Neutral Citation Number: [2015] EWCA Civ 282

Case No: C3/2014/0881

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL(LANDS CHAMBER)
LRX/11/2013
LRX/92/2013
LRX/99/2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/03/2015

Before :

LORD JUSTICE PATTEN
LADY JUSTICE GLOSTER
and
SIR DAVID KEENE

- -

Between :

First Appeal	**TRIPLEROSE LTD**	**Appellant**
	- and -	
	NINETY BROOMFIELD ROAD RTM CO LTD	**Respondent**
Second Appeal	**FREEHOLD MANAGERS (NOMINEES) LTD**	**Appellant**
	- and -	
	GARNER COURT RTM CO LTD	**Respondent**
Third Appeal	**PROXIMA GR PROPERTIES LTD**	**Appellant**
	-and-	
	HOLYBROOK RTM CO LTD	**Respondent**

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- -

Mr Philip Rainey QC and Mr Justin Bates (instructed by **Scott Cohen Solicitors**) for the **Appellants**
Mr Andrew Drane (appeared in person) for the **1st Respondent**
Mr Steven Woolf (instructed by **Paul Robinson Solicitors**) for the **2nd Respondent**
Mr Phil Perry (appeared in person) for the **3rd Respondent**

Hearing dates: Thursday 4th December 2014

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Approved Judgment

Lady Justice Gloster :

Introduction

1. The Commonhold and Leasehold Reform Act 2002 ("the Act") created a new right for the appropriate proportion of qualifying leaseholders of flats in a self-contained building or self-contained part of the building to establish a "right to manage" company ("an RTM company") which, in general terms, can exercise the management functions under the leases which are vested in the landlord or other manager.[1]

2. The question which arises in these appeals is whether an RTM company can acquire the management of more than one set of premises as defined in section 72 of the Act. In two of the cases the subject of this appeal, *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd ("Ninety Broomfield Road"); Garner Court RTM Company Ltd v Freehold Managers (Nominees) Ltd*) ("*Garner Court*"), the Leasehold Valuation Tribunal ("the LVT")[2] held that an RTM company could not do so. In the third, *Holybrook RTM Co Ltd v Proxima GR Properties Ltd* ("*Holybrook")*, the case was transferred into the Upper Tribunal (Lands Chamber) ("the Upper Tribunal") for determination by that Tribunal in its first instance capacity. All three cases were dealt with together at a hearing convened before the Upper Tribunal for that purpose on 17 October 2013[3].

3. The Upper Tribunal[4] decided[5] that an RTM company could acquire the management of more than one set of premises so long as all the qualifying conditions were met in relation to each set of premises respectively; neither the decision nor its reasoning imported any requirement that confined this conclusion to premises belonging to the same freeholder or freeholders or to the same estate or geographical area. Accordingly the Upper Tribunal allowed the appeals in relation to *Ninety Broomfield Road* and *Garner Court* and remitted the application in *Holybrook* to the First-Tier Tribunal (Property Chamber) to determine whether the RTM company, Holybrook RTM Company Ltd ("Holybrook RTM") was entitled to exercise the right to manage.

4. The three landlords in the above-named cases appeal to this court against the Upper Tribunal's decision with the permission of the Upper Tribunal.

Factual background

Ninety Broomfield Road

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[1] *e.g.* management companies under tri-partite leases.
[2] As it was then; in England it is now the First-Tier Tribunal (Property Chamber); it remains the LVT in Wales.
[3] A fourth case was also heard with these three, *Sinclair Gardens Investments (Kensington) Ltd v 14-44 Apperley Way and 18-44 Pippen Avenue RTM Co Ltd*, but the landlord in that case has not appealed.
[4] Siobhan McGrath, Chamber President, First-tier Tribunal (Property Chamber) sitting as a judge of the Upper Tribunal (Lands Chamber).
[5] [2013] UKUT 0606 (LC).

5. Triplerose Ltd, the appellant landlord in the first case ("Triplerose"), is the freehold owner of land known as 90 Broomfield Road, Chelmsford, CM1 1SS registered under a single title. There are two purpose-built, structurally detached, blocks of flats on the land (Building A, flats 1-6 Farthing Court and Building B, flats 7-15 Farthing Court), together with parking spaces, garden areas and a cycle and bin store. 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 1-6 Farthing Court via an underpass at ground level.

6. The lease of each flat in Farthing Court states that the intention is that each of the 15 units should be demised 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. Triplerose, as landlord, manages the site as a single entity. All flats are let to qualifying tenants as defined in section 75 of the Act.

7. The objects for which the respondent RTM company in the first appeal, Ninety Broomfield Road RTM Co Ltd ("Ninety Broomfield Road RTM") 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."

8. On 17 May 2012 Ninety Broomfield Road RTM served on Triplerose two separate notices of claim under section 79 of the Act to acquire the right to manage, one in respect of Building A, the other in respect of Building B. The notice for Building A stated that the premises were ones to which the relevant provisions of the Act applied as they consisted of "a structurally detached, self contained building containing a total of six flats…" The notice for block B also stated that it related to premises which consisted of "a structurally detached, self contained building with appurtenant property containing a total of nine flats…" At that date, five of the six leaseholders in Building A were members of Ninety Broomfield Road RTM, as were seven of the nine leaseholders in Building B.

