FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LAM/2016/0012**
Property	:	**Properties at Canary Riverside, London E14 5DY.**
Applicant	:	**Octagon Overseas Limited and Canary Riverside Estate Management Limited**
Representative	:	**Trowers & Hamlins LLP**
Respondent	:	**Various Leaseholders as per the application**
Representative	:	**In person**
Type of application	:	**Application for permission to appeal and stay of a reviewed decision.**
Tribunal members	:	**Ms. A. Hamilton-Farey** **Mr. L. Jarero, BSc FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**29 September 2016**

DECISION

In this decision:

- *Applicants' refers to the respondents in the original application before the tribunal, that is, Octagon Overseas Limited and Canary Riverside Estate Management Limited.*
- *Respondents' refers to the applicants (the leaseholders) in the original application to appoint a manager.*

DECISION OF THE TRIBUNAL

1. The tribunal has considered the applicants' request for permission to appeal, and stay, dated 23 September 2016 (received on 26 September 2016) and, having already reviewed its decision determines that:

   (a) it will not further review its decision;

   (b) it will not grant a stay of the decision; and

   (c) permission to appeal be refused.

2. 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, the applicants may make 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.

3. The Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: lands@hmcts.gsi.gov.uk .

REASONS FOR THE DECISION

4. The reason for the decision is that the tribunal had considered and had taken into account all of the points now raised by the applicant in the reviewed decision;

5. The tribunal considers that a new manager should be appointed with effect from 1 October 2016, that the manager has made provision for that management and that any stay would seriously prejudice the respondents, given the findings of the tribunal of poor management on the part of the applicants in relation to this estate. In addition, if the applicants succeed in their application for leave to appeal the review decision, they would not have suffered any prejudice and any monies collected by the manager could be returned to the respondents.

6. With respect to the further points now raised the tribunal provides specific comments on the grounds of the appeal against the reviewed decision:

Ground 1 Just and convenient/suspended order:

The tribunal considered all of the evidence during the hearing, no application for a suspension of the Order was made by the applicants, and the tribunal does not consider that the matters relied on by the leaseholders in their S.22 Notice which was served in May 2014, were trivial.

The 'condition' that the proposed manager collected service charge monies in advance of his appointment was removed from the reviewed decision, and is therefore no longer relevant. In any event, the tribunal has already referred to the fact that the applicants were willing to pay Mr. Coates so that he would be in funds prior to his appointment coming into effect, as a demonstration of their faith in his management abilities.

Ground 2 Terms of the Order:

The applicants were served with a copy of the draft Order in January 2016 and a revised Order was contained in the bundles at the hearing in May. Despite various items of correspondence with the respondents and the tribunal the applicants failed to raise any of the issues regarding the contents of the Order until this further appeal. The tribunal considers that the applicants, being represented throughout these proceedings had sufficient time to consider the terms of the Order and to negotiate those terms if they so wished, before this further appeal.

Ground 3 Mr. Coates:

The applicants' objections to Mr. Coates were raised during the hearing. Mr. Coates explained the circumstances of his resignation from his previous appointment and the proceedings taken against him. Having considered that evidence, the tribunal was satisfied that sufficient time had elapsed since his previous dealings with the estate, and that sufficient procedures were in place to ensure that similar circumstances did not re-occur. The tribunal was satisfied that Mr. Coates was suitable for appointment under S.24 of the Landlord & Tenant Act 1987.

Ground 4 Inadequate reasons/treatment of evidence:

The tribunal considered the evidence presented to it during the four-day hearing and in closing submissions. The reviewed decision of the tribunal correctly recorded all of the relevant evidence and not only the evidence presented on behalf of the respondents.

7. In addition, the tribunal notes that, by an e-mail dated 26 September 2016 to the Upper Tribunal on behalf of the applicants' a further reason for the appeal was raised that *'part of the objection to such a course of action (the appointment of a manager) .. will mean that our clients are in breach of loan covenants in respect of monies secured against their title'*. This was not raised by the applicants during the four day hearing, in closing submissions or in the first appeal prior to the issue of the reviewed decision. The tribunal considers that if this were indeed the case, that the accountant for the applicants, who appeared and gave evidence at the hearing, would have provided evidence of those possible breaches of loan covenants. He did not.

A timeline of this application is detailed below, for the benefit of the Upper Tribunal, should a further appeal be made.

1. S.22 Notice under Landlord & Tenant Act 1987 served by leaseholders on landlord on 14 May 2014.

2. Application made to the FtT 24 June 2015.

3. Directions issued 24 June 2015 listed for hearing on 12/13 October 2015. Following application by the parties, that this date was not convenient.

4. Case management hearing 19 November where the parties agree hearing date of 14 – 18 March 2016.

5. Application from landlord on 4 December 2015 requesting matter be re-listed due to unavailability of vital witness, Mr. Paul. Application opposed by the leaseholders, but granted by the tribunal for a hearing 17 – 23 May 2016.

5. Hearing between 17 – 20 May, closing submissions in writing supplied to the tribunal 23 May 2016.

6. Decision issued 15 August 2016.

7. Leave to appeal received 8 September 2016.

8. Reviewed decision made 15 September and issued 19 September 2016.

9. Application for leave to appeal and stay of the reviewed decision received 26 September 2016.

10. Tribunal reconvenes 29 September 2016, issues decision on leave to appeal of the reviewed decision.

Name: Ms. A. Hamilton-Farey **Date:** 29 September 2016