

308



**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL

Case No.: CAM/34UF/LOA/2012/0001

Subject Property: 7 & 9 & 11 & 15 Timken Way South, Duston,
Northampton, Northamptonshire NN5 6FE

Applicant: Timken Way RTM Company Ltd

**Applicant's
Representative:** Mr Roger McElroy, Director of One Carey Lane,
London EC2V 8AE

Respondent: Sinclair Gardens Investments (Kensington) Ltd

**Respondent's
Representative:** P Chevalier & Co, Solicitors

Application: Application for an Order that the Applicant was, on the
relevant date, entitled to acquire the right to manage
the Subject Property determination under Section 84(3)
Commonhold and Leasehold Reform Act 2002

Date of Application: 29th March 2012

Date of Determination: 11th July 2012

Tribunal: Dr JR Morris (Lawyer Chair)
Mr R Brown FRICS

DECISION & STATEMENT OF REASONS

Decision:

- The Subject Property complies with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002.
- The Tribunal found that in accordance with the decision in *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011] UKUT 425 (LC) Case Number: LRX/17/2010 the description of the Subject Property in the Claim Notice met with the required definition of "the premises" under section 80(2) of the Commonhold and Leasehold Reform Act 2002 and the Claim Notice was valid notwithstanding it did not identify the appurtenant property specifically.
- The Articles of Association for the Applicant do not state that its object or one of its objects is the acquisition of the right to manage the premises pursuant to Section 73 (2) (b) because the description of the

premises in the relevant article of association does not give the name and address of the premises as required by the RTM Companies (Model Articles) (England) Regulations 2009 (SI 2009/2767)

- **Therefore the Applicant was not, on the relevant date, entitled to acquire the right to manage the Subject Property under the Commonhold and Leasehold Reform Act 2002.**

Reasons

Application

1. This Application was made on 29th March 2012 for a Leasehold Valuation Tribunal to make an Order that the Applicant was, on the relevant date, entitled to acquire the right to manage the Subject Property under Section 84(3) Commonhold and Leasehold Reform Act 2002.
2. The Applicant requested at the time of application that the matter be heard by oral hearing although the Procedural Chair considered it suitable to be dealt by way of consideration of the documents only. The Applicant subsequently reconsidered their request and agreed to the matter being determined by consideration of documents only on or after the 13th June 2012.

Issues

3. The Respondent made two objections in its statement of case to the claim by the Applicant for an order that the Applicant was, on the relevant date, entitled to acquire the right to manage the Subject Property.
 - The Subject Property does not comply with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002.
 - The Articles of Association for the Applicant do not state that its object or one of its objects is the acquisition of the right to manage the premises under Section 72(3)(b) of the Commonhold and Leasehold Reform Act 2002 because the description of the premises in the relevant article of the Articles of Association did not comply with the prescribed provisions of the RTM Companies (Model Articles) (England) Regulations 2009 (SI 2009/2767).

The Law

4. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
5. Section 72 Premises to which Chapter applies
 - (1) *This Chapter applies to premises if—*
 - (a) *they consist of a self-contained building or part of a building, with or without appurtenant property,*
 - (b) *they contain two or more flats held by qualifying tenants, and*
 - (c) *the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.*
 - (2) *A building is a self-contained building if it is structurally detached.*

- (3) *A part of a building is a self-contained part of the building if—*
 - (a) *it constitutes a vertical division of the building,*
 - (b) *the structure of the building is such that it could be redeveloped independently of the rest of the building, and*
 - (c) *subsection (4) applies in relation to it.*
- (4) *This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—*
 - (a) *are provided independently of the relevant services provided for occupiers of the rest of the building, or*
 - (b) *could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.*
- (5) *Relevant services are services provided by means of pipes, cables or other fixed installations.*
- (6) *Schedule 6 (premises excepted from this Chapter) has effect.*

6. Section 73 RTM companies

- (1) *This section specifies what is a RTM company.*
- (2) *A company is a RTM company in relation to premises if—*
 - (a) *it is a private company limited by guarantee, and*
 - (b) *its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.*
- (3) *But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).*
- (4) *And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.*
- (5) *If the freehold of any premises is conveyed or transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the conveyance or transfer is executed.*