9. Triplerose served counter-notices denying that Ninety Broomfield Road RTM was entitled to acquire the right to manage.

Garner Court

10. The property the subject of the second appeal, Garner Court, consists of two blocks of flats (block 1, flats 1-48 and block 2, flats 49-68) and a communal car park situate on property known as 122, 124 and 126 Dock Road, Tilbury, Essex RM18 7BJ. The property is registered under three separate titles: the first relating to block 1, the second to block 2 and the third to the car park.

11. 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 individual leases of the flats permit the occupier of any flat within "the block" to have equal rights of

passage, use, and/or otherwise in relation to any of the communal areas, or as against any other leaseholder within "the block". "The block" for the proposes of the Lease is defined as being:

"*The two blocks of flats known as Garner Court, Dunlop Road, Tilbury, Essex registered at HM Land Registry with title number EX693801, EX710799 and EX730543 and shall include all additions, amendments and alterations made thereto during the term including the car parking spaces and access thereto".*

12. Service charges are levied to leaseholders without differentiation between the two blocks and the properties are managed as a single unit.

13. The objects for which the respondent RTM company in the second appeal, Garner Court RTM Co Ltd ("Garner Court RTM"), 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.

14. On 12 December 2012 Garner Court RTM served two separate notices of claim on the freehold owner, the appellant in the second appeal, Freehold Managers (Nominees) Ltd ("Freehold Managers") under section 79 of the Act to acquire the right to manage, one in respect of block 1, which claimed the right to manage the block alone, and one in respect of block 2, which claimed the right to manage both the block and the appurtenant property. As at that date, 26 of the 48 qualifying tenants in block 1 were members of Garner Court RTM and 11 of the 20 qualifying tenants in block 2 were members.

15. Freehold Managers served counter-notices denying that that Garner Court RTM was entitled to acquire the right to manage.

Holybrook Estate

16. The property, the subject of the third appeal, consists of a residential estate in Reading, Berkshire containing seven self-contained blocks of residential flats (blocks A-G) comprising 200 flats. In addition to the 200 flats, the estate has 20 freehold houses which were not included in the claims made by the relevant RTM company, Holybrook RTM. There are two freehold titles under which the seven blocks were registered. The freehold owner was the appellant in the third appeal, Proxima GR Properties Ltd ("Proxima").

17. Each block has its own service charge budget. However Holybrook RTM claimed before the Upper Tribunal that the whole estate had been managed as one entity by OM Property Management since its construction.

18. The objects for which Holybrook RTM was incorporated were to "acquire and exercise in accordance with the 2002 Act the right to manage the Premises." The Premises were defined as blocks A to G on the estate.

19. Individual claim notices were served by Holybrook RTM on Proxima in respect of each block, but all contained the same information and in particular no indication was given of which lessees belonged to which block. That was clear from the sample claim notice

in respect of block D, provided to the Upper Tribunal[6] and which was before this court, which included the names and particulars of a total of 146 participating lessees in all the blocks, and not exclusively in block D. The sample notice stated that the premises consisted of a self-contained building and that the total number of flats held by such tenants was not less than two thirds of the total number of flats contained in the premises. However, as the Upper Tribunal stated[7], that was apparently somewhat modified in Holybrook RTM's evidence before the Tribunal, where it was 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."

20. In its counter-notice Proxima, [by its agent, Estates and Management,] denied that Holybrook RTM had the right to mange the estate on various grounds.

The judgment of the Upper Tribunal

21. As we have already stated above, the Upper Tribunal held that one RTM company could acquire the right to manage more than one set of premises. In summary, its reasons were as follows. The "main objective" of the statutory provisions was to "grant long leaseholders the right to take over the management of their building without having to prove fault or pay compensation"[8]. Where a number of self-contained buildings were managed together and shared appurtenant property, that could "only" be achieved by adopting a purposive construction[9]. The provisions of section 72 of the Act did not limit the number of self-contained buildings or parts of buildings to which the right applies[10]. Although this meant that, logically, an RTM company could acquire the management of multiple (geographically unrelated) properties, that was a "fanciful" concern[11]. Accordingly, so long as each set of premises qualified for the right to manage, there was nothing to prevent an RTM company acquiring the management of more than one set of premises or self-contained buildings[12]. It would suffice if a single notice were served in respect of a number of properties provided that its content was sufficiently clear to establish eligibility in respect of each set of premises[13].

[6] See paragraph 27 of the judgment.
[7] See paragraph 27 of the judgment.
[8] See paragraph 81 of the judgment.
[9] See paragraph 82 of the judgment.
[10] See paragraph 83 of the judgment.
[11] See paragraph 89 of the judgment.
[12] See paragraph 94 of the judgment.
[13] See paragraph 94 of the judgment.

