UPPER TRIBUNAL (LANDS CHAMBER)

[2023] UKUT 220 (LC) **UTLC Case Number: LC-2023-122**
Royal Courts of Justice

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

LANDLORD AND TENANT – RIGHT TO MANAGE – costs – whether RTM company having issued proceedings against the appellant as landlord is estopped from denying that it is the landlord for the purposes of costs under section 88 of the Commonhold and Leasehold Reform Act 2002

BETWEEN:

ASSETHOLD LIMITED

Appellant

-and-

159-167 PRINCE OF WALES ROAD RTM COMPANY LIMITED

Respondent

Re: 159-167 Prince of Wales Road,
London,
NW5 3PY

Upper Tribunal Judge Elizabeth Cooke
Determination by written representations
Decision Date: 12 September 2023

Mr Justin Bates for the appellant, instructed by Scott Chen Solicitors Limited
The respondent was not represented

The following cases are referred to in this decision:

Actionstrength Ltd v International Glass Engineering [2003] UKHL 17

Benedictus v Jalaram (1989) 58 P. & C.R. 330

Cobbe v Yeoman's Row Management Ltd, [2008] UKHL 55

Dutton v Sneyd Bycars Co Ltd [1920] 1 KB 414

Lough's Property Management Limited v Robert Court RTM Company Limited [2019] UKUT 105 (LC)

Plintal SA v 36-48A Edgewood Drive RTM Co Ltd LRX/16/2007

1.

Introduction

1. This is an appeal from the First-tier Tribunal's refusal to make a costs order under section 88 of the Commonhold and Leasehold Reform Act 2002, where the respondent RTM company had issued proceedings against the appellant as landlord, claiming the right to manage, but had then withdrawn its claim.

2. The appeal has been determined under the Tribunal's written representations procedure; the appellant has been represented by Mr Justin Bates of counsel. The respondent has not been legally represented but its grounds of opposition were expertly drafted.

The background and the FTT's decision

3. Part 2, chapter 1 of the Commonhold and Leasehold Reform Act 2002 provides for the acquisition of the right to manage leasehold premises, by a nominee company representing leaseholders, on a no-fault basis; the right is acquired if procedural steps are correctly taken, without any need for there to be anything wrong with the management carried out to date by the landlord. Among the procedural steps is the requirement to serve a claim notice, in section 79(6):

> "(6) The claim notice must be given to each person who on the relevant date is —
> (a) landlord under a lease of the whole or any part of the premises,
> (b) party to such a lease otherwise than as landlord or tenant, or
> (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 in relation to the premises...."

4. The property in question in the present appeal is 159-167 Prince of Wales Road, London NW5 3PY, which comprises several long leasehold flats. The respondent, 159-167 Prince of Wales RTM Company Limited, is a right to manage company formed by the leaseholders of some of these flats. The appellant, Assethold Limited purchased the freehold of the property from Millcastle Limited on 10 October 2019. It also purchased the headlease of the Property from Millcastle on 10 October 2019.

5. On 10 June 2021 the RTM company served a notice addressed both to Millcastle and to the appellant claiming the right to manage the property pursuant to section 79 of the 2002 Act. On 14 July 2021 the appellant served a negative counter-notice dated 14 July 2021, pursuant to s.84 of the 2002 Act, contending that the notice of invitation to participate had not been given to the correct persons, and that the claim notice had not been served on each of the persons specified in section 79(6) and (8) of the Act. On 23 September 2021 the RTM Company applied to the FTT, under section 84(3) of the 2002 Act, for a determination that it was entitled to the right to manage the property, naming the appellant as landlord. The FTT gave directions and the application was listed for a hearing on 26 May 2022. On 25 May the RTM Company filed and served notice of withdrawal.

6. Section 88 of the 2002 Act says this:

> "(1) A RTM company is liable for reasonable costs incurred by a person who is —
> (a) landlord under a lease of the whole or any part of any premises,
> (b) party to such a lease otherwise than as landlord or tenant, or
> (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, …
> in consequence of a claim notice given by the company in relation to the premises.
> (2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
> (3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the FTT only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.
> (4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by [the FTT]."

7. Section 89 adds:

> "(1) This section applies where a claim notice given by a RTM company—
> (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
> (b) at any time ceases to have effect by reason of any other provision of this Chapter.
> (2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time."

