UPPER TRIBUNAL (LANDS CHAMBER)

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UTLC Case Number: LRX/11/2013
LRX/92/2013
LRX/99/2013
LRX/182/2011

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Right to Manage – whether a single RTM company can exercise the right in respect of more than one set of premises – whether separate claim notices are required – whether qualifying conditions in section 72 of the Commonhold and Leasehold Reform Act 2002 must be met in respect of each set of premises

IN THE MATTER OF THREE APPEALS AGAINST DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN AND MIDLAND RENT ASSESSMENT PANELS

AND IN THE MATTER OF AN APPLICATION TRANSFERRED TO THE UPPER TRIBUNAL (LANDS) CHAMBER PURSUANT TO RULE 25 OF THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)(PROPERTY CHAMBER) RULES 2013

BETWEEN:

NINETY BROOMFIELD ROAD RTM COMPANY LTD **Appellant**

and

TRIPLEROSE LTD **Respondent**

LRX/11/2013

GARNER COURT RTM COMPANY LTD **Appellant**

and

FREEHOLD MANAGERS (NOMINEES) LTD **Respondent**

LRX/92/2013

HOLYBROOK RTM COMPANY LTD **Applicant**

and

PROXIMA GR PROPERTIES LTD **Respondent**

LRX/99/2013

SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LTD **Appellant**

and

4-44 APPERLEY WAY **Respondent**

LRX/182/2011

Re: Flats 1 to 15 Farthing Court,
90 Broomfield Road,
Chelmsford, Essex CM1 1SS

Flats 1-48 Garner Court (Block 2)
and flats 49-68 Garner Court (Block 2)
Dock Road,
Tilbury,
Essex
RM18 7BJ (Block 1)

New Bright Street and others,
Reading,
Berkshire
RG1 6QQ

14-44 Apperley Way & 18-44 Pippen Avenue
Halesowen
West Midlands
B63 2PN/2PW
2-24 Netherend Lane & 192-210 Apperley Way
Halesowen
West Midlands
B63 2PU/2YA

……..

Before: Siobhan McGrath, Chamber President – First-tier Tribunal (Property Chamber) sitting as a Judge of the Upper Tribunal (Lands Chamber)

Sitting at: 10 Alfred Place, London
WC1E 7LR
on 17 October 2013

LRX/11/2013
Mr A Drane for the appellant
Mr J Bates counsel for the respondent

LRX/92/2013
Mr S Woolf counsel for the appellant
Mr J Bates counsel for the respondent

LRX/99/2013
Mr Phil Perry for the appellant
Mr J Bates counsel for the respondent

LRX/182/2011
Mr O Radley-Gardner counsel for the appellant
Mr S Woolf counsel for the Respondent

The following cases are referred to in this decision:

Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG[1975] A.C. 591
Bredon Court (Newquay) RTM Company Ltd v Wel (No 1) Ltd /00HE/LRM/2012/0020)
Gala Unity Ltd v Ariadne Road RTM Company Ltd [2011] UKUT 425 (LC); [2012] EWCA Civ 1372
Craftrule Ltd v 41-60 Albert Place Mansions (Freehold) Limited [2011] EWCA Civ 185.
Scrivens v Ethical Standards Officer [2005] EWHC 529
Longacre Securities Ltd v Karet [2005] 4 ER 413
Cawsand Fort Management Ltd v Stafford (LRX/145/2005)

Decision

Introduction

1. The common issue in these cases is whether the Right to Manage (RTM) contained in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 may be exercised by a single RTM company in respect of more than one self-contained building.

2. It had been directed that this issue, which arises in three appeals and one application transferred to the Upper Tribunal under rule 25 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, should be dealt with together and a hearing for this purpose was convened on 17 October 2013.

3. For ease of reference in this decision, the cases will be referred to as follows: the appeal in Ninety Broomfield Road RTM Company Ltd v Triplerose Ltd, will be referred to as "Ninety Broomfield Road"; the appeal in Garner Court RTM Company Ltd v Freehold Managers (Nominees) Limited will be referred to as "Garner Court"; the application transferred from the First-tier Tribunal in Holybrook RTM Company Ltd v Proxima GR Properties Ltd will be referred to as "Holybrook" and the appeals in Sinclair Gardens Investments (Kensington) Ltd v 14-44 Apperley Way and 18-44 Pippen Avenue Halesowen Right to Manage Company and another, will be referred to as "Apperley Way".

4. The applicant in the Holybrook transferred case is the RTM company; each appellant in the Garner Court and Ninety Broomfield Road cases is the RTM company and the appellant in the Apperley Way case is the freeholder. At the hearing the freeholders in 90 Broomfield Road, Holybrook and Garner Court cases were represented by Mr Justin Bates of counsel and the freeholder in Apperley Way was represented by Mr Oliver Radley-Gardner of counsel. The RTM companies in Garner Court and Apperley Way were represented by Mr Steven Woolf of counsel; Mr Andrew Drane represented the RTM company in Ninety Broomfield Road and Mr Phil Perry assisted by Mr John Mortimer represented the RTM company in Holybrook.

5. In addition to the oral submissions made at the hearing, skeleton arguments had been submitted by or on behalf of each party together with a bundle of relevant documents for each case.

Background to the Right to Manage

6. Before moving on to consider the statutory provisions and the submissions in these cases, it is worth considering the context for the Right to Manage. Shortly before the hearing commenced, Mr Radley-Garnder produced copies of the Draft Bill and Consultation Paper which preceded the Commonhold and Leasehold Reform Act 2002. No objection was made to my having regard to the report and I was satisfied that it was

appropriate to do so (see *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG* [1975] A.C. 591).

7. Section 3 of the report provides details of proposals included in the draft bill for leasehold reform. The proposed right to manage is dealt with from page 115 of the report. In the introduction to section 3, the problems with the existing regime were described as follows:

> "Although long leaseholders in flats have purchased the right to live in their property, control of the management, maintenance and insurance of the property normally remains in the hands of the landlord. The leaseholders are normally obliged under their leases to meet the full costs of the landlord's functions, but enjoy little control over the quality, value for money or promptness of those services. The Government believes that the landlord's monopoly over the supply of the services in the property is not justified. In most cases, the financial value of the landlord's interest in the building is very small in comparison with that of the leaseholders."

8. At paragraph 9 the broad policy for the proposed measure were set out:

> "The Government therefore considers that a new right is required to allow leaseholders to take over responsibility for the day to day management of the block in which they live…"

And at paragraph 10 the overall objective of the proposals can be found as being:

> "The main objective is to grant residential long leaseholders of flats the right to take over the management of their building collectively without having either to prove fault on the part of the landlord or to pay any compensation. The procedures should be as simple as possible to reduce the potential for challenge by an obstructive landlord. The allocation of responsibilities should be clear-cut and the body through which the leaseholders take on management responsibility should enjoy all necessary powers to properly discharge its functions. At the same time, the legitimate interest of the landlord in the property should be properly recognised and safeguarded."