Legislative framework[14]

22. Part 2, Chapter 1, of the Act makes provision for the acquisition of the right to manage. Thus section 71 provides 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) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred in this Chapter as the right to mange.

23. The right to acquire management rights applies to "premises" within the meaning of section 72, *i.e.* "a self-contained building or part of a building, with or without appurtenant property." Section 72, so far as relevant, provides as follows:

> "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.

[14] The following summary of the legislative framework is largely taken from the appellants' skeleton argument and was agreed by the respondents.

> (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."[15]

24. A company is an RTM company "in relation to premises" if it is a private company limited by guarantee with the object (or one of its objects) being to acquire and exercise the right to manage the premises. There can only be one RTM company in relation to any premises at any one time. Section 73, so far as relevant, provides as follows:

> "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 articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.
>
> ……
>
> (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.[16]
>
> (4) If the freehold of any premises is 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 transfer is executed."

[15] This includes premises where the immediate landlord of any qualifying tenant is a local housing authority (Sch.6, para.4); there is no such exclusion for other social landlords (*e.g.* housing associations).
[16] See also Sch.6, para.5; if the right to manage is "exercisable" by an RTM company, then the premises in question are exempted from s.72.

25. The qualifications for membership of a RTM company are set out in section 74 which so far as relevant provides as follows:

> "(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 articles of association of RTM companies.
>
> (3) A RTM company may adopt provisions of the regulations for its 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 articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.
>
> ...".

26. Sections 75 – 77 contain provisions for determining who is a "qualifying tenant" and what is a "long lease" for the purposes of Chapter 1. In general terms, a tenant of a residential flat held under a long lease as defined in section 76-77 is a qualifying tenant.

27. The relevant regulations are The RTM Companies (Model Articles) (England) Regulations 2009, S.I. 2009/2767)[17] ("the Regulations"). These prescribe the mandatory content and form of an RTM company's articles of association. Regulation 3(2) provides:

> "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".

28. Part 3 of the model Articles in the Schedule to the Regulations governs membership. Articles 26 – 27 so far as relevant provide as follows:

[17] In Wales, see The RTM Companies (Model Articles) (Wales) Regulations 2011, S.I. 2011/2680; there is no material difference between the English and Welsh regulations.

> "26(1) Every person who is entitled to be, and who wishes to become, a member of the company shall deliver to the company an application for membership executed by him in the following form (or in a form as near to the following form as circumstances allow or in any other form which is usual or which the directors may approve:)...
>
> To the Board of [name of company]I, [name]of [address]am a qualifying tenant of [address of flat] and wish to become a member of [name of company] subject to the provisions of the Articles of Association of the company and to any rules made under those Articles. I agree to pay the company an amount of up to £1 if the company is wound up while I am a member or for up to 12 months after I have ceased to become a member. Signed Dated
>
> (2) No person shall be admitted to membership of the company unless that person, whether alone or jointly with others, is—
>
> (a) a qualifying tenant of a flat contained in the Premises as specified in section 75 of the 2002 Act; or
>
> (b) from the date upon which the company acquires the right to manage the Premises pursuant to the 2002 Act, a landlord under a lease of the whole or any part of the Premises.
>
> (3) Membership of the company shall not be transferable.
>
> ...
>
> "(6) The directors shall, upon being satisfied as to a person's application and entitlement to membership, register such person as a member of the company.
>
> 27.(1) A member who at any time fails to satisfy the requirements for membership set out in article 26 shall cease to be a member of the company with immediate effect.
>
> (2) If a member (or joint member) dies or becomes bankrupt, his personal representatives or trustee in bankruptcy will be entitled to be registered as a member (or joint member as the case may be) upon notice in writing to the company.".

29. The procedure for acquiring the right to manage starts with the RTM company giving a "notice inviting participation" (in prescribed form)[18] to the "qualifying tenant of a flat contained in the premises" who is not already a member of the RTM company or has not agreed to become a member of the RTM company. Thus section 78(1) provides that:

[18] Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010, S.I. 2010/825; Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011, S.I. 2011/2684.

> "78(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...."

30. At least 14 days after the giving of the notice inviting participation, and once the membership of the RTM company comprises at least half the qualifying tenants of the flats in the premises, the RTM company may serve a "notice of claim to acquire right" (in prescribed form)[19] on the landlord and any other manager. Thus section 79 provides:

> "79(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a 'claim notice'); and in this Chapter the 'relevant date', in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
>
> (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
>
> (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
>
> (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.
>
> (6) The claim notice must be given to each person who on the relevant date is—
>
> (a) landlord under a lease of the whole or any part of the premises,
>
> (b) party to such a lease otherwise than as landlord or tenant, or
>
> (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987... to act in relation to the premises, or any premises containing or contained in the premises....".

[19] *ibid*.