7. Section 74 RTM companies: membership and regulations

- (1) *The persons who are entitled to be members of a company which is a RTM company in relation to premises are—*
 - (a) *qualifying tenants of flats contained in the premises, and*
 - (b) *from the date on which it acquires the right to manage (referred to in this Chapter as the "acquisition date"), landlords under leases of the whole or any part of the premises.*
- (2) *The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.*

- (3) *A RTM company may adopt provisions of the regulations for its memorandum or articles.*
- (4) *The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.*
- (5) *A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.*
- (6) *The regulations have effect in relation to a memorandum or articles—*
 - (a) *irrespective of the date of the memorandum or articles, but*
 - (b) *subject to any transitional provisions of the regulations.*
- (7) *The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—*
 - (a) *sections 2(7) and 3 (memorandum), and*
 - (b) *section 8 (articles).*

8. Section 80

- (1) *The claim notice must comply with the following requirements.*
- (2) *It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.*
- (3) *It must state the full name of each person who is both –*
 - (a) *the qualifying tenant of a flat contained in the premises, and*
 - (b) *a member of the RTM company,**and the address of his flat.*
- (4) *And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including –*
 - (a) *the date on which it was entered into,*
 - (b) *the term for which it was granted, and*
 - (c) *the date of the commencement of the term.*
- (5) *It must state the name and registered office of the RTM company.*
- (6) *It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84;*
- (7) *It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.*
- (8) *It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.*
- (9) *And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.*

9. Section 81 Claim notice: supplementary

- (1) *A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.*
- (2) *Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a "sufficient number" is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.*
- (3) *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.*
- (4) *Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—*
 - (a) *been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or*
 - (b) *ceased to have effect by reason of any other provision of this Chapter.*

10. The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010/825,

Regulation 4(c)

a statement that the notice is not invalidated by an inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or this regulation, but that a person who is of the opinion that any of the particulars contained in the claim notice are inaccurate may –

- (i) *identify the particulars in question to the RTM company by which the notice was given; and*
- (ii) *indicate the respects in which they are considered to be inaccurate.*

Regulation 8 paragraph 9

this notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act. If you are of the opinion that any of the particulars contained in the claim notice are inaccurate you may notify the company of the particulars in question, indicating the respects in which you think that they are inaccurate.

11. The RTM Companies (Model Articles) (England) Regulations 2009 states:

Regulation 2

- (1) *The articles of association of a RTM company shall take the form, and include the provisions, set out in the Schedule to these Regulations.*
- (2) *Subject to regulation 3(2), the provisions referred to in paragraph (1) shall have effect for a RTM company whether or not they are adopted by the company.*

Schedule

Defined terms

*1-(1) In the articles, unless the context requires otherwise-
The Premises means [name and address]*

12. Section 112 Definitions

- (1) *In this Chapter—
“appurtenant property”, in relation to a building or part of a building or a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part or flat*

13. Building Regulations SI No. 2010/2214 Schedule 1

Internal fire spread (structure)

B3. —

- (1) *The building shall be designed and constructed so that, in the event of fire, its stability will be maintained for a reasonable period.*
- (2) *A wall common to two or more buildings shall be designed and constructed so that it adequately resists the spread of fire between those buildings. For the purposes of this sub-paragraph a house in a terrace and a semi-detached house are each to be treated as a separate building*
- (3) *To inhibit the spread of fire within the building, it shall be sub-divided with fire-resisting construction to an extent appropriate to the size and intended use of the building.*

