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**HM COURTS AND TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/21UC/LVT/2012/0001**

**REASONS**

**Application :** Section 37 of the Landlord and Tenant Act 1987 as amended ("The 1987 Act")

**Applicant/Leaseholders :** Patricia June Fairweather and the 37 other Lessees listed in Appendix 1 to these reasons

**Applicant/Management Company :** Mariners Walk "B" Eastbourne Management Company Limited

**Respondent/Landlord :** Citistead Limited

**Flats :** The flats at Plymouth Close, Eastbourne, BN23 5RL and Southampton Close, Eastbourne, BN23 5RP listed in Appendix 1 to these reasons, together with Flat 22 Plymouth Close, Eastbourne, BN23 5RL

**Date of Application :** 26 January 2012

**Date of Directions :** 9 February 2012

**Date of Hearing :** considered by the Tribunal on 1 May 2012 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with the directions given by the Tribunal

**Member of the Tribunal :** Mr P R Boardman MA LLB (Chairman)

**Date of Tribunal's Reasons:** 1 May 2012

**Introduction**

1. This an application by the Applicant/Leaseholders to vary the leases of the Flats
2. The documents before the Tribunal are those in a bundle prepared by the Applicants' solicitors, with pages numbered 1 to 112. References in these reasons to page numbers are to page numbers in the bundle

**Applicant/Leaseholder's statement of case submitted 13 March 2012**

3. The Applicant/Leaseholders stated that there were 39 Flats in partially interconnected blocks which formed part of a development completed in 1996 consisting of the Flats and 14 freehold houses at Mariner's Walk, the Crumbles, Eastbourne, East Sussex. The extent of the development was shown on the file plan attached to the HM Land Registry entries relating to title number ESX198986 at page 67

4. The Applicant/Management Company was a party to the leases of the Flats and of the original transfers of the 14 freehold houses for the purpose of taking on the obligations of maintaining, insuring and repairing the parts of the Flats which were not demised by the leases of the Flats in the surrounding amenity areas including grassed areas, car parking spaces, footpaths and forecourts and access ways. The owners of the leases of the Flats and of the freehold houses became members of the Applicant/Management Company and entered into covenants to contribute to the expenses of the Applicant/Management Company in carrying out its duties. The contributions of the owners of the freehold houses were limited to the maintenance of the surrounding grounds and not to any part of the Flats
5. The leases of the Flats were in common form and a specimen copy was at pages 17 to 39. The Leases of the Flats were defective in that they did not enable the Applicant/Management Company to recoup 100% of the costs which it incurred in carrying out its obligations. The leases provided that each lessee should pay  $\frac{1}{86}$  of the grounds costs and  $\frac{1}{66}$  of the costs relating to the maintenance of the flats (page 19)
6. A specimen of the freehold house transfer documents was at pages 40 to 50. The freehold house transfer documents provided that the owners of the houses should each contribute  $\frac{1}{52}$  of the costs of the grounds. In fact, as there were in all 53 Flats and houses in the development the house-transfer documents slightly over provided for the householders' share of the grounds contribution. The contributions of the householders could be changed as the ownership of each of the houses changed
7. At the present time, however, the fractions in the house transfers and the leases put together resulted in a shortfall in the grounds costs recovery of 27.75% and a shortfall with regard to the Flats costs recovery of 41%
8. The variations which the Applicants wished to have made to the leases of the Flats were set out at pages 15 and 16, which have been copied as Appendix 2 to these reasons
9. The grounds of the Applicants' claim were that the leases failed to make satisfactory provision in respect of :
  - a. the computation and recovery of the service charges for the reasons already set out; the variations set out in paragraph 1 of the document at Appendix 2 made the correct provision
  - b. the insurance of the Flats, in that the lease provisions did not provide for comprehensive insurance; the variations set out in paragraph 2 of the document at Appendix 2 made the correct provision
  - c. the repair and maintenance of the Flats and the installations and services serving them, in that additional obligations on the part of the Applicant/Management Company were required; the variations set out in paragraph 3 of the document at Appendix 2 made the correct provision
  - d. the collection of the service charges, in that the service charges needed to be assessed annually on a proper budget rather than on the previous year's expenditure, and provision for additional levies needed to be included; the variations set out in paragraph 4 of the document at Appendix 2 made the correct provision