31. Any of the people who have been given a claim notice may serve a counter-notice (in prescribed form),[20] either admitting or denying that the RTM company is entitled to acquire the right to manage: see section 84(2)). Where an RTM company has been given a counter-notice, it may apply to the appropriate Tribunal[21] for a determination that it is entitled to acquire the right to manage the premises: see section 84(3). Thus section 84 provides so far as relevant:

> "84(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a 'counter-notice') to the company no later than the date specified in the claim notice under section 80(6).
>
> (2) A counter-notice is a notice containing a statement either—
>
> (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
>
> (b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,
>
> ...
>
> (3) Where the RTM company has been given one or more counter-notices[22] containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
>
> (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
>
> (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—
>
> (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
>
> (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled...."

[20] *ibid*.
[21] In England, the First-Tier Tribunal (Property Chamber); in Wales, the Leasehold Valuation Tribunal.
[22] *Cf.* above, s.79(6), above, para.30.

32. On the acquisition of the right to manage, the RTM company assumes the "management functions" previously exercised by the landlord or other manager under the terms of the lease. "Management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management. Functions concerning only a part of the premises not held under a lease by a qualifying tenant are, however, excluded as are all functions relating to re-entry or forfeiture. These provisions are all contained in section 96 which, so far as material, provides as follows:

> "96(1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.
>
> (2) 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.
>
> (3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.
>
> (4) Accordingly, any provisions of the lease making provision about the relationship of—
>
> (a) a person who is landlord under the lease, and
>
> (b) a person who is party to the lease otherwise than as landlord or tenant,
>
> in relation to such functions do not have effect.
>
> (5) 'Management functions' are functions with respect to services, repairs, maintenance, improvements, insurance and management.
>
> (6) But this section does not apply in relation to—
>
> (a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
>
> (b) functions relating to re-entry or forfeiture...."

33. The right to manage may cease either by agreement between the RTM company and the landlord or (in general terms) if the RTM company becomes insolvent, or if it is struck off the register of companies, or if the appropriate Tribunal appoints a manager under Pt.2, of the Landlord and Tenant Act 1987.[23] Alternatively, if the RTM company ceases to be an RTM company in relation to the premises (*e.g.* by acquiring

[23] In general terms, a "for cause" power where there has been a failure of management.

the freehold), it will cease to be entitled to exercise the right to manage. Section 105 provides as follows:

> "105(1) This section makes provision about the circumstances in which, after a RTM company has acquired the right to manage any premises, that right ceases to be exercisable by it.
>
> (2) Provision may be made by an agreement made between—
>
> (a) the RTM company, and
>
> (b) each person who is landlord under a lease of the whole or any part of the premises,
>
> for the right to manage the premises to cease to be exercisable by the RTM company.
>
> (3) The right to manage the premises ceases to be exercisable by the RTM company if—
>
> (a) a winding-up order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company, or the RTM company enters administration,
>
> (b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,
>
> (c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
>
> (d) the RTM company's name is struck off the register under section 1000, 1001 or 1003 of the Companies Act 2006.
>
> (4) The right to manage the premises ceases to be exercisable by the RTM company if a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, begins so to act or an order under that Part of that Act that the right to manage the premises is to cease to be exercisable by the RTM company takes effect.
>
> (5) The right to manage the premises ceases to be exercisable by the RTM company if it ceases to be a RTM company in relation to the premises."

Representation

34. Mr Philip Rainey QC and Mr Justin Bates appeared on behalf of all three appellants. Mr Andrew Drane, a director of Ninety Broomfield Road RTM, the respondent in the first appeal, provided a written skeleton argument and with the permission of the court made oral submissions on its behalf. Mr Steven Woolf appeared on behalf of Garner Court RTM, the respondent in the second appeal. Mr Phil Perry, a director of Holybrook RTM, the respondent in the third appeal, represented that company but did not address the court separately. I am grateful to counsel and the parties for their helpful written and oral submissions. The fact that I do not rehearse all the arguments in this judgment does not mean that I have not considered them carefully.

The appellants' submissions

35. In summary Mr Rainey and Mr Bates, on behalf of the appellants, submitted that the purpose of the legislation was to allow qualifying leaseholders to take over management of their own blocks, through the instrumentation of RTM companies; the purpose of the legislation was not intended to allow anyone else to do so. They submitted that the complex statutory provisions of the Act on a proper analysis could *only* be construed as meaning that there had to be one RTM company for each exercise of the right, *i.e.* for each block, and that such provisions did not permit the concept of "global" RTMs applying to premises with different geographical footprints. The reference to “premises” in the legislation had to have the same meaning wherever it was used (save so far as was expressly provided otherwise). This analysis was supported by the consultation paper "Commonhold and Leasehold Reform, CM 4843, August 2000” ("the consultation paper"), which preceded the draft bill which ultimately became the Act, as well as the relevant debates in Parliament, as reported in Hansard. The analysis was also supported by the practical consequences, which would follow, if the Upper Tribunal's decision were held to be correct. Accordingly, the appeals should be allowed.

The respondents’ submissions

36. Mr Woolf, on behalf of Garner Court RTM, and Mr Drane, on behalf of Triplerose RTM, submitted that the Upper Tribunal's decision was clearly correct for the reasons set out in the decision and for the following additional reasons. They also relied on the subsequent decision of the Upper Tribunal in *Fencott Ltd v Lyttelton Court 1 14 - 34a RTM Company Ltd and others* [2014] UKUT 0027 (LC) which followed the decision of the Upper Tribunal in these appeals.

