FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LVM/2021/0014**
Property	**:**	**Canary Riverside Estate, Westferry Circus, London E14 (the "Estate")**
Applicants	**:**	**(1) Circus Apartments Limited** **(2) Leaseholders represented by the Residents Association of Canary Riverside ("RACR")**
Respondents	**:**	**(1) Octagon Overseas Limited ("Octagon")** **(2) Canary Riverside Estate Management Limited("CREM")** **(3) Riverside CREM 3 Limited ("Riverside")** **(4) Mr Sol Unsdorfer**
Represented by	**:**	**Freeths LLP for Octagon, CREM, and Riverside** **RACR for the leaseholder Applicants** **Norton Rose Fulbright LLP for Circus Apartments Limited**

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		Wallace LLP for Mr Unsdorfer
Type of application	**:**	**Applications for an interlocutory management order under s.24 Landlord and Tenant Act 1987**
Tribunal Judge	**:**	**Judge Amran Vance**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**3 November 2021**

DECISION

Decision

1. I make an interlocutory management order, in the terms of the Order annexed hereto at Annex 2, pursuant to s.24(1) Landlord and Tenant Act 1987. I am satisfied, for the purposes of s.24(b) that there are other circumstances that make it just and convenient to make such an order. My reasons for making the Order are set out below.

2. This interlocutory management order shall continue in force from the date of this order until further order of the Tribunal

Background

3. This decision is made following a remote video hearing (HMCTS Code REMOTE:CVP) that took place on 3 November 2021. All parties consented to a video hearing.

4. The hearing on 3 November was to determine CAL and RACR's joint application (LON/00BG/LVM/2021/0014) for an interlocutory management order ("IMO") under the provisions of s.24(2) Landlord and Tenant Act 1987 ("the 1987 Act").

5. Present at the hearing were: Mr Rainey QC, counsel for CAL; Mr Bates, Counsel for Octagon, CREM, and Riverside; Ms Jezard, the lay representative for the leaseholders represented by RACR; and Mr Dovar, counsel for Mr Unsdorfer, the current Manager of the Estate

("the Manager"). Mr Unsdorfer was also present as were solicitors from the represented parties.

6. Page numbers in bold and in square brackets below refer to page numbers in the hearing bundle prepared by CAL.

7. In a decision dated 5 August 2016 (reviewed on 15 September 2016) (LON/00BG/AOM/2015/0012) **[1]** the tribunal appointed Mr Alan Coates as the Manager of the Estate pursuant section 24(2) of the 1987 Act. Mr Coates has since been replaced by Mr Unsdorfer. The existing Management Order ("EMO") was has been varied by the tribunal on several occasions, most recently by a decision dated 28 April 2021 (LON/00BG/LVM/2021/0005).

8. In separate applications that are not before me today:

   (a) RACR have applied for an extension of the EMO for a further three years - application LON/00BG/LVM/2021/0003;

   (b) CAL have applied for a variation of the EMO (primarily for it to removed from the schedule of commercial lessees identified in the schedule to the Order) – application LON/00BG/LVM/2021/0004;

   (c) Mr Unsdorfer has applied for variation of the EMO (primarily to grant him additional powers) – application LON/00BG/LVM/2021/0010; and

   (d) CAL and RACR have applied for a new management order ("MO"); - applications LON/00BG/LVM/2021/0011 and 12.

9. The two applications for a new MO have arisen because of Riverside's appeal to the Upper Tribunal regarding my decision of 28 April 2021 to vary the EMO to enable Mr Unsdorfer to recover, from Riverside, outstanding sums owed to him by Virgin Active Health Clubs Limited ("Virgin"). Riverside is Virgin's current immediate landlord of the gym and health club situated on the Estate. Prior to assigning its interest to Riverside on 21 November 2018, CREM was Virgin's immediate landlord.

10. Riverside has appealed on the basis that this tribunal had no power to impose such an obligation on it. It argues, relying upon the decision of the Deputy President in *Urwick v Pickard* [2019] UKUT 365 (LC) that it cannot be bound by the EMO, as varied by me on 28 April, because it

was not a party to the original MO. The appeal is due to be heard by the Upper Tribunal on 3 and 4 March 2022.

