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**Residential
Property**
TRIBUNAL SERVICE

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 84(3) OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002 ("the Act")**

REF: LON/00BE/LRM/2011/0024

Properties: collectively
Flats 1-6 16 Lynbrook Grove;
Flats 1-8 34 Lynbrook Grove, Flats 1-8 108 Chandler
Way and Flats 1-8 1 Tower Mill Road;
Flats 1-6 3 Tower Mill Road;
Flats 1-6 5 Tower Mill Road;
Flats 1-6 7 and Flats 1-6 9 Tower Mill Road; and
Flats 1-6 11 Tower Mill Road

Applicant: SQ North RTM Company Limited

Respondent : Regisport Limited

Members of the Tribunal Mrs J.S. Pittaway LL.B
Mr P Tobin FRICS MCI Arb

Date of Decision: 18 November 2011

Background

1. This is an Application under s84(3) of the Act for a determination that on 17 June 2011, being the relevant date (namely the date when notices of claim were given to the Respondent), the Applicant was an RTM company ("an RTM company") entitled to acquire the right to manage the Properties.
2. The freehold interest in the Properties is owned by Regisport Limited.
3. The Application details persons stated to be qualifying tenants and members of an RTM company.
4. In the Application the Applicant indicated that it would be prepared for the Application to be dealt with by way of written representations. Directions issued by the Tribunal on 29 July provided that any request for an oral hearing should be made by 19 September 2011. Neither party made such a request.
5. A Tribunal was convened on 28 September to consider the Application. The Tribunal had before it a bundle which included the Applicants' Response and Statement of Case dated 22 August 2011 ("the Applicants' Case") and a Statement of Truth by Eliza Thaine. They also had the Respondent's Reply to the Applicants' Case dated 15 September 2011 ("the Respondents Reply").
6. To enable the Tribunal to reach a decision they requested that the parties provided to each other, with a copy to the Tribunal, evidence to substantiate whether or not each of the Properties is a self-contained building by 13 October 2011 and any submissions they might want to make on the relevance of the decision of the Court of Appeal in Crafrule Ltd. V 41-60 Albert Place Mansion (Freehold) Limited by 20 October 2011. Supplementary submissions were made by the Applicant but the Tribunal received nothing from the Respondent.

Issues to be determined

1. In relation to Flats 1-8 34 Lynbrook Grove, Flats 1-8 108 Chandler Way and Flats 1-8 1 Tower Mill Road ("34 Lynbrook Grove") and Flats 1-6 7 and Flats 1-6 9 Tower Mill Road ("7 and 9 Tower Mill Road") whether the buildings in each claim fulfil the requirements of s72 of the Act.
2. Whether all the tenants named in the six claims were "qualifying tenants" as required by s74(1) of the Act.

3. Whether the RTM company complied with the membership requirement in s79(5) of the Act that on the relevant date the membership must include qualifying tenants of not less than one half of the total number of flats contained in the premises.

4. Whether Notice of Invitation to Participate had been given to all persons as required under s78(1) of the Act.

5. Whether the claim notices had been given in accordance with the requirements of s79 of the Act

Evidence

1. Self-contained buildings

The Applicant submitted in the Applicants' Case that the building comprising each of 34 Lynbrook Grove and 7 and 9 Tower Mill Road is a separate building as there is no vertical separation between the addresses forming part of each of these properties, they were incapable of independent development having shared services, roofing, guttering and television and satellite aerials.

The Respondent disputed this submission in the Respondents' Reply, arguing that neither was a self-contained building or part of a building.

In their supplementary submissions the Applicants submitted that the Respondents were ignoring that Section 72(1)(a) which states that the provisions apply to a self-contained building "or" a part of a building and that once the definition in section 72(2) is satisfied it is irrelevant that the building might also be capable of being divided into parts. They also referred to the analogous provisions in section 3 Leasehold Reform and Urban Development Act 1993 considered in Crafrule Ltd. v 41-60 Albert Place Mansion (Freehold) Limited and referred to the decision in Marks Court RTM Company Limited v Long Term Reversioners Limited & ors CAM/00KF/LRM/2009/0002

2. Qualifying Tenants

The Applicant stated that qualifying tenants of at least half the flats in the building as listed in each Claim Notice were members of the Applicant RTM Company.

The Respondent submitted that its solicitor had been unable to confirm the number of qualifying tenants.

3. Membership of RTM company

The Applicant submitted that there was no statutory requirement that they produce evidence of applications for membership to the Respondent as it had requested.

The Respondent submitted that its solicitor had been unable to confirm whether the qualifying tenants were members of the Applicant company.