37. They submitted that, since it was undeniable that the purpose of Parliament, when enacting the legislation, was to give the leaseholders, through an RTM Company, as much power of management and control of the building as a freeholder would have had, it must follow that if there was a desire, as there plainly was amongst the qualifying tenants of Garner Court, to manage two blocks of flats and the car park as one, Garner Court RTM's wishes should prevail as should any other RTM Company which wished to adopt a similar one company approach to its various blocks of flats. The legislative framework of the Act was consistent with such an approach. There was nothing which expressly precluded a RTM company from having the right to manage more than one block of flats. In those circumstances it was not legitimate for

the court to have regard to the consultation paper or the relevant debates in Parliament,

38. In oral argument Mr Woolf conceded that, contrary to the submissions made in his written skeleton, the reference in section 71 and section 72(1) of the Act, to "premises" could only be to one set of premises. However, both he and Mr Drane submitted that nonetheless one RTM company could have the right to manage more than one set of premises. What section 72, read as a whole did not do, was limit the number of self-contained buildings or parts of self-contained buildings to which the right to manage applied. Nothing in any other section of the Chapter in which the word "premises" was used pointed in the direction the appellants would contend.

39. Both submitted that section 73 (2) did not expressly limit the number of objects an RTM company could have, or the number of premises it could manage. Section 78 and section 79 by use of the word "any premises" were consistent with the possibility of an RTM company having the right to manage more than one set of premises. Moreover managing estates with more than one block of flats as one entity was self-evidently the optimum way to manage such premises. That was in the best interests of both the landlord and tenant.

40. The type of adverse consequences upon which the appellants relied which could arise where two or more blocks were managed by one RTM Company were recognised; however, a far more worrying and detrimental consequence to the leaseholders would arise if the appellants' submissions were to prevail. For example, in Garner Court, where two blocks of very differing sizes existed, a situation could arise where the substantially higher service charge income of block 1 tenants could be used to maintain their block to a higher standard, leaving block 2 tenants to fund only basic repairs and maintenance to their block. In such event the value of the individual flats in block 1 would remain constant or possibly be enhanced, whilst the value of the flats in block 2 would fall dramatically when viewed by potential purchasers.

41. They pointed to the fact that, as was mentioned in paragraph 51 of the judgment in *Lyttleton Court*, there have been at least 16 previous decisions in which Leasehold Valuation Tribunal's have confirmed the acquisition of the right to manage multiple self-contained buildings; they also pointed to the fact, likewise referred to in *Lyttleton Court*, that there were numerous RTM companies which had been established on an estate-wide basis.

42. They argued that, even if there were to be the type of adverse consequences as envisaged by the appellants, the combined workings of (a) the covenants within the leases together with (b) the application of company law principles, was more than sufficient to exercise necessary checks and balances. The legislative framework relied upon had, in any event been considered by this Court in the case of *Gala Unity Limited v Ariadne Road RTM Co. Ltd*. [2012] EWCA 1372. They accepted that the issue of whether the two blocks were "premises" was not expressly argued; however they submitted that it was clear from the judgment of Sullivan LJ, that the court's view was:

> "there can be no doubt that the two blocks of flats are self contained buildings for the purpose of section 72(1)(a)." See paragraph 13 of the judgment.

43. Whilst the appellants might argue that the court in *Gala Unity* was not taken to the consultation paper, the consultation paper had to be given very little weight in circumstances where: (a) the context in which the questions were raised was not known; and (b) it was not known what, if any, further discussion took place. Moreover it was not legitimate for the court to look at the consultation paper as there was no ambiguity in the Act. References relied upon by the appellants made clear that the right to manage had to be exercised on a block by block basis; but there was nothing in the consultation paper or the debate which implied that an RTM company could not exercise the right more than once to acquire the right to manage further sets of premises. Moreover there was nothing in the Act which prevented an RTM company from having the right to manage more than just one block on an estate. It was clearly consistent with the aim of the legislation and in the interests of both landlords and leaseholders for the latter to opt to be part of, and to have their buildings managed by, a single RTM company in those situations where the leaseholders determined that it was in the in their best interests to do so.

Analysis and determination

44. In my judgment the appellants' approach to the construction of the Act is correct. My reasons are as follows.

45. Section 71 makes it clear that Chapter 1 of the Act makes provision for the acquisition of the right to manage only in relation to "premises to which this Chapter applies" and only by a company "which, in accordance with this Chapter may acquire and exercise those rights." Section 72(1) makes it clear that Chapter 1 only applies to premises if they satisfy the three separate conditions set out in sub-paragraphs (a), (b) and (c) of section 72(1). Importantly for present purposes sub-paragraph (a) imposes the condition that the premises "consist of a self-contained building or part of the building", which satisfies the conditions in sub-paragraphs (b) and (c) in relation to qualifying tenants and number of flats held by qualifying tenants. This makes it clear that the acquisition and the exercise of rights to manage applies not, as Mr Woolf originally suggested, to a number of blocks or self-contained buildings in an estate, but to a single self-contained building (i.e. structurally detached – see section 72(2)) or part of a building.

