FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LVM/2021/0005**
HMCTS code (paper, video, audio)	**:**	**P: PAPER**
Property	**:**	**Canary Riverside Estate, Westferry Circus, London E14 (the "Estate")**
Applicant	**:**	**Sol Unsdorfer, tribunal appointed manager**
Representative	**:**	**Wallace LLP**
Respondent	**:**	**(1) Octagon Overseas Limited (2) Riverside CREM 3 Limited (3) Canary Riverside Estate Management Limited (4) Circus Apartments Limited (5) Leaseholders represented by the Residents Association of Canary Riverside**
Respondents' Representative	**:**	**(1) - (3) Ince Gordon Dadds LLP (4) Norton Rose Fulbright LLP (5) Residents' Association of Canary Riverside**
Type of application	**:**	**Application for permission to appeal**
Tribunal member	**:**	**Judge Amran Vance**
Date of decision	**:**	**1 June 2021**

DECISION ON AN APPLICATION FOR PERMISSION TO APPEAL

DECISION OF THE TRIBUNAL

1) I have considered Riverside CREM 3 Limited's application for permission to appeal the tribunal's decision dated 28 April 2021.

2) The application for permission to appeal was received by the tribunal on 26 May 2021 and is accepted as an in-time application.

3) Having considered the application I determine that:

   (a) I will not further review my decision;

   (b) permission to appeal is refused; and

   (c) the application for a stay of the tribunal's decision pending appeal is refused.

4) In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, Riverside CREM 3 Limited may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

REASONS FOR THE DECISION

5) The appeal has no realistic prospect of success and there is no other reason to grant permission to appeal.

ADDITIONAL COMMENTS

1. For the benefit of the parties and the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the tribunal has set out its comments on the specific points raised by Riverside CREM 3 Limited's in its application for permission to appeal, in the appendix attached.

Name: Amran Vance **Date** 1 June 2021

APPENDIX TO THE DECISION
REFUSING PERMISSION TO APPEAL

1. The sole ground of appeal is that the tribunal had no power to make the variation ordered in its decision of 28 April 2021. It is argued that the power under s.24(9) Landlord and Tenant Act 1987

> "cannot be used to vary an existing order so as to add a new party who is bound by the order and whose rights are impacted by the order. In such cases the *only* option is to made a fresh application under s.24(4) (*i.e.* serve the s.22 notice and prove a ground: See *Benthan v Lindsay Court (St Annes) RTM Company Ltd & Anor* [2021] UKUT 4 (LC) (not, it seems, previously cited to the FTT)."

2. Riverside CREM 3 Ltd ("Riverside") contends that as it was not a party to the original Management Order, section 24(9) cannot be used to impose obligations, duties, or liabilities on it.

3. I do not consider the appeal has a realistic prospect of success for the following reasons:

   (a) the issue now raised by Riverside was not raised in its statements of case, nor at the hearing of the application at which it was represented by senior counsel. It is a point that could have been brought but was not. The principle of finality of litigation demands that parties to litigation, and this tribunal, are entitled to know what points are in issue and what points the tribunal is required to determine. I do not consider this to be an exceptional case that overrides that general principle;

   (b) I do not agree with Riverside's interpretation of the decision in *Benthan*. Central to the decision in *Benthan* was the interaction of two statutory schemes for the management of leasehold property, namely the provisions of the Landlord and Tenant Act 1987 for the appointment of a manager, and those of the Commonhold and Leasehold Reform Act 2002 for the acquisition of the right to manage by an RTM company. In that case, the Manager was seeking to deprive the RTM Company, who was not a party to the original management order, of its statutory entitlement to acquire the right to manage under the Commonhold and Leasehold Reform Act 2002 Act. Judge Cooke held that an order depriving a third party of management powers over a property, where that person was not bound by the initial appointment of the manager, is not a variation, it is a new order [50]. She also held that the specific procedural and substantive requirements of the 1987 Act must be satisfied before a person can be deprived of their right and responsibility to manage their own property [52]. However, in this case, there is no interference with, or deprivation of Riverside's powers, rights, or responsibility to manage its own property. Instead, the variation

to the Management Order makes Riverside responsible to pay the service charge debt owed by Virgin, its leaseholder, to the Manager. In doing so it preserves the *status quo* in respect of that debt as if no management order was in existence. As I stated in paragraph 57 of my decision, if it were not for the existence of the Management Order, it would be Virgin's landlord, Riverside, who would bear the risk of Virgin's default. The variation made therefore preserves the status quo as opposed to depriving or interfering with Riverside's right to manage its own property. *Bethan* is therefore distinguishable on the facts of this case;

