THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No.: CHI/00HX/LRM/2009/0002

RE: 10-12 AND 14-32 ARIADNE ROAD, OAKHURST, SWINDON SN25 2JH.

BETWEEN:

Ariadne Road RTM Company Ltd — The Applicants

And

Gala Unity Ltd (freeholder) and
Hazelvine Ltd. (Management Company) — The Respondents.

In the matter of Sections 72, 79 and 84 of the Commonhold &Leasehold Reform Act 2002.('The Act').

INSPECTION AND HEARING: 19TH OCTOBER 2009.

Tribunal:- Mrs. T. Clark (Barrister at law) Chairman.
Mr. P. Smith FRICS
Mr. R. Dumont (Lay member).

Parties present at the Hearing:-

Mr. Stuart Mewse
Ms. Ellie Cameron-Daum for the Applicants.

Mr. Brian McGurk (Gala Ltd)
Mr. Nigel Burnand and Mr. Derek Poole (Hazelvine Ltd) Respondents.

DECISION AND ORDER

A .BACKGROUND.

1. There are two separate Applications in this matter, relating to two self-contained blocks on the new development in Ariadne Road. The first relates to the block containing 10 flats, numbered 14-32, and the second relates to the block containing 2 flats, numbered 10-12. The Tribunal considered both Applications together.

2. The buildings contain residential flats let on 125-year leases, and are set in an area of garden, paved access-road and courtyard, and tarmac parking-spaces. In addition to the two blocks mentioned above, there are 2 further self-contained blocks on the site, which are no.s 6 and 8 and are referred to as the 'coach-houses'. Each of these buildings contains only one residential unit, and therefore they do not satisfy the criteria for Right to Manage ('RTM') set out in the Act, and they are not parties to the Application.

3. There are 4 allocated parking-spaces on the site for lessees of flats in the main block, and 6 further allocated spaces or 'car-ports' for numbers 14-32 underneath the two coach-houses. Residents of flats 10 and 12 have spaces immediately in front of their building, and there are then 5 'visitors' spaces' shared by all 14 units.

4. The required procedures under the Act, as to Notices and Counter-Notices, had been complied with, and statements and supporting documentation had been served by all parties. The Tribunal was satisfied that the applicants were 'qualifying tenants' within the statutory definition, and both of the blocks contained '2 or more flats' as required by Section 72.

5. The Tribunal inspected the property on 19th October 2009, in the presence of Mr. Mewse. A hearing was then held, attended by those listed above.

B. RELEVANT LAW.

1. All parties agreed that the primary issue for the Tribunal was whether, on the date the Notice of claim was given pursuant to Section 79 of the Act, (i.e. 17th March 2009), the Applicants were entitled to acquire the right to manage the property.

2. Under Section 72 of the Act, and in accordance with the decision in the 'Litlington Court' case which was referred to us, and agreed by Mr. McGurk, the Tribunal has to decide whether the building is EITHER a self-contained building OR 'part of a building'. (Sec. 72(1)(a).)

3. If it is a self-contained building, i.e. 'structurally detached' (Section 72(2)) 'with or without appurtenant property', then the Ariadne Road RTM company is entitled to acquire the right to manage it. No other provisions apply.

If it is a 'part of a building', then the entitlement will depend on a number of other considerations as set out in Section 72 (3), (4) and (5).

4. Under Section 84, where valid Notices and Counter-Notices have been served, the RTM company can apply to a Leasehold Valuation Tribunal for a determination that it was, on the relevant date, entitled to acquire the Right to Manage.

5. Section 112 defines 'Appurtenant Property' as '...any garage, outhouse, garden, yard or appurtenance belonging to, or usually enjoyed with, the building...'.

C. APPLICANT'S CASE.

The Applicants contend that, in the case of each of the 2 buildings the subject to the application, it is a self-contained, structurally detached building. They say that considerations as to common parking areas, separate car-ports, and pipes and cables lying under the common access areas, whilst they may present practical problems, are irrelevant to the fundamental question of whether or not the buildings themselves are self-contained.

D. RESPONDENT'S CASE.

Both Hazelvine Ltd. and Gala Ltd. argue that, because of the car-ports underneath the coach-houses and the shared access road and visitors' parking-spaces, the buildings are not 'structurally detached' or self-contained.

They therefore argue that the provisions of Section 72(3),(4) and (5) apply, and the Tribunal should be considering the practical difficulties of separate development, of combined/shared services, and of potential for vertical division.

Mr McGurk also sought clarification as to which elements/areas of the development the RTM company proposed to take on, and pointed out logisitical anomalies if they were to assume responsibility for only part of the whole.

E. TRIBUNAL FINDINGS AND DETERMINATION.

1. The Tribunal members, having visited the property, were satisfied that both the blocks were, indeed, self-contained and structurally-detached. To construe the lease of each flat in such a way as to find that the separate car-ports were part of the 'structure' seemed to us to be an unacceptable fiction and distortion of the reality of the situation.