11. Without prejudice to their contention that Riverside is already bound by the EMO, CAL and RACR have made applications for a new MO, which binds Riverside, in order to protect and preserve the Manager's ability to manage the Estate, in case Riverside's appeal succeeds. Before making the applications, CAL and RACR served notices under s.22 of the 1987 Act **[57-64], [78-87]** giving notice of the intended applications for a new MO, and setting out the steps that the Respondents needed to take to avoid this, broadly, for Riverside to unequivocally and irrevocably accept that it remains bound by the EMO. It is not disputed that these steps have not been taken. Although Riverside accepts that, by reason of my 28 April decision and *res judicata*, it is currently bound by the EMO, its position is that it will not be so bound if it succeeds in its appeal before the Upper Tribunal on 3 and 4 March 2022.

12. The applications for an extension and variation of the EMO, and the applications for a new MO, are listed to be heard together by this tribunal at a seven-day hearing, commencing on 21 March 2022. In the interim, the EMO has been extended, by paragraph 4 of the tribunal's order dated 1 May 2021, until final determination of applications LON/00BG/LVM/2021/0003 and LON/00BG/LVM/2021/0004.

The Application for an Interlocutory Management Order

13. CAL and RACR have jointly applied for an IMO which binds Riverside to its terms **[105]**. Their application is supported by Mr Unsdorfer, who argues that Riverside's contention, in its appeal, that it is not bound by the EMO, will, if correct, have a significant impact on his ability to manage the Estate, including his ability to raise service charges.

14. At a case management hearing on 27 September 2021, I notified the parties that I considered that the application for an IMO should proceed to an urgent determination. My reasons were set out in my directions, issued on 1 October 2021 **[48]**, in which I said:

> "17. I accept that the current uncertainty regarding Riverside's position risks undermining Mr Unsdorfer's ability to manage the Estate. This is of particular concern with regard to the cladding works, for which Mr Unsdorfer says he has applied

> for Building Safety Fund funding, and also with regard to the need for him to renew the electricity contract for £2 million electricity contract for the Estate, which is due to be renewed on 1 October …
>
> 18. Whilst Riverside accepts that, by reason of *res judicata*, it is currently bound by the MO, because of my 28 April decision, if it succeeds in its appeal, it will argue that it was never bound by the MO. The result would be that Mr Unsdorfer would have no power to manage those parts of the Estate assigned to Riverside, including in respect of the cladding works."

15. Since the date of those directions there has been some narrowing of the parties' positions regarding the IMO application, although significant differences remain. The Respondents, who initially opposed the making of an IMO, now agree that such an order should be made. The key area of difference separating the parties are the *reasons* for making an IMO.

16. All parties agree (and I concur) that:

    (a) I have power to make an interlocutory order under s.24(1) of the 1987 Act, which allows the tribunal, by order (whether interlocutory or final) to appoint a manager to carry out in relation to any premises to which Part II of the Act applies, such functions in connection with the management of the premises, or, such functions of a receiver, or both, as it thinks fit;

    (b) In order to make an IMO, I need to be satisfied that one or more of the conditions in s.24(2) is made out. As this application is pursued in reliance upon s.24(2)(b), I need to be satisfied that "other circumstances exist which make it just and convenient for the order to be made";

    (c) the correct approach when considering whether an interlocutory order should be made under s.24(1) is to apply the principles identified in *American Cyanamid Co v Ethicon Ltd* [1975] A.C. 396; [1975] 2 W.L.R. 316, HL. That involves addressing the following questions:

        (i) is there a serious question to be tried? All parties agree that the answer is yes, as whether or not Riverside is, or

should be bound by a management order is a serious question;

(ii) would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction? It is common ground that this question is not relevant to proceedings before this tribunal, which has no power to either award damages in lieu of a remedy, or to take an undertaking in damages from the Applicants;

(iii) if not, where does the "balance of convenience" lie?

(d) there is no material difference between the 'balance of convenience" test in *American Cyanamid*, and the "just and convenient" test in s.24(2)(b), and, in the circumstances of this case, both tests are met ,and an IMO should be made. However, the parties disagree as to the reasons for the test being met;

(e) the IMO should be in substantially the same form as the EMO, save that it binds Riverside.

17. The parties have sought to agree the terms of the IMO. Although the operative clauses of the order are largely agreed, there is considerable disagreement as to the content of the recitals to the order, and it therefore falls to me to decide what recitals should be included.

