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

Case reference : **LON/00AU/LVL/2014/0002**

Property : **3 Wilmington Square, London
WC1X OES**

Applicant : **Portland House Holdings Ltd**

Representative : **Mr Carl Brewin, counsel
instructed by Seddons, solicitors**

Respondents : **(1) Ms Victoria Oana Watson –
basement flat
(2) Bradford Property Trust Ltd
(ground and first floor flat)
(3) Ian Paul Denning (second
and third floor)**

Type of application : **The Variation of Lease by a party to
the lease**

**Date and Venue of
hearing:** : **30 May 2014
10 Alfred Place, London WC1E 7LR**

Tribunal members : **Mr Angus Andrew
Mrs Jenna Davies FRICS**

Date of decision : **23 June 2014**

DECISION

Decision

1. Pursuant to our powers under paragraph 35 of the Tribunal Procedure (First-Tier) Tribunal (Property Chamber) Rules 2013 we make a consent order disposing of the application under section 35 of the Landlord and Tenant Act 1987 in the terms of the annexed Schedule of Agreement.
2. The applicant may not recover any of its costs incurred in these proceedings from either Victoria Watson or Ian Denning through the service charge.

Application and hearing

3. On 14 February 2014 the Tribunal received Portland's application to vary the three leases held by the respondents and to which its freehold reversionary interest is subject. The application was made under section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act"). Portland sought to increase the percentage charge contribution in each lease from 25% to 33.3% with the stated objective of ensuring that the landlord recovers 100% of the service charge costs. Although not specifically stated it was apparent that Portland relied on section 35(2)(f) and 35(4) of the 1987 Act.
4. Ms Watson objected to the application and served a statement in response. No response was received from either Bradford Property Trust or Mr Denning.
5. At the hearing Portland was represented by Mr Brewin, a barrister. Also in attendance were Ms Sherrie Munroe of Seddons, solicitors and Ms Priya Rawal a block manager with Portland. Both Ms Watson and Mr Denning appeared in person. Bradford Property Trust is connected to Portland and did not appear and was not represented.
6. At the hearing both Ms Watson and Mr Denning applied for an order under section 20C of the Landlord and Tenant Act 1985 preventing Portland from recovering any of the costs incurred in these proceedings through the service charge.

Background

7. 3 Wilmington Square is a five storey terrace house. We were told that it was built in 1826. It is apparent that it was at one time occupied by a number of sitting tenants. In 1984 the freehold interest was owned by Bartholomew Estates Ltd. That company had secured vacant possession of the second and third floors and on 19 December 1984 it granted a lease of the second and third floor flat to a Mr & Mrs Lewis for a term of 80 years from 24 June 1983. The lease provides for a service charge contribution of 25% of the relevant costs incurred by the landlord. In 1987 Mr Denning

purchased the second and third floor flat from Mr & Mrs Lewis and he has lived there ever since.

8. By 1998 the freehold reversionary interest had passed to Ayalim Real Estate Ltd. That company granted three leases to Sani Management Ltd. It is reasonable to assume that Sani was connected to Ayalim. The first lease was of the basement flat: the second of the ground and first floors: the third of the second and third floor. The grant of the overriding lease of the second and third floor appears to have been a mistake. In any event that lease was never registered and is consequently void.
9. The other two leases were for terms 150 years from 24 June 1983. Each lease provides for a service charge contribution of 25%.
10. In 1999 Portland purchased the freehold reversionary interest and either at that time or shortly thereafter Bradford Property Trust purchased Sani's lease of the ground and first floors. Those floors have never been converted to form a self contained flat but remain in the occupation of a sitting tenant who it seems has lived there for many years.
11. Ms Watson purchased the basement flat in 2000 and has lived there ever since.
12. It is therefore apparent that under the terms of the three leases Portland can only recover 75% of the service charge costs and since it purchased the freehold reversion in 1999 it has funded the shortfall of 25%.