8. So the combined effect of those provisions is that the RTM company is liable for the costs incurred by a landlord (and others not relevant to the present appeal) as a result of his being given a claim notice if the application to the FTT for a determination about the right to manage is dismissed or withdrawn.

9. On 30th September 2022 the appellant made an application to the FTT for costs pursuant to section 88(4). The respondent resisted the application on the basis that the appellant was not the "landlord under a lease of the whole or any part of any premises," as required by section 88(1)(a) because it was not the registered proprietor of the freehold or of the head-lease of the property. The appellant in response said that it had purchased the freehold and headlease on 20 October 2019 (as it had said in its Statement of Case), and that its application to HM Land Registry for registration was still pending. It argued that the RTM company having issued proceedings against it under section 88(4) was estopped from denying that it was the landlord.

10. "Estopped" is a technical term which roughly means "prevented"; I say more about its technical meaning below.

11. On the appellant's account of the facts (and the FTT has made no findings about the date of purchase) it was throughout the relevant period the equitable owner of the freehold and headlease but not yet the legal owner. The FTT agreed that only legal ownership was relevant for the purposes of sections 79(6)(a) and section 88(1)(a). It rejected the estoppel argument, saying that the provisions of the statute could not be overridden by any misunderstanding of the law by the RTM company. It refused to make an order for costs.

The grounds of appeal

12. The FTT granted permission to appeal on three issues:

    a. That the RTM company was estopped fom denying the appellant's standing as landlord;

    b. That the appellant was landlord because it was the owner of the freehold and headlease in equity;

    c. That where one entity has the legal title and another the equitable title they are both the landlord.

13. If ground 1 succeeds then the other two grounds are unnecessary.

The appeal on ground 1

14. The intention of the costs provisions in sections 88 and 89 of the 2002 Act is that where an RTM company has put the landlord to the expense of defending proceedings in the FTT but fails to acquire the right to manage because its claim is dismissed or withdrawn it should pay the landlord's costs. That is obviously fair. In the present case the respondent has taken proceedings against the appellant and then at the last minute withdrawn its claim, but it resists the costs application on the basis that the appellant was not the landlord after all.

15. The appellant argues that when an RTM company issues proceedings under section 88(4) it is stating, by implication, that its claim notice was valid and that the person against whom it issues proceedings is one of those listed in section 79(6) – in this case, was the landlord. It cannot then deny that statement when it comes to costs.

16. The appellant relies on the decision of the Lands Tribunal in *Plintal SA v 36-48A Edgewood Drive RTM Co Ltd* LRX/16/2007. An RTM company served claim notices on the freeholder and head leaseholder of the relevant property. Counter-notices were served which said, among other things, that the claim notices had not been validly served. In the proceedings in the Leasehold Valuation Tribunal ("the LVT") in the FTT in its pleading dated 14 December 2005 the RTM company argued that the counter-notices were invalid but also argued in the alternative that its claim notices were in fact invalid and that it was therefore entitled to serve fresh claim notices.

17. The LVT held that in the light of that concession it had no jurisdiction and dismissed the application. It also dismissed the claim for costs under section 88; it said that the freeholder and leaseholder having chosen to argue that the notices were not validly served for the purposes of resisting the right to manage could not then argue that they were entitled to costs on the basis that the notices had been served.

18. On appeal to the Tribunal the landlords argued first that the claim notices, while not "given" for the purposes of section 79 because not validly served, were nevertheless "given" for the purposes of section 88 because they had been received by the landlords. Alternatively they argued that the RTM company having pleaded on 14 December 2005 that the notices were validly served was estopped from denying that in response to the costs application. The President, George Bartlett QC, rejected the first argument but as to estoppel said this:

> "19. …By maintaining their application to the LVT the RTM companies were asserting that the claim notices were valid and were validly served. They were asking the LVT to determine that they had the right to manage the premises. That was their primary contention as expressed in their reply. It was only if the LVT found itself unable to determine in their favour the right to manage that they sought to accept and rely on the appellants' contention that the claim notices had not been validly served. In these circumstances the appellants could not have sat back in reliance on the RTM companies' acceptance that the notices had not been validly served because that acceptance was only contingent on the failure of the RTM companies' primary case. The LVT would have determined that the RTM companies had the right to manage, and that determination would have been effective for all purposes.
>
> 20. Accordingly, the appellants were in my judgment entitled to their costs from the date of the RTM companies' reply on 14 December 2005, which is the basis of the estoppel, and the LVT should have so concluded."