(c) Riverside is the successor in title to the leasehold interests in non-residential units on the Estate previously held by Third Respondent, Canary Riverside Estate Management Limited ("CREM"). The two are associated companies. The assignment to Riverside took place on or about 21 November 2018. At no point since that date has Riverside sought to argue before this tribunal that it is not bound by the Management Order, or that it has no liability to pay service charge to the Manager under the Order in respect of shared services. Indeed, its solicitors, Freeths, expressly stated the opposite in a letter to the tribunal dated 31 October 2019, objecting to an intended application by Circus Apartments Limited ("CAL") to vary the Management Order to specifically include a clause that bound Riverside to the terms of the Management Order. In its letter, Freeths said:

> "CREM has, however, undertaken a restructuring exercise and assigned the commercial parts of the estate to Riverside CREM 3 Limited in November 2018….
>
> The commercial leases are defined within the Management Order and the underlessee remains liable for the service charge for the shared services.
>
> <u>Wording of Management Order</u>
>
> The Management Order, as currently drafted, already binds CREM's successor in title to its obligations under the Management Order. First, the definition of "Landlord" in the interpretation section at the beginning states that the Landlord means *"Canary Riverside Estate Management Limited…and includes any successors in title of the leasehold estate registered under title number EGL365354 or any interest created out of the said leasehold title"*.
>
> Secondly, paragraph 17 (j) states that *"the obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either*

> *a leasehold interest (whether by assignment or fresh grant) or freehold of the premises".*
>
> CAL themselves state in their application that *"…the Management Order specifically provides that CREM's successors in title are bound by the order".* It is therefore completely unnecessary for CAL to seek to vary the Management Order when CREM's successor in title is already bound."

(d) The effect of the tribunal's decision of 28 April 2021 was not, therefore, to add a new party to the Management Order, and to impose duties and obligations on that party. By its solicitors' express acknowledgment Riverside, as CREM's successor in title, were already bound by the terms of the Management Order.

(e) It would defeat the statutory purpose of the s.24 scheme if an assignment of a leasehold interest by a landlord, to an associated company, in a transaction that was not at arm's length, as part of a restructuring exercise, necessitated a new s.22 notice, and new s.24 application, in order to bind the successor to the terms of an existing management order that bound its predecessor. If that was correct, all that a landlord need do in order to frustrate the management order would be to assign its interest to an associated company for no value.

Request for a Stay

1. I do not consider a stay is warranted. Useful guidance as to when a stay should be granted can be obtained from:

    a. the decision of Sullivan J in *Department for Environment, Food and Rural Affairs v Georgina Downs* [2009] EWCA Civ 257, where it was said that a stay is an exception rather than a rule and that solid grounds had to be put forward by the party seeking the stay; and

    b. The judgment of the Court of Appeal in *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065 where the Court considered that the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay, and, in particular, whether there is a risk of the appeal being stifled if a stay was refused.

2. These authorities make clear that the granting of a stay is an exceptional remedy and that if an appellant seeks a stay, it must provide full, frank and clear grounds why a stay should be granted. All that Riverside has said in support of its request is that it would "be improper" to allow the Manager to recover service charge arrears owed by Virgin Active Health Clubs Limited from Riverside in the sum of £355,384. The sum is substantial, but there is no suggestion that the Manager would not return any payment made by Riverside if its appeal

is successful. Nor do I consider that my refusal of a stay risks stifling or undermining Riverside's appeal.