Applicant's Case

14. Mr Roger McElroy, a Director of the Applicant, made a witness statement on behalf of the Applicant as follows.
15. He stated that the Premises are a Building containing 4 flats, at least two thirds of which are let to qualifying tenants within the meaning of section 75 of the Commonhold and Leasehold Reform Act 2002 (the Act). The Applicant Company was formed on the 8th September 2011 and a copy of the Memorandum and Articles of Association was provided.
16. All of the qualifying tenants agreed to become members of the Applicant prior to the formation of the Applicant and therefore it was not necessary to serve a notice inviting participation pursuant to section 78 of the Act.
17. On 14th January 2012 a Claim Notice under section 79 was given to all parties to the Lease, including the freeholder, any head lessee and all lessees and the management company as required by the Act. (Example copies were provided). In particular a copy of the Claim Notice was given to each person who was a qualifying tenant of a flat contained in the Premises on the date

the Claim Notice was given. At the date the Claim Notice was given at least half of the tenants of qualifying flats were members of the Applicant. (A copy of the Register of Members showing the complete list of members and the date on which each person was registered as a member was provided.)

18. On the 9th February 2012 the Applicant received a Counter Notice pursuant to section 84 of the Act. (A copy of the Counter notice was provided). In response to the Counter Claim it was said that the Articles of Association for the Applicant "indicate that its intention relates to 7 & 9 & 11 & 15 Timken Way". The claim relates to the same complex of buildings. The building is a complex of those flats with associated gardens and car parking space, all contained within the confines of exterior walls. The residents currently maintain the gardens areas. The car parks are paved material requiring little or no maintenance.

Respondent's Case

19. The Respondent made two objections in its statement of case to the application of the Applicant for an order that the Applicant was, on the relevant date, entitled to acquire the right to manage the Subject Property. First the Subject Property does not comply with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002. Secondly the description of the "premises" in the Notice of Claim is too narrow and the Articles of Association does not state that its object or one of its objects is the acquisition of the right to manage the premises because the description of the premises in the relevant article of the Articles of Association was too wide.

The Subject Property does not comply with the definition of "premises"

20. The Respondent stated that Section 72 of the Commonhold and Leasehold Reform Act 2002 provides that premises must consist of a self-contained building or part of a building with or without appurtenant property.
21. It was submitted that the Subject Property, which the Applicant seeks to acquire the right to manage, comprises flats, 7, 9, 11 and 15 but it is not a detached building because the "building or part of the building" also includes flat 17. Flat 17 is connected to the remainder of the building by that part of flat 17 which spans the entrance to parking court number 2.
22. It was also submitted that the Subject Property for which it is sought to acquire the right to manage could not be developed independently of the building because the part of flat 17 which comprises the arch joining it to the premises would be unsupported if the flats 7, 9, 11 and 15 were removed. Photographs were provided which it was said showed that the roof for the entire building has been designed and engineered as a continuous structure. There does not appear to be a firewall or other supporting structure at the point at which the roofline of flat 17 (above the arch) adjoins the remainder of the roof. Therefore the Landlord is of the opinion that the integrity of the structure of the roof could not be divided at this point. Consequently the structure of the building is such that it could not be developed independently of the rest of the building.
23. In addition it was submitted that the relevant services are not provided independently for the occupiers of the rest of the building to the best of the

Landlord's knowledge and could not be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for the occupiers of the rest of the building.

24. Reference was also made to the Lease of Flat 7 and its plan, which it was said, confirmed that the building included flat 17.

The description of the "premises" in the Notice of Claim is too narrow and in the Articles of Association is too wide and neither correspond

25. The Respondent stated that Clause 1 of the Articles of Association defined premises in respect of which it has been established to acquire the right to manage as: "Duston, Northampton NN5 6FE". It was said that this does not accord with the definition of the premises set out in the Claim Notice which claims the right to manage in respect of "7, 9, 11 and 15 Timken Way, Duston, Northampton NN5 6FE". It was submitted that the premises defined within the Articles of Association of a Right to Manage Company must accord with the definition of the premises in the Claim Notice in respect of which any right to manage is claimed.
26. The argument as set out in the Respondent's Statement of Case was not particularly clear. However, the point appeared to be that one or other must be incorrect. The Respondent seemed to make the point that either the definition of the premises in the Articles of Association is too wide and/or the Claim Notice definition is too narrow as it does not include any appurtenant property.
27. With regard to the Notice of Claim reference was made to the decision of the Upper Tribunal in *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011] UKUT 425 (LC) Case Number: LRX/17/2010. In that case one of the issues was what was meant by the words "with or without appurtenant property". Mr George Bartlett QC, President said at paragraph 14:

