicant at the Snooker Club.

True, the matter was only raised on the morning of the first day of hearing, but when Miss Heather Gibson (Counsel for the Respondent) during that day's hearing stated she had been taken by surprise and had been unable to prepare full arguments in reply, the Lands Tribunal adjourned in order to give sufficient time for the Respondent's case to be properly prepared.

Nevertheless the Tribunal does not consider that the Respondent was prejudiced by the late apprehension by the Applicant of the latent defect ie that although there had been valid service on the Applicant it was out of time. In those circumstances the Tribunal does not accept that the Applicant's right to take this point was waived; neither is the Applicant estopped.

The Tribunal has found that the Respondent's Notice to Determine was not served on the Applicant within the very strict timetable laid down in Section 4(2) of the 1964 Act and consequently the "notice to determine shall not have effect ...".

The Tribunal makes no award as to costs.

ORDERS ACCORDINGLY

20th November 1991

**Mr A L Jacobson FRICS
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Mr Mark Orr of Counsel (instructed by Messrs Anderson, Agnew and Company, Solicitors) for the Applicant.

Miss Heather Gibson of Counsel (instructed by Messrs Samuel Cumming and Son, Solicitors) for the Respondent.