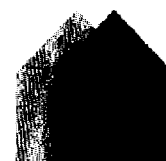


**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

**APPLICATION UNDER SECTION 37 OF THE LANDLORD AND
TENANT ACT 1987 (as amended) ("The ACT")**

Case Number:	CHI/21UG/LVT/2008/0004
Property:	Various Blocks of Flats known as: - St Kitts; Montserrat; Grenada; St Thomas; Tobago & St Lucia West Parade Bexhill on Sea East Sussex TN39 3DS
Applicant	West Parade Estates Limited
Represented by	Robert Gordon Jones of Gordon Jones Associates John Cheele, Director/Chairman of West Parade Estates Limited
Respondents	The Lessees of the flats in the following blocks St Kitts; Montserrat; Grenada; St Thomas; Tobago & St Lucia West Parade Bexhill on Sea
Also in attendance	Mr Patterson, Lessee Mr Jeffery, Lessee
Dates of Hearing	10th December 2008 and 9th February 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr B H R Simms FRICS MCI Arb (Valuer Member) Mr J N Cleverton FRICS (Valuer Member)
Date of the Tribunal's Decision:	13th February 2009

THE APPLICATION

1. This is an application made on the 25th October 2008 by the Applicant for an order under Part IV of the Landlord and Tenant Act 1987 (The Act) for a variation of all the leases at the properties shortly known as St, Kitts, Montserrat, Grenada, St Thomas, Tobago & St Lucia, West Parade, Bexhill on Sea, East Sussex, TN39 3DS. The Applicant is the freeholder of the properties and the Respondents are the long leaseholders.
2. The initial hearing took place at the Horntye Centre Hastings on the 10th December 2008 but did not conclude on that day. The Tribunal reconvened on the 9th February 2009 to consider the further documents that had been filed by the Applicant as directed by the Tribunal.

THE LAW

3. The statutory provisions dealing with variation of leases are contained in Part IV of the Act. Section 37 (1) of the Act provides that an application may be made to the Tribunal for an order varying two or more of the leases.
4. Section 37 (2) of the Act requires that the leases are long leases and the landlord is the same person in all the leases.
5. Section 37 (3) specifies the grounds on which the application can be made which are that the object to be achieved by the variation cannot be satisfactory achieved unless all the leases are varied to the same effect.
6. Section 37 (4) requires the application to be made by any of the tenants or the landlord.
7. Section 37 (5) (b) requires that an application can only be made where it is in respect of more than eight leases if it is not opposed by more than 10% of the total number of parties concerned and at least 75% of that number consent.
8. Under Section 38 (1) of the Act the Tribunal may make an order varying the lease provided that the variation would not substantially prejudice any Respondent or any party who is not a party to the application.
9. Under Section 38 (6) of the Act the Tribunal may, if it thinks fit, make an order providing for any party to the lease to pay any other party to the lease or to any other person compensation in respect of any loss or disadvantage which the Tribunal considers he is likely to suffer as a result of the variation.

THE EVIDENCE

10. Mr Gordon James stated that the application was being made because the current drafting of the leases was unsatisfactory in relation to the collection of advance service charge. The amount of advance service charge could not exceed 1/3 of the aggregate of the previous three years expenditure. This did not permit the freeholder to budget accurately in advance and resulted in large fluctuations of service charge which were not welcomed by the

leaseholders. In short the provisions for 'on account' collection based on historic expenditure, were not satisfactory.

11. The freeholder, with the leaseholders consent, wished to amend the service charge regime so that demands could be made on the basis of costs that were likely to be incurred during the forthcoming year by reference to a budget. This objective could only be achieved if all the leases in the properties were varied to the same effect.
12. There was another problem, namely the drafting of the leases did not provide for the reasonable costs of outside commercial management to be recovered. Whilst at the current time management of the properties was carried out "in house", it was possible that in the future the freeholder might wish to retain an outside managing agent and this would only be possible if the leases contained a clause permitting the landlord to recover the reasonable management fees, charges and expenses.
13. Finally the freeholder wished to remove a clause in each lease which provided for any dispute to be referred to the President of the Institute of Chartered Accountants. The freeholder considered this requirement to be onerous and outdated bearing in mind the jurisdiction enjoyed by the Leasehold Valuation Tribunal over all elements of service charge. As above the object of the variation could only satisfactory be achieved if all the leases were varied to the same effect.
14. John Cheele, the Chairman of the freeholder confirmed that each lessee had been served with the proposed lease amendments and a ballot of all the lessees was conducted to find out the number of lessees who consented to the Application. Out of a total number of 176 lessees, 156 were in favour, none opposed and 20 did not respond. Accordingly 89% of all lessees were in favour of the application, which meant that the conditions set out in section 37 of the Act, had been met.
15. In the circumstances both Mr Cheele and Mr Gordon Jones invited the Tribunal to make an order providing for the leases of the properties to be varied in accordance with the draft wording appearing as Schedule Two to this order.