Do these words mean that if the self contained building has appurtenant property "the premises" for the purposes of the Act consist of the building plus the appurtenant property or the building alone, leaving it to the claim notice to specify under section 80(2) which of these, for the purposes of the claim, it is? I think it must be the first of these, so that the effect of a valid notice is to extend the right to manage any property appurtenant to the building or part of the building. It would be unsatisfactory if a claim notice had to specify whether or not it was made in respect of appurtenant property. The Right to Manage (prescribed Particulars and Forms) (England) Regulations 2010 do not require this, nor does the form in Schedule 2 of the Regulations provide for any more than a statement of the name of the premises to which the notice relates.

28. This decision was followed in the leasehold valuation tribunal case of *Ribble Close Worcester WR5 1SB* where the issue was whether or not it was necessary to specify any appurtenant property in the claim notice. The tribunal found itself bound by the Upper Tribunal decision of *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011].
29. In the Statement of Case the Respondent said that it disagreed with this decision because:

- Appurtenant property can only be the subject of one RTM claim. If appurtenant property is not specified it may mean that two RTM companies might manage the same property.
 - Any appurtenant property needs to be specified as it is essential that all parties concerned know whether the RTM company is responsible.
 - An RTM company should be able to acquire the right to manage a Building without appurtenant property if it chooses
 - The premises defined within the Articles of Association of a Right to Manage Company must accord with the definition of the premises in the Claim Notice in respect of which any right to manage is claimed
30. It was said that the effect of *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011] would be that the Right to Manage Company will acquire the following:
- The external Common Parts of the Estate (Clause 5 of the 1st Schedule to the Lease)
 - The refuse storage areas and bicycle stores (Clause 7 of the 4th Schedule to the Lease)
 - The adoptable roads to the Estate (Clause 8 of the 4th Schedule to the Lease)
 - The allocated car parking spaces (Clause 6 of the 4th Schedule to the Lease)
31. It was submitted that section 73(2)(b) required the Applicant's articles of association to state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises. It was argued that the definition in the Articles of Association of the Applicant is too wide in that it just refers to "Duston, Northampton NN5 6FE". It was said that if it was intended to read "7, 9, 11 and 15 Timken Way, Duston, Northampton NN5 6FE" as set out in the Claim Notice then this is an omission and not an inaccuracy. The Respondent referred to *Speedwell Estates v Dalzeil* [2001] EWCA Civ 2034 with a view to showing that there is a difference between inaccuracies and omissions. The case related to a notice of claim in respect of enfranchisement. The legislation prescribed that the notice should contain certain information and contained a saving provision that inaccuracies would not invalidate the notice. Certain prescribed information had been omitted from the notice and one of the issues was whether the saving provision included omissions. It was held that there was a distinction between an inaccuracy and an omission and that the latter did not come within the saving provision.
32. In the present case the Respondent submitted that with regard to the Articles of Association the same principle applied. The legislation required the Applicant to provide certain prescribed information, namely the name and address of the premises, which it had omitted to do. Notwithstanding a saving provision in relation to inaccuracies this was an omission, which did not come within that saving provision.

Decision

33. The Tribunal firstly addressed the issue of whether or not the Subject Property complies with the definition of "premises" over which a right to manage could be acquired under Section 72 of the Commonhold and Leasehold Reform Act 2002. The Tribunal considered the law with particular

reference to section 72 noting in particular the Subject Property being part of a building:

- must be a self-contained building
- there must be a vertical division of the building,
- it could be redeveloped independently of the rest of the building,
- the relevant services provided for occupiers are provided independently of the relevant services provided for occupiers of the rest of the building, or
- could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services

The Tribunal also considered the written documentation and visited the Subject Property to confirm the photographic evidence and the plans annexed to the Lease.

