

IN THE COUNTY COURT AT CENTRAL LONDON

Claim No: D5PP0283

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 24th April 2019

Before:

HIS HONOUR JUDGE SAUNDERS

Between:



C Y PROPERTY MANAGEMENT LIMITED

Claimant

- and -

MS TAWAKALIYU ENITAN BABALOLA

Defendant

Mr Frimpong of Counsel (instructed by **Simon Noble Solicitors** for the **Claimant**
Mr Robert Brown of Counsel (instructed by **Messrs Duncan Lewis Solicitors**) for the
Defendant

Hearing dates: 24th January 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Saunders

HHJ SAUNDERS

1. On the 24 January 2019, I allowed the defendant's appeal against the order of Deputy District Judge Bennett dated 24th of August 2017 which was varied as follows: -
 - (i) paragraph 1 is set aside; [this was a paragraph whereby the defendant was ordered to give the claimant possession of Flat 6, 49 Boyne Avenue, London NW4 2JL on or before 14 September 2017}
 - (ii) paragraph 3 is varied such that "the defendant pays the claimant's costs of £325" is substituted for "cost reserved".
2. I gave further directions for the future disposal of this claim which now had to be re-determined included the filing of evidence. The matter now comes back before me - in relation to the substantive claim - on one discrete issue.
3. The discrete issue is if the claimant landlord has given proper notice under section 8 of the Housing Act 1988 by complying with Section 47 of the Landlord and Tenant Act 1987. If so, then they are entitled to an order for possession but, if not, the notice is defective and, despite having a substantial judgment for rent arrears, they will have to secure possession by other means (or further proceedings following service of a proper notice).
4. At the hearing before me, the claimant was represented by Mr Frimpong of Counsel and the defendant by Mr Brown of Counsel - who represented the defendant in the successful appeal. I heard witness evidence from Mr Charles Teff - who is a director of the claimant company. This is the only evidence upon behalf of the claimant and it is based upon five witness statements served in the proceedings. For my purposes, I need only have regard to the two most recent witness statements-which are dated 21 September 2018 and 30 January 2019 respectively.
5. The defendant gave very short evidence herself based on her own witness statement dated 7 February 2019. I also heard evidence from Mr Adrian Smith who is a solicitor acting for the defendant. His witness statement is dated 24 February 2019. There is no other evidence save for those matters which are contained within the hearing bundle to which I refer in due course.
6. It is common ground that a section 8 notice was served on the defendant on 19 May 2017. It is found at pages 8 to 9 of the bundle. In addition, the defendant continues to owe a substantial amount of rent which I am told exceeds £20,000.

7. Section 47 of the Landlord and Tenant Act 1987 provides as follows: -

“(1) where any written demand is given to a tenant of premises to which this part applies, the demand must contain the following information, namely-

- (a) the name and address of the landlord, and
- (b) if that address is not in England and Wales, address in England and Wales at which notices (including notices and proceedings) may be served on the landlord by the tenant;

(2) where-

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain the information required to be contained in it by virtue of subsection (1) then (subject to subsection (3)) any part of the amount demanded which consists of the service charge or an administration charge (“the relevant amount”) shall be treated for all purposes as not being due from tenant to landlord at any time before that information is furnished by the landlord by notice given to the tenant;

(3) the relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver and manager whose functions include the receiving of service charges from the tenant;

(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.”

8. It is also common ground given the wording of section 47 (4), that a notice under the Housing Act 1988, section 8 which relies on grounds of rent arrears is a demand for the purposes of section 47.

9. It was an issue in the appeal (and remains an issue) that the section 8 notice does not contain the address of the landlord. In the section 8 notice, it is described as:

“CY Property Management Ltd, 5 Eastville Avenue, London NW11 0HD.”

10. The claimant says this is its trading address. The defendant says that investigations reveal that the claimants registered address is 2nd Floor, Parkgates, Bury New Road, Prestwick, Manchester M25 0TL with an earlier registered

address (at the time of the section 8 notice) being at another address in Manchester.

11. The defendant also says that a search at H.M. Land Registry reveals that the property at 5 Eastville is not owned by the defendant or Mr Teff personally - but is in the joint ownership of two other people – Ms Janet Byrne and Mr Richard Lawrence. There is, therefore, little in the way of indication (if anything) that the premises at 5 Eastville Avenue are an address for the claimant company or that it does in any way trade from those premises.
12. The claimant relies entirely upon the evidence of Mr Teff. His witness statement dated 30 January 2019 says that 5 Eastville Avenue is the claimant's trading address, that it was the claimant's trading address prior to the commencement of the tenancy agreement under which these proceedings been pursued, and remain so to this date.
13. In support of this assertion, he exhibits two documents at his CYTB1. The first is a bank statement for the period 1 May 2016 to 31 May 2016 from Lloyds bank plc addressed to the claimants at 5 Eastville Avenue. Secondly, there is a letter from a local authority, Barnet, dated 24 August 2018 also addressed to the claimants at the same premises.
14. In addition to this, I had been shown a copy of an existing floor plan of 5 Eastville Avenue which I am told was submitted to London Borough of Barnet's planning department along with some photographs purporting to show a home/office used by Mr Teff at those premises. It must be said that these photographs could have been of any home/office anywhere but Mr Teff in his oral evidence confirmed that this was to be found at 5 Eastville Avenue.
15. Mr Teff says he is a tenant at the property – which explains why it is not held in his name. He lives there under an assured shorthold tenancy granted to him by Ms Byrne and Mr Lawrence – they are happy for him to operate his office from the premises in a converted garage.
16. In cross-examination, he was asked why there were no more documents in this case which has been ongoing for such period of time. His answer was that he thought the documents he had provided were sufficient to prove his company's case. In his view, they cover the period around which the section 8 notice had been issued and demonstrate that this was the claimants' trading address.
17. A particular line of questioning adopted by Mr Brown was by reference to a series of company searches made of Mr Teff which revealed his involvement in 14

different companies. Some of these -such as Prospect Road Ltd had registered details such that 5 Eastville Avenue as a correspondence address but others did not. CY Property Management Ltd had given a correspondence address at Park Gates (and not at 5 Eastville Avenue).