46. That in itself does not determine the question whether one RTM company can acquire the right to manage more than one set of "premises". For the provisions relating to RTM companies one has to look at sections 73 and 74 of the Act and the requirements set out in those sections and in the model articles of association contained in the Regulations. As already stated section 74 provides that:

> "(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."

That to my mind is quite clear. If a company is an RTM company in relation to premises A, only qualifying tenants of premises A, and relevant landlords of premises A, are entitled to be members of that RTM company. Section 74 does not envisage that qualifying tenants of flats contained in premises B, and relevant landlords of premises B, are also entitled to be members of that RTM company. The Act could have so provided by envisaging or permitting a complex membership structure of a RTM companies whereby there were different classes of members in relation to different premises in relation to which the RTM company had acquired the right to manage. It does not do so.

47. When one looks at the Regulations they are wholly inconsistent with the notion that an RTM company can acquire rights of management in relation to different sets of premises, and in particular with the notion that an RTM company can acquire rights of management in relation not merely to blocks of flats in the same estate, but also to premises with a wholly different geographical footprint.

48. For example article 1 of the model articles of association of an RTM company defines "the Premises" as meaning "[name and address]". Article 4 states that "the objects for which the company is established are to acquire and exercise in accordance with the 2002 Act the right to manage the Premises." Article 6 provides that a company is required to spend all income in promoting the objects. Article 26 provides that no person shall be admitted to membership of the company unless that person, whether alone or jointly with others is:

> "(a) a qualifying tenant of a flat contained in the Premises as specified in section 75 of the 2002 Act; or
>
> (b) from the date upon which the company acquires the right to manage the Premises pursuant to the 2002 Act, a landlord under a lease of the whole or any part of the Premises."

49. But, if the respondents are right, and there can be numerous "Premises" defined in the articles of association of an RTM company, so that any qualifying tenant of any flat contained in any one of several "Premises", wherever situate, may be a member of an RTM company, the provisions of decision making by members contained in the articles (see for example articles 28 to 38) and the provisions for the appointment of directors by means of an ordinary resolution (see article 22) are completely undermined. For example, the majority of the 100 qualifying tenants of premises A in Liverpool, could (on the one member, one vote, principle) dictate who were appointed the directors of the RTM company and outvote the 14 qualifying tenants of premises B in Reading, in relation to decisions that had to be taken in relation to premises B by virtue of the members' reserve power by special resolution to direct the directors to take, or refrain from, taking specified action as set out in article 9. Similar considerations would apply to enable the majority of the qualifying tenants in relation to block A on a particular estate, to outvote the views of the qualifying tenants in relation to block B. That, in my judgment, is clearly not what the statute had in mind. There is no provision to ring fence the rights of members who are qualifying tenants of one set of premises, from the rights of those who are qualifying tenants of another set of premises.

50. Other provisions of the Act support this conclusion. For example the notice inviting participation must be given to a tenant of a flat "contained in *the* premises" (section 78(1)(a)), must explain that the RTM company intends to acquire the management of "*the* premises" (section 78(2)), must invite the recipients of the notice to become members of the company and must state the names of the existing members of the RTM company. Similarly, sections 79 and 80 of the Act are wholly inconsistent with the idea that "premises" as defined can include different premises beyond the single "self-contained building or part of the building referred to in section 72(1)(a). For example, section 79(5) provides that the claim notice to be served by the RTM company can only be served if a requisite number of qualifying tenants of flats "contained in *the* premises" have joined the company; and section 80(2) provides that the claim notice must specify "*the* premises".

51. None of the detailed provisions of these sections (which require specification of the members of the RTM company) or the machinery for the acquisition of the right to manage makes sense if an RTM company is entitled to a right to manage "premises" in different geographical locations. Similar comments can be made in relation to the requirements of The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 which impose additional requirements in relation to, for example, notices of invitation to participate and contents of claims notice or counter notice. It is impossible to see how these apply if an RTM company is permitted to apply for and exercise management in relation to different premises, whether comprised in the same estate or in different geographical locations. Similar arguments can be made in relation to other provisions of the Act.

52. Mr Rainey also pointed to the real practical problems which would arise if the Upper Tribunal's decision was correct and the right to manage was extended to include a number of blocks or separate buildings within the same estate. He gave the following examples:

    i) Where two blocks of different sizes were managed by one RTM company, it was likely that the members belonging to the larger block would dominate decisions referable also (or even solely) to the smaller block; the possibility of such domination remained even if the blocks were of similar size. As he explained, although day-to-day decisions would be made by the directors (see article 8 of the model articles), there was no requirement that each block should have a director; if members wished to limit the powers of the directors, a special resolution had to be passed (see article 9); that required a majority of not less than 75%, passed by members representing not less than 75% of the total voting rights of eligible members: s.283, Companies Act 2006. Hence, the larger block could easily prevent the smaller block building in protection by fettering the powers of the directors.

    ii) There was obvious potential for conflict of interest between the leaseholders of different blocks on a range of matters which were, in context, of considerable importance to leaseholders (particularly those who had shown the interest to exercise RTM); for example:

a) one block might want to increase service charges whereas the other might not;[24]

b) one block might wish to grant approvals for, *e.g.* sub-letting to periodic tenants,[25] whereas the other might not;[26]

c) one block might wish to undertake major works (*e.g.* at a particular time) whereas the other might not;

d) estate rules and regulations might be varied to benefit one block at cost of another, *e.g.* allocation of parking, storage use of gardens, etc.

