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MAN/00BN/LVL/2013/0001

HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL
DECISION WITH REASONS
LANDLORD AND TENANT ACT 1987 – SECTION 38

Property: Britannia Mills, 1-125 Hulme Hall Road,
Urmston, Manchester M15 4LB

Applicant: Britannia Mills Management Limited

Respondents: Various leaseholders of the Property

Tribunal Members: Mr J W Holbrook LLM (Chairman)
Mr I James MRICS

DECISION

The decision of the Tribunal is that the application for an order varying the leases of the Property is refused.

REASONS

Background

1. The Property comprises a development of 125 residential apartments each of which is held on a long lease. A copy of one of the leases was provided to the Tribunal and it is understood that all of the leases are in materially identical terms. The leases are all tripartite agreements between Urban Splash (Britannia Mills) Limited (1), Britannia Mills Management Limited (“the Management Company”) (2), and the long leaseholder of the apartment concerned (3).

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2. The freehold estate in the Property is now vested in the Management Company and, on 4 December 2012, the Management Company applied to the Tribunal under section 37 of the Landlord and Tenant Act 1987 ("the 1987 Act") for an order under section 38 of that Act varying each of the 125 apartment leases. The Respondents to the application were the long leaseholders of the apartments.
3. The Management Company confirmed that notice of the application and a copy of the variation applied for had been given to each of the Respondents and to relevant mortgagees. Ninety six of the Respondents had previously indicated their support for the proposed variation and none had indicated that they opposed it.
4. Following a pre-trial review on 8 March 2013, the Tribunal directed that the application would be determined without a hearing unless any party requested one within 14 days. No such request was received, and the Tribunal accordingly convened on 29 April 2013 to determine the application on the basis of the written representations and copy documentation submitted by the Management Company. No representations were received from other parties. However, the Tribunal deferred its determination of the matter to provide the Management Company with an opportunity to clarify the grounds for the application. The Management Company duly provided an additional statement by way of such clarification.

The Law

5. Section 37 of the 1987 Act provides:
 - (1) Subject to the following provisions of this section, an application may be made to a leasehold valuation tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

- (2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.
- (3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
- (4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
- (5) Any such application shall only be made if—
 - (a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or
 - (b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.
- (6) For the purposes of subsection (5)—
 - (a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and
 - (b) the landlord shall also constitute one of the parties concerned.

7. Section 38(3) of the 1987 Act provides:

If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may ... make an order varying each of those leases in such manner as is specified in the order.

The proposed variation

8. The apartment leases currently provide that, upon sale or transfer of an apartment, the leaseholder must pay a contribution towards a maintenance fund for the Property. The amount of the contribution is determined by ascertaining a base figure and then by applying the appropriate multiplier to that figure. The

base figure is calculated as 0.25% of the greater of the sale price of the apartment and its market value. The appropriate multiplier is the number of years for which the seller has owned the apartment (if this is greater than four). If the seller has owned the apartment for four years or less, the appropriate multiplier is four.

9. It follows that a contribution of at least 1% of the sale price/market value is payable when an apartment is sold or transferred. Although the appropriate multiplier to be used in determining the amount of the contribution cannot be less than four, it is not subject to any maximum. The proposed variation which is now being sought would have the effect of capping the multiplier at ten in cases where the leaseholder has owned the apartment for more than ten years.

The Tribunal's jurisdiction to vary the leases

10. Before it may grant an application under section 37, the Tribunal must be satisfied that the application complies with the consent requirements set out in section 37(5). It is clear that those requirements have been complied with in this case.
11. However, the Tribunal must also be satisfied that the grounds on which the application is made are those specified in section 37(3): section 38(3) (from which the Tribunal derives its power to order a variation) makes it clear that, unless those grounds are established to the satisfaction of the Tribunal, then it must not make an order varying the leases.
12. The grounds specified in section 37(3) are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect. The statute thus effectively limits the circumstances in which the Tribunal may grant a section 37 application to those where the whole purpose of what is trying to be achieved will be thwarted unless all of the leases are varied in the same way. For example, if the object is to adjust the service charge

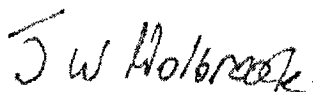
percentages in every lease to rectify a shortfall in the overall percentage of expenditure which is recoverable, that object will not be achieved unless every lease is varied appropriately. In such circumstances the Tribunal would be able to order that all the leases are varied at the same time and to the same effect in order to ensure that the object is satisfactorily achieved.

