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

Case Reference : CHI/00HY/LVL/2013/0001

Property : 20/20A Bedwin Street, Salisbury, SP1
3UT

Applicant : 20/20A Bedwin Street
(Salisbury) Management Ltd

Representative : Mr Ian Newbery, of Ian
Newbery & Co, solicitors

Respondent : Anne Pritchard (and others)

Representative : -

Type of Application : Variation of lease : section 37 of the
Landlord and Tenant Act 1987 ("the
1987 Act")

Tribunal Members : Judge P R Boardman (Chairman) and
Mr P D Turner-Powell FRICS

**Date and venue of
Hearing** : 25 October 2013
Milford Hall Hotel, 206 Castle Street,
Salisbury, SP1 3TE

Date of Decision : 25 October 2013

DECISION

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Introduction

1. This is an application for variation of the leases of the 6 flats at the Property
2. In an application dated 14 August 2013, which superseded an earlier application dated 24 December 2012, the grounds of the application were stated to be as follows :
 - a. the Applicant was the landlord, being a residents management company, whose shares were owned by the six leaseholders
 - b. the Property was a purpose built 4-storey block of six residential flats constructed in 2003
 - c. the Respondents were the six leaseholders, namely Anne Pritchard of Flat 1, Patricia Osborne of Flat 2, Helen Bray of Flat 3, William and Judith Dickinson of Flat 4, Matthew and Charlotte Andrews of Flat 5, and Lloyd Molton of Flat 6
 - d. the leases did not reasonably provide for :
 - complying with the standard terms and conditions imposed by the Property's insurers
 - the repair of the Property, which had a number of structural defects and omissions dating back to the original construction
 - the landlord to obtain professional advice in relation to its covenanted obligations
 - linking the leases to the residents management company
3. A copy of the lease of Flat 4, and a draft of the requested lease variations, were attached to the application

Inspection

4. The Tribunal inspected the exterior of the Property on the morning of the hearing on 25 October 2013. Also present was Mr Dickinson
5. The Tribunal found the Property to correspond to the description in the application

The hearing

6. Present were Mr Newbery, Mr and Mrs Dickinson, and, initially, Mr Richard Molton for Mr Lloyd Molton
7. Mr Newbery said that five of the six leaseholders, namely Anne Pritchard of Flat 1, Patricia Osborne of Flat 2, Helen Bray of Flat 3, William and Judith Dickinson of Flat 4, and Matthew and Charlotte Andrews of Flat 5, agreed with the proposed variations. Copies of their written consents were before the Tribunal
8. The Tribunal asked Mr Molton whether Mr Lloyd Molton agreed or opposed the proposed variations. Mr Molton said that he was not in a position to agree or oppose. Mr Lloyd Molton had been wanting to take

legal advice, but his solicitor had said that he first needed to see the legal advice given to the residents management company in that respect. The residents management company had refused to copy that advice to Mr Lloyd Molton, despite him being a member of the company. In answer to questions from the Tribunal, Mr Molton confirmed that Mr Lloyd Molton had received the application, draft lease variations, and copy lease, with a covering letter dated 14 August 2013, but said that he had not been able to take legal advice about the proposed variations because he had been excluded from the advice given to the company. He wanted an adjournment to enable Mr Lloyd Molton to take legal advice

9. When the Tribunal put it to Mr Molton that Mr Lloyd Molton had had some 2 months in which to take independent legal advice between 14 August and the date of the hearing, irrespective of whether he had or had not received a copy of any legal advice given to the company, Mr Molton said that he did not agree
10. When the Tribunal then put it to Mr Molton that the Tribunal proposed to proceed with the hearing and to hear from Mr Newbery about each proposed variation and that, as Mr Molton was now present at the hearing, he could then comment on each proposed variation, Mr Molton said that he was not instructed, or competent, to comment on the proposed variations, and that if the Tribunal proceeded with the hearing he would withdraw
11. When the Tribunal encouraged Mr Molton to continue to attend the hearing so as to be involved with the process, and at the very least so as to listen to Mr Newbery presenting his case for, and explaining the nature of, the proposed variations, and indicated that if Mr Molton withdrew, then the Tribunal would continue to hear the case, and make such decisions as the Tribunal thought fit, in his absence, Mr Molton said that he did not agree that he would be involved, and left the hearing
12. The Tribunal decided in all the circumstances to continue the hearing in the absence of any representation on behalf of Mr Lloyd Molton

The proposed variations

13. Mr Newbery presented the proposed variations, and, in answer to questions from the Tribunal, asked for some amendments to the variations
14. Mr Newbery submitted that no one would be prejudiced by the variations, and that accordingly there should be no order for compensation for the purposes of section 38(10) of the 1987 Act