THE TRIBUNAL'S DELIBERATIONS

16. The Tribunal was satisfied that the requirements of section 37 (1) and (2) of the Act had indeed been met. The application has been made in respect of two or more leases and the same Company is the landlord in all the leases affected.
17. The purpose of this application, as set out in the statement of case is to enable the landlord to base interim service charge demands on anticipated future expenditure rather than on historic expenditure. This proposal can only be achieved if all of the leases in the properties are varied in the same way. Thus the requirements of Section 37 (3) of the Act are fulfilled.
18. The Applicant has stated in their statement of case that they have received no letters of objection to the proposed application for variation and therefore the 10% opposition limit set out in Section 37 (5) of the Act has not been reached. Moreover more than 75% of leaseholders consent to the application. On these facts the Tribunal is satisfied that the criteria set out in Section 37 (4) and (5) have been met.

19. The Tribunal accepts that the proposed variation as set out in Schedule Two will cure the perceived defect and allow the landlord to collect interim service charge based on anticipated future expenditure. Furthermore the proposed amendment will also enable the freeholder to retain outside managing agents. Finally the amendments will have the effect of removing the jurisdiction of the President of the Institute of Chartered Accountants in relation to service charge disputes. These changes can only be satisfactorily achieved if all the leases are varied to the same effect.
20. As the Tribunal is satisfied that the statutory grounds for a variation have been met the Tribunal determines that all of the leases at the properties may be varied in accordance with the application. The Tribunal considers that the most convenient method to effect the variation is by means of an order that varies the lease without the need for a deed of variation in accordance with section 38 (1) and 38 (9) of the Act. Such an order is annexed and takes effect from the date of the issue of this decision. It is appropriate that a memorandum of the order should be annexed to each of the leases and counterparts of them, and that such entries as are appropriate should be entered into the relevant registers at HM Land Registry.
21. The Tribunal has considered whether it would be appropriate to award any person compensation under its powers under section 38 (10) and considers that the Applicant will not suffer a loss or disadvantage by the variation and neither will any of the leaseholders of the properties. In these circumstances and bearing in mind that no request for a compensation order has been submitted to the Tribunal, the Tribunal makes no order for compensation under section 38 (10) of the Act.

SCHEDULE ONE

In the matter of Part IV of the Landlord and Tenant Act 1987 (as amended) (“the 1987 Act”)

Re St Kitts; Montserrat; Grenada; St Thomas; Tobago & St Lucia, West Parade, Bexhill on Sea, East Sussex, TN39 3DS (“the properties”)

Case Number CHI/21UG/LVT/2008/0004

BETWEEN

West Parade Estates Limited

Applicant

and

The lessees of the properties above mentioned (“the leases”)

Respondent

ORDER

Upon hearing the Applicant in this matter, and upon the Tribunal being satisfied that the statutory grounds for a variation of the leases have been made out

It is ordered:

1. that the said leases are hereby each varied with effect from the date hereof in accordance with the revisions set out in Schedule Two
2. that a memorandum of this Order shall be endorsed upon each of the said leases and of the counterparts thereof and that the terms of the variation hereby effected shall be entered as may be requisite upon the register of the titles to each of the said leases at HM Land Registry.

SCHEDULE 2

DRAFT LEASE VARIATION: *MONTSERRAT, ST. KITTS, GRENADA, ST THOMAS & TOBAGO*

Clause 4(d) of the existing Lease be deleted and replaced by the following provisions:

“4...(d) Contribute and pay such part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto in such a manner provided and as is payable under the provisions of the Fourth Schedule”

Clauses 9, 10, 11 and 12 in the Fourth Schedule of the existing Leases shall be deleted and replaced by the following provisions:

“9. The reasonable and proper costs to the Lessor of providing the services and other items of expenditure (actual or prospective) specified in Clauses 1- 8 in the Fourth Schedule (hereinafter referred to as “the Cost of Services”).

“10 The Cost of Services shall include the costs of any managing agents, accountants, legal services (including the costs of instructing solicitor or counsel and disbursements) or administrative costs reasonably incurred by the Lessor in connection with or incidental to the provision of services to the building, the management and general administration of the building, or enforcement of any covenant of this lease.