9. I deal with the statutory provisions in detail below, but by way of overview, section 72(1) of the Act provides that the right to manage applies to premises if: they consist of a self-contained building or part of a building, with or without appurtenant property; they contain two or more flats held by qualifying tenants, and 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. By subsection (2), a building is a self-contained building if it is structurally detached.

10. Section 79(1) provides that a claim to acquire the right to manage any premises is made by giving notice of the claim; and under section 80(2) the claim notice "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." Section 79(1) specifies the persons to whom the claim notice must be given. They include the landlord under a lease of the whole or part of the premises. A person who is given a claim notice may give to the RTM company a counter-notice (section 84(1)); and under section 84(2) a counter-notice either admits the right of the RTM company to acquire the right to manage the premises or alleges that, by reason of a specified provision of the Chapter, the RTM company was not on the relevant date (the date of the claim notice: see section 79(1)) entitled to acquire such right. If the latter, the company may apply to an LVT for a determination that it was on the relevant date entitled to acquire the right to manage the premises (section 84(3)); and it will acquire the right to manage the premises if and when the LVT makes a determination in its favour (section 84(5)).

11. Where the RTM company has acquired the right to manage the premises section 96(2) provides that management functions which a person who is landlord under a lease of the whole or part of the premises has under the lease are instead functions of the company; and section 96(5) provides that "management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management. Under section 97(2) the landlord is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96 except in accordance with an agreement made by him and the RTM company.

Facts

12. The facts in each of the cases differ materially one from the other and I summarise the background to each below.

Ninety Broomfield Road

13. This appeal concerns flats 1 to 15 Farthing Court, 90 Broomfield Road, Chelmsford CM1 1SS. The flats are contained in two separate structurally detached buildings with allocated parking spaces and some garden areas. The development is wholly residential. The site is registered under a single title.

14. The building on the west side of the site comprises flats 1 to 6. The building on the east side of the site comprises flats 7 to 15 and a cycle and bin store serving the whole site. There is a single electricity and water supply for communal services in both buildings. A single access road from Broomfield Road on the east side serves the whole site and passes through the building comprising flats 1 to 6 via an underpass at ground level.

15. The sample lease provided describes the demised premises as forming part of "the Building" of fifteen residential apartments together with parking spaces and communal areas. There is a stated intention that each lease is to be in identical terms with a view to each of the tenants being able to enforce restrictions contained in such leases against

each other. Service charges are levied on an estate basis and calculated on the basis of a percentage which relates to all 15 flats. The site is managed as a single entity.

16. The objects for which the RTM company was established were "to acquire and exercise in accordance with the 2002 Act the right to manage the Premises. The Premises are defined as "the freehold or leasehold land and buildings known as 90 Broomfield Road, Chelmsford, Essex CM1 1 SS registered under the title number EX722958 and comprised of two buildings, namely building A (flats 1 to 6 Farthing Court…) and building B (flats 7 to 15 Farthing Court…) and appurtenant property."

17. At the relevant date (17 May 2012), all six flats in building A were held by qualifying tenants, five of whom were members of the RTM company and all nine flats in building B were held by qualifying tenants, seven of whom were members of the RTM company.

18. The RTM company served two claim notices on the landlord. The notice for block A is dated 17 May 2012 and states that the premises are ones to which the relevant provisions of the act apply as they consist of "a structurally detached, self contained building containing a total of six flats.." The notice for block B is also dated 17 May and is stated to relate to premises which consist of "a structurally detached, self contained building with appurtenant property containing a total of nine flats…"

19. The freeholder served counter-notices advancing various objections none of which are relevant to the appeal. The RTM company made two applications to the Leasehold Valuation Tribunal for a determination that it was entitled to acquire the right to manage. Following a hearing on 13th December 2012, the LVT determined that one RTM company cannot, as a matter of law, acquire the right to manage more than one building and dismissed the applications. Permission to appeal was granted by the LVT on 9 January 2013.

Garner Court

20. This appeal concerns flats 1-48 Garner Court, Dock Road, Tilbury, Essex RM18 7BJ (Block 1) and flats 49-68 Garner Court (Block 2). The property is registered under three separate titles: the first relating to block 1, the second to block 2 and the third to the shared car park.

21. The car parking spaces are not demised to individual flats within Block 1 or Block 2. All lessees have the same rights to use the car park and to use utility storage facilities including the bin facilities located on the edges of the car park. The Blocks are numbered sequentially.

22. In the sample lease provided "the Block" is defined as "the two blocks of flats known as Garner Court ….and shall include all additions amendments and alterations made thereto during the Term including the car parking spaces and access thereto". "The Common Parts" are defined as "such parts of the Block as are for the time being not comprised or intended in due course to be comprised in any lease granted or to be granted by the Landlord." Service charges are levied to leaseholders without differentiation between the Blocks and the properties are managed as a single unit.

23. The objects for which the company was incorporated were to "acquire and exercise in accordance with the 2002 Act the right to manage the Premises." The Premises are defined as Blocks 1 and 2 and appurtenant property. Block 1 contains 48 flats with not less than two thirds being held by qualifying tenants, 26 of whom were members of the RTM company. Block 2 contains 20 flats with not less than two thirds being held by qualifying tenants 11 of whom were members of the RTM company.

24. On 12 December 2012, the RTM company served two claim notices on the landlord. The notice for Block 1 claimed the right to manage the block alone. The notice for Block 2 claimed the right to manage both the block and the appurtenant property. The freeholder served counter-notices and the RTM company made two applications to the Leasehold Valuation Tribunal for a determination that it was entitled to acquire the right to manage. On 1 May, 2013 the LVT determined that one RTM company cannot, as a matter of law, acquire the right to manage more than one building and dismissed the applications. Permission to appeal was granted by the LVT on 20 May 2013.

Holybrook

25. This application was referred to the Upper Tribunal for a first instance determination of the common issue in these cases and concerns 200 flats on the Holybrook estate. The facts set out here are taken from the documentation provided by the parties and are not intended to be determinative of any questions other than those common to all of the parties, posed to the Tribunal.

26. The development is wholly residential and includes roadways and garden areas. The application relates to seven self contained blocks. In addition to the 200 flats, the estate has 20 freehold houses which are not included in the claims made by the RTM company. The seven blocks are spread across two titles. Each block has its own service charge budget, however on behalf of the RTM company it is said that the whole estate has been managed as one entity by OM Property Management since its construction although two managing agents seem to be involved in this – Holybrook and Countryland.

27. The objects for which the company was incorporated were to "acquire and exercise in accordance with the 2002 Act the right to manage the Premises." The Premises are defined as Blocks A to G on the estate. Individual claim notices were served by the RTM company for each block but all contained the same information and in particular no indication was given of which lessees belong to which block. This is clear from the

sample claim notice provided which includes the names and particulars of a total of 146 participating lessees. The sample notice states that the premises consist of a self-contained building and that 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. However, in the RTM's statement this is somewhat modified and it is asserted that "Claim notices have been served on E & M covering all the flats that qualify within section 72(1). That is: All the flats are within a self contained building; There are more than 2 flats within each block and they are held by qualifying tenants; The total number of flats held by qualifying tenants is equal to 100% of each block and Two thirds of the Lessees of the whole estate wish to be allowed to continue with the Right to Manage."