4. Notice of Invitation to Participate

The Respondent submitted that failure by the Applicant to disclose the Notices of Invitation (or the covering letters) meant that they were unable to confirm that all qualifying tenants had been served with Notices Inviting Participation as required under s78 of the Act

The Applicant submitted that the principle adopted in the LVT decision in Greenhill RA RTM Company Limited v Hildron Finance Limited should also be adopted here; that evidence that section 78 was strictly complied with is not required unless the landlord has established a *prima facie* case of non-compliance with the section. They submitted that the Respondent had not established such a *prima facie* case. The Applicant submitted (but without providing evidence to substantiate its assertion) that it had exceeded its statutory obligations. It stated that it had prepared its mailing list using official copies obtained from the Land Registry. Ms E Thaine's Statement of Truth stated that she had endeavoured to invite all leaseholders to participate and that she had not deliberately excluded any leaseholder.

5. The validity of the claim notice given by RTM company

The Respondent submitted that the claim notices had not been given in accordance with the requirements of s79 of the Act as the notices were not signed by a Director of the Right to Manage Company or a person authorised by the company.

The Applicant submitted that the claim notice was signed by Urang Property Management Limited, the corporate secretary of the company.

The Respondent submitted that the Notices before the Tribunal were not signed by anyone.

The Law

In addition to sections 71 to 81 of the Commonhold and Leasehold Reform Act the Tribunal had regard to the following cases;

Crafrule Ltd. V 41-60 Albert Place Mansion (Freehold) Limited [201] EWHC 1230 (Ch) ("Crafrule")

Marks Court RTM Company Limited v Long Term Reversioners Limited & ors CAM/00KF/LRM/2009/0002 ("Marks Court")

Greenhill RA RTM Company Limited v Hildron Finance Limited LON/00AG/LRM/2206/002 ("Greenhill")

The Tribunal's Decision and Reasons

The Tribunal determines that on 17 June 2011 the Applicant was a Right to Manage Company entitled to acquire the Right to Manage the Properties.

1. Self-contained buildings

The Tribunal noted that the Applicants had withdrawn an earlier claim notice which related to more than one self-contained building and that the resubmitted claims in relation to four of the six claims clearly related to self-contained buildings.

The Tribunal determines that the Applicants' remaining two resubmitted claims were each in respect of a self-contained building.

In reaching this conclusion the Tribunal accepted the supplementary submissions of the Applicant as to the construction of section 72(1) (a) and as to the decision of the Court of Appeal in Crafrule Ltd. V 41-60 Albert Place Mansion (Freehold) Limited .

2. Qualifying Tenants

The Tribunal considered that the Respondent was in a position to ascertain who the qualifying tenants were without requiring this information from the Applicants, from their own knowledge of the Properties and documents of public record. They had not done so.

The Tribunal accepted, in the absence of evidence to the contrary that the persons named in the Claim Notice as qualifying tenants were qualifying tenants.

3. Membership of RTM company

The Tribunal noted that the Respondent had not produced any evidence to refute the statement of Urang Property Management Limited, the corporate secretary of the Applicant, that at least half the qualifying tenants were members of the Applicant company and on the face of the documentation before the Tribunal this appeared to be the case.

The Tribunal therefore accept the Applicant's statement that the membership of the Applicant company was at least half of the qualifying tenants of each building.

4. Notice of Invitation to Participate

The Tribunal adopt the same approach as taken in Greenhill. They do not consider that the Respondent has established a *prima facie* case of non-compliance with the section.

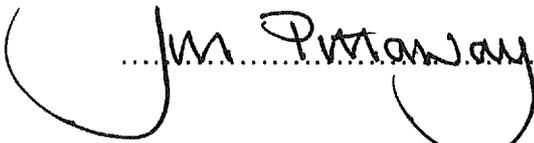
On the basis of Ms E Thaine's Statement of Truth they consider that on the balance of probabilities all of the qualifying tenants were served with Notices Inviting Participation.

5. The validity of the claim notice given by RTM company

Urang Property Management Limited is a legal person. The Tribunal can see no reason why the company should not have authorised it to sign the notices on its behalf as it claims. Further the Tribunal notes from the copy notices in the bundle before it that they are stated to be signed "by authority of the company". Each of the copy notices in the Tribunal's bundle is signed.

In the absence of any evidence that they were not signed by a "person authorised by the company" and on the basis of the Applicant's submission that the notices were signed by their corporate secretary the Tribunal determines that the Notices were validly signed.

Chairman

A handwritten signature in black ink, appearing to read "Jim Pittman-Jay", is written over a horizontal dotted line. The signature is enclosed within a large, hand-drawn circular scribble.

Date 18 November 2011