IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPEAL

B E T W E E N:

(1) OCTAGON OVERSEAS LTD
(2) CANARY RIVERSIDE ESTATE MANAGEMENT LTD

Appellants

AND

VARIOUS LEASEHOLDERS AT CANARY RIVERSIDE

Respondents

APPLICATION FOR PERMISSION TO APPEAL
AND GROUNDS OF APPEAL

Ground 1: Error in application of s.20C

1. This Ground of Appeal assumes that, contrary to the submissions on the other Grounds (below), an order under s.20C was correctly made. This Ground focuses on the form and content of that order.

2. In this regard, the FTT decision is wrong in three respects:
   (a) first, there is no power for the FTT to order monies to be paid by one party to any other, whether under s.20C, Landlord and Tenant Act 1985 or at all and, to the extent that the FTT has ordered this, it is wrong in law to have done so;[1]
   (b) secondly, as a matter of fact, the amount which has *actually* been charged to the service charge is only £212,214.66[2];
   (c) thirdly, regardless of the figure which has been charged, the FTT has proceeded on the basis that a s.20C order would relate to all the costs; the correct position is that a s.20C order only benefits those who made the application (and anyone else named in the application), accordingly, if an order is to be made, it needs to be limited to those leaseholders who applied for the s.20C order.[3]

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[1] See, *e.g.*, *Warrior Quay Management Co Ltd v Joachim* LRX/42/2006; *Holding & Management (Solitaire) Ltd v Dr Holden and others* [2012] UKUT 86 (LC).
[2] Schedule attached.
[3] See e.*g. Re: Cleveland Mansions and Southwold Mansions, London, W9* [2014] UKUT 58 (LC).

Ground 2: Octagon Overseas Ltd

3. No order should be made as against Octagon Overseas Ltd. Nothing in the final management order *as originally made* directly affects it and it has lost no powers or functions. [4] It exercised no management functions and is not criticised in the FTT decision. There is no basis for making any order against it.

4. It is, respectfully, no answer to say that it was a respondent and so an order should be made; the effect of an order under s.20C is to deprive a landlord of its contractual and proprietary rights. The decision to make such an order requires more than simply that the landlord was a respondent.

Ground 3: No order (as against CREM or at all)

5. The critical part of the FTT decision appears to be para.12, but, with respect (taking the bullet points in turn):

(a) the appellants are not (as the FTT seems to think) criticising the leaseholders for waiting a year between the s.22 notice and issuing proceedings; this argument arose because the leaseholders criticised CREM for doing too little in response to the s.22 notice;

(b) it is wrong, as a matter of law, to give any particular "ley way" to an unrepresented party;[5] moreover, the fact that the leaseholders may have incurred irrecoverable legal costs is not a reason to make an order under s.20C but is a feature of the law (both procedural and substantive) governing the FTT[6];

(c) leaving the matter to be resolved through s.19, Landlord and Tenant Act 1985 does not in any way diminish the rights of the leaseholders and potentially makes the dispute easier to resolve (*e.g.* it would allow for proper consideration of the amount which has actually been charged, *cf* para.2(b), above).

Permission to appeal

6. 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;

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[4] Although, as a result of the hearings on April 4 and 5, 2017, it is now clear that the responsibility for maintaining the structure and exterior (e.g. roofs) of the residential towers does fall to be transferred to Mr Coates.

[5] See, *e.g. Jones v Longley* [2016] EWHC 1309 (Ch), applying *Elliott v Stobart Group Ltd* [2015] EWCA Civ 449.

[6] Which is also repeated in respect of the third bullet point.

(d) the point(s) at issue are potentially of wide implication.

7. The appellants rely on (a) and (c).

Justin Bates
13.4.17

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 18/4/2017…... Position SOLICITOR……..