28. In its counter-notice Estates and Management rejected the claims on a number of grounds, including the following which are relevant to the issue under determination:

(a) the premises do not consist of a self-contained building or part of a building with or without appurtenant property contrary to section 72(1)(a) and do not fulfil the criteria set out in sections 72(3) and 72(4);

(b) the membership of the RTM company did not on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than half of the total number of flats so contained contrary to section 79(5);

(c) the RTM company is not a Right to Manage Company within the meaning of section 73 of the Act as that section provides that the Company will only be an RTM Company if, inter alia, its memorandum and articles states its objects to include the right to manage "premises"

(d) the stated objects of the RTM company is to manage multiple blocks and as such cannot be a company in relation to a building but in relation to an estate of more than one building and as such cannot be an RTM company.

Apperley Way

29. In this appeal the RTM company sought to exercise the right to manage in respect of a number of groups of blocks of flats and maisonettes. Each group was described by the Tribunal as a "mansion" as follows:

> "9. The estate was disposed of originally by way of long leases, and each subject Property comprises a number of two storey maisonettes or flats of brick construction with interlocking tiled roofs. There are four maisonettes or flats in each block and there are a number of blocks to a "mansion". A mansion is a self-contained tract of land containing the blocks and therefore the flats and maisonettes within those blocks, together with various common areas such as amenity grounds, parking areas and separate garage compounds. The occupiers of the flats and maisonettes pay a service charge linked to the costs of (a) administering and maintaining the blocks in which their individual flats or maisonettes are situated, and (b) administering and maintaining the common areas within the particular mansion that contains the relevant block or blocks."

30. At paragraphs 3 and 4 of his skeleton argument Mr Radley-Gardner suggests that in fact the second element of the service charge relates to the whole of the estate rather than a "mansion" as described by the Tribunal. It may not be necessary for the purposes of this determination for me to decide which interpretation is correct. However, having looked at the lease I am inclined to agree with the Tribunal. The wording of the first schedule is unfortunate since it is the same wording used in the description of "The said development" in the recitals except that the development is to "include the Mansion as hereinafter defined". This suggests that the mansion is something different. Furthermore, the contribution of the lessee to the maintenance of the mansion appears to be a thirtieth which suggests that the contribution is to be made to maintenance of an area less than the estate as a whole. It appears that the two parts of the estate have been managed separately since the 1970s.

31. The articles of association of 14-44 Apperley Way and 18-44 Pippin Avenue Halesowen RTM Company Ltd state that its objects are to acquire and exercise in accordance with the 2002 Act the right to manage the Premises and the Premises are defined as 14-44 Apperely Way and 18-44 Pippin Avenue. The articles of association of 2-24 Netherend Lane and 192-210 Apperley Way Halesowen RTM Company Ltd. state that its objects are to acquire and exercise in accordance with the 2002 Act the right to manage the Premises and the Premises are defined as 2-24 Netherend Lane and 192-210 Apperley Way.

32. The hearing bundle includes copies of five claim notices in respect of the five self contained buildings in one "mansion" of the estate. These were served by 14-44 Apperley Way and 18-44 Pippin Avenue Halesowen RTM Company Ltd on 7th July 2010. It also included copies of two notices in respect of the two self contained buildings in the other "mansion" of the estate. These were served by 2-24 Netherend Lane and 192-210 Apperley Way Halesowen RTM Company Ltd. on 19th July 2010. Counter-notices were served each rejecting entitlement to the right to manage on the following bases: a single RTM Company cannot be incorporated to acquire the right to manage in respect of more than one Building; alternatively each and every premises in respect of the right to manage is claimed are not specified as a separate object in the memorandum of association; appurtenant property can only be subject to one right to manage claim; the notice inviting participation and claim notice do not comply with the regulations.

33. The two RTM companies made applications to the Leasehold Valuation Tribunal for determinations that each was entitled to acquire the right to manage. On 13 September 2011, the LVT determined that the companies were entitled to acquire the right to manage. On 21 November the LVT refused permission to appeal but on 3 April 2012, permission was granted by the Tribunal (George Bartlett QC, President)

The issues

34. Against this background it is possible to identify the general issues in more specific detail:

(a) The primary issue is whether an RTM company may seek and acquire the right to manage in respect of more than one self-contained building;

(b) If so then must the RTM company serve separate notices in respect of each self-contained building and must each building have the requisite number of qualifying tenants who are members of the company?

(c) If an RTM company does not need to serve separate notices in respect of each self-contained building but can seek the right to manage a number of buildings in a single notice, how is the requisite number of qualifying tenants and members of the company to be identified and counted?

The statutory provisions

35. Sections 71 and 72, so far as relevant, provide as follows:

> "71 The right to manage
>
> (1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company
>
> (2) …….
>
> 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,

(c) …….. “

36. Other provisions referred to in the course of argument include sections 73, 78, 79 and 81 which provide so far as is relevant:

“**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) ……

(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.

……

78. **Notice inviting participation**

(1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given-

(a) is the qualifying tenant of a flat contained in the premises, but

(b) neither is nor has agreed to become a member of the RTM company

……..

79. **Notice of claim to acquire right**

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim …..

…….

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

…….

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 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.

……"

37. Pausing there, on behalf of the landlords and for the reasons set out in submissions described below, it is said that the definition of premises is such that it restricts the ability of an RTM company to manage more than one self-contained building. On behalf of the RTM companies it is said that there is no reason to read the provisions in such a narrow way and that there is nothing to prevent an RTM company from managing more than one set of self-contained premises.

Gala Unity Limited v Ariadne Road RTM Company Limited

38. The decisions in *Gala Unity*, both in this Tribunal and in the Court of Appeal are relevant to the submissions of all parties and at this stage it is convenient to consider the case in some detail.

39. The premises concerned in *Gala Unity* are two blocks of flats on land which also included two free-standing "coach houses", which are first-floor flats with parking spaces underneath. One of the blocks contains 10 flats and the other contains 2 flats. Two of the parking spaces below the coach houses were allocated to the coach houses and the others to some of the leasehold flat owners. There is a free standing dustbin store serving all the flats on the land. A single RTM company was set up seeking to claim the RTM over both blocks of flats. The blocks and coach houses shared common accessways and circulation areas. The service charges paid by the leaseholders fell into several categories including the estate common parts; the building main structure; the building common parts, the car park and insurance.

40. The lessees and all persons authorised with them, were given rights of way over and along the roads, drives, forecourts and pavements, the right to use appropriate areas of the estate, the right to use car parking spaces available for common use and the right to use the dustbin area.