19. In the same way, Mr Bates argues for the appellant in the present case, the respondent RTM company maintained by issuing proceedings that the appellant was the landlord, and it cannot then deny that for the purposes of the costs application. Once an RTM company issues proceedings seeking a determination that it is entitled to acquire the right to manage, it accepts that the statutory liability for costs arises and is estopped from denying that liability. Mr Bates argues that that is consistent with the position under the Landlord and Tenant Act 1954; he refers to *Benedictus v Jalaram* (1989) 58 P. & C.R. 330, where tenants who applied for a new tenancy of business premises for the purposes of Pt II of the Landlord and Tenant Act 1954 were not permitted to argue that they should not pay an interim rent under s.24A of that Act on the basis that they did not occupy the premises.

20. The respondent presents six arguments in response to the appeal, which I set out below and respond to in turn.

(1) Subverting the statute

21. First, the respondent argues that the statute is very specific indeed about who is entitled to costs. It is only the persons set out in section 88(1). Other persons have no entitlement even if they are parties to the proceedings. Had Parliament intended other persons to be entitled it could and would have said so.

22. I agree that that is a correct reading of the statute: only specific persons can have their costs, in specific circumstances. But that in itself does not prevent the FTT from awarding costs in a case where the RTM company does not deny, or is prevented by an estoppel from denying, that the applicant for costs is one of those persons.

23. The argument about the role of estoppel in the face of statutory provisions is developed further in the respondent's point 3 and I revert to it there.

(2) Inconsistency with the rest of the provisions of the chapter

24. Next the respondent argues that to allow the estoppel would be inconsistent with the rest of the provisions made in the 2002 Act for RTM companies. For example, if someone who is not a landlord is regarded as a landlord by virtue of an estoppel once proceedings have been issued, that would mean that someone who is not a landlord would have access to the premises by virtue of section 3, which reads:

> "(1) Where a RTM company has given a claim notice in relation to any premises, each of the persons specified in subsection (2) has a right of access to any part of the premises if that is reasonable in connection with any matter arising out of the claim to acquire the right to manage.
> (2) The persons referred to in subsection (1) are— …
> (b) any person who is landlord under a lease of the whole or any part of the premises…"

25. More generally, the respondent argues, if an estoppel arises when proceedings are issued, then a person who is not a landlord when served with a claim notice is then treated as a landlord once proceedings are issued, and is a landlord for some purposes and not others.

26. This argument depends upon hypothetical circumstances which have not happened and do not arise in the present case. It is important to remember that if in the present appeal the appellant is able to benefit from the estoppel it alleges, that does not in itself mean that it is not the landlord. It may well be; that point has not been decided. Whether any inconsistent or inappropriate result arises from an estoppel in a given case has to be considered in that case and on those specific facts. Nothing absurd or inappropriate arises from the estoppel asserted here.

(3) Estoppel cannot be used to outflank a statute

27. This ground reflects the proverbial maxim that estoppel cannot be used in the face of a statute. There is some force in the maxim but it has to be looked at in its context to understand what it means.

28. The respondent refers to what it regards as two useful analogies. First, proprietary estoppel cannot be used to negate the requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 that a contract relating to land must be made in writing. So an oral contract for the sale of land cannot be made enforceable by the seller being estopped from denying that it was made in writing or being estopped from arguing that it is void. In *Cobbe v Yeoman's Row Management Ltd*, [2008] UKHL 55 Lord Scott (with whom Lords Hoffmann, Brown and Mance also agreed) expressed the following obiter view:

> "19. My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section 2 is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute."

29. Second, the Statute of Frauds 1677 requires that a contract of guarantee be in writing and again that requirement cannot be outflanked by estoppel: *Actionstrength Ltd v International Glass Engineering* [2003] UKHL 17. As Lord Hoffman put it at paragraph 26,

> "To admit an estoppel on these grounds would be to repeal the statute"

30. In the same way, the respondent argues, the statutory scheme in chapter 1 of part 2 of the 2002 Act cannot be allowed to be subverted by an estoppel; equity cannot contradict the statute and allow costs to be awarded to someone who is not on the list in section 88(1).