34. The Tribunal found that the Respondent had not shown that the structural integrity of Flat 17 was dependent upon the support of the Subject Property. On the balance of probabilities the Tribunal found from the photographs provided confirmed by its inspection that there is a vertical division between Flat 17 and the Subject Property. This is evidenced by:
- There being pillars supporting that part of Flat 17 which extends over the entrance to Car Park 2 at first floor level. There is a vertical joint between the Subject Property and the pillars and the first floor structure.
 - Whereas the ridge of the roof is continuous there is a 'step' in the front elevation indicating that Flat 17 is separate from the Subject Property. Although the line of the roof is one indicator that the building may be a single entity it is far from decisive as is shown in the case of terraced houses.
 - There was a similar vertical joint between the attached buildings between 7 and 5 on the other side of the Subject Property
 - On the balance of probabilities, without evidence to the contrary, the suggestion there is no firewall would be in contravention of Building Regulations (SI No. 2010/2214) Schedule 1 Part B3.
35. The Tribunal found that the services were provided independently to each of the flats. Each flat had an independent metered utility supply, including flat 17. There was therefore no evidence on the inspection to support the Respondent's submission that: "The relevant services are not provided or capable of provision ... independently for the occupiers of the rest of the building"
36. Therefore the Tribunal determined on the above facts that the Subject Property complied with the definition of "premises" under section 72.
37. The Tribunal considered the second issue, which was in two parts. The first part was that the description of "the premises" in the Claim Notice was too narrow because it does not include appurtenant property. The Tribunal in the present case were of the same opinion as the tribunal in the case of *Ribble Close Worcester WR5 1SB* which found that it was bound to follow the case of *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011] UKUT 425 (LC) Case Number: LRX/17/2010. In that the President of the Upper Chamber made it clear that it was not necessary to itemise the appurtenant property in the Claim Notice.

38. The Tribunal therefore found that in accordance with the decision in *Gala Unity Limited v Ariadne Road RTM Company Limited* [2011] UKUT 425 (LC) Case Number: LRX/17/2010 the description of the Subject Property in the Claim Notice met with the required definition of "the premises" under section 80 (2) of the Commonhold and Leasehold Reform Act 2002 and the Claim Notice was valid notwithstanding it did not identify the appurtenant property specifically.
39. The second part to this issue was whether the Applicant's Articles of Association complied with the legislation. In particular whether, as the Respondent claimed, the definition of premises was too wide in referring to: "Duston, Northampton NN5 6FE" and whether the definition had to correspond to the definition of premises in the Claim Notice.
40. The Tribunal took account of section 73(2)(b) of the Commonhold and Leasehold Reform Act 2002 and were of the opinion that the Applicant's articles of association were required to state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises. It then took account of the RTM Companies (Model Articles) (England) Regulations 2009 (SI 2009/2767) and asked whether the definition of premises is prescribed information. Regulation 1 states *The articles of association of a RTM company shall take the form, and include the provisions, set out in the Schedule to these Regulations.* The Schedule then goes on to include under *Defined terms*, the term, *The Premises means [name and address]*. The Tribunal found from this regulation that it is prescribed information and therefore the articles must contain a definition of the premises.
41. The Tribunal then considered whether "Duston, Northampton NN5 6FE" met with that definition or whether it was too wide an area. It was noted that the Schedule to the Regulations required there to be a name and address. The Tribunal interpreted the phrase name and address to mean that the information relating to the premises had to be sufficiently clear as to identify the Subject Property. It was found that Duston was too large an area of Northampton and did not constitute a name and address of itself. Although the addition of a postcode in some circumstances might be sufficiently specific, in the present case the postcode included not only the Subject Property but a number of other properties as well. Therefore to identify the Subject Property for the purposes of defining the premises in the articles the name and address would be "7, 9, 11 and 15 Timken Way, Duston, Northampton NN5 6FE" as given in the Claim Notice.
42. The Articles of Association for the Applicant do not state that its object or one of its objects is the acquisition of the right to manage the premises pursuant to Section 73 (2) (b) because the description of the premises in the relevant article of association does not give the name and address of the premises as required by the RTM Companies (Model Articles) (England) Regulations 2009 (SI 2009/2767)