“11. The Lessee shall pay and contribute to the Lessor by way of service charge (hereinafter referred to as “the Service Charge”) the lessee’s proportion (hereinafter referred to as “the Lessee’s Proportion”) of the Lessor’s costs, expenses and outgoings or in such other reasonable proportion so determined by the Lessor in its absolute discretion”.

“12. The Lessee’s Proportion shall mean the amount of the payment and contribution payable by the Lessee under the provisions of Clause 4(d) of this Lease and shall be an amount equal to the proportion hereinafter mentioned of the costs expenses and

outgoings last mentioned and so that such proportion shall be equal to the proportion which the gross annual value for the rating purposes of the demised premises bears to the gross annual value of the demised premises and such other parts of the Building as are assessed for rating purposes.

“13. The amount of the Service Charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a Certificate signed by the Lessor’s auditors or accountants at the discretion of the Lessor annually and so soon after the end of the Lessor’s financial year as may be practicable and shall be related to such year in the manner hereinafter mentioned (hereinafter referred to as “the Certificate”);

“14. The expression “the Lessor’s financial year” shall mean the period from the First day of January in each year to the Thirty-first day of December in the same year or such other annual period as the Lessor may in its absolute discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the Building shall be made up;

“15. A copy of the Certificate for each such financial year shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee;

“16. The Certificate shall contain a summary of the Lessor’s said costs, expenses and outgoings incurred by the Lessor during the Lessor’s financial year to which it related together with a summary of the relevant details and figures forming the basis of the Service Charge and other charges hereinafter covenanted to be paid and the Certificates (or a copy thereof duly certified by the person by whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify;

“17 The expression “costs expenses and outgoings incurred by the Lessor” as hereinafter used shall be deemed to include a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountant or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and related pro rata to the Flat.”

“18. The Lessee shall pay to the Lessor such sum or sums (hereinafter referred to as “the Interim Service Charge”) as the Lessor or its managing agents may determine in advance and on account of the Service Charge.

“19. The Lessor shall deliver to the Lessee at the Flat a statement of the amount of the Interim Service Charge that shall be payable and such statement if sent by post shall be deemed to have been delivered on the day following the posting thereof’.

“20. The Service Charge and Interim Service Charge shall be payable on demand and in default of payment within 14 days of any such sum becoming payable, the same shall until paid bear interest calculated on a day to day basis at an annual rate of 3% above the Base Rate of the National Westminster Bank Plc for the time being in force.

“21. If the Interim Service Charge paid by the Lessee exceeds the amount set out in the Certificate for that year any such excess will be repaid by the Lessor to the Lessee.

“22. If the Interim Service Charge paid is less than the amount set out in the Certificate for the financial year to which it relates the shortfall shall be payable on demand.

END

DRAFT LEASE VARIATION: *ST. LUCIA*

Clause 4(iv) of the existing Lease be deleted and replaced by the following provision:

“4...(iv) Contribute and pay such part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto in such a manner provided and as is payable under the provisions of the Fourth Schedule”

Clause 13 in the Fourth Schedule of the existing Leases be deleted and replaced by the following provisions:

“13. The reasonable and proper costs to the Lessor of providing the services and other items of expenditure (actual or prospective) specified in Clauses 1- 12 in the Fourth Schedule (hereinafter referred to as “the Cost of Services”).

Clauses 14, 15 and 16 in the Fourth Schedule of the existing Leases be deleted and replaced by the following provisions:

“14 The Cost of Services shall include the costs of any managing agents, accountants, legal services (including the costs of instructing solicitor or counsel and disbursements) or administrative costs reasonably incurred by the Lessor in connection with or incidental to the provision of services to the building, the management and general administration of the building, or enforcement of any covenant of this lease.

“15. The Lessee shall pay and contribute to the Lessor by way of service charge (hereinafter referred to as “the Service Charge”) the lessee’s proportion (hereinafter referred to as “the Lessee’s Proportion”) of the Lessor’s costs, expenses and outgoings or in such other reasonable proportion so determined by the Lessor in its absolute discretion”.

“16. The Lessee’s Proportion shall mean the amount of the payment and contribution payable by the Lessee under the provisions of Clause 4(iv) of this Lease and shall be an amount equal to the proportion hereinafter mentioned of the costs expenses and outgoings last mentioned and so that such proportion shall be equal to the proportion which the gross annual value for the rating purposes of the demised premises bears to the gross annual value of the demised premises and such other parts of the Building as are assessed for rating purposes.