31. Another way of putting this – which the respondent sets out under point 6 but which I think properly belongs here – is that it is not possible to confer a jurisdiction on the court by estoppel. There is no jurisdiction to award costs under section 88 to a party who is not a landlord and a jurisdiction to do so cannot be created by estoppel.

32. That point was addressed in *Benedictus v Jalaram* (1989) 58 P. & C.R. 330, where a tenant claimed a new tenancy under the Landlord and Tenant Act 1954, on the basis that it was in occupation of the property, but then sought to resist an application for interim rent by stating that it was not in occupation. Its response to the application was struck out. The Court of Appeal had to address the argument that it is not possible to create a jurisdiction to award interim rent by an estoppel. Stocker LJ referred to the decision in *Dutton v Sneyd Bycars Co Ltd* [1920] 1 KB 414 where Atkin LJ had to consider a claim under the Workmen's Compensation Act 1906 and said at page 419 ff:

> "The operation of the Act is confined to a certain class of cases, and it seems to me that the parties cannot by any form of estoppel or by agreement so enlarge the operation of the Act as to bring within it other cases, or to extend the limited statutory jurisdiction to those cases…
>
> Of course, if some particular fact alleged by either party is in issue and either in accordance with the practice of the Court, as in the case of admissions in the

> pleadings or by the application of some rule of law, it has to be taken to be as alleged, it will be so taken although the result may be not in accordance with the true state of the facts…
>
> In this case the applicant suffered from an illness contracted in the course of his employment. He was not injured by an accident; and the illness was not one of the diseases brought within the Act by s. 8, and the Third Schedule. Under these circumstances, in my opinion, it was not competent for the employer and workman by conduct or agreement to give jurisdiction to the county court judge to award compensation under the Act. It is entirely different where the parties determine by agreement questions that arise within the Act, e,g., whether a person injured is a workman to whom the Act applies, whether he was injured by accident, whether the accident arose out of, or in the course of, his employment, what the amount of the compensation should be. In such cases the agreement of the parties operates within the ambit of the Act."

33. Stocker LJ therefore, faced with an argument that the tenants were estopped from denying that they were in occupation of the property and therefore liable to pay an interim rent, distinguished between

> "agreements or estoppel which purport to enlarge the jurisdiction of the court and those which relate to an admitted state of facts essential to prove the cause of action arising within the ambit of the court's jurisdiction."

And went on to say:

> "In my view it is clear law that the parties cannot by any route enlarge the jurisdiction of the tribunal before whom a matter falls to be decided. The question arising upon this appeal is whether or not the effect of the estoppel pleaded is to enlarge the jurisdiction of the court or whether it concerns solely an estoppel which precluded the tenants from denying an essential fact necessary to establish their right to a new lease - viz. that at the time of the application the premises were occupied by the tenants for the purposes of a business carried on by them. Thus in this case the question in issue is whether the assertion that the tenants were not in occupation for the purposes of their business impugns the jurisdiction of the court, or whether it is one which arises within the ambit of the court's jurisdiction as exemplified by the examples given by Atkin, L.J., in the Dutton case at page 421. In my view the tenants' contention does not give rise to any question of jurisdiction but arises as an issue relevant to their claim for a new tenancy.

34. In my judgment, if the respondent is estopped from denying the appellant's status as landlord, it is estopped from denying "an essential fact necessary to establish [the appellant's] right" to costs. It is not an enlargement of the jurisdiction of the FTT to award costs, which remains exactly as defined in the statute. Accordingly there is no bar to the operation of estoppel in this case just as there was none in *Benedictus v Jalaram* nor in *Plintal* where again the tenant was estopped from denying a necessary ingredient.

35. The authorities relating to the statutory regulation of the validity of certain documents or contracts, such as wills, contracts relating to land, or guarantees stand in a rather different category. The law relating to them is complex and the academic commentary on the relationship between proprietary estoppel and the rule that land contracts have to be in writing is extensive. Central to the problem in these contexts is that the whole point of the statutory provision is to invalidate transactions that are not in a certain form, and therefore as Lord Hoffman said in *Actionstrength* to allow a party to be estopped from denying that the statutory requirements are met would be to repeal the statute.

