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LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL

DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

PART IV LANDLORD AND TENANT ACT 1987, as amended

REF: LON/00AY/LVT/2011/0004

**Address:** Flats 1,2,3, 58 and 58A Norwood Road, London SE24 9BH

**Applicant:** Cormorant Ltd.

**Respondents:** Stephen Gibbon and June Ann Davison (58A Norwood Road)  
and Jack Frankel (Flats 1,2,3, 58 Norwood Road)

**Tribunal:** Mrs JSL Goulden JP  
Mr W R Shaw FRICS  
Mr A D Ring

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1 The Applicant, Cormorant Ltd., has made an application dated 30 May 2011 (received by the Tribunal on 1 June 2011) under Part IV of the Landlord and Tenant Act 1987 ("the Act") for a variation of a lease or leases.

2. 58 and 58A Norwood Road, London SE24 9BH ("the property"), which has five floors including the basement, was described at the hearing as a property which was originally a shop and basement with one large flat above. It has now been converted into a wholly residential unit with a flat on the ground and basement floors (58A) and three flats (Flats 1,2,3) on each of the three upper floors. The Applicant is the freeholder of the property. The Respondents are the lessees of the four flats at the property.

3. The grounds of the claim, as set out in the application, state:

*"1. it is reasonable that the reasonable fees of a managing agent are to be paid by the lessees as part of service charge 2. to include such a provision benefits not only the landlord but also the lessees because an effective mechanism for the management of the block enhances the marketability of the flats".* The relevant terms in the leases were said to be in respect of the managing agents fees and legal costs. Copies of all the leases were provided to the Tribunal. The leases of Flats 1,2,3 were stated to be in essentially the same form but the Tribunal noted that the lease for Flat 58A differed in some respects.

4. The proposed Deed of Variation and draft Order were attached to the hearing bundle.

5. Directions of the Tribunal were issued on 9 June 2011.

6. Although the Applicant requested a paper determination, the matter was set down for an oral hearing in the Tribunal's Directions and this took place on 22 July 2011.

7. The Tribunal is satisfied that, in the circumstances, it is not necessary to inspect the property.

### **The hearing**

8. At the hearing on 22 July 2011, the Applicant company was represented by Mr C Case, Property Manager, of Hampton Wick Estates, the Applicant's managing agents. Of the Respondents, Mr J Frankel, the lessee of Flats 1, 2 and 3, appeared. He was represented by Mr C Buckley of Counsel, instructed by Bude Nathan Iwanier, Solicitors. Written submissions of Bude Nathan Iwanier on behalf of Mr Frankel were produced.

9. During the hearing, an opportunity was given to Mr Case to discuss the matter with the Applicant's Solicitors, George Ide LLP (Chichester branch). He confirmed that he had received Mr Frankel's written submissions, but had not passed them on to the Applicant's solicitors.

10. Mr Frankel's written submissions included an application under S20C of the Act. The nature of this application was explained fully to Mr Case at the hearing. He confirmed that he understood and gave an undertaking that no steps would be taken to obtain reimbursement of any costs in connection with these particular proceedings before the Tribunal within the service charge.

11. Mr Buckley for Mr Frankel initially said that he would request the Tribunal to consider making an Order against the Applicant in respect of penal costs but, in the event, withdrew this request at the hearing.

### **The evidence**

12. Mr Case, after consultation with his Client's solicitors, said that he had been advised that he was to rely on S 35(2) (e) of the Act but was unable to assist the Tribunal further. He said that, since he was not a lawyer, it was beyond his remit.

13. Mr Case maintained that the effective management of the block had been impaired by the inability to charge management fees. The managing agents had been unsuccessful in collecting monies for repairs and maintenance, in particular from Mr Frankel who was in arrears to the tune of at least £20,000, although he thought that this could be as high as £28,000. The lessees of 58A were not in arrears.

14. Mr Case said that the managing agents' duties involved maintaining the accounts, arranging insurance, six monthly inspection and arranging a fortnightly cleaning contract. He accepted that the Applicant was a commercial landlord and the managing agents managed approximately 200 residential units for the

Applicant. Mr Case said that the proposed variations were “*fair and reasonable*” and would ultimately benefit all the tenants.

15. Mr Buckley contended that S35(2) did not apply as none of the grounds set out therein had been satisfied. Mr Frankel was the original lessee of Flats 1, 2 and 3 and had negotiated the terms. The Applicant had purchased the freehold interest in 2003 and, as a professional property company, should have been aware of the terms of the leases to which the purchase of the freehold had been subject. The variations and the proposed Deed of Variation were clearly for the sole benefit of the Applicant. They would prejudice the lessees not only in increased costs but also, according to Mr Frankel, in depreciation of the capital value of the flats.

16. Mr Buckley argued that whilst the landlord was entitled to employ an agent to fulfil its obligations under the lease, unless the lease provided otherwise, that choice could only be at the landlord’s expense and “*the bargain made was that the landlord could not recover the cost of the managing agents*”. The proposed variation in respect of legal fees widened the range of costs which the freeholder could recover from the lessees. It was difficult to see how this was regarded by the lessees as beneficial to the lessees. He referred the Tribunal to a S27A determination made by an earlier Tribunal relating to the same property and dated 6 September 2010, when it had been determined that neither managing agents’ fees nor legal fees could properly be placed to the service charge account.

#### **The Tribunal’s determination**

17. S 35(2) of the Act sets out the grounds on which any party to a long lease of a flat can make an application to the Tribunal for an order varying the lease. The grounds are that (for whatever reason) the lease fails to make satisfactory provision with respect to any one or more of the following:-

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

[(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);]

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit

of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.

[(g) such other matters as may be prescribed by regulations made by the Secretary of State.]

18. The background to the present application appears to have been the Tribunal's determination of 6 September 2010 that the landlord was not entitled under the lease terms to demand either managing agents' and/or legal fees. The Applicant is a commercial property company and had, according to Mr Case, been advised that they could obtain reimbursement for both managing agents fees and also legal fees. This is a matter between the Applicant and their legal advisors.

19. The Tribunal determines that the grounds put forward on behalf of the Applicant do not fall within the provisions set out in S35(2) of the Act. The Tribunal is not able to consider the question of fairness, as contended by Mr Case. The issue before the Tribunal is whether the lease or leases fail to make satisfactory provision in respect of one or more of the matters referred to in the subsections of S 35(2) of the Act. In the particular circumstances of this case, the Tribunal does not consider that the Applicant has made its case and the application therefore fails.

20. The Tribunal's determination is binding on the parties and also on others (including predecessors in title and any surety) whether or not they are parties to the proceedings before the Tribunal or were served with a notice under S35(5).

CHAIRMAN.....



DATE.....22 July .. 2011.....