53. He further correctly pointed out that, in the event that this sort of situation was to arise, the acquisition of the right to manage could not be exercised against an existing RTM company (see section 73(4) of the Act), so that the leaseholders in the smaller block would in practice be fixed with the choice of the RTM company for all time. The only way in practice to change the situation would be to apply to the appropriate Tribunal to appoint a manager under Part 2, Landlord and Tenant Act 1987, which was a complex and costly process, in the case of a small block of four or five flats probably prohibitively so. However attractive it might seem superficially for a smaller block to have joined in a single, estate-wide RTM, in reality this meant that the smaller block could not achieve the objective of self-management which was at the purpose of the provisions.

54. I find these submissions persuasive and reject the respondents' arguments to the contrary about the possible practical difficulties of two or more blocks on the same estate being under the management of different RTM companies. For my part I consider that the provisions of the Act are adequately clear and are strongly supported by the type of practical considerations to which Mr Rainey referred. With respect I disagree with the Upper Tribunal's proposition that the "only" way to achieve the purpose of the legislation, in a situation where a number of different self-contained buildings had been managed together and share appurtenant property, was to give the statutory provisions a purposive construction, so as to enable one RTM company to exercise the right to manage in respect of multiple buildings. In my judgment there is no basis in the statutory provisions that justifies such a conclusion. Indeed, as Mr Rainey pointed out, from a practical point of view there would be nothing to prevent two or more RTM companies, which were established in relation to separate blocks on the same estate, from entering into an agreement to delegate management to one of the RTM companies, or indeed a third party manager, to act on behalf of both or all: the articles explicitly provide for delegation;[27] RTM companies can also appoint agents. Moreover in my judgment the Upper Tribunal's conclusion (viz. that a composite right to manage a number of separate premises could be acquired by an RTM company) wrongly paid no regard to the consequential dilution of the rights of members who were qualifying tenants of individual premises. Such dilution was simply not justified by the relevant provisions of the Act or the Regulations.

[24] E.g. to set standards of services, condition or facilities in order to enhance the value of the block and therefore of its flats.
[25] Thus allowing sales to buy-to-let purchasers rather than owner-occupiers.
[26] Where the consent of the landlord is required for a subletting, it becomes a function of the RTM company subject to prior notice given to the landlord (s.98).
[27] Prescribed articles, art.5(i),(k); art.10. They can even appoint the landlord as agent: section 97(2).

55. If, contrary to my view, the true interpretation of the provisions of the Act is ambiguous, then this court is entitled to have regard to the consultation paper and the debates in Parliament as reported in Hansard, which preceded the passing of the Act, as an aid to construction. The consultation paper on the original draft Bill (Commonhold and Leasehold Reform, August 2000)[28] demonstrated that the right to manage was intended to apply to a single block. The paper proposed the introduction of a new right to manage for "a majority of the leaseholders in a block of flats to take over the management of their block". For example the paper contained the following passages:

> "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." (para.9)
>
> "The main objective is to grant residential long leaseholders of flats the right to take over the management of their building..." (para.10)
>
> "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." (para.22)
>
> "In certain cases, a block of flats may be part of an estate of properties, with all blocks enjoying a number of common facilities. These may include, for example, a car park or gardens. Where that is the case, the RTM company would become responsible only for the management of the block for which the RTM had been exercised." (para.88)

56. The consultation paper specifically addressed the issue of the practicability of extending the right to manage to make it exercisable in respect of a group of leasehold properties and invited views on the issue; see paragraph 23 of the paper. It considered the possibility of a change to the draft Bill to allow the proposals to operate in relation to more than one block. But the paper stated:

> "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 to 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

[28] The draft bill fell when Parliament was dissolved ahead of the 2001 general election, but was reintroduced in only "a very slightly revised" form (see Current Law Statutes) by the new government and substantively progressed through Parliament in a way that reflected the stages already completed before the election. The wording relevant to the issue in these proceedings was identical as between (a) the draft Bill consulted on, (b) the pre-election Bill as originally introduced, (c) the post-election Bill as introduced, and (d) the Act.

> a test may be relatively simple to identify principle, it may also be difficult to frame satisfactorily in legislation."

In accordance with the practice at the time, the consultation responses were not published, but there was no change in the draft Bill which reflected, or could be said to have reflected, any such extension.