36. That principle is not relevant here, because we are not here dealing with a transaction which would have been valid at common law but fails the statutory criteria for validity. The appeal concerns a purely statutory regime and the potential for one of the parties to be estopped from denying that a fact that is necessary for the operation of the statutory regime. There is no sense in which allowing that estoppel would go the heart of the statutory scheme in such as a way as to repeal it. For the reasons set out in *Benedictus v Jalaram* I find that there is nothing to prevent the operation of estoppel in this case.

(4) Plintal *is distinguishable*

37. I set out the facts of *Plintal* above. It is not of course binding on me and I am free either to distinguish it or to depart from it. The respondent does not suggest that it was incorrectly decided but says that it is distinguishable both on the law and on its facts.

38. As to the facts, the difference in *Plintal* is said to be that the tenant ran the inconsistent argument all along; it pleaded in the alternative that the notices were valid but the counter-notices invalid, or that the notices were invalid and would be re-served. By contrast the respondent in the present case has not held two inconsistent positions at the same time; it denied the appellant's status as landlord only once its claim was withdrawn. The claim notice was addressed both to Millcastle Limited and to the appellant and expressly said "if you are … the landlord". All the respondent did in issuing proceedings was to tick the box on the pro forma saying that the appellant was the landlord, having received a counter-notice from it. So it was not stating that the appellant was the landlord and was not running inconsistent positions.

39. I have no hesitation in saying that the respondent by issuing proceedings was asserting that the appellant was the landlord. It chose to respond to the counternotice by issuing an application, thereby taking the risk of liability for costs under section 88, and it stated on its application – the fact that there is a pro forma makes no difference - that the appellant is the landlord.

40. So the later denial of the appellant's status was inconsistent with the respondent's earlier position. I do not see any reason to distinguish *Plintal* on the basis that the respondents in the present case were not saying two inconsistent things at the same time. The taking of proceedings against the appellant as landlord and the denial of its status as landlord are inconsistent whether or not they are simultaneous. If anything the change of position in the present case is much more obviously unfair than was the inconsistency in *Plintal* where the tenant's position was clear to the landlord from the tenant's pleading. In the present case the appellant has incurred costs in defending proceedings only to be told after their

withdrawal that its status to do so was denied. There is an even stronger argument in the present case that the respondent should not be allowed to take advantage of its own inconsistency, than there was in *Plintal*.

41. The respondent also argues that *Plintal* can be distinguished on the law. The respondent refers to the Tribunal's decision in *Lough's Property Management Limited v Robert Court RTM Company Limited* [2019] UKUT 105 (LC). The case turned on the fact that if an RTM company does not commence proceedings within two months of the service of the landlord's counter-notice, the claim notice is deemed by section 87(1) of the 2002 Act to have been withdrawn, and as we have seen section 89 provides for the landlord's costs to be recoverable up to the date of that deemed withdrawal (paragraph 7 above). The issue in *Lough's Property* before the FTT was whether proceedings had been commenced by the RTM company within time in circumstances where it had submitted a form without the accompanying documentation. The FTT decided that it was in time but gave permission to appeal, and before the appeal was heard counsel for the RTM company had submitted a skeleton argument that in effect conceded the appeal. The Deputy President gave a judgment explaining why the concession was correct and allowing the appeal. At the request of the parties he also provided guidance – necessarily obiter since no costs application had yet been made – as to whether the landlord's costs were payable only until the deemed withdrawal of claim notice, now conceded to have taken place, or should also include the landlord's costs of the proceedings. One of the landlord's arguments was that the RTM company, by issuing proceedings, asserting the validity of its claim so that it was estopped from denying the continuing liability for costs.