   The Section specifically makes it clear that 'appurtenant property' does NOT affect the status of the building as a whole, and the Tribunal found that the car-ports and common parking areas were exactly the sort of extra facilities which were envisaged when the Section was drafted. If a 'garage, out-house or yard' falls within the definition, then we are satisfied that the facilities in Ariadne Road also fall within that definition.

   'Appurtenant property' which is referred to in the lease should not be confused with the question of the nature of the building itself.

2. Upon reviewing the two cases which were cited by the parties, the Tribunal found as follows:-

Litlington Court.(Seaford)RTM Ltd. v Sinclair Garden Investments (Kensington) Ltd..

As outlined above, we agreed with the Tribunal in this case that the question is whether a building is *EITHER* self-contained *OR* 'part of a building'.
The remainder of the determination dealt with other issues outside the remit of this Application.

Finland Street 1-16 RTM Co. Ltd. v. Holding and Management (Solitaire) Ltd.

From the facts outlined in this case, it appeared that the Tribunal were dealing with a property which was, in fact, 'part of a building', and that the subject of the application was only a section of a larger block. The Lands Tribunal did not agree with the LVT's comment that, because the part of the building *not* included in the application represented only a small proportion of the whole, they could disregard it and nevertheless find that they were dealing with a whole, 'structurally detached' unit. (This is a case where, once again, it was the reality of the situation which mattered, and not some fictional 'entity'.)

3. Whilst it is acknowledged that there may be practical difficulties which arise if the RTM application is successful, we do not take the view that these are matters which should influence our decision. (Per curiam: it seems that the 2 units shown as 'Plot 17' on the plan have a right of access over the private road and courtyard to their property, and yet they do not belong to the same freeholder, nor (apparently) do they contribute to the upkeep. Such complications are not uncommon in building developments of this kind, and do not necessarily present insoluble problems.)

The jurisdiction of the Tribunal extends only to the question of whether or not the RTM company is entitled to acquire the right to manage, and if we find that it is so entitled, then we have no power to make any orders as to how that right should be excercised, or how it can be made compatible with overlapping management functions in respect of areas shared with (for example) the coach-houses.

4. We do, however, consider that it is important to clarify what precisely it is that the new company has a right to manage.

It seems logical that the new company should have control of all the service-charge categories set out in Categories A,B, C,D,E and F of the leases. 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 2 blocks. The insurance of all areas as defined in the various leases will also be in their hands, but the insurance of all that property defined in the coach house leases will be excluded.

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. Variation could provide that they should pay a lesser percentage of the total service-charge in view of the fact that the majority of the maintenance is being undertaken and paid for by the RTM company, and not by the landlord's managers.

Similarly, it may make more economic sense for the site to be managed as one whole, and insured as one whole, but this is beyond our jurisdiction.

CONCLUSION.

The Tribunal determines that, on the 17th March 2009, the Ariadne Road RTM company was entitled to acquire the right to manage both of the subject properties.

The acquisition date on which this decision takes effect is 19th January 2010, being 3 months from the date of the final determination, in accordance with Section 90 of the Act.

T.C. Clark.
24th October 2009

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RE: INSPECTION AND HEARING: 19TH OCTOBER 2009.

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LEAVE TO APPEAL)

On reading the letter from Mr. McGurk dated 25th November 2009, the Tribunal have reviewed the matter and HEREBY GRANT LEAVE TO APPEAL against its Decisions dated 19TH OCTOBER 2009

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T.C.Clark
Barrister at Law
(Chairman)
A Member of the Panel appointed by the Lord Chancellor
2nd January 2010

Reasons for the Decision

This case concerned an application by the residents of the Ariadne Road development for a ruling as to their entitlement to acquire the right to manage the property. The Tribunal found that they were so entitled at the relevant time.

Further to Mr. McGurk's letter, the members of the Tribunal take particular exception to the suggestion that his submissions were rejected in an 'off-hand manner'. This matter was the subject of a full hearing, and of careful and lengthy discussions and deliberations. Reasons for the Decision explained the reasoning in as much detail as was practicable. (please see attached copy). Merely because we did not accept Mr. McGurk's viewpoint, and because we felt that his construction of the relevant statute was artificial and unnecessarily cumbersome, does not mean that we 'failed to grasp' any of his arguments: it means that we think he is wrong.

However, we take the view that it would be helpful and constructive to hear whether the Lands Tribunal agree with us on this point: namely whether the blocks in question could be defined as 'self-contained and structurally detached'.

Similarly, in the absence of authorities on this particular area of law, it would be helpful to have some guidance as to the extent to which Tribunals in these circumstances are required to speculate upon – and make provision for – the practical difficulties which may flow from their decisions.

We do not, however, accept that the right to manage in the case of the subject property 'cannot be implemented'. With the agreement of the various parties and residents, the practical difficulties could be overcome, though that might mean that Mr. McGurk would have to accept a different system to that currently in place.

T.C.Clark
Barrister at Law
Chairman
2nd January 2010