41. At first instance the landlord had argued that because of the car-ports underneath the coach-houses and the shared access road and visitors' parking spaces, the buildings were not structurally detached or self-contained. This contention was firmly rejected by the Leasehold Valuation Tribunal which went on to decide that the RTM company should have control of all of the service-charge categories set out above. The Tribunal observed "This means that they will take on responsibility for all the common areas, both those shared with the coach-houses and those exclusively for the use of those in the other two blocks…..In effect, there may be some duplication of service provision initially, but nothing in this decision precludes the lessees of the coach-houses from applying to a leasehold valuation tribunal for variation of their leases, or for a decision as to reasonableness of service charges…." The LVT gave the landlord permission to appeal its decision.

42. It is important to note, that no argument was made that an RTM company could not have the right to manage more than one block. In his decision the President, George Bartlett Q.C. observed at paragraph 13 that:

> " The claim notices identified 'the premises' for the purposes of the claim as, in one case 'the block of flats numbered 14 to 32 Ariadne Road' and, in the other case, 'the block of flats numbered 10 to 12 Ariadne Road'. Each of these buildings is undoubtedly self-contained since it is structurally detached (see section 72(2)); and accordingly on the relevant date the RTM company was entitled to acquire the right to manage them"

43. The question that the Upper Tribunal was considering was described as follows "The question arises…to what other parts, if any, of the Managed Estate the right to manage extends. The right to manage can only be acquired in relation to the premises that are the subject of a claim notice; and a claim notice can only be served in relation to premises that "consist of a self-contained building or part of a building, with or without appurtenant property". The question includes a supplementary issue as to whether a claim notice has to specify whether or not it is made in respect of appurtenant property. On that issue the President decided (at paragraph 14) that such a requirement would be "unsatisfactory". He observed that "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."

44. On the main question, the President's conclusion at paragraph 15 was that "the right to manage in the present case extends to the two blocks of flats and to appurtenant property. Property is appurtenant for this purpose, in my view, if it is appurtenant to a flat within the block. The appurtenant property attaching to each flat under the lease of it is of two sorts. Firstly there is the car port or car parking space that is included in the demise …… The second sort of appurtenant property consists of the incorporeal rights of way and other rights granted under schedule 2 of each flat's lease.." In particular the President concluded that appurtenant property need not be confined to land or rights appertaining exclusively to the premises despite the fact that this would mean that both the landlord and the RTM company would be obliged to provide certain categories of service on "shared" land.

45. The landlord appealed the decision to the Court of Appeal where the leading judgement, upholding the Upper Tribunal's decision, was given by Lord Justice Sullivan. Again, it was not argued that an RTM company cannot acquire the right in respect of more than one self-contained building. At paragraph 13 Lord Justice Sullivan stated:

> "In my judgement, there is only one issue in this case: the issue identified in paragraph 16 of the President's decision….Mr McGurk's wish that his company's estate should be managed as a whole is understandable, but there can be no doubt that the two blocks of flats are self contained buildings for the purpose of section 72(1)(a). There is no challenge to the President's factual conclusion, reached after he had carried out a site visit, that the two blocks are structurally detached. The Act defines a self contained building by reference to it being 'structurally detached', and there is no justification for imposing Mr McGurk's further requirement that the structurally detached building must be able to function independently, without the need to make use of any shared facilities such as private access roads, car parking, gardens or other communal areas."

At paragraphs 15 and 16 he added:

> "The fact that the definition is not limited to appurtenances which belong to the building in question is a powerful indication that Parliament did not intend that appurtenant property for the purpose of section 72(1)(a) should be limited to property that is exclusively appurtenant to the self contained building in question…..
>
> 16. …….The prospect of dual responsibility for the management of some of the appurtenant property in this and other similar cases is not a happy one. As Mr McGurk submitted, there is the potential for duplication of management effort and for conflict between the 'old' management company and the new RTM company in respect of such appurtenant property, but I am not persuaded that these consequences are so grave, or that the end product is so manifestly absurd, that we would be justified in adding a gloss to words – appurtenant property – which are already defined in the Act."

The Submissions

Mr Drane

46. Mr Drane spoke for the appellant RTM company in the Ninety Broomfield Road case. He submitted that it has become generally accepted that a single RTM company can take over the management of multiple self-contained buildings provided that its membership meets the membership requirements for each building and a claim notice is given in respect of each building. He contended that there was nothing in the 2002 Act to prevent this happening.

47. He referred to guidance published by the Leasehold Advisory Service which includes the following:

> "The right [to manage] relates to a building, so, in an estate of separate blocks, each block would need to qualify separately and an individual RTM notice served. In the case of an estate of flats under the same management, it would be sensible to take over the management of the whole estate, but this would have to be accomplished by application in respect of each separate block."

48. He also pointed out that a number of Leasehold Valuation Tribunals had followed this line and referred to *Bredon Court (Newquay) RTM Company Ltd v Wel (No 1) Ltd* (CHI/00HE/LRM/2012/0020) where the Tribunal had decided that there is no reason why premises cannot consist of one or more blocks, in particular where blocks share common grounds or services and it is appropriate that they be managed collectively. The landlord in that case had suggested that a logical consequence of a single RTM company having the right to manage more than one building would be to enable such a company to manage "all the flats in Newquay". The Tribunal rejected this as "being a fanciful argument." Mr Drane adopted this description and identified a number of reasons why it was inherently unlikely that an RTM company would seek to or would achieve management of multiple blocks over a wide area. In particular he pointed out that the RTM company's ability to acquire the right depended on the agreement and membership of qualifying tenants.

49. Mr Drane submitted that the decisions in *Gala Unity Ltd v Ariadne Road RTM Company Ltd* both in the Upper Tribunal and in the Court of Appeal were indirectly supportive of his submissions since although the issue of one RTM company acquiring the right to manage two buildings was not in dispute, the scenario at the centre of the case was exactly that. In his case the two blocks of flats at 90 Broomfield Road, have identical leases, shared access road, parking, gardens, cycle and bin stores and were, he said, designed, built and set up to be managed as one entity. It had been transferred between freeholders as one entity and continues to be managed as such.

50. He argued that the alternative to having one RTM company managing more than one building would be, in the case of 90 Broomfield Road, to have two separate RTM companies with each one separately acquiring the right to manage each building. This, he said would have the following unacceptable consequences:

(a) The first company to succeed would acquire the right to manage appurtenant property denying the right of the other company to do so due to the provisions of section 73(4);

(b) The landlord would have to be a member of both companies in relation to its single property holding or, if the right to manage one building only was acquired, would be responsible for managing one part of the site and not the other;

(c) Complicated management arrangements would be required between the two companies to ensure the smooth running of the whole site and fulfilment of each of the individual lease obligations.

51. In respect of the statutory provisions, Mr Drane acknowledged that section 72(1) itself can be read as limiting premises to one structurally detached, self contained

building. However, he argued that the effect of this is not to prevent an RTM company from managing more than one building, but rather to ensure that a separate qualification process is required in respect of each building. Section 81(2) of the Act specifically anticipated there being members of the RTM company who were not qualifying tenants of flats contained in the premises.

