

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/OOAH/LRM/2009/0012**

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 84 OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002.**

Applicant: 2 Carolina RTM Company Limited

Respondent: Sinclair Gardens investments (Kensington) Ltd

Premises: 2 Carolina road, Thornton Heath, Surrey CR7 8DT

Application Received 24 June 2009

Date of Hearing 20 August 2009

Appearances for Applicant: None

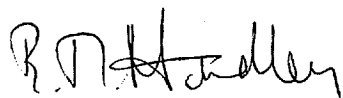
Appearances for Respondent Mr Summers of counsel:

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B  
Mr B.F. Collins FRICS  
Mrs L. Walter MA (Hons)

Date of Tribunal's Determination: 20 August 2009.

1. The applicant seeks a determination that it was, on the relevant date, entitled to manage the Premises.
2. On 15 April 2009 the applicants, represented by Canonbury Management, claimed the right to manage Flats 2A –J, 2 Carolina Road, Thornton Heath, Surrey.
3. They claimed that the Premises :
  - (a) consist of a self contained building or part of a building
  - (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.
4. On 18 May 2009 the respondents served a counter notice stating that the applicants were not entitled to acquire the right to manage the premises - the flats - specified in the claim notice.
5. On 24 June 2009 the Tribunal received an application for a determination.
6. On 29 June 2009 Directions were issued and a hearing was scheduled for 20 August.
7. On 17 August 2009 Canonbury Management wrote to the Tribunal on behalf of the applicants complaining that the respondent's statement of case had arrived on 28 July 2009 rather than 15 July as specified in the Directions.
8. The Tribunal was of the opinion that the respondent's statement of case was merely an elaboration of the points already made in the counter notice and that the issues raised would be fully aired at the hearing.
9. On 20 August Mr Summers of counsel appeared to represent the respondents but there were no appearances for the applicants.
10. Mr Summers said that the notice of claim sought the right to manage the flats in the premises rather than the totality of the premises. He explained, and produced photographs, that the premises consisted of nine flats and two shops. The shops were on the ground floor and behind, also on the ground floor, were two flats. On the first floor there were two flats above the two ground floor flats and two flats above the shops. The third floor has one flat above the ground floor flats and two flats above the shops.
11. Mr Summers contended that this meant that the premises claimed were not a vertical division of the building in question because the commercial units were under part of the residential premises in respect of which the claim is made.
12. Mr Summers produced copies of Holding and Management (Solitaire) Ltd (2008) 2EG,152 in which the President of the Lands Tribunal had said 'the part of the building in respect of which the claim was made did not constitute "a vertical division of the building"'. Accordingly, it was not a self contained part of the building for the purposes of c.1 of Pt2 of the Act'.
13. The Tribunal was persuaded that since the notice of claim related only to the flats and not the building as a whole, it was not possible to acquire the right to manage part of the building which was not, clearly, vertically severed from the commercial units for which no claim was made.
14. Accordingly, the application must fail because the claim relates only to the residential units and not to the entire premises.

15. Counsel, in a skeleton argument, was prepared to take other points in relation to the claim but the Tribunal considered that it failed at this first hurdle.

Chairman 

Date 20/8/09.