18. The defendant's evidence was quite short. Mr Smith gave evidence that he had waited outside the premises at five Eastville Avenue for a period of no more than five minutes - from 9:20 AM to 9:25 AM on 7 February 2019 and, in that time, he was able to form a view that there was no indication of the claimant carrying on business at those premises. He also exhibits the company searches that he discovered.
19. The defendant gave very brief evidence based upon her witness statement dated 7 February 2019. She was not cross-examined. Her evidence is simply that, in all her dealings with the claimant, she has not visited or been aware of the address at 5 Eastville Avenue.
20. There is very little case law which assist me about this case. The only decision referred to by the parties is an Upper Tribunal (Lands Chamber) decision of Mr George Bartlett QC. It is *Beitov Properties Limited v Martin* [2012] UKUT 133 (LCC).
21. In the decision in *Beitov*, and after setting out the provisions of section 47, at his paragraph 11, the judge states as follows: –
“11. The address of the landlord for the purpose of section 47(1) thus seems to me to be the place where the landlord is to be found in the case of an individual this would be his place of residence or the place which carries on business. In the case of a company it would be the company's registered office or the place from which it carries on business. If there is more than one place of residence or place from which businesses carried on, then, depending on the facts, it may be that any one of such addresses will do. I do not think that it is useful to say any more than this. Of course, in many cases providing the address of the company landlord may for purposes of identification add nothing of practical value and is unlikely to be of any interest to the tenant, who will be more concerned about having an address at or through which he can communicate with the landlord. (In the present case there is nothing to suggest that the tenant was concerned to establish the company's address). But there will be cases in which provision of an address does assist in the process of identification.”

22. In his submission, Mr Brown says that the evidence before me is insufficient (where the burden is on the claimant) to establish that the claimant company uses the premises at 5 Eastville Avenue as its address. It is not the claimant's registered office. He says that Mr Teff's evidence has evolved over time and so not particularly persuasive. Whilst he exhibits a small number of documents (three as exhibits and some photographs) to support his company's case, it is claimed that he could have done more. He asks the rhetorical question as to why the documentation is so limited when these proceedings have continued for such a considerable period – and presumably important to the claimant?
23. In his further submission, he asks me to find for the defendant upon the basis that there is little in the way of evidence (if anything) to show that 5 Eastville Avenue was the claimant's trading address at the time when the Section 8 Notice was served in May 2017. This, he says, is supported by Mr Smith's brief evidence, Ms Babalola's evidence that she was unaware of the address in her dealings with the claimant and that Mr Teff was perhaps surprisingly a tenant at the property under an assured shorthold tenancy where business use may not be permitted. He draws a comparison to the terms of the defendant's own tenancy agreement which contains such terms – namely a prohibition on business activities. Mr Teff's answer that the freehold owners permit him to do this is, in his respectful submission, in doubt.
24. I am able to draw two fundamental principles from the decision in *Beitov*. First, that the emphasis of Section 47 – according to *Beitov* – appears to be the need to establish where the landlord is to be found. I see no reason why this should be different for individuals or companies. Secondly, that the intention of the sub-section is to ensure that the landlord can be identified. I refer to the final sentence of Mr George Bartlett QC's paragraph which, in my view, sets this out and is instructive for my purposes.
25. So, the question is “does it provide an address at which the landlord can be contacted?” My answer to that has to be that, on the evidence limited as it is in some respects, it does. To establish otherwise, the defendant will have to demonstrate that Mr Teff is not telling the truth. I cannot make that finding on the evidence before me. I agree that his evidence could be more comprehensive (if not more helpful by reference to additional documentation) but, in the absence of any significant evidence to the contrary, I must accept his oral evidence that he lives at 5 Eastville Avenue – and that the claimants trade from there (not only in

respect of the claimants but, in support of this finding, in the case of other companies in which he is a director).

26. Apart from the evidence that he does not own the freehold of the property at 5 Eastville (an arrangement which may be surprising), there is little in the way of evidence which undermines his account that he resides there and carries out business there. Whilst I accept that there are only a handful of documents exhibited to his fourth and fifth Witness Statements, the position remains that they are supportive of Mr Teff's account in straddling the period in which the section 8 notice was served.
27. Both Ms Babalola's evidence – and that of Mr Smith – add very little in my view. In Ms Babalola's case, it is perhaps understandable that all her contact was with managing agents and it adds little. Mr Smith's visit to the property was, in my opinion, so brief that he was unable to really say whether anyone was trading from there – or not.
28. In these circumstances, I find that, on the balance of probabilities, the claimants traded from 5 Eastville Avenue on the date of the section 8 notice and that this complied with Section 47. The section 8 notice is, therefore, valid.
29. I, therefore, make an Order for Possession within 14 days on mandatory ground 8. This has to follow in view of the judgment amount in excess of £7,000 (which remains enforceable) against the background of existing rent arrears which I am told exceed £20,000.

HHJ SAUNDERS

8TH April 2019