57. There was subsequently an explicit attempt to amend the Bill[29] so as to provide that an RTM company could acquire more than one block. The amendment was debated in the House of Lords before being withdrawn in the light of the Government's response.[30] I quote the relevant passages:

"Lord Lea of Crondall... Amendment No.83A is self-explanatory. It is an attempt to extend the right to manage across a whole estate...
"Lord Kingsland... [T]he amendments would extend the right to manage to cover estate of buildings. At present it applies only to blocks of flats...
"Lord Whitty[31] ... [I]t would be very difficult to implement... the terms of the amendments... we have given careful thought to the possibility of creating a right to manage applying to more than one property... we would need rather more complicated amendments to the Bill than are proposed in these clauses... that would be a matter for complex amendment or, in our judgment, a later Bill, by which time we would be able to take account of the experiences of the more straightforward application of RTM in individual buildings."

58. Contrary to the respondents' submissions, if there were any ambiguity in the Act itself, these passages put the legislative intention beyond doubt.

59. As Mr Rainey further submitted, some support can also be derived from the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The 1993 Act confers on long leaseholders the right to acquire the freehold of their blocks. Although there are various incidental differences between the two Acts,[32] and the provisions of the 1993 Act operate through a nominee purchaser, the qualifying conditions are otherwise identical, i.e. as to blocks, qualifying leaseholders, and appropriate proportion of qualifying leaseholders. In particular, the provisions in section 72 of the Act are indistinguishable from those in section 3 of the 1993 Act. Section 3 provides:

> "3(1) Subject to section 4, this Chapter applies to any premises if—
>
> (a) they consist of a self-contained building or part of a building;
>
> (b) they contain two or more flats held by qualifying tenants; and

[29] In fact this was the Bill which fell with the 2001 election but was subsequently enacted in substantially similar form as the Act.
[30] Hansard, House of Lords, February 27, 2001, CWH98-102.
[31] Parliamentary Under-Secretary of State at Department of the Environment, Transport and the Regions.
[32] Not least the subject matter of what is actually being acquired pursuant to the relevant statutory provisions.

> (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."

60. The leading textbook on Leasehold Enfranchisement, *Hague on Leasehold Enfranchisement*, 6th edition, 2014, paragraph 21-02 states:

> "The Act refers to 'a' building. It has been held in the county court, correctly is it considered, that 'building' should not be construed as meaning 'building or buildings'."

Whilst the construction of the 1993 Act is not under consideration in these appeals, and the contexts are different, at first sight the analogy seems to me to be apt. If what appears to be the generally accepted view that the 1993 Act applies only to single buildings (i.e. one cannot enfranchise two or more blocks via one nominee purchaser under one claim notice) is correct, it would be surprising if the same words in the Act fell to be construed differently from those in the 1993 Act.

61. Finally I should say that I am not persuaded by Mr Woolf's argument that Sullivan LJ's statement at paragraph 13 of this court's judgment in *Gala Unity Limited v Ariadne Road RTM Co. Ltd* that:

> "there can be no doubt that the two blocks of flats are self contained buildings for the purpose of section 72(1)(a)."

is of any assistance to the respondents' case. Whilst it is correct that, as a matter of fact, in *Gala* one single RTM company was seeking to acquire the right to manage two separate self-contained blocks of flats, and that no point appears to have been taken either by the parties, or by the court, that that was an illegitimate course in any event, because of the arguments raised in this case, the contentious issue in *Gala* had nothing whatsoever to do with that point. The issue in *Gala* related to the sole question whether certain "appurtenant property" (a bin area, access road and gardens) which was enjoyed not merely by the two blocks of flats, but also by a number of other occupiers, fell within the definition of "appurtenant property" in section 112(1) of the Act; the argument on behalf of the freeholder was that it did not fall within the definition because "appurtenant property" had to appertain exclusively to the self-contained building or part of a building which was the subject of a claim to acquire the right to manage. This court rejected that argument but neither the statement relied upon by Mr Woolf, nor anything else in the judgment, or in the parties' arguments[33], addressed the issue under consideration in the present case. In those circumstances the fact that, as a result of the judgment, a single RTM company was held to be entitled to acquire the right to manage the two blocks of flats in that case cannot be regarded as support for the respondents' analysis in the present appeals.

62. Accordingly in my judgment the relevant provisions of the Act, construed as a whole, in context, necessarily point to the conclusion that the words "the premises" have the same meaning wherever they are used (save where otherwise expressly provided). That means that the references in section 72 to "premises" are to a single self-contained building or part of the building, and that likewise references to "the

[33] Neither party was represented by counsel.

premises" or "premises" or “any premises” in sections 73, 74, 78 79 and other provisions of the Act are likewise references to a single self-contained building or part of the building. That interpretation is consistent with the provisions for model articles contained in the Regulations and is the only basis upon which the machinery for acquisition of the right to manage can operate. Accordingly in my view it is not open to an RTM company to acquire the right to manage more than one self-contained building or part of a building and the Upper Tribunal was wrong to reach the decision which it did.

Disposition

63. For the above reasons I would allow this appeal.

Patten LJ:

64. I agree.

Sir David Keene:

65. I also agree.