52. He pointed out that section 73(2) requires the RTM company's articles of association to state that its object is to manage the premises but does not limit that management to one set of premises as defined in section 72(1). Furthermore, he said, section 73(2) uses the phrase "its object, or one of its objects" implying that the company can have more than one object. In the articles of association prescribed by the RTM (Model Articles)(England) Regulations 2009, the only objects permitted are the acquisition and exercise of the right to manage and therefore, as a matter of logic, it must have been intended that the right could be exercised in respect of more than one self-contained building.

53. He submitted that qualifying tenants who did not want their building managed in conjunction with another, would simply not seek membership of the company and the acquisition of the right in respect of that building would not proceed. Each building would have to "opt in". In any event where a company had acquired the right in respect of a number of blocks of flats, it was still required to manage in accordance with the relevant leases.

54. During the course of submissions, reference was made to the Court of Appeal decision in *Craftrule Ltd v 41-60 Albert Place Mansions (Freehold) Limited* [2011] EWCA Civ 185. That case concerns the Leasehold Reform Housing and Urban Development Act 1993. There two notices were served by one nominee purchaser in respect of two separate self-contained parts of a building. That case is supportive of another of Mr Drane's submissions, namely that if it would be possible for an RTM company to acquire the right to manage more than one self-contained part of a building, it should also be possible to acquire the right in respect of more than one structurally detached building.

Mr Bates

55. For the freeholders in the 90 Broomfield Road, Holybrook and Garner Court cases, Mr Bates argued that as a matter of statutory interpretation, section 72 of the Act only permits the right to manage to extend to an individual building. Section 72 applies to premises if they consist of **a** self-contained building or part of **a** building. Furthermore, it was said, the structure of the rest of Part 2 of Chapter 1 of the Act is consistent with the RTM company only managing one building. In particular:

(a) the "qualified majority" provisions for calculating entitlement (s.72,79) are only referable to a single block;

(b) the prescribed articles for an RTM company (s 74; RTM Companies (Model Articles)(England) Regulations 2009/2767) are consistent with management of only one building:

(i) the definition of "premises" (cl. 1, prescribed articles) indicates that only one address can be provided (" 'The premises' means [name and address]")

(ii) the "objects" clause relates back to that address (cl.4); and

(iii)the voting mechanism (cl.33) becomes potentially unworkable and grossly unfair if more than one building is managed by the same RTM company, in particular, if there are two (or more) blocks of flats being managed by one RTM company, the leaseholders of one block can out-vote the others and, eg delay necessary works.

56. He submitted that it is significant that section 72 refers to "a" building in the singular and that as a matter of common drafting practice, the Parliamentary Draftsman uses the phrase "building or buildings" when intending to confer rights over multiple buildings and as examples he referred to section 1 of the Sharing of Church Buildings Act 1969; paragraph 4 of schedule 4 to the Housing Act 1996; paragraph 1 of schedule 14 to the Housing Act 2004 and condition M3 Town and Country Planning (General Permitted Development)(Amendment)(England) Order 2013 SI 2013/1101.

57. Mr Bates also contended that the provisions in section 72 are indistinguishable from those in section 3 of the Leasehold Reform Housing and Urban Development Act 1993 which gives a very similar definition of "premises" and that it is, he said, commonly accepted that the 1993 Act applies only to single buildings. In this respect he referred to *Hague on Leasehold Enfranchisement*, para 21-02 where it reads "The Act refers to 'a' building. It has been held in the county court, correctly it is considered, that 'building' should not be construed as meaning 'building or buildings'."

58. Finally, he submitted that a number of absurdities/difficulties would arise if an RTM company could acquire the management of more than one building: firstly, if there were an estate with one block containing 20 flats and one block containing five flats, the lessees of the larger block would be able to acquire the right to manage in respect of both blocks even if none of the qualifying tenants of the smaller block wished that to happen (or, even if there were no qualifying tenants in the smaller block); secondly, he posed the question, where does the right "stop" and how is this to be determined by the parties? If an RTM company can acquire the management of two blocks on the same estate, why not four blocks on two adjoining estates? Six blocks on unconnected estates? All blocks of flats in England or Wales?

Mr Radley-Gardner

59. Mr Radley-Gardner's submissions on behalf of the freeholders in the Apperley Way case were in two parts. Firstly, the general questions of principle of how the RTM regime is to work in the case of an estate comprising a large number of separate blocks, and, in particular:

(i) How shared appurtenant property is to be dealt with under the regime and in notices;

(ii) Whether it is permissible for a single RTM Company to exercise RTMs over more than one "premises," ie building or part of a building.

Secondly and following on from the general questions are specific questions relating to the appeals in the *Apperley Way* case, which I deal with in my consideration below.

60. At the outset of his submissions Mr Radley-Gardner drew my attention to particular aspects of the Consultation paper and draft bill referred to above. Firstly, he referred to page 117, paragraph 13 where it is noted that the 2002 Act's RTM rights were intended to dovetail with collective enfranchisement rights under the Leasehold Reform Housing and Urban Development Act 1993. He also pointed out that the editors of *Hague* consider that "a building" means a single building.

61. Secondly, he referred to page 119 where the question of multi-block RTMs is discussed as follows:

> "22. The right to manage as set out in the draft Bill has been prepared on the basis that the right will apply to leaseholders of flats on a block-by-block basis. This would allow individual blocks on a commonly-managed estate to take on responsibility for their own management, and thereby remove themselves from the overall management scheme for the estate. Ministers recognise, however, that there may be circumstances, such as on retirement estates, where the removal of one block from the overall management regime would be a less desirable option for leaseholders than one which would allow them collectively to manage a group of properties under a single regime.
>
> 23. We would therefore be interested to receive views on the practicability of extending RTM to make it exercisable in respect of a group of leasehold properties. We would intend that RTM remained a collective right, and would therefore wish to retain the principle that the leaseholders involved have some common form of interest. At the very least, we would envisage a requirement that all blocks involved be owned by the same freeholder. However, we recognise that this could in principle allow a group application for properties which are miles, if not hundreds of miles, apart. We would therefore wish to identify a further test of commonality which would need to be passed in order to make properties eligible for a wider application of RTM. While such a test may be relatively simple to identify in principle, it may also be difficult to frame satisfactorily in legislation. One option would be to require that all leaseholders in question have rights to enjoy the same common facilities or areas under the lease (for example, they all share the same gardens). However, this might lead to disputes over what constitutes a common facility and would not necessarily ensure that properties were close together. We would be interested in any further suggestions consultees are able to offer."

62. Mr Radley–Gardner was unable to find a summary of responses to the consultation but pointed out that the draft Bill (which was annexed to the consultation document) at clause 54 is no different from what was eventually enacted as section 72. This, he contended demonstrated that the problems identified in paragraphs 22 and 23 of the consultation document, remained unresolved.

