



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

Case Reference	MAN/ooDA/LVL/2023/0010
Property	The Moss - A Residential Development on the east side of Limb Lane, Dore, Sheffield
Applicants	Saleem Hasan, David Cartwright, John Cartwright and Abdul Mannan Shaikh
Representative	Property Management Legal Services Limited
Respondent	Various (see appendix)
Representative	
Type of Application	Application for Variation of a Lease (Part IV Landlord and Tenant Act 1987)
Tribunal Members	Judge Rachel Watkin Surveyor Member – Ian James MRICS
Date of Hearing	27 June 2024
Date of Decision	27 June 2024

DECISION

Decision

The Tribunal determines that it would not be reasonable for the variation order to be granted under sections 35(1) of the Landlord and Tenant Act 1987 (“The Act”).

The reason for the decision is set out below.

As this decision has been made in the absence of the parties, they may contact the Tribunal within 7 days of receiving it to request that the matter be listed for hearing for reconsideration.

The Application

1. By the Application dated 10 August 2023, Saleem Hasan, David Cartwright, John Cartwright and Abdul Mannan Shaikh (the “Applicants”) apply for the variation of 14 leases pursuant to s.35(1) of the Landlord and Tenant Act 1987 (the “1987 Act”)

The Relevant Law

2. The relevant law is sections 35 to 37 of the 1987 Act which provides:

“35. Application by party to lease for variation of lease

- (1) Any party to a long lease of a flat may make an application to the (Tribunal) for an order varying the lease in such manner as is specified in the application.
- (2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely –
 - 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 any such land or building as 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.

38. Orders ... varying leases.

- (1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.
- (2) If—
 - (a) an application under section 36 was made in connection with that application, and
 - (b) 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 under section 36,the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.
- (3) 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 (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) (A tribunal) shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

- (a) that the variation would be likely substantially to prejudice—
 - (i) any respondent to the application, or
 - (ii) any person who is not a party to the application,and that an award under subsection (10) would not afford him adequate compensation, or
- (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) (A tribunal) shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

- (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
- (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
- (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

Background

3. The Applicants are the joint proprietors of the freehold land known as “land on the east side of Limb Lane, Dore, Sheffield”, registered under title number SYK486966 (the “Land”). There are 26 separate leases registered against the title to the Land. The residential development known as The Moss (the “Property”) is situated on the Land and comprises 15 flats which are each let under a long lease of 125 years from 1 June 2003. Each of the leases are stated to be made between Goodcare Health Limited (the landlord as at 1 June 2003), Goodcare Health Management Company Limited (named as the management company) and a lessee.
4. The Applicants are the successors in title to Goodcare Health Limited.
5. The management company on each of the Leases is named as “Goodcare Health Management Company Limited”. However, the Applicants inform the Tribunal that this company has never existed, and the correct company name is Goodcare Health Management Limited (“Goodcare”).
6. Goodcare has been named on the Applicant’s “Preliminary Submissions” as an interested party but has not been named as a Respondent within the Application and it is not known whether Goodcare has been served with the Application
7. Under the terms of the leases, the management company has obligations to provide services for the benefit of the lessees. In turn, the lessees have covenanted to pay the service charge to the management company. The named management company does not exist and no step in rights have been provided to enable the landlord to perform the management functions where the management company fails to do so.
8. The Applicants therefore applies under section 35 (1) for an order varying the name of the management company under the leases to the name of the existing company, Good Care Health Management Company Limited. The Applicants state that the lease to Flat 61F have already been varied. Therefore, only the remaining 14 leases (the “Leases”) require to be varied.

9. Pursuant to s.35(1), the Applicants may only make an application for an order varying the leases where the leases fails to make satisfactory provision for one or more of the matters set out in s.35(2).
10. The Applicants contend that the Leases fails to make satisfactory provision for matters set out in s.35(2) as the named management company is the only party to the Lease that has any obligations to:
 - a. Repair and maintain the estate
 - b. Insure the building
 - c. Repair and maintain installations within the building

and is the only party to the Lease entitled to recover service charges

11. The Applicants have provided a witness statement from Mr Saleem Zafarul Hasan dated 16 February 2024 in support of the Application.

Decision

12. The Tribunal has considered the terms of the Leases and notes that the Applicants state clearly that:

“The Management Company does not exist. Therefore, it cannot provide the services set out in the terms of the occupational leases.”

and

“The only entity that is able to collect service charges is the Management Company. They do not exist.”

13. The Applicants do not state that the management company is Goodcare but its name has been recorded incorrectly. This is not suggested at any point.
14. Similarly, within the witness statement, Mr Hasan states that *“when the leases were originally drafted that there was a clerical error on the part of those drafting the documents. As a result, the leases refer to the wrong management company.”* He does not say that the management company has been given the wrong name.
15. In the event that the management company had been incorrectly named and it is

understood by all to be the company known as Goodcare, the Tribunal could give consideration to whether it is appropriate to vary the Leases to remove the word “Company” from its name. This is not what is requested by the Application.

16. The Application states that the leases refer to the “wrong” management company and requests that a different company is now included by way of a variation. The Applicants state that unless the Leases are varied, they do not make satisfactory provision for the matters set out in s.35(2). However, the reality is that, save for the fact that the Management Company does not exist, the Leases are otherwise adequate.
17. The Application is, therefore, akin to the situation where the Management Company has been dissolved. The Tribunal does not accept that would give rise to a requirement for the Leases to be varied under s.35(1), albeit steps may need to be taken to obtain a vesting order.
18. The Tribunal does not consider it appropriate for the s.35(1) process to be utilised to add an additional party to the Leases (particularly where it was neither a party to the Leases, nor to the proceedings).
19. In the event that Goodcare was not a party to the Leases at the time that the Leases were executed, it cannot be made a party by later variation under s.35(1), particularly in circumstances where it isn’t a party to the Application. Either, it was a party, albeit incorrectly named, in which case it may be a question of interpretation of the Leases for which it may be possible for a declaration of the Court to be obtained or it is not a party to the Leases in which case it would need to enter into the appropriate deeds.
20. The Tribunal notes that an order under s.35(1) shall be binding on other persons. However, the Tribunal does not consider that this enables it to make a third party a party to the Leases.
21. The Tribunal has also considered whether it can order, under s.38(8) directing the parties to vary the Leases. However, if Goodcare is not a party to the Leases, it is not appropriate for such an order to be made. If Goodcare is a party to the Leases, no such order is necessary – albeit, in those circumstances, the Applicants may prefer the Leases to be amended so that the name of the management company was amended to reflect the correct company. The Tribunal accepts that this may be possible under s.35(1) in the present circumstances but only if the Goodcare was a party to the Application and given an opportunity to object.

22. The Tribunal is mindful that the more straightforward route for the parties, in circumstances where the management company's name has been incorrectly stated, may be for them to each to enter into a Deed of Variation in respect of their respective Leases correcting the name of the Management Company.
23. The Tribunal determines that in the present circumstances, it would not be reasonable for the variation order to be granted.
24. As this decision has been made in the absence of the parties, they may contact the Tribunal within 7 days of receiving it to request that the matter be listed for hearing for reconsideration.

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

Tribunal Member Ian James MRICS