10. The Applicant/Leaseholders represented 38 out of the 39 Flat owners and had all consented to these variations, as confirmed by the forms of consent at pages 70 to 106. The application had also been served on :
  - a. Mr Jay, the leaseholder of Flat 22 Plymouth Close (page 109), but nothing had been heard from him
  - b. the Respondent/Landlord (page 107) and its agents, Estates and Management Limited, (page 108); the agents had responded that from a preliminary perusal of the documents it was unlikely that the Respondent/Landlord would be raising any objection to the proposal, but further details were awaited (page 110), and that the Respondent/Landlord had no objection to the matter being dealt with by way of a paper determination (page 111)
11. The Applicant/Leaseholders' solicitors served on the Respondent/Landlord's agents the Applicant/Leaseholders' statement of case and bundle of documents on 13 March 2012 (page 112), but the Tribunal has not been notified of any response

### **The Tribunal's findings**

12. The Tribunal finds that :
  - a. the grounds upon which the Applicant/Landlord's application to vary each lease have been made under section 37 of the 1987 Act have been established to the satisfaction of the Tribunal, namely that :
    - the object to be achieved by the variations sought cannot be satisfactorily achieved unless all the leases are varied to the same effect
    - the application is supported by leaseholders owning 38 out of the 39 Flats, and has not been opposed by the other leaseholder, namely Mr Jay of Flat 22 Plymouth Close, and in making that finding the Tribunal has taken into account the fact, as the Tribunal finds, that the application has been served on Mr Jay and the Respondent/Landlord, and that neither Mr Jay nor the Respondent/Landlord has given notice to the Tribunal of any objection to the application
    - the application is supported by the Applicant/Management Company
  - b. there is no evidence before the Tribunal that the variations sought would be likely substantially to prejudice Mr Jay or the Respondent/Landlord, or that it would not be reasonable in the circumstances for the variations sought to be effected
  - c. there is before the Tribunal no application by any party for compensation pursuant to section 38(10) of the 1987 Act, and, in all the circumstances of the case, there is no reason to make an order for compensation
13. The Tribunal therefore orders that the lease in respect of each of the 39 Flats shall be varied in accordance with the wording set out in the document at Appendix 2 to these reasons

Dated 1 May 2012

Signed

P R Boardman

A Member of the Tribunal appointed by the Lord Chancellor

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Southampton Close, Eastbourne, BN23 5RP**

**Appendix 1**

**List of Applicant/Leaseholders and their Flats**

LIST OF APPLICANTS

Name	Address		Property	Confirmed Agreement to LVT Application
Mr Michael James Harte	17 Plymouth Close Eastbourne East Sussex BN23 5RL		17 Plymouth Close	Yes
Mr Michael and Mrs Jane Scanlon	Woodlea Hardwick Road Whitchurch Reading Berkshire, RG8 7HW		18 Plymouth Close	Yes
P Y Investments Limited	1 The Grove Denton Newhaven East Sussex BN9 0QY		19 Plymouth Close	Yes
Lock-Yuen Pang & Bing Ying Diana Phang Ho	Sargeants with Clifford Dan c/o Mrs N Wyllie Albion House Albion Street LEWES BN7 2NF		20 Plymouth Close	Yes
Mr David Albert and Mrs Lynn Patricia Buckley	16 Galvestone Close Eastbourne East Sussex BN23 5RH		21 Plymouth Close	Yes
Mr Donald William Dorsett Evans	31 Plymouth Close Eastbourne East Sussex, BN23 5RL		31 Plymouth Close	Yes
Mr Marc Tremaine Fretwell	32 Plymouth Close Eastbourne East Sussex BN23 5RL		32 Plymouth Close	Yes
Mr John and Mrs Jacqueline Anne Ebdy	'Lynton' 51 Redehall Road Smallfield Surrey RH6 9QA		33 Plymouth Close	Yes