63. In his supplementary skeleton argument, Mr Radley-Gardner submits that the document is clearly an important aid to construction of the relevant provisions of the 2002 Act and was not referred to in *Gala*. Furthermore, in *Gala* the parties do not appear to have addressed argument to the issues concerned in this appeal. Accordingly, these issue are not part of the formal *ratio* of *Gala* and can be considered by this Tribunal: *Scrivens v Ethical Standards Officer* [2005] EWHC 529.

64. In his submission it is necessary to recognise the inherent difficulties in the management of a multi-block estate by a single RTM company. The most apparent of those difficulties is where the residents of one block want to do work and the residents of another block do not agree. The power of the tenant's votes would be reduced to 25% rather than 50% and this dilution of rights cannot have been intended. There is no block by block voting provision and since self determination is such a critical part of the right this must militate against multi-block management. It was, he said, intended that tenants should be masters of their own destiny and this intention is undermined if interests are divided in this way.

65. He contended that there would be potential conflicts of interest between different blocks. For example, there may be a reluctance to commit to payment of legal costs incurred in relation to leasehold disputes affecting one of the buildings rather than the overall estate, or the costs of fees of compliance with consultation requirements under section 20 of the Landlord and Tenant Act 1985. As he put it, the headline point is that RTM was intended for one building, with one RTM company seeking to acquire the right to manage the individual block and, if required, appurtenant property. He said the legislation is clear. The concept of "premises" in section 72(1) is of a single building and this is reinforced by section 73(2) which reflects the intention that an RTM company will be established to manage those "premises", namely the individual block. The RTM company's attention is to be focused on its one building, and not diffused between multiple buildings, each with their own interests and priorities.

66. He submitted that other parts of the Act support this straightforward intention and he drew my attention to sections 78 and 79(1) and (5). He emphasised that it is clear that a claim notice must be served in respect of a single self contained block and that since qualification on the relevant date requires the RTM membership to include "a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained", this can only relate to a single block and not to multiple premises. As supplementary points Mr Radley-Gardner also suggested that model articles 4 and 5 of the 2009 regulations support the proposition that a single building is intended. Additionally he said the same underlying assumption emerges from the costs provisions in sections 88 and 89 of the 2002 Act.

67. An important part of Mr Radley-Gardner's case concerns the effect of sections 80 and 81 of the Act and the difficulty with overlapping entitlements to RTM. He submitted that there simply cannot be multiple RTMs dealing with same or overlapping premises under the 2002 Act. Firstly, he points out that section 73(4) provides that "a company is not an RTM company in relation to premises if another company is already an RTM company in relation to the premises or to any premises containing or contained in the premises". There is no provision, he says, for severance of the affected part so as to save the rest.

68. This, he says, is reinforced by the notice provisions. Under section 80(2), the RTM notice must "specify the premises" [the first limb] and it must "contain a statement of the grounds on which it is claimed that they are premises to which the Chapter applies" [the second limb]. The first limb is satisfied by the stating of the address of the block. The second limb, however, requires the company to consider the exemptions in Schedule 6 to the Act which at paragraph 5 includes an exemption for premises where "the right to manage the premises is at that time exercisable by a RTM company". He contended that the effect of this is that the Claim Notice must identify ineligible parts of an estate which are already the subject of a claim.

69. Accordingly, he said the claim notice must engage with the question by whom management is to be carried out both at the stage of the incorporation of the RTM Company and at the stage of giving of the notice. At paragraph 14 of the *Gala* decision at first instance, the President concluded that the effect of a valid notice is to extend the right to manage to any property appurtenant to the building or part of a building and that "It would be unsatisfactory if a claim notice had to specify whether or not it was made in respect of appurtenant property". As noted above, the President also concluded that appurtenant property was not limited to rights exclusive to a particular flat but would include rights shared with all or some of the other flats. Mr Bates did not support Mr Radley-Gardner's submissions in this respect.

70. Mr Radley-Gardner contended that insofar as it was found in *Gala* that appurtenant property could extend to shared as well as exclusive rights and that at first instance it was decided that there is no requirement to specify the extent of premises in identifying appurtenant property, the decision was made in error and without the benefit of full argument.

71. However, and in any event, Mr Radley-Gardner submitted that the second limb does require such specification to make it clear that the RTM is not being sought over a part of an estate which already has a pre-existing RTM. He submitted that it will be essential to know which block is claiming which appurtenances and that simply to state in each case that the claim is for the blocks and appurtenant property is inadequate as it does not inform the landlord in respect of which block the shared appurtenances are deemed included and which blocks only have their own appurtenant property. In summary therefore, a failure to identify appurtenant property as part of the second limb would invalidate any claim notice and in any event a new RTM company cannot exist nor can a claim be made for premises which include any shared appurtenant property in respect of which the RTM is already being exercised.

Mr Woolf

72. Mr Woolf made submissions on behalf of the RTM companies in the Garner Court and Apperley Way cases. He adopted Mr Drane's submissions in respect of the ability of one RTM company to exercise the right to manage over two or more blocks but also said that one RTM company might acquire that right by serving a single notice.

73. His submissions started with a reference to the objective for the right to manage set out in paragraph 10 of the consultation paper which he said is very much the heart and soul of this part of the legislation. Part of that objective was to make the acquisition of the RTM a straightforward matter. To this end he cited section 81 of the Act which provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by virtue of section 80.

74. He argued that it would incorrect to use the 1993 legislation as a good comparator. The right to collective enfranchisement is far more draconian than the right to manage and it would be a mistake to seek to apply the same rigour in the interpretation of the legislation as would be necessary if a group of lessees were seeking to acquire the freehold of a property rather than to acquire its management.

75. On the consequences of having one company managing several blocks he suggested that this would be bad only if the qualifying tenants had not chosen the route. If the requisite majority wished to exercise the right, then they would be entitled to do so, that is the result of the legislation. He said that it was absurd to suggest that an RTM company might seek to take on the management of a large area of property and even the whole of England. On the other hand, the consequence of not having multiple properties within the same management would bring its own problem. For example, if there were an estate with 12 blocks of flats, there would need to be 12 RTM companies, 12 claim notices, 12 sets of accounts etc. Every aspect of management would be multiplied and a landlord would also be required to deal with 12 separate entities. There would also be additional difficulties with overlapping rights to common parts within an estate.

76. So far as the legislative provisions were concerned, Mr Woolf referred to section 71(1) which provides: " This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies……." and contended that section 72 does not provide a definition of the word "premises" for all purposes. Semantically section 72(1)(a) reads "*they* consist of…." He submitted that it is not sufficient to simply look at the words, instead a common sense approach must be adopted. The wording of section 71(1)(a) would not, he said, be disrupted by adding words so that it read "they consist of *at least* a self contained building…" He added that paragraph (1)(a) is the only reference to building in the Chapter. As a matter of policy he suggested that it was not intended that the right should be acquired for properties one by one and that a single claim notice may sensibly deal with the entire estate. Otherwise section 73(4) might, in effect, prevent the proper management of adjoining premises. In support of his submission that a single claim notice could encompass a number of self

contained buildings, Mr Woolf pointed out that nothing in sections 80(2), 80(3) or section 81 limited "premises" to a single building.