“17. The amount of the Service Charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a Certificate signed by the Lessor’s auditors or accountants at the discretion of the Lessor annually and so soon after the end of the Lessor’s financial year as may be practicable and shall be related to such year in the manner hereinafter mentioned (hereinafter referred to as “the Certificate”);

“18. The expression “the Lessor’s financial year” shall mean the period from the First day of January in each year to the Thirty-first day of December in the same year or such other annual period as the Lessor may in its absolute discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the Building shall be made up;

“19. A copy of the Certificate for each such financial year shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee;

“20. The Certificate shall contain a summary of the Lessor’s said costs expenses and outgoings incurred by the Lessor during the Lessor’s financial year to which it related together with a summary of the relevant details and figures forming the basis of the Service Charge and other charges hereinafter covenanted to be paid and the Certificates (or a copy thereof duly certified by the person by whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify;

“21. The expression “costs expenses and outgoings incurred by the Lessor” as hereinafter used shall be deemed to include a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountant or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and related pro rata to the Flat.”

“22. The Lessee shall pay to the Lessor such sum or sums (hereinafter referred to as “the Interim Service Charge”) as the Lessor or its managing agents may determine in advance and on account of the Service Charge.

“23. The Lessor shall deliver to the Lessee at the Flat a statement of the amount of the Interim Service Charge that shall be payable and such statement if sent by post shall be deemed to have been delivered on the day following the posting thereof”.

“24. The Service Charge and Interim Service Charge shall be payable on demand and in default of payment within 14 days of any such sum becoming payable, the same shall until paid bear interest calculated on a day to day basis at an annual rate of 3% above the Base Rate of the National Westminster Bank Plc for the time being in force.

“25. If the Interim Service charge paid by the Lessee exceeds the amount set out in the Certificate for that year any such excess will be repaid by the Lessor to the Lessee.

“26. If the Interim Service Charge paid is less than the amount set out in the Certificate for the financial year to which it relates the shortfall shall be payable on demand.”

END

Signed

R.T.A.Wilson Chairman

Dated 13th February 2009

In the matter of Part IV of the Landlord and Tenant Act 1987 (as amended) (“the 1987 Act”)

Re St Kitts; Montserrat; Grenada; St Thomas; Tobago & St Lucia, West Parade, Bexhill on Sea, East Sussex, TN39 3DS (“the properties”)

Case Number CHI/21UG/LVT/2008/0004

BETWEEN

West Parade Estates Limited

Applicant

and

**The lessees of the properties above mentioned (“the leases”)
Respondent**

ORDER

Upon hearing the Applicant in this matter, and upon the Tribunal being satisfied that the statutory grounds for a variation of the leases have been made out

It is ordered:

1. that the said leases are hereby each varied with effect from the date hereof in accordance with the revisions set out in Schedule Two
2. that a memorandum of this Order shall be endorsed upon each of the said leases and of the counterparts thereof and that the terms of the variation hereby effected shall be entered as may be requisite upon the register of the titles to each of the said leases at HM Land Registry.

SCHEDULE 2

**DRAFT LEASE VARIATION: *MONTSERRAT, ST. KITTS, GRENADA,
ST THOMAS & TOBAGO***

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“12. The Lessee’s Proportion shall mean the amount of the payment and contribution payable by the Lessee under the provisions of Clause 4(d) of this Lease and shall be an amount equal to the proportion hereinafter mentioned of the costs expenses and outgoings last mentioned and so that such proportion shall be equal to the proportion which the gross annual value for the rating purposes of the demised premises bears to the gross annual value of the demised premises and such other parts of the Building as are assessed for rating purposes.

“13. The amount of the Service Charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a Certificate signed by the Lessor’s auditors or accountants at the discretion of the Lessor annually and so soon after the end of the Lessor’s financial year as may be practicable and shall be related to such year in the manner hereinafter mentioned (hereinafter referred to as “the Certificate”);

“14. The expression “the Lessor’s financial year” shall mean the period from the First day of January in each year to the Thirty-first day of December in the same year or such other annual period as the Lessor may in its absolute discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the Building shall be made up;

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agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and related pro rata to the Flat.”

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“22. If the Interim Service Charge paid is less than the amount set out in the Certificate for the financial year to which it relates the shortfall shall be payable on demand.

END

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in such other reasonable proportion so determined by the Lessor in its absolute discretion”.

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“25. If the Interim Service charge paid by the Lessee exceeds the amount set out in the Certificate for that year any such excess will be repaid by the Lessor to the Lessee.

“26. If the Interim Service Charge paid is less than the amount set out in the Certificate for the financial year to which it relates the shortfall shall be payable on demand.”

END

Signed

R.T.A.Wilson Chairman

Dated 13th February 2009