The Respondents' Position

18. In his skeleton argument, Mr Bates submits that it is important that the tribunal does not make any findings of fact at this stage as the purpose of the IMO is simply to "hold the ring" pending the Upper Tribunal appeal, and the final tribunal hearings in March 2022.

19. He draws attention to the following passage from the judgment in *American Cyanamid*:

> "It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial." (at 407H).

20. He also makes reference to the following extract from the White Book (Vol 2, para.15-2):

> "At bottom, the principles are based on the 'great object' of the court when hearing an application for an interlocutory injunction; which is, 'to abstain from expressing any opinion on the merits of the case until the hearing'."

21. The Respondents' concession is, he submits, enough to satisfy the test in s.24(2)(b) of the 1987 Act.

22. In oral submissions, Mr Bates recognised that I need to provide reasons as to why it is just and convenient to make the IMO, and suggested that alongside the Respondents' concession, I may wish to have regard to the points I identified in my directions following the CMH, namely that the current uncertainty regarding Riverside's position risks undermining Mr Unsdorfer's ability to manage the Estate, particularly with regard to the cladding works, for which Mr Unsdorfer says he has applied for Building Safety Fund funding, and also with regard to the provision of shared services to the Estate.

The Applicants' Position

23. Mr Rainey QC advances submissions on behalf of both Applicants. Ms Jezard, and Mr Dovar agree, and adopt, both his skeleton argument and his oral submissions.

24. Mr Rainey argues that the Respondents' concession is not the basis upon which the IMO ought to be made. The reasons why an IMO is required is, in his submission, because of acts or omissions committed by the Respondent landlords. All of the reasons why the EMO was made are, he says, also reasons why it is just and convenient to make the IMO, and the reasons why the EMO was made can be found in the tribunal's previous decisions.

25. In his skeleton argument, he invites me to include expressly include, in my reasons for making an IMO, the reasons set out in the Applicants' application **[117-119]**, in particular that:

    (a) Riverside is part of the Yianis group, as is Octagon and CREM, and that all are in common control;

    (b) the EMO was made for the reasons given in the decisions upon which that order was made and that those reasons are to be attributed to Riverside;

(c) the necessity for the IMO was created by the acts of Octagon, CREM and Riverside, in concert, to assign parts of CREM's interests in the Estate to Riverside;

(d) the assignment was only made possible by the acts of Octagon and CREM in arguing, at a previous hearing before the tribunal, against the inclusion of a provision for a Restriction on title and, having done so, omitting to inform the tribunal, the manager, or any other party that they and Riverside had decided to assign parts of CREM's interest to Riverside;

(e) the IMO was necessitated by Riverside's act in asserting (after previously conceding the opposite) that it is not bound by the EMO; and

(f) the assignment to Riverside was in breach of the EMO.

26. None of these grounds, says Mr Rainey, require me to determine today any disputed facts, or difficult questions of law, as they are all, he argues, matters of record.

27. Mr David Stevens, the solicitor with conduct of this matter at Norton Rose Fulbright, CAL's solicitors, comments on the assignment in his witness statement dated 4 June 2021 **[293]-[295]**. He points out that it was only on 27 May 2021, that Riverside asserted, for the first time, over 2½ years after CREM transferred its reversionary interest in parts of the Estate to it in November 2018, that it is not bound by the EMO.

28. After Mr Stevens made an urgent application to the tribunal to join Riverside into the EMO, Freeths, the Respondents' solicitors responded in a letter dated 31 October 2021, stating that the application was unnecessary as the EMO already binds CREM's successors in title. As a result of that letter, CAL's application was withdrawn.

29. Mr Rainey argues that the assignment to Riverside was a clear breach of the EMO because its effect (assuming Riverside's argument that it is not bound by the EMO is correct) is that the Manager cannot perform his functions in respect of those parts of the Estate assigned to Riverside, and the only person who could do so is Riverside. He submits that the assignment therefore breached paragraph 5 of the EMO, which confers on the Manager his functions, and directs that he perform them, as well as paragraph 6 which provides that no other party is entitled to perform a function in respect of the Premises where the same is the responsibility of the Manager. Mr Rainey also argued

that the assignment was a breach of paragraph 17(j), which states that the obligations in the EMO bind any successors in title, because Riverside is asserting that it is not bound, notwithstanding that it is a successor in title of CREM.