77. In support of his submissions, Mr Woolf also referred to *Longacre Securities Ltd v Karet* [2005] 4 ER 413. This was a case brought under the Landlord and Tenant Act 1987, and required a determination of the meaning of "building" in that legislation. In brief summary, the landlord in that case sought to dispose of his immediate interest in a number of separate blocks of flats with appurtenant property and had served a single notice in that respect. Section 1 of the Act provides that the right to acquire applies to "premises if…they consist of the whole or part of a building…" Having considered the whole of Part 1 of the Act together with a number of authorities, the judge decided (at paragraph 74) that :

> " … the 1987 Act can only make sense, if the word 'building' is construed to mean (I accept somewhat awkwardly) either a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises"

78. In Mr Woolf's submission the 1987 Act provides a better comparison than the 1993 Act. In addition to having a similar definition of a "building", Part II of the Act also deals with management. In the *Gala* case, the President of the Upper Tribunal had referred to the appointment of a manager under Part II of the Landlord and Tenant Act 1987 and to his own decision in *Cawsand Fort Management Ltd v Stafford* (LRX/145/2005). He emphasised again that here we are dealing with management rather than acquisition.

Mr Perry

79. Mr Perry made submissions on behalf of the RTM company in the Holybrook case and at the Tribunal hearing was accompanied by Mr Mortimer. Mr Perry submitted that the problem to be addressed here was a practical one, that of the 200 leaseholders on the estate, 146 supported the application and that it had not been possible to contact the remaining 50. He pointed out that there were many LVT decisions where one RTM company has successfully won the right to manage a number of blocks and cited three examples. He also referred to *Gala Unity* and said that although the key issue there was 'appurtenant property' it was implicit that the Upper Tribunal's decision related to one RTM Company issuing two claims. He endorsed the submissions made by Mr Drane and Mr Woolf and also referred to the LEASE advice cited above. On the statutory provisions he contended that there was nothing in the 2002 Act that forbids one RTM company issuing more than one claim notice. He specifically referred to section 78(1) and the wording "…manage *any* premises" and section 79(1) "….to acquire the right to manage *any* premises…."

80. Each of the parties had referred to a number of LVT cases on the issue. A number supported the freeholders' case and a number supported the RTM company's case. I do not propose to list those cases or to examine them in any detail.

Consideration

81. The starting point for the consideration of this important issue is to seek to understand the purpose of the legislation. This can be found in the draft bill and consultation paper at paragraph 10 of section 3 where the main objective is stated to be to grant long leaseholders the right to take over the management of their building without having to prove fault or pay compensation. Additionally, the aim was to ensure that the procedures should be simple; the allocation of responsibilities should be clear cut and the body through which the leaseholders take on management "should enjoy all necessary powers to properly discharge its functions".

82. In cases such as those under consideration here, where a number of different self-contained buildings have been managed together and share appurtenant property, it is my view that this objective can only be achieved by giving the statutory provisions a purposive construction.

83. Section 72 describes the premises to which Chapter 1 of Part 2 of the 2002 applies. In my view, and as suggested by Mr Woolf, the section does not define "premises" for all purposes. The section limits the type of premises to which the right to manage will apply to "a self-contained building or part of a building," it defines a self-contained building as being "structurally detached" and describes a part of a building as a self-contained part of a building if it constitutes a vertical division of the building and the structure is such that it could be redeveloped independently of the rest of the building. Section 72(1)(a) and 72(2)-(5) make it clear to which premises the right to manage will apply, and importantly to which premises the right to manage will not apply. I regard that distinction as being the purpose of those parts of the section. The section does not limit the *number* of self-contained buildings or parts of self-contained buildings to which the right will apply. Its purpose, is to define self-containment. I therefore reject the emphasis sought to be placed on the pro-noun "a" on behalf of the freeholders. Whilst it is correct that the section might instead have read "self-contained buildings" this would not have added to the purpose of the section and, in context and in particular for consistency and clarity with section 72(2) the use of the word "a" is not, in my view determinative or of assistance in the consideration of whether the right to manage may be exercised in respect of multiple "premises".

84. On that basis it is necessary to consider whether any of the other statutory provisions militate against the exercise of the right by one RTM company in respect of multiple buildings. Section 73 defines RTM companies. By section 73(2)(b) a company is an RTM company if 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". I agree with Mr Drane's observation that this does not, of itself, limit the right to a single set of premises. Whilst noting Mr Bates' submission that in other Acts the draftsman has used the phrase "building or buildings" when intending to confer rights over multiple buildings, I take the view that the 2002 Act must be considered within its own context and in any event, as stated above, I have concluded that the purpose of section 72 is to describe the type of building to which the right applies. This is consistent with the approach of the President in the *Gala Unity* case.

85. I accept that sections 72(2)(b) and (c), which require that premises contain two or more flats held by qualifying tenants, and that the number of flats so held is not to be less than two-thirds of the total number of flats and 79(5), which requires that "the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained" must be calculated in respect of each set of premises. However, I can see nothing in that section that limits the number of sets of premises that can be included provided that the qualifying membership is achieved.

86. It is correct that the provisions in section 72 are indistinguishable from those in section 3 of the Leasehold Reform Housing and Urban Development Act 1993 and note that in respect of the 1993 Act there is commentary that "building" should not be construed as "building or buildings." However, there is no decided authority on the point and I accept Mr Woolf's submission that it would be wrong to place too much reliance on the 1993 Act which is dealing with the very much more draconian right to collective enfranchisement. The right to manage is very different from the right to enfranchise. For similar reasons, I do not consider that the provisions of the Landlord and Tenant Act 1987 or the case of *Longacre Securities Ltd v Karet* [2005] 4 ER 413, assist in the interpretation of the 2002 Act, which in my view must be construed in its own context.

87. I am also not helped by paragraphs 22 and 23 of the consultation document, set out above and referred to by Mr Radley-Gardner. The issues identified in those paragraphs and the perceived difficulties in exercising the right in respect of a number of premises were issues on which views were invited rather than being conclusions. Although the draft clause 54 was eventually enacted as section 72, this demonstrates very little. We simply do not know whether the questions raised were intended to relate only to clause 54 or to all of the draft material relating to the right to manage and we also do not know what the content of the responses was. In particular it may be that it was decided that the provisions were adequate to support the right to manage for multiple blocks rather than the reverse.

88. Mr Bates' contention that the ability of an RTM company to acquire the right in respect of a number of blocks could lead to a situation where the exercise of the right to manage might be achieved without the consent of qualifying tenants in the smaller blocks is, in my view, misconceived. I consider that qualification must be achieved on a block by block basis. As a result of section 79, unless a qualifying majority within a set of premises are members of the RTM company then it will not be able to exercise the right. I also do not accept the submission that the interests of tenants in different blocks would be unduly diluted by the exercise of the right on multiple properties. Firstly, Mr Drane is correct to say that any RTM company would only be entitled to act in accordance with the leases for each set of premises. Secondly, although there may be a dilution of rights in respect of shared parts of premises, there are inevitably such management difficulties on estates with shared appurtenances and the payability and reasonableness of any service charges levied can be challenged in the Courts or the Tribunal.