42. The Deputy President (Martin Rodger QC) considered the decisions in both *Benedictus v Jalaram* and *Plintal*, but held that in the case before him there could be no estoppel. Section 89(2) provides that costs are payable until deemed withdrawal, and there is no provision for additional costs to be payable if proceedings are nevertheless commenced if the deemed withdrawal has already taken place. He distinguished both *Benedictus* and *Plintal*:

> 64. In *Benedictus* there was a consensus, on which the application was based and which was disturbed only by the tenant's decision to resile from it, as to facts which, if true, would have rendered the tenant liable for the interim rent. There has never been such a consensus in this case. It has always been the appellant's case that the proceedings were not properly constituted because the claim notice was deemed to have been withdrawn. The appellant would therefore have anticipated that section 89(2) would apply to its entitlement to recover costs. "
>
> 65. In *Plintal* there was no deemed withdrawal of the notice of claim, and the application failed because the notice of claim had not been validly served. Costs were incurred in the proceedings in which the RTM company's primary case was that it was entitled to acquire the right and its secondary case was that no there were no costs in consequence of a claim notice given by the company because the notice had not been validly given. The Tribunal held that the company was estopped from contending that no notice had been given. That conclusion was only possible because there is nothing in the Act to prevent it. To achieve a similar result in this case would not simply involve the assumption of a state of

facts contrary to reality, but would require that section 89(2) be ignored. That is not permissible."

43. Thus *Benedictus* was different because there had been consensus up to the point the tenant changed its position – as there was in the present case. The distinction from *Plintal* is less easy to understand. The respondent says the as in *Lough's Property* the estoppel requires section 88(1) to be ignored, and that that puts the case on all fours with *Lough's Property* rather than with *Plintal*, but as I have already explained I do not regard the statutory provisions in the present case as posing any obstacle to the estoppel.

44. If the obiter reasoning in *Robert Court* is inconsistent with the decision in *Plintal* then I have to say that I prefer the reasoning in *Plintal* which appears to me to be consistent with the authorities on estoppel and responds to the obvious injustice that will follow if the respondent's argument prevails.

(5) Estoppel is a shield not a sword

45. The respondent argues that estoppel is a shield not a sword, and cannot be used to pursue a claim rather than to defend one. Here the appellant is using estoppel in order to pursue a claim for costs, which is impermissible.

46. In my judgment this argument goes nowhere. The maxim "estoppel is a shield not a sword" has been used in older cases to describe situations where estoppel is used as a defence from a contractual liability (promissory estoppel). It is not a general rule; proprietary estoppel is a cause of action. Estoppel cannot create a jurisdiction, but it is not doing so here. The jurisdiction to award costs is set out in section 88 and the appellant says the respondent is estopped from denying that the conditions for the jurisdiction are met. The shield metaphor is a useful illustration: the appellant is using it to parry the RTM company's assertion that it is not a landlord.

47. Similarly in *Plintal* estoppel prevented the RTM company from denying that claim notices had been given, which was a precondition for the jurisdiction to award costs.

(6) No recognised form of estoppel

48. Finally the respondent says that no recognised form of estoppel has been identified, and that therefore it is impossible to say whether the ingredients of the estoppel in question are present. If, for example, it is necessary to show that there was a representation, where is it? The respondent points out that it has never said that the appellant is the landlord and has never said that it would be entitled to its costs. And if it is necessary, as in most cases of estoppel, to show that the appellant has relied upon the representation to its detriment, where is the detriment? The respondent says there is none.

49. Again this argument goes nowhere. The estoppel here may be by representation, or it may be an estoppel by convention as was found in *Benedictus v Jalaram*. Either way a representation is required, and representations may be express or made by conduct; a tenancy by estoppel arises from the act of entering into a tenancy agreement where the

landlord has no estate in the land, without the requirement for either party to the tenancy to assert that the landlord has an estate. In *Plintal* there was no detailed examination of the ingredients of estoppel but the President referred to the RTM company's pleading as the source of the estoppel. In the present case the respondent indicated on its form of application to the FTT that the appellant was the landlord, and by issuing proceedings against the appellant stated by its conduct that it was the landlord. As to detrimental reliance, the act of engaging with the proceedings and the incurring of costs are clearly detriments.

Conclusion

50. I have rejected the respondent's arguments. The unfairness of the RTM company's attempt to pursue the appellant in the FTT on the bass that it is the landlord, and then to deny liability for costs on the basis that it is not the landlord, is obvious, and is reflected in the legal position that the RTM is estopped from denying that the appellant is the landlord for the purpose of recovering costs under section 88 of the 2002 Act. There is no need, and it would not be proportionate, to decide the two other grounds of appeal.

51. That being the case a costs order can be made. The appellant filed a schedule of costs in the FTT and the parties made representations about it; I will make a determination about costs under section 88 in a separate order.

Upper Tribunal Judge Elizabeth Cooke

12 September 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.