The Tribunal's decision

15. Having considered the application, the terms of the lease of Flat 4, and

the proposed variations as amended, the Tribunal indicated at the hearing that the Tribunal was satisfied that :

- a. for the purposes of sections 37(3) and 38(3) of the 1987 Act, the objects to be achieved by the proposed variations could not be satisfactorily achieved unless all the leases were varied to the same effect
- b. the variations would not be likely to prejudice any Respondent or any person who was not a party to the application
- c. there was no reason to make an order for compensation in this case
- d. it was reasonable in all the circumstances for the proposed variations, as amended, to be effected

16. The Tribunal therefore makes an order varying each of the leases in accordance with the draft variations attached to this decision

Appeals

17. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
18. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
19. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
20. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 25 October 2013



.....
Judge P R Boardman
(Chairman)

Relevant Terms of the Lease and Variations Requested:

~~CLAUSE 1~~ [RECITALS] (i)

Add a further definition between (f) and (h)

“(g) “Retained Parts” means all parts of ^{the} Development not included in this demise or the demise of any other flat within the Development”

Add a further definition after ~~(h)~~ (i)

(j)
“(j) “Residents Management Company” means a Company under the exclusive ownership and control of the Lessees of the six flats within the Development.

FIRST SCHEDULE

Add at the end

“But excluding:

- A. Any ceiling joists or structural or load bearing members and any other parts of the Development above the ceilings, and
- B. Any floor joists or structural or load bearing members and any other parts of the Development under the floors
- C. The walls (excluding the plaster boarding and other internal coverings or linings of such walls), *window bays* and structures bounding the Property other than the windows and window frames at the Property and door/doors giving access to the Property”

FIFTH SCHEDULE

Add new clauses

(5) (d) for so long as the Lessor is a Residents ^{Management} ~~management~~ Company the Lessee shall not assign the *Property* ~~Premises~~ except to a person who has first applied to become a member of the Residents Management Company

(5) (e) The Lessee hereby applies to the Land Registry for the registration of a restriction on the title of this lease in the following terms: “No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, is to be registered without a certificate signed by a conveyancer that the provisions of Clause (5) (d) of the Fifth Schedule have been complied with or that they do not apply to the disposition.”

At Clause ~~(12)~~ (a) replace the words

“...in the repair maintenance and ~~renew~~ ^{renewal} of the main structure of the building on the Development of which the Property forms. The repair maintenance and renewal of the services serving the *said* Development, maintenance repair and renewal of the facilities effecting the Insurance Policy...”

With

“...in carrying out its obligations under the Sixth Schedule...”

Add a new sub-clause

- (12)(ix) The expression "the expenses and outgoings incurred by the Lessor" shall, for so long as the Lessor is a Residents Management Company, ^{also} be deemed to include the following:
1. All professional fees (which shall include, without limitation to the foregoing, the fees, disbursements and other outgoings of persons or organisations providing professional advice to the Lessor which is to include but is not limited to: architects, business management, engineers, financial management, health and safety, leasehold management, legal, surveyors) incurred by the Lessor in the performance or contemplation of the performance of its obligations under this lease
 2. All costs incurred by the Lessor in operating the Residents Management Company

SIXTH SCHEDULE

Amend the opening words of Clause (6) to read:

"To maintain repair and renew (which expression shall include the addition replacement or repair of any part that ~~is or may have been omitted~~ ^{has been omitted} or inherently defective, the replacement of existing parts with modern materials which provide reasonable life-cycle cost reduction) as appropriate"

Clause (6)

Add

"(d) All other external parts of the Development

(e) All other Retained Parts"

Clause (7)

Amend to:

"So far as practicable to keep lit and clean the Facilities and the Retained Parts"

Clause (8)

After the words "Facilities" add the words:

"and the Retained Parts"

Clause (9)

After the words "Facilities" add the words:

"and the Retained Parts"

Clause (10)

Amend

contained in the lease thereof *contained in the leases thereof*
"Lessee of the other flat" to read "Lessees of the other flats"

Add the following additional clauses

^{NOT BOLD} (11) To defend insofar as may be reasonable any claims brought that may adversely affect the Development or any **part** of it and to bring insofar as may be reasonable any claims necessary to reasonably protect or preserve the Development

(12) To do all such works as may be necessary to comply with the requirements of any statute, statutory instrument or statutory body.

(13) To do all such works as may be necessary to comply with the reasonable requirements of any policy of insurance issued by an insurer of the Development

the floors of *of the Retained Parts* *or other suitable covering*
(14) To keep ~~the~~ ^{the} halls stairs and landings ~~within the Development~~ covered with suitable carpet and replace the same as often as may be necessary"