89. Logically, the consequence of an RTM company being able to exercise the right in respect of multiple premises is that a company could take over the management of wide-spread properties. However, the legislation has now been in force for 10 years and I was not informed that this had yet occurred notwithstanding that it is clear (if only from the number of LVT decisions where the right to manage multiple properties was accepted) that over the years RTMs have been established on this basis. I consider that the contentions on behalf of all of the RTM companies in this case that such an outcome is "fanciful" is correct.

90. Turning to Mr Radley-Gardner's arguments in respect of section 73(4) and the requirement under section 80(2) to specify the premises and, by reference to schedule 6 of the Act, to specify any ineligible parts of an estate which are already the subject of a claim. Mr Radley-Gardner did not submit that the exercise of an RTM on one part of a complex estate precludes the exercise of RTM in another part. His submission was that a subsequent RTM company formed in respect of another part of the Estate must confine itself to the building and other appurtenant parts of the estate over which a prior RTM Company and RTM does not already exist. The effect of this submission is that if an RTM company exercises the right to manage in respect of a single block which includes *shared* appurtenances on an estate, then that will prevent either the same, or any other RTM company from exercising the right to manage any other premises which includes those same shared appurtenances. I cannot accept that this is the effect of the statutory provisions or the effect of the decision in *Gala Unity*.

91. It may be helpful in this context to consider what is the effect of a successful acquisition of the right to manage by a RTM company. This is dealt with in sections 95 to 103 of the 2002 Act. The main provision is contained in section 96 (2) which provides that "management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company". Those management functions relate to the premises which, in accordance with the President's conclusion at paragraph 16 of *Gala Unity* will include appurtenant shared rights. Where a freeholder is responsible for other property, which is not part of the right to manage claim, but which also shares those rights, then management is duplicated between the RTM company and the freeholder.

92. The incidence of shared rights does not prevent premises from being self-contained within the meaning of section 72 and therefore, does not prevent the premises from being eligible for the exercise of the RTM. By extension, the fact that one RTM company is exercising the right over property where there are shared rights does not prevent another RTM company exercising the right over the same shared property or rights in respect of another set of premises falling within the definition in section 72. The second RTM company is simply acquiring the residual management rights and obligations of the freeholder in respect of the shared property. Those are the management rights contemplated by section 96. The second RTM company is not acquiring rights held exclusively by the first RTM company, rather it is acquiring the landlord's shared rights. This may well result in there being dual responsibility for the management of some of the appurtenant property, however, this was what had occurred in *Gala* and was not considered by the Court of Appeal to be of such consequence as to displace the effect of the statute. The difference in this scenario is that instead of the

shared management being between a freeholder and an RTM company, the shared management may be between two or more RTM companies.

93. Accordingly, therefore I consider that section 73(4) does not, of itself, prevent a single RTM company from exercising the right over a number of premises falling within the definition of section 72. In fact, where there are shared rights, the exercise of the right by one, rather than a number of, RTM companies would afford a practical solution to the management of an estate of self-contained buildings. I agree with the President in his decision in the *Gala Unity* case, that the first limb of section 80(2) of the Act is satisfied by the stating of the address of the block. The claim notice need not specify whether it is made in respect of appurtenant property. Furthermore, I do not consider that a claim to RTM is invalided by the specification of premises which include shared appurtenant property rights, already the subject of another RTM.

94. On the second and third questions posed, I consider that each set of premises must fulfil all of the section 72 conditions. Therefore in addition to being self-contained, they must also contain two or more flats held by qualifying tenants and the total number of flats held by such tenants must be not less than two-thirds of the total number of flats contained in the premises. Initially I had taken the view that it was necessary for an RTM company to serve a separate notice in respect of each set of premises. However, on reflection, I consider that Mr Woolf is correct and a single notice will suffice in respect of a number of properties. If a single notice is served, then its content must be sufficiently clear to establish eligibility in respect of each set of premises and must comply with section 80. For that reason, the RTM company may prefer to serve separate notices simply for the sake of clarity.

Decisions

95. On the basis of the above my decisions in each of the cases is set out below. This has been a contentious matter and where I deal with appeals, no criticism is intended of any of the LVT decisions which were well and carefully reasoned:

Ninety Broomfield Road RTM Company Ltd v Triplerose Ltd

96. The appeal is allowed. Ninety Broomfield Road RTM Company Ltd is entitled to exercise the right to manage in respect of the premises at 90 Broomfield Road, Chelmsford, Essex, specified in its notice of claim. The right to manage is exercisable from the date three months after this decision becomes final in accordance with sections 90(4) and 84(7) of the Commonhold and Leasehold Reform Act 2002.

Garner Court RTM Company Ltd v Freehold Managers (Nominees) Limited

97. The appeal is allowed. Garner Court RTM Company Ltd is entitled to exercise the right to manage in respect of the premises at 1-48 Garner Court and 49-68 Garner Court,

Dock Road, Tilbury, Essex, specified in its notice of claim. The right to manage is exercisable from the date three months after this decision becomes final in accordance with sections 90(4) and 84(7) of the Commonhold and Leasehold Reform Act 2002.

Holybrook RTM Company Ltd v Proxima GR Properties Ltd

98. The application is remitted to the First-tier Tribunal (Property Chamber) for a determination whether, having regard to this decision, Holybrook RTM Company Ltd is entitled to exercise the right to manage.

Sinclair Gardens Investments (Kensington) Ltd v 14-44 Apperley Way and 18-44 Pippen Avenue Halesowen Right to Manage Company and another

99. In addition to the general questions of principle in this matter, Mr Radley-Gardner identified four specific questions for consideration on appeal. My determination in respect of those questions is as follows:

(i) For the reasons set out at paragraph 93 of this judgement, I consider the claim notices were adequate in this case;

(ii) For the reasons given by the Leasehold Valuation Tribunal at paragraphs 40 to 43 of its decision, I consider that the Articles of the Respondent are not deficient and that they set out the relevant premises adequately;

(iii) If, and it is not clear, the LVT determined that the RTM "unit" was the "Mansion" rather than individual buildings or parts of buildings, I consider that this would have been an error. However, since an RTM company is entitled to acquire the right to manage a number of separate self-contained buildings and it seems that here, separate claim notices were served in respect of each self-contained building, each of which qualified for the acquisition of such a right, any error is in my view, immaterial.

(iv) This point does not require to be determined.

100. Accordingly, the appeal is dismissed and the decision of the Leasehold Valuation Tribunal dated 13 September 2011 confirmed.

Dated: 28th November 2013

Siobhan McGrath
Chamber President – First-tier Tribunal (Property Chamber) sitting as a Judge of the Upper Tribunal (Lands Chamber)