Reasons for our decision to make a consent order

13. Towards the end of the hearing the parties requested a short adjournment to enable them to negotiate. When they returned they informed us that they had agreed that Ms Watson's lease of the basement flat would remain unvaried but that the other two leases would be varied by increasing the service charge contributions from 25% to 37.5%. Thus after the variation Portland would recover 100% of its service charge cost.
14. We informed the parties that we would issue a consent order upon receipt of a signed agreement. That agreement has now been received and is annexed to this decision.

Reasons for our decision on the 20C application

15. The parties were unable to agree terms in respect of 20C application. We heard representations from each of them.
16. To the extent that costs might be recovered through the service charge the right to recover them is a property right which should not be lightly

disregarded. Section 20C however provides that a tribunal may “*make such order on the application as it considers just and equitable in the circumstances*”. Those words permit us to take into account the conduct of the parties in deciding whether to make an order.

17. We do not accept Mr Brewin’s suggestion that in the absence of agreement Portland had no alternative but to apply to vary all three leases to make good the service charge shortfall that he described as a “lacuna”. It is impossible to know what was in the minds of the previous landlords when the leases were granted. It is by no means impossible that they contemplated the eventual conversion of the ground and first floors into two separate self-contained flats with each flat in the building being responsible for 25% of the service charge costs. That would have been consistent with the grant of the single storey basement flat with a service charge contribution of 25%. Equally Portland and Bradford Property Trust could simply have agreed to vary the lease of the ground and first floors by increasing the service charge contributions to 50%. As the companies are connected that would reflect the actual contributions of the parties for the last 14 years or so.
18. Portland would have appreciated that the leases provided for only a 75% cost recovery when it purchased the freehold reversion: a fact that was no doubt reflected in the price that it paid. Furthermore it had acquiesced in that arrangement for some 14 years so that the application came as a surprise to Ms Watson and Mr Denning.
19. Ultimately the application was made for the sole benefit of Portland. Mr Denning had never objected to the application and indeed on the day of the hearing he even agreed to further increase his service charge contribution. Ms Watson’s objection to the application was effectively accepted in that her service charge contribution was left unchanged. As Portland was the only beneficiary of this application it would be both unjust and inequitable if it were able to recover any part of the cost of these proceedings from either Ms Watson or Mr Denning through the service charge. Consequently and for each of the above reasons we make the order sought by them.

Name: Angus Andrew

Date: 23 June 2014

IN THE FIRST TIER TRIBUNAL

Case Ref: LON/00AU/LVL/2014/0002

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

PORTLAND HOUSE HOLDINGS LIMITED

Applicant

And

- (1) MS V O WATSON (basement flat)
- (2) BPT (BRADFORD PROPERTY TRUST LIMITED) (ground floor and first floor flat)
- (3) MR IAN DENNING (second floor flat)

Respondents

Schedule of Agreement

Upon Portland House Holdings Ltd's application under section 35 of the Landlord and Tenant Act 1985

And upon Portland House Holding Ltd, Victoria Watson and Ian Denning reaching agreement on 30 May 2014 as to the proportion of contribution that Victoria Watson and Ian Denning should make to the service charge

And upon BPT Limited agreeing to be bound by this Schedule of Agreement

It is agreed that:

In respect of the lease for the Basement Flat (dated 4 December 1998 for a term of 150 years from 24 June 1983) Clause 3(4) shall stay the same, namely payment and contribution of service charge equal to 25% of the costs expenses and outgoings to the Building.

In respect of the leases for the Ground and First Floor Flat (dated 4 December 1998 for a term of 150 years from 24 June 1983) and the Second and Third Floor Flat (dated 4 December 1998 for a term of 80 years from 24 June 1983) Clause 3(4) shall say "To pay and contribute to the Landlord by way of further rent a service charge equal to 37.5% of the costs expenses and outgoings to the Building such payments to be assessed and paid in accordance with the fifth schedule and to include the items specified in Clause 4(5) and the Fourth Schedule".

Victoria Watson

Victoria Watson

Dated:

10th June 2014

For BPT Limited

[Signature]

Position:

Branch Manager

Dated:

12/06/14

Ian Denning

[Signature]

Dated:

9 JUNE 2014