13. In contrast, the Tribunal should not order a variation in cases where achieving the desired object does not depend upon complete uniformity of approach – even if the proposed variation has the support of the parties. It is not the intention of the statutory scheme that the Tribunal should order a variation simply to save the parties the time and expense of drawing up and completing deeds of variation in the conventional way if, by doing so, they will be able to achieve their object satisfactorily.
14. In the present case, the Management Company confirmed that the object of the proposed variation is to vary each apartment lease so that the provisions for recovering monies from the leaseholders to ensure that there is an adequate maintenance fund for substantial capital or other unplanned expenditure are fair and reasonable. There is a balance to be struck between the need to provide for such a fund in the interests of good estate management, and the need to ensure that the contribution provisions in the apartment leases do not adversely affect the marketability of the apartments or discourage leaseholders from retaining their apartments for the long term. The fact that the leases do not currently include a cap on the amount of the appropriate multiplier is unattractive to potential buyers and is considered unreasonable. The proposed variation would introduce such a cap into each apartment lease.
15. In the view of the Management Company, the above object can only be achieved satisfactorily if all the leases are varied to the same extent. It considers that all the leases need to be varied in this way to ensure the uniform operation of the

maintenance fund regime throughout the development and to ensure each lease is consistent and equally attractive in the open market.

16. In our judgment, however, it is not the case that the object to be achieved by the proposed variation can only be satisfactorily achieved if all the leases are varied to the same effect. That object can be simply stated: it is to cap the potential liability of individual leaseholders to contribute to the maintenance fund upon sale or transfer of their apartments. That object can be achieved for a particular leaseholder by varying the terms of his or her lease without regard to the possible variation of any of the other apartment leases. The variation being offered by the Management Company is clearly an advantageous one from a leaseholder's perspective and it seems unlikely that many leaseholders would turn down the offer of a variation to this effect. Nevertheless, even if a leaseholder were to do so, this would not prevent the others from achieving their objective of capping their own potential liability. We do not accept that ensuring the uniform operation of the maintenance fund or the consistency of the contribution provisions are significant factors here as there is no risk that the Management Company may be financially disadvantaged if one or more leaseholders decides not to accept a variation.

17. In summary, therefore, we are not satisfied that the grounds for this application are grounds on which the Tribunal may properly make an order varying the apartment leases. This is because the object of the proposed variation may satisfactorily be achieved by the Management Company agreeing to vary the leases on a case by case basis, without the intervention of the Tribunal.



J W Holbrook
Chairman
17 June 2013

GUIDANCE NOTE ON APPEAL FROM THE LEASEHOLD VALUATION TRIBUNAL

Introduction

1. The decision of the Leasehold Valuation Tribunal (LVT) is final and there is no power for the LVT to revisit or reconsider that decision. If you are dissatisfied with the decision of an LVT, the statutory remedy is to appeal to the Upper Tribunal (Lands Chamber).¹
2. The LVT will provide written reasons for its decision. A decision and reasons may be issued together. Alternatively, a decision may be issued and a reasons document sent at a later stage.

Permission to appeal

3. In order to appeal, you must obtain permission to do so. Application for permission must first be made to the LVT. If the LVT refuses permission you may ask the Upper Tribunal (Lands Chamber) for permission to appeal.² (See paragraph 8 below for details).
4. The general rule is that your application for permission from the LVT must be made within the period of 21 days starting with the date on which the reasons for decision document was sent to you.³ (Note that the last mentioned date might differ from the dated reasons document). Notwithstanding the general rule, the LVT has power to extend that 21 day period.⁴ However, the LVT is only required to consider your application for an extension if that application is made before the 21 day period expires.⁵
5. Your application for permission to appeal should normally be made in writing. It should signed by you or your representative and
 - a. state the name and address of you and any representative;
 - b. identify the decision and the tribunal to which the request for permission relates and
 - c. state the grounds on which you intend to rely in the appeal.

An application form is available for this purpose and obtainable from the LVT.

6. On receipt of your application for permission the LVT will serve a copy on every other party to the decision to be appealed. To facilitate the process it would assist if sufficient copies were provided with your application. The LVT will give you and every other party written notification of its decision.

¹ Commonhold and Leasehold Reform Act 2002, s 175.

² Commonhold and Leasehold Reform Act 2002, s 175.

³ Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (SI 2003/2099), reg. 20.

⁴ SI 2003/2009, reg.24(1).

⁵ SI 2003/2009, reg.24(2).

7. If permission to appeal to the Upper Tribunal (Lands Chamber) is granted by the LVT your notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within one month after the date that the LVT sent you notice of that permission.⁶
8. If the LVT refuses to give permission to appeal, you may renew your application for permission to the Upper Tribunal (Lands Chamber). Your 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 LVT sent you notice of its refusal of permission to appeal.⁷ (Details as to the power of the Upper Tribunal (Lands Chamber) to permit a notice of appeal or application for permission to appeal to be made outside the relevant time limit are given in the Upper Tribunal (Lands Chamber) "Explanatory Leaflet: A Guide for Users" obtainable from the Upper Tribunal (Lands Chamber)).

The Upper Tribunal (Lands Chamber) may be contacted at:

Upper Tribunal (Lands Chamber)
45 Bedford Square
London
WC1B 3DN

DX : 149065 Bloomsbury 9
Tel: 020 7612 9710
Fax: 020 7612 9723
Email: lands@tribunals.gsi.gov.uk
Website: www.landstribunal.gov.uk

Typetalk: 18001 020 7612 9710

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⁶ The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 (No. 2600 (L.15) rule 24 .

⁷ The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010, rule 21.