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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : BIR/OOCN/LCP/2013/0001

Property : The Post Box, Upper Marshall St., Birmingham, B1 1LA

Applicant : Post Box Ground Rents Ltd.

Representative : Brethertons LLP, Solicitors
Mr J. Bates of Counsel

Respondent : The Post Box RTM Company Ltd.

Representative : Mrs M. Madjirska-Mossop

Type of Application : An Application by the Applicant for permission to Appeal the Tribunal Decision dated 13th January 2014, following withdrawal of an RTM Claim by the Respondent under s.88 of the Commonhold and Leasehold Reform Act 2002.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
P.J. Hawksworth (Lawyer)

Date and Venue of Hearing : The Tribunal reached its decision based on written representations received on various dates from 30th January 2014 to 13th May 2014 without a Hearing.

Date of Decision : **16 JUN 2014**

DECISION

Introduction

- 1 The First-tier Tribunal (Property Chamber) issued its Decision on the costs payable following withdrawal of an RTM application under s.88 of the Commonhold and Leasehold Reform Act 2002 on 13th January 2014.
- 2 On 30th January 2014 it received a request from the Respondent asking for clarification of a point raised in the decision concerning the question of whether VAT should be paid to the Applicant and why no reference had been made to the Respondent's further Submission on the point in the decision.
- 3 The Tribunal re-convened on 4th March 2014 when it was found that the further Submission had never been received by the Tribunal Office and in the absence of further contact from the Respondent the Tribunal had no reason to assume a further Submission had been made. Accordingly, the Respondent was invited to send a copy of the document for consideration.
- 4 The Tribunal subsequently received the copy Submission on 26th March 2014 and having considered the points raised, issued an Addendum to the Decision on 12th May 2014. The Addendum allowed a further period to request permission to appeal the Addendum point on VAT which expired 9th June 2014, during which time no application was received by the Tribunal.
- 5 Meanwhile, the Tribunal received a request from the Applicant for the primary decision of 13th January 2014 to be reviewed or appealed to the Upper Tribunal, by letter received 7th February 2014 which was copied to the Respondent.
- 6 On 26th February 2014 the Tribunal received a reply from the Respondent relating to the Applicant's request.
- 7 The Tribunal then received a reply from the Applicant in response to the Respondent's comments, by letter dated 17th March 2014, referring to a recent decision of the Upper Tribunal.
- 8 On 17th April 2014 the Tribunal received further correspondence from the Applicant, referring to another recent decision of the High Court and enclosing a copy.
- 9 On 13th May 2014 the Tribunal received a letter from the Applicant replying to the Respondent's letter of 17th April 2014.
- 10 The Tribunal has considered all the points made by the parties and finds as follows.

Decision

The Applicant's Grounds of Appeal

11 The Applicant states two grounds of Appeal:

12 Ground 1 - Breach of Natural Justice

The Applicant claims the Tribunal was in breach of natural justice by referring to cases not referred to by the parties.

.../2

- 13 The Tribunal finds that no such breach has been made. Both parties were represented by legally qualified advocates who were specialists in their field and expected to be fully conversant with all aspects of this area of the law in representing their clients before the Tribunal. Furthermore, the case referred to, *Daejan Properties Limited v Carlton Mansions RTM Company Ltd.* LON/OOAM/LCP/2009/21 was in the public arena and included in the decision for information.
- 14 Ground 2 - Tribunal Decision wrong in law
The Applicant submitted inter alia that the question of costs arising under s.88 of the Commonhold and Leasehold Reform Act 2002 were of potentially wide significance and should be referred to the Upper Tribunal for clarification.
- 15 In subsequent correspondence dated 14th March 2014, the Applicant referred to a recent decision of the Upper Tribunal that had not been decided by the date of the First-tier Tribunal decision on 13th January 2014, *Fencott v Lyttelton Park RTM companies* [2014] UKUT 27 (LC) that was submitted to be relevant to the case.
- 16 On 17th April 2014 the Applicant sent further correspondence referring to another recent decision of the High Court, *The Queen on the Application of O Twelve Tree Ltd. v the Rent Assessment Panel and Beckett House Brentwood RTM Company Ltd. and Estates & Management Ltd.* [2014] EWHC 1229, which was also submitted as relevant.
- 17 In view of the recent decisions that had not been available to the Tribunal by the date of its primary decision, the Tribunal considers the issues raised to be of potentially wide significance to the public. It decides not to review its decision under rule 55 and grants the Applicant permission to appeal to the Upper Tribunal under rule 53(2).

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 16 JUN 2014