## LIST OF APPLICANTS

Name	Address		Property	Confirmed Agreement to LVT Application
Ms Zsuzsanna Maria M Burian	Geza u 8 flat 4 Budapest 1194 Hungary email all correspondence to <a href="mailto:buzsu71@gmail.com">buzsu71@gmail.com</a>		1 Southampton Close	Yes
Mr Jonathan Richard Morgan	2 Southampton Close Eastbourne East Sussex BN23 5RP		2 Southampton Close	Yes
P Y Investments Limited	1 The Grove Denton Newhaven East Sussex BN9 0QY		3 Southampton Close	Yes
Mrs Ann Hamilton	25 Boston Close Eastbourne East Sussex BN23 5RA		4 Southampton Close	Yes
Mr Charles Chibuike Okoro and Mrs Rosalie Joan Uwakane	26 Maderia Way Eastbourne East Sussex BN23 5UJ		5 Southampton Close	Yes
Mr Leslie Charles Teague	6 Southampton Close Eastbourne East Sussex BN23 5RP		6 Southampton Close	Yes
Mr Sidney Baker	7 Southampton Close Eastbourne East Sussex BN23 5RP		7 Southampton Close	Yes
Ms Fay Belinda Penrose	33 Selmeston Road Eastbourne BN21 2ST		8 Southampton Close	Yes

## LIST OF APPLICANTS

Name	Address		Property	Confirmed Agreement to LVT Application
Mr John Edward Sheppard	9 Southampton Close Eastbourne East Sussex BN23 5RP		9 Southampton Close	Yes
Mr Marco Rinaldo Giorgi	c/o The Afton Hotel 2-8 Cavendish Place Eastbourne East Sussex BN21 3EJ		10 Southampton Close	Yes
Mr Robert John Seviour & Mrs Sally Ann Walker	17 Southfields Road Eastbourne East Sussex BN21 1BU		11 Southampton Close	Yes
Ms Sarah Jane Gilbert	12 Southampton Close Eastbourne East Sussex BN23 5RP		12 Southampton Close	Yes
Mr David Banks	14 Southampton Close Eastbourne East Sussex BN23 5RP		14 Southampton Close	Yes
Mr Andrew Phillip Coulanche	15 Southampton Close Eastbourne East Sussex BN23 5RP		15 Southampton Close	Yes
Mrs Pamela Overington	c/o 45 Church Street Willingdon East Sussex BN22 0HP		16 Southampton Close	Yes
Mr John Anthony Griffiths	17 Southampton Close Eastbourne East Sussex BN23 5RP		17 Southampton Close	Yes

LIST OF APPLICANTS

Name	Address		Property	Confirmed Agreement to LVT Application
Mr Dennis Jarlath Wallis	5 Ticehurst Close Crawley West Sussex RH10 7GN		18 Southampton Close	Yes
Kim-Wha Pang	Sargeants with Clifford Dan c/o Mrs N Wyllie Albion House Albion Street LEWES, BN7 2NF		19 Southampton Close	Yes
Mr Lock Yuen Pang and Ms Bing Ying Diana Pang Ho	Sargeants with Clifford Dan c/o Mrs N Wyllie Albion House Albion Street LEWES, BN7 2NF		20 Southampton Close	Yes
Miss Lisa Jayne Martin	21 Southampton Close Eastbourne East Sussex BN23 5RP		21 Southampton Close	Yes
P Y Investments Limited	1 The Grove Denton Newhaven East Sussex BN9 0QY		22 Southampton Close	Yes
Mr Steven Paul Mulley	27 Elphinstone Avenue Hastings TN34 2DE		23 Southampton Close	Yes
Mr Robert George Berry and Ms Karen Berry	24 Southampton Close Eastbourne East Sussex BN23 5RP		24 Southampton Close	Yes
Mr Mark Doherty	c/o Mrs R M Doherty 10 Manor Road Carharrack Redruth Cornwall TR16 5SD – Mr Doherty lives abroad – email all correspondence to mark@2gobelow.com		25 Southampton Close	Yes