30. In support of his contention Mr Rainey relies upon the decision in *Urwick* at [55], where the Upper Tribunal accepted that steps taken to register a transfer of the landlord's interest were in breach of the management order because they put it out of the power of the manager to perform the functions which the tribunal had ordered him to perform.

31. Mr Rainey asserts that there are also wider reasons why it is just and equitable to make an IMO, including: the Respondents' concession; the need for Mr Unsdorfer to continue to discharge his functions in respect of cladding over those parts assigned to Riverside; and the practical difficulties identified by Mr Unsdorfer in his Statement of Case and witness statement **[122]-[150]**.

32. Mr Rainey also suggests that the Respondents' concession is a tactical move, designed to facilitate the IMO being made only for the very limited reasons that Mr Bates advances. He refers to the Respondents' long-standing and openly acknowledged concern that that the Applicants may be intending to obtain an acquisition order under Part III of the 1987 Act.

33. One of the conditions for the making such an acquisition order is that for the two years immediately preceding an application there was in force an appointment of a manager of the premises under Part II of the Act, and that such appointment was made by reason of an act or omission on the part of the landlord.

34. Mr Rainey suggests that the Respondents may be hoping, in light of the decision in *Urwick*, that the assignment to Riverside breaks the chain of management orders over those parts of the Estate assigned to Riverside, thereby interrupting that two-year qualifying period. This is, of course posited on the assumption that Riverside succeeds in its appeal to the Upper Tribunal that it is not bound by the EMO.

35. If, in future, an application for an acquisition order is made, the Court will need to identify the reasons why the tribunal made management orders over the Estate, and whether these were made because of acts or omission on the part of the landlord. Mr Rainey's submits that I should not close my eyes, when considering whether to make a management order, to the potential rights of lessees to obtain an acquisition order,

and the possibility that a court may, at a future date, have to decide if the requirements for such an order are met. I should not, he contends, say anything in my decision that could fetter that right.

Reasons for making an IMO

36. I do not agree with Mr Rainey that it is necessary, nor in the context of this case, is it helpful, to examine, the reasons why the tribunal originally made the EMO. There is no dispute that there is a serious question to be determined in these applications. In my judgment, all that it is appropriate for me to do when considering whether to make an interlocutory order, is to determine whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. That this is the correct approach is clear from *American Cyanamid*, as is the need for me to abstain from expressing any opinion upon the merits of the substantive applications for a new MO until the hearing of those applications in March 2022.

37. I am satisfied that the balance of convenience lies in favour of granting an IMO for the following reasons. Each of these reasons weighs in favour of maintaining the current *status quo ante* regarding management of the Estate through the grant of an IMO;

    (a) Riverside's current contention that it is not bound by the EMO risks undermining Mr Unsdorfer's ability to manage the Estate. If its contention is successful before the Upper Tribunal, it would mean that a significant element of the Estate, including part of Eaton House, would be no longer be within his management. In my judgment, in order for Mr Unsdorfer to be able to effectively manage the Estate pending the Upper Tribunal's decision, it is important that he do so in line with the EMO, and that the current status quo is preserved;

    (b) Mr Unsdorfer is responsible for the provision of extensive shared services to both the residential and commercial parts of the Estate. I accept his evidence, in his witness statement dated 15 October 2021 **[131]**, that it is not practicably possible to split the management between the residential and commercial parts of the Estate and/or for him to provide services to part only of the Estate;

    (c) I also accept Mr Unsdorfer's evidence that if Riverside successfully argues that it is not bound by the EMO, that there is a significant risk that it will argue that it, or their tenants, will not have to pay for the electricity they consume, and for which Mr Unsdorfer has contracted to pay. The same risk applies to the costs of other shared

services for which Mr Unsdorfer seeks a contribution from Riverside;

(d) In his witness statement, Mr Unsdorfer states that he has personally contracted with the GLA for pre-tender support funds in respect of cladding works required on the Estate. He states that he has received £1.1 million in funding, with the main remediation funding of approximately £7 million to follow. All parties agree that the cladding remediation works are vital. In his witness statement Mr Unsdorfer says that he simply cannot commence an £8m cladding project against a risk that he might be found, in hindsight, to have had no powers or rights to exercise management functions over parts of the Estate. This, he says, could expose him, for example, to a potential trespass claim by Riverside for works carried out to Eaton House, and a clawback of GLA funding. In addition, he says that it is likely that he would be obliged to inform the GLA if an IMO is not ordered, and that this may well result in the funding being pulled, and him having to return the £1.1m pre-tender support funds which his company is holding as trustee;

(e) each of the Respondents, including Riverside, consent to the making of an IMO on the same substantive terms as the IMO, and on the basis that it bind Riverside.

