



FAO: Jacqueline Benjamin
London Residential Property First Tier Tribunal
10 Alfred Place
London
WC1E 7LR

your ref LON/00BG/LVM/2016/0023
our ref DBM.83662.1
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date 27 October 2017

By post and email: rpilondon@hmcts.gsi.gov.uk
Jacqueline.Benjamin@hmcts.gsi.gov.uk

Dear Sirs

Our Client: Canary Riverside Estate Management Ltd
Property: Canary Riverside Estate, Westferry Circus, London

We act for the Appellants in relation to claim numbers LON/00BG/LVM/2016/0020 and LON/00BG/LVM 2016/0023 and enclose an application for permission to appeal and grounds of appeal.

Yours faithfully

TROWERS & HAMBLINS LLP

c.c.

- 1 Downs Solicitors
- 2 CRAR: Residents' Association of Canary Riverside, Berkeley Tower, Canary Riverside, 48 Westferry Circus, London, E14 8RP

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IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

B E T W E E N:

**(1) OCTAGON OVERSEAS LTD
(2) CANARY RIVERSIDE ESTATE MANAGEMENT LTD
(3) PALACE CHURCH 3 LTD
(4) YFSCR LTD
(5) YIANIS HOTELS LTD**

Appellants

AND

VARIOUS LEASEHOLDERS AT CANARY RIVERSIDE

Respondents

**APPLICATION FOR PERMISSION TO APPEAL
AND GROUNDS OF APPEAL**

Introduction

1. The appellants find themselves in an unsatisfactory position. Upon receipt of the written decision and the amended management order there was an exchange of letters with Downs Solicitors (for Mr Coates) and Trowers & Hamlins (for the First and Second Appellants) concerning certain matters which the appellants considered to be oversights or omissions in the amended order, with the intention of presenting an agreed list of final corrections to the FTT.

2. Whilst that process was ongoing, the Residents Association wrote to the FTT asking for clarification of certain issues and identifying some typographical errors. It was not an application for a review (r.55, FTT procedure rules), nor an application for permission to appeal (r.52).

3. In response, the FTT has not reviewed its decision nor granted permission to appeal. Nor has it given additional reasons for its decision. This, as will be explained below, has given rise to the present appeal.

Ground 1: Dealing with assignments (e.g. receiving notices, preparing sales packs) and dealing with applications for consent under the lease

4. The decision of 29 September 2017 does not give any reasons why these functions are now said to be performed by Mr Coates. The management order itself does not expressly identify them as functions to be conferred on Mr Coates.

5. The absence of any such reasons is, respectfully, an error of law. The parties made oral and written submissions on these issues. A Scott Schedule was prepared and worked through at length. It is not permissible to issue a letter explaining what a management order means. There needs to be written reasons in the actual decision explaining which of the arguments has succeeded and why.

6. In any event, the appellants respectfully contend that no properly directed Tribunal could conclude that a s.24 manager could be given responsibility for these functions. A manager does not – and cannot – act “in the name or on behalf of the landlord”¹; rather, he acts “in his own right as a [tribunal]-appointed official”². Moreover, a management order “... does not confer any proprietary interest on the [manager].”³

7. Given those restrictions, it is impossible for a manager to be given powers to grant consents under a lease or otherwise deal with land as if he had a reversionary interest. A power to grant consent (for example) could *only* be done in the name of the landlord, as it is the landlords consent that is required under the lease.

Ground 2: Duration of appointment

8. The appellants understand the reasons given in the decision for this amendment to the order (*cf* Ground 1, above), but respectfully contend that the FTT was wrong to extend the term of the order. The FTT was not seized of that question. It was dealing only with the application made by the First and Second appellants, *i.e.* to reduce the term. There was no application being considered to extend the term, nor were any submissions made on the same, nor was the same put to the appellants for their submissions.

9. In those circumstances, it was an error of law to extend the duration of the order.

Ground 3: Indemnities

10. There are two distinct issues.

11. The first is the requirement to provide an indemnity to Mr Coates in respect of access to areas which are let/licenced to third parties. This was not requested by the appellants and was not part of their application and, respectfully, the FTT was not seized of the same.

