

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Case Number: CH1/00HH/LVL/2005/0003**

**Decision on an Application under Part 1V (Section 35) of the Landlord and Tenant Act 1987  
for a Variation of a Clause in the Lease of the property**

**Applicant:** Southwood Court (Torquay) Association Limited

**Respondent:** Mr & Mrs G B Melliush

**The Property:** Flat 14, Southwood Court, Middle Warberry Road, Torquay

**Date of Application:** 14 June 2005

**Venue:** Devonshire Suite, Livermead House Hotel, Seafront, Torquay

**Representation:** Labrinth Properties (Mr D Gearon and Mr N Faulkener)  
Mr G B Melhuish, for the Applicant  
the Respondent

**Tribunal Members:** Mr A L Strowger MA (Cantab) (Chairman)  
Mr P J R Michelmores, FRICS  
Ms Cindy Rai, Legal Member LLB

**Date of Decision:** 2 February 2006

**DECISION**

**The Application and the proceedings**

The Tribunal is asked to exercise its jurisdiction under section under Part 1V (Section 35) of the Landlord and Tenant Act 1987 ("the Act") to vary a clause in the Lease of the property.

- 1 Prior to the Hearing the Tribunal made a site inspection in the presence of the Respondent.

- 2 The Tribunal heard oral evidence from Mr D Gearon and Mr D Faulkener of Labrinth Properties for the Applicant and Mr G B Melhuish, the Respondent.

### **Background**

- 3 The Property, Flat 14, is one of 10 flats in Block B at Southwood Court. Block A comprises 8 flats and Block C consists of 2 flats. The flats were demised for a term of 999 years from 29 September 1960. It is understood that on completion of sale of the last flat the freehold was transferred to Southwood Court (Torquay) Association Ltd, the management company. In summary, Service charges are recoverable under the leases on the basis that each owner in each block pays an equal share (according to the number of flats in that block) of the costs in connection with that individual block ("the Block cost"). In addition each owner pays one twentieth (there being twenty flats in total) of the costs common to the whole development ("Court costs"), excluding costs attributable to each individual Block.

### **The law**

- 4 Section 35 of the Act sets out the relevant provisions. Under sub-section (i) any party to a lease may apply for a variation in a lease in circumstance in which the lease fails to make satisfactory provision in certain respects. The provision that is relevant to this appeal is section 35 (2) (f) which relates to the computation of a service charge payable under the lease. Sub-section (4) provides that for the purpose of (2)(f) " a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if
  - (a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and
  - (b) other tenants of the landlord are also liable under their leases to pay by way of any expenditure; and
  - (c) the aggregate of the amount that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure".
- 5 The Tribunal has powers under section 38 to make an order varying the lease

### **Oral Evidence**

- 6 Mr Faulkener outlined the application. The leases provide for each flat to pay 1/20 of the Court cost. The level of the Block cost varies according to the number of flats in each block. All the Block B flats have the figure of 1/10 figure handwritten in but in the case of Flat 14, the Respondent's flat, the figure on page 2 had been incorrectly written in as 1/20 in respect of the Block cost. The consequence was that there was a shortfall of 5% in the total sum that the Management Company could collect from the flat owners. He suggested that without a variation the company could be seen as trading insolvently. Mr Melhuish was happy to agree the variation of the lease provided other matters were sorted.
- 7 Mr Melhuish said there was no issue as to the solvency of the management company. There had not been a shortfall because he had previously always paid the 1/10 share of the

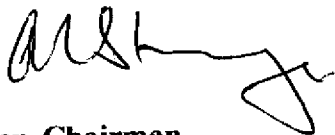
- 8 Block B Block cost. There was presently only a shortfall of £93. In 2002 he had brought the attention of the management company to the anomaly in his lease. He had no objection to the alteration of the lease but did consider that there had been injustice over the way in which service charges had been levied and managed which had not been in accordance with the terms of the leases.

**Consideration of the facts and findings of the Tribunal**

- 9 It is clear from the documents before the Tribunal that some of the lessees felt an understandable sense of grievance over the administration of the service charge and the calculations of the amounts payable. There are clearly a number of anomalies that require attention. However this is not the forum at which such challenges can be made. That would require another application to the Tribunal as to the reasonableness of service charges levied on lessees. It was however suggested by the Tribunal and agreed by both parties that if the disputed matters can be addressed by both the Applicant and the lessees, it would be unnecessary for that route to be followed.
- 10 Whilst acknowledging the concerns that Mr Melhuish has expressed, none of the matters referred to in his application and in his oral evidence have any bearing on the present appeal.
- 11 The Tribunal finds there is a clear clerical error in the Lease of flat 14. It falls within the ambit of the Act and the powers of the Tribunal, as outlined above, to vary it.
- 12 Accordingly the Tribunal makes an order varying the lease of flat 14 and the counterpart lease in the terms of the annexed Schedule.
- 13 Looking at all the circumstances of the case the Tribunal further orders that:

**The costs pursuant to the implementation of this order and registration with the Land Registry be borne by the Applicant and treated as a Court cost.**

Signed:



**A.L. Strowger, Chairman**

**Dated: 16 February 2006**

**SCHEDULE**

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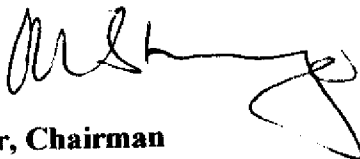
**Case Number: CH1/00HH/LVL/2005/0003**

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for Variation of a Clause in the Lease of the property known as Flat 14, Southwood Court,  
Middle Warberry Road, Torquay**

**On considering the application and on hearing the parties the Tribunal in pursuance of  
its powers under section 38 makes the following orders:**

- 1 The lease and counterpart lease of Flat 14 be varied on page two by the substitution  
of the words "One tenth" for the handwritten words "One twentieth", in respect of  
the Block cost.**
- 2 A memorandum of this variation shall be endorsed on the lease and counterpart.**

**Signed:**



**A.L. Strowger, Chairman**

**Dated: 16 February 2006**