38. No party has identified any matters weighing against the making of an IMO, and I therefore conclude that the balance of convenience test is met and that it is just and convenient to make an IMO.

39. With regard to the points advanced by Mr Rainey, it is not, as I understand it, disputed that Riverside is part of the Yianis group, along with Octagon and CREM, and they are in common ultimate control. I cannot see, however, that it is appropriate for me, in an interlocutory application, to attribute the reasons for the tribunal making the EMO to Riverside, when it was not a party to the original application for a management order, and when it had no interest in the Estate at that time.

40. I consider that the necessity for the IMO has occurred because of the argument now being advanced by Riverside, in its appeal against my 28 April 2021 decision, that it is not bound by the EMO. I do not agree with Mr Rainey's suggestion that it is factually evident that the need for the IMO was created by the acts of Octagon, CREM and Riverside, acting, in concert, to assign parts of CREM's interests in the Estate to Riverside. Nor do I agree with his suggestion that it is factually evident that the assignment was only made possible by the acts of Octagon and CREM previously arguing against the inclusion of a provision for a Restriction on title and then omitting to inform the tribunal, the

manager, or the parties of the assignment to Riverside. Both suggestions appear to me to be invitations for me to make a findings of fact, as to the intentions and/or motivations of the Respondents, on disputed matters, that, are not self-evident from the documents and evidence before me. If these suggestions are relevant, they are relevant to the merits of the substantive applications for a new Management Order, and not these interlocutory applications.

41. Similarly, the Applicants' contention that the assignment to Riverside breached the terms of the EMO because it interfered with the Manager's exercise of his functions is, in my view, a matter for the final hearing of these applications, and not for these interlocutory applications. It would require me to make a specific finding that the terms of the EMO were breached, when that suggestion is disputed. As stated, all I am required to do and, in my view, all I should do, in these interlocutory applications is to determine whether the balance of convenience merits the making of an IMO.

42. I do not consider that the possibility that lessees may, at some future date, apply for an acquisition order under the provisions of Part III of the 1987 Act, is a relevant matter for me to have regard to. The exercise of such statutory entitlement by lessees is consequential upon the making of a management order. It has not been suggested that the lessees actually intend to apply for an acquisition order, and the possibility that they might at some future date do so, is not, in my judgment relevant to the question of whether it is just and convenient to make an IMO.

43. As Mr Rainey acknowledged, if Riverside's argument that it is not bound by the EMO is found by the Upper Tribunal to be correct, then there has already been a break in the chain of management orders since the original EMO was made. That break would have occurred in November 2018 when the assignment to Riverside occurred. The Applicants wish me to record, in my reasons for making the IMO, that it is being made because of acts or omissions by the landlord. This would arguably start the clock running in terms of the two-year time limit for the making of an acquisition order. For the reasons stated above, I decline to do so. If the possibility of obtaining an acquisition order has any relevance, it is a matter for the final hearing of these applications, when the tribunal will decide the substantive applications for new management orders.

Wording of the IMO

44. There is a dispute between the parties regarding several of the recitals to the Order. The Respondents propose that the text identified below be struck from the first recital:

> "UPON the Tribunal having made a management order pursuant to section 24 of the Landlord and Tenant Act 1987 ("the Act') ~~in respect of management functions in relation to the premises known as Phase 1, Riverside, Westferry Circus, London E14 ("the Estate") originally by its decision dated 5 August 2016 (reviewed on 15 September 2016)~~ in Case Ref: LON/00BG/AOM/2015/0012, the current iteration of which order is a management order dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 ("the Current Management Order")"

45. Mr Bates contended that the phraseology should mirror the definition of the Estate contained in the EMO, rather than create an additional definition. Mr Rainey recognised the need to avoid multiple definitions, and I agree. In my determination, the first recital should refer to the Estate, but not define it. It should also refer to the date of the original management order and the date of its current itineration. I amend it to the following:

