

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

IN THE MATTER OF SECTION 24(9) OF THE LANDLORD & TENANT ACT 1987

PREMISES: CANARY RIVERSIDE, WESTFERRY CIRCUS, LONDON E14

BETWEEN

RIVERSIDE CREM 3 LTD

Applicant

-and-

**(1) MR SOL UNSDORFER
(2) CIRCUS APARTMENTS LTD
(3) LEASEHOLDERS REPRESENTED BY RESIDENTS' ASSOCIATION OF
CANARY RIVERSIDE
(4) OCTAGON OVERSEAS LTD
(5) CANARY RIVERSIDE ESTATE MANAGEMENT LTD**

Respondents

**THIRD RESPONDENTS' REPRESENTATIONS AGAINST PERMISSION TO
APPEAL APPLICATION**

Introduction

1. This representation is filed on behalf of the leaseholders (“the Leaseholders”) represented by the Residents’ Association of Canary Riverside.
2. In this document the Applicant is referred to as “Riverside”, the First Respondent as “the Manager” and the Second Respondent as “Circus”. The relevant decision of the FTT under appeal is referred to as “the Decision”.

Representations against the grant of permission to appeal

New point of law

3. The Applicants should not be allowed to raise a new point of law on appeal. It is inconceivable to the Leaseholders that Riverside’s legal representatives were not aware of the point of law

that is now being advanced. To the Leaseholders there appear to be two plausible options for the 'new point of law' not having been raised during the proceedings:

- (1) Riverside's counsel had insufficient knowledge of S24 and was unaware of the 'new point of law'. Given counsel's extensive S24 and LTA experience (set out on his chamber's website) this does not appear likely.
 - (2) Riverside's counsel was instructed not to raise the 'new point of law' at the hearing, on the grounds that Riverside had previously accepted that it was bound by the Management Order. In the Leaseholder's view this is the more plausible option. It would also leave open the possibility of an appeal (using the 'new point of law' defence) were the decision not to be in Riverside's favour.
4. The appeal puts the Leaseholders in the position of being asked to believe that the hearing on 27th April 2021 was held in good faith but that unfortunately Riverside's counsel was not entirely up to the task, failing to raise the defence that is now being put forward as a 'new point of law'. Leaseholders find it unconceivable that Riverside's counsel was not aware at the time of the hearing of the defence that is the basis of the appeal.

Purpose of the 27th April hearing

5. The hearing and Decision were expedited by Judge Vance (of the FTT) because it was recognised that a determination was needed by the Manager prior to the commencement of the High Court hearing of 29th April 2021, to enable the Manager to consider his position in respect of the High Court proceedings concerning Virgin Active. The Applicants were also a party to the High Court proceedings, and the Decision would presumably have also been relevant to their position.
6. By failing to raise the defence that the Applicants now seek to rely on the Manager (together with the Leaseholders and Circus) has been disadvantaged. He sought and relied on the Decision when deciding not to appear at the Virgin Active sanctioning hearing at the High Court.
7. For the reasons outlined in 3(2) the Leaseholders assert that the appeal is an abuse of process. It appears to the Leaseholders that the most plausible reason for Riverside's counsel not having raised the 'new point of law' as a defence on 27th April 2021 would be because he was instructed that Riverside had already agreed to be bound by the existing Management Order.

Riverside is already bound by the existing Management Order

8. Riverside has consistently accepted and averred that from the date of assignment(s) by CREM to it that it (Riverside) was bound by the existing Manager Order and liable to pay service charges for shared services to the manager: see, for example a letter from Riverside to the then Manager Mr Coates dated 21 November 2018; a letter from Solicitors acting for Octagon, CREM and Riverside to the FTT dated 31 October 2019 and an e-mail from Riverside's Solicitors to the Manager's Solicitors on 13 April 2021 at 11:37. At no point prior to applying on 26 May 2021 for permission to appeal the decision of the FTT dated 28 April 2021 in Case Ref: LON/00BG/LVM/2021/0005 did Riverside contend otherwise.
9. The Manager Mr Alan Coates and his successor Mr Sol Unsdorfer has at all material times since the assignment to Riverside continued to perform the functions of the Manager in respect of the whole of the Property set out in the existing Management Order in reliance upon the fact that Riverside accepted and averred that it remained bound by the existing Manager Order.
10. In the circumstances permission to appeal ought to be refused.

Statement of Truth

The Third Respondents believe that the facts stated in these Representations are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth.



ANGELA JEZARD

SECRETARY, RESIDENTS ASSOCIATION OF CANARY RIVERSIDE

19th JULY 2021

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