## LIST OF APPLICANTS

Name	Address		Property	Confirmed Agreement to LVT Application
Mrs Patricia June Fairweather	26 Southampton Close Eastbourne East Sussex BN23 5RP		26 Southampton Close	Yes
Mrs Christine Ellen Rummery	27 Southampton Close Eastbourne East Sussex BN23 5RP		27 Southampton Close	Yes
Mr Michael John and Mrs Celia Farrant	The Platt Old Road Magham Down Hailsham East Sussex BN27 1PR		28 Southampton Close	Yes
Mrs Linda Hardman	13 Clifford Avenue Eastbourne East Sussex BN21 1XL		31 Southampton Close	Yes
Mr Andrew John Rafferty	57 Hornebeam Avenue Bexhill on Sea East Sussex TN39 5JQ		32 Southampton Close	Yes
Mr Nicolas John Holmes	Allcopy Products (UK) Ltd 6A Southbourne Business Park Courtlands Road Eastbourne BN22 8UY		33 Southampton Close	Yes
Mariners Walk 'B' Eastbourne Management Company Ltd	C/O Peregrine House 29 Compton Place Road Eastbourne BN21 1EB		Management Company	Yes

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**Appendix 2**

**Proposed variations to the leases of the Flats**

## SCHEDULE

1. Paragraph 10 of Clause 1 BRIEF PARTICULARS AND DEFINITIONS be replaced with the following clause:-

10. **The Relevant Proportion** is  $1/39^{\text{th}}$  in respect of the matters referred to in paragraphs 1 to 5 inclusive and 7, 8, 15, 17 and 18 of the Fifth Schedule hereto and  $1/53^{\text{rd}}$  in respect of the other matters referred to in the remaining paragraphs of the said Fifth Schedule.

2. The Definition of **Insured Risks** in Clause 2 INTERPRETATION shall be replaced with the following definition:-

(i) loss or damage by such risks as may normally be covered by a policy of comprehensive insurance for buildings situated where the Blocks are sited for the full reinstatement value of the Blocks including two years loss of rent and all architects surveyors and other fees consequent upon rebuilding or reinstating the Development.

(ii) accidental damage or breakage of any windows of the Common Parts

(iii) third party and property owner's liability in respect of the Common Parts

and such other risks for which insurance as may from time to time be reasonably required by the Lessor and the Company

3. The following Clauses shall be added to THE FIFTH SCHEDULE (The Company's Management Duties)

17. To pay all existing and future rates taxes assessments and outgoings now or hereafter imposed on the entirety of the Blocks or those parts of them used in common by two or more of the flats therein or serving the same.

18. To provide and supply such other services for the benefit of the Lessee and other lessees and to carry out such other works and repairs and to defray such other costs including borrowing money and paying interest thereon that the Company shall reasonably consider necessary or convenient to maintain the Block or suitable for the convenience or comfort of the Lessee and the other lessees.

4. clause 2(c) of THE SIXTH SCHEDULE shall be deleted and replaced by the following three clauses:-

2.

c) The Company shall before the Thirtieth day of September in each year of the Term produce to the Lessee a certified statement of any expenditure incurred by the Company under the Provisions of the Fifth Schedule of this Lease for the immediately preceding accounting period and any deficiency between the amount expended and the amount collected from the Lessee shall be paid within twenty eight days of demand by the Company after production of the Certified Statement.

d) On the 1<sup>st</sup> day of April in each year the Lessee shall pay and contribute and on account of the Service Charge for the then current year such sum as the Company or its Managing Agents may at any time specify in a notice in writing

given to the Tenant such amount to represent a reasonable estimate by the Company or by the Managing Agents of the Service Charge or the balance thereof for the relevant forthcoming Service Charge Year PROVIDED FURTHER THAT in the event of any additional expenditure being required for the performance of the Company's covenants the Company or its Managing Agents may give notice in writing to the Lessee at any time requiring payment within twenty-eight days from the Lessee of the Lessee's contribution subject to prior due compliance with any appropriate statutory requirements in this respect.

- e) Any overpayment of Service Charge under this under this Clause in any annual account submitted by the Company (save such as may have been accumulated for the purpose of a reserve fund) shall be credited against the Rent or Service Charge payment in the succeeding year.