> "UPON the Tribunal having made a management order pursuant to section 24 of the Landlord and Tenant Act 1987 ("the Act') in respect of management functions in relation to the Canary Riverside Estate (as defined in that management order) originally by its decision dated 5 August 2016 (reviewed on 15 September 2016) in Case Ref: LON/00BG/AOM/2015/0012, the current iteration of which order is a management order dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 ("the Current Management Order")"

46. The next recital in dispute is the following

> "AND UPON the Manager Mr Alan Coates and his successor Mr Sol Unsdorfer at all material times since the Assignment and notwithstanding that the Assignment had taken place having continued to perform the functions of the Manager

or receiver in as set out in the current management order (dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012)"

47. Mr Bates' objected on the basis that the contents of the recital were beyond the knowledge of the Respondents. He also suggested that there was an area of Mr Unsdorfer's management over which they had potential concerns, but did not specify the nature of those concerns. At the hearing I suggested the following form of wording, which was agreed by all parties, and which should therefore be included in the recitals:

"AND UPON the Manager Mr Alan Coates and his successor Mr Sol Unsdorfer asserting that at all material times since the Assignment (and notwithstanding that the Assignment had taken place) they have continued to perform the functions of the Manager or receiver as set out in the current management order (dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012)"

48. The Respondents also objected to the words struck out in the following recital.

"AND UPON Circus Apartments Ltd and the leaseholders represented by the Residents' Association of Canary Riverside having issued an application for an interlocutory management order under s.24, Landlord and Tenant Act 1987 dated 27 July 2021 without prejudice to the contention that Riverside CREM 3 Limited is already bound by the ~~current management order (dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012) and that no further or new manager order is required and without prejudice to the variations sought to the said current management order by the leaseholders of Canary Riverside (represented by the Residents' Association of Canary Riverside), Circus Apartments Ltd and Mr Unsdorfer in applications LON/00BG/LVM/2021/0003, 0004 and 0010~~ Current Management Order and that no further or new management order is required"

49. Mr Bates' objected on the basis that whilst the Applicants had made their application for an IMO without prejudice to their contention that Riverside was already bound by the EMO, they had not reserved their position in respect of their applications to vary the EMO. He pointed out that no such reservation appears at paragraph 1 of the grounds accompanying the application for an IMO **[116]**, nor in Mr Unsdorfer's witness statement **[131]**. Whilst that is correct, as Mr Rainey submitted, there is an express reservation in paragraph 3 of the Applicants' reply **[163]** where they state that they seek an IMO in the same terms as the EMO, without the variations sought in their separate applications, simply to maintain the *status quo ante*. They state that this was without prejudice to the variations they argue should be incorporated in any extension of the EMO and/or into any new management order.

50. I am satisfied that the Applicants' position was reserved in their Reply and that the recital should read as follows:

> "AND UPON Circus Apartments Ltd and the leaseholders represented by the Residents' Association of Canary Riverside having issued an application for an interlocutory management order under s.24, Landlord and Tenant Act 1987 dated 27 July 2021 without prejudice to the contention that Riverside CREM 3 Limited is already bound by the current management order (dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012) and that no further or new management order is required and without prejudice to the variations sought to the said current management order by the leaseholders of Canary Riverside (represented by the Residents' Association of Canary Riverside), Circus Apartments Ltd and Mr Unsdorfer in applications LON/00BG/LVM/2021/0003, 0004 and 0010"

51. Mr Bates also objected to the words struck out in the recital below on the basis that he could not identify such consent being given by Mr Unsdorfer.

> "AND UPON Mr Unsdorfer also supporting the making of an interlocutory management order ~~and consenting to be appointed as the Manager thereunder without prejudice to the contention that Riverside CREM 3 Limited is already bound by the current management order (dated 12 April~~

~~2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012) and that no further or new management order is required"~~

52. Mr Unsdorfer was at the hearing of the application, and Mr Dovar, on his behalf, provided his consent. As such, I consider the words struck out should be reinstated and that the recital should read as follows:

> "AND UPON Mr Unsdorfer also supporting the making of an interlocutory management order and consenting to be appointed as the Manager thereunder without prejudice to the contention that Riverside CREM 3 Limited is already bound by the current management order (dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012) and that no further or new management order is required"