¹ *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633; [2003] 1 W.L.R. 379, at [40].

² *Ibid*, at [41].

³ *Octagon Overseas Ltd v Coates* [2017] EWHC 877 (Ch), at [43].

12. In any event, the scope of the indemnity as presently drafted is far too wide (and so wide as to be beyond the scope of what any properly directed Tribunal could order). It would, for example, require an indemnity to be provided for any actions carried out by Mr Coates even if they were unreasonable or unlawful (*e.g.* if he broke down a door and committed a trespass). That is simply unlawful.

13. Secondly, as regards the public liability position, the Upper Tribunal decision ([2017] UKUT 190 (LC)), makes clear that this indemnity was only a temporary measure pending provision of insurance:

“30 In remitting the application to the FTT I invite it to consider specifically how the two proposals made by CREM may be incorporated into any order it will make giving directions dealing with insurance. In principle Mr. Coates is to have the benefit of public liability insurance arranged by CREM, *or* an indemnity, and he should also have independent responsibility for claims handling. To reduce those two proposals to a workable draft for consideration by the FTT will require careful thought. It is not possible to do that this afternoon, but I record specifically that CREM's proposals have been an important consideration in my decision to leave it free to place insurance.” (emphasis added).

Public Liability

14. In favour of Mr Coates insurance has now been procured. There is no reason for an indemnity and that part of the management order is accordingly beyond the scope of what any properly directed Tribunal could properly order.

Ground 4: Omissions

15. These matters might more accurately be considered to be requests for corrections, rather than grounds of appeal and, to that extent, the FTT is also asked to consider these matters under s.24(9), 1987 Act and r.50 and 55, FTT procedure rules.

(i) It was agreed that the First and Second appellants should be entitled to their costs of complying with the management order and this needs to be reflected either in the decision or the management order itself.

(ii) Neither the management order nor the decision deal with how regularly Mr Coates should be required to report to the First and Second appellants. They submitted it should be quarterly so as to marry up with the banking covenants.

(iii) It was agreed that *if* Mr Coates was to have the right to collect service charges which fell due prior to his appointment, then he would also be responsible for paying bills which related to that earlier period; conversely, it was agreed that *if* Mr Coates was *not* to deal with pre-1 October 2016 service charge then the First and Second appellant must do so and would therefore be responsible for discharging all bills for that period. The FTT has

decided on the latter of these options and therefore, respectfully, needs to direct Mr Coates to return monies which relate to the period prior to 1 October 2016.

(iv) It was agreed that the words "or other monies" should be deleted from the final paragraph of cl.4(i) of the management order. It appears that this has been left in by oversight. To the same effect, the words "rents and any other monies" seems to have been left in para.5 of the Schedule to the order by oversight.

(v) Likewise, it was agreed that the power to make arrangements or enter into compromises (cl.4(i)) could not be "on behalf of the landlord" (and, in any event, the FTT has accepted that the management cannot act on behalf of the landlord) and the words "with consent of the landlord" need to be added.

(vi) Finally, there remains the three typographical errors noted in paras.10 and 11 of the letter from Trowers & Hamblins, dated 19 October 2017.

Permission to appeal

16. The Upper Tribunal (Lands Chamber) Practice Direction, para.4.2, makes clear that permission to appeal may be granted where:

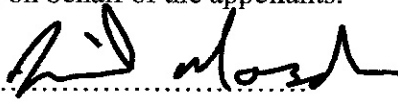
- (a) the Tribunal wrongly interpreted or wrongly applied the relevant law;
- (b) the decision shows that the Tribunal wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice;
- (c) the Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect;
- (d) the point(s) at issue are potentially of wide implication.

17. The appellants rely on (a), (c) and (d).

Justin Bates
26.10.17

Statement of Truth

I believe that the facts contained in this document are true. I am duly authorised to sign this statement on behalf of the appellants.

Signed.......... Name.....**DAVID MARSDEN**.....
Date.....**27/10/2017**..... Position.....**SOLICITOR**.....