53. The final recital objected to by the Respondents was as follows:

> "AND UPON the Tribunal reading and considering the previous tribunal decisions leading to the making of the current management order (dated 12 April 2019 as varied on 16 September 2019 and 28 April 2021 Case Ref: LON/00BG/AOM/2015/0012) and the Statements of Case and evidence filed on behalf of (1) Circus Apartments Ltd and the various leaseholders represented by the Residents' Association of Canary Riverside, (2) Octagon Overseas Ltd, Canary Riverside Estate Management Ltd and Riverside CREM 3 Ltd and (3) Mr Unsdorfer"

54. Mr Bates had no objection to the recital recording that the tribunal had read the application, but in his submission the previous tribunal decisions, and the reasons given as to why the previous management orders were made, were not relevant to the application for an IMO. In response, Mr Rainey repeated his submission that all of the reasons found in the tribunal's previous decisions as to why the EMO was made are also reasons as why it is just and convenient to make the IMO, and the recital was therefore appropriate.

55. I consider that the purpose of recitals of this nature which, as Mr Rainey mentioned, were, and may still be, common practice in the Chancery Division of the High Court, is simply to record the documents considered by a court or tribunal when making its decision or order. No weight, can, or should, be attached to the mere inclusion of a particular document in such a recital, and the question of the relevance of any such document is a matter for the substantive decision or order. In the course of preparing for this hearing I have read the whole of the bundle

prepared by CAL, as well as the skeleton arguments received from counsel and a letter from Freeths. The recital should therefore read as follows:

> "AND UPON the Tribunal reading: (a) the hearing bundle prepared by the solicitors for the First Applicant; (b) skeleton arguments provided by Mr Phillip Rainey QC and Mr Justin Bates; (c) the travelling draft of a proposed form of Interlocutory Management Order; and (d) a letter from Freeths LLP, solicitors for the Respondents, to the tribunal dated 2 November 2021

56. Turning to the operative part of the IMO, Mr Bates objected to the words struck out in the following paragraph:

> "IT IS ORDERED THAT
>
> 1) An interlocutory management order is made under s.24(1) and s.24(2)(b), Landlord and Tenant Act 1987 appointing Mr Sol Unsdorfer <u>to fulfil the functions of manager and receiver</u> on the terms set out in paragraph 2"

57. The remaining paragraph of the order is agreed, and reads as follows:

> 2) The terms of that order are the same as the Current Management Order, copies of which orders are attached to this order) save that:
>
> (1) Riverside CREM 3 Ltd are bound by the interlocutory management order;
>
> (2) Any references to Canary Riverside Estate Management Ltd shall, where referable to any part of the Premises held by Riverside CREM 3 Ltd, be interpreted as referring in addition to Riverside CREM 3 Ltd;
>
> (3) The words "This final Order is for a period of five years commencing on 1 October 2016" in paragraph 4 of the order dated 12 April 2019 shall be omitted .
>
> (4) Paragraph 17(i) of the order dated 12 April 2019 shall be omitted.

58. Mr Bates' objection to paragraph 1 is that the powers of the manager should, in his submission, be set out in paragraph 2. Mr Rainey's position is that it was appropriate to specify that Mr Unsdorfer was

being appointed to fulfil the functions of a manager and receiver in paragraph 1, and that these should be defined in the IMO.

59. In my determination, paragraph 1 should refer to the basis on which Mr Unsdorfer is appointed. This is to be on the same basis as the EMO, save as varied in paragraph 2. Paragraph 1 of the EMO refers to the Manager being appointed to "fulfil the functions of Manager (including such functions of a Receiver as are specified herein)". Paragraph 1 of the Order should therefore read as follows:

"IT IS ORDERED THAT

1) An interlocutory management order is made under s.24(1) and s.24(2)(b), Landlord and Tenant Act 1987 appointing Mr Sol Unsdorfer to fulfil the functions of manager, and such functions of a Receiver, as are specified in the Current Management Order"

60. I note that the only function specified in the EMO that the Manager is empowered to carry out as a Receiver is that in paragraph 32 of the Schedule of Functions and Services, namely, to register at HMRC as Receiver Manager for VAT purposes. This IMO does not accord the Manager with any additional functions as a Receiver.

Name: Amran Vance **Date: 5 November 2021**

ANNEX 1 - RIGHTS OF APPEAL

Appealing against the tribunal's decisions above

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 – INTERLOCUTORY MANAGEMENT ORDER