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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
THE LEASEHOLD REFORM, HOUSING  
AND URBAN DEVELOPMENT ACT 1993, SECTION 48**

**Case Reference:** LON/00AC/OLR/2013/0191

**Premises:** 34 POPLAR GROVE  
COLNEY HATCH LANE  
LONDON NW11 3NL

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**Applicant(s):** (1) MR HARRIS NASIM MAKHDUMI  
(2) MRS RABIA MAKHDUMI

**Representative:** Roulla Georgiou Solicitors

**Respondent(s):** JOSEF KASNER and  
BARUCH ERLICH as Trustees of the Kasner  
Charitable Trust

**Representative:**

**Date of Application:** 31<sup>st</sup> January 2013

**Date of Directions:** 21<sup>st</sup> February 2013

**Date of Hearing:** 21<sup>st</sup> May 2013

**Date of Decision:** 5<sup>th</sup> June 2013

**Appearance for Applicants:** Mrs Georgiou, solicitor

**Appearance for Respondent(s):** No Attendance

**Leasehold Valuation Tribunal:** Mr S. Shaw LLB (Hons) MCI Arb  
Mr P Casey MRICS

## DECISION

### Introduction

1. This case involves an application by the Applicants Mr Harris Nasim Makhdumi and Mrs Rabia Makhdumi (“the Applicants”) for a new lease in respect of 34 Poplar Grove, Colney Hatch Lane, London NW11 3NL (“the Property”). The application is made pursuant to the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) and is made against Josef Kasner and Baruch Erlich as Trustees of the Kasner Charitable Trust (“the Respondent”). The Respondent is the freehold owner of the building of which the Property forms part and the Applicants are the leasehold owners of the Property.
2. On 29<sup>th</sup> June 2012 the Applicant served on the Respondent a Notice of Claim pursuant to the Act, and a counter notice was served on 7<sup>th</sup> September 2012. As will appear from the matters set out below, that is the only communication which has been received from the Respondent.
3. An attempt was made to agree the premium and the terms of the new lease but the Respondent failed to engage in this regard, and on 31<sup>st</sup> January 2013 the Applicant applied to the Tribunal for the determination of the premium and the terms of acquisition.
4. Directions were given by the Tribunal on 21<sup>st</sup> February 2013. Those directions were in standard form and required the Respondent to submit a draft lease to the Applicant for approval by 7<sup>th</sup> March 2013. In the event the Respondent

breached this direction and failed to supply the draft lease. Instead, on 19<sup>th</sup> March 2013 the Applicant's solicitors, in an attempt to advance matters, served on the Respondent a draft lease in an attempt to comply with paragraph 2 of the Tribunal's directions. In fact the draft lease submitted by the Applicant to the Respondent was precisely the same lease that the Respondent had supplied to the Applicant during earlier negotiations for a lease extension, prior to the service of this particular Claim Notice. The Applicant added some proposed amendments to this draft lease, which appears at pages 57 to 65 in the bundle prepared by the Applicant.

5. In addition, on 4<sup>th</sup> April, in compliance with the Tribunal's directions for valuers to exchange valuations, the Applicant served a valuation of the premium for the new lease upon the Respondent. The Applicant had proposed a premium of £7,500 in the Notice of Claim and the Respondent had made a counter-proposal of £10,250. Once again, in breach of the Tribunal's directions the Respondent failed to submit any valuation at all.
6. On 19<sup>th</sup> April 2013 the Applicant's solicitor wrote to the Respondent requesting comments on the draft lease and valuation, but the Respondent failed to reply at all.
7. For the reasons set out above, it was necessary for the Applicant to appear before the Tribunal on 21<sup>st</sup> May 2013 to seek orders from the Tribunal, given the total silence from the Respondent. On that occasion the Applicants appeared in person and were represented by their solicitor Mrs Roulla Georgiou. The

Respondents failed to appear. The Applicants sought confirmation that the terms of the new lease were to be in the form of the draft submitted and referred to above appearing at pages 57 to 65 in the bundle. Further, in order to simplify matters, they agreed to the proposal made by the Respondent in its counter-notice of a premium of £10,250. That agreement to the proposal in the counter-notice was also communicated in writing to the Respondent by letter from the Applicant's solicitor, but in keeping with all other attempts to communicate, was ignored.

8. The Tribunal has considered the terms of the proposed draft lease which, as has been indicated, is essentially the same draft as had been proposed by or on behalf of the Respondent during the course of some different and earlier negotiations prior to the service of the notice in this case. The Tribunal is satisfied that these terms are perfectly reasonable, and are in fact in the main a replication of the terms of the original lease, subject to the variation of the term and other formal matters. The Tribunal is also satisfied that the proposed premium of £10,250 is reasonable and indeed, as again mentioned, it reflects precisely the proposal made by the Respondent, and therefore can be hardly contentious.
9. Accordingly, the Tribunal determines that the terms of the new lease shall be as appearing at pages 57 to 65 in the bundle. In fact a clean copy of the lease has been prepared on behalf of the Applicant together with the necessary prescribed clauses for the purposes of the Land Registry, and that copy, which is approved by the Tribunal, is attached to this Decision. Again, for the reasons

indicated above, the Tribunal is satisfied and directs that the premium for the new lease is in the sum of £10,250.

10. The Applicants applied at the hearing for an order in their favour pursuant to the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Under that provision the Tribunal has discretion to make an order for costs up to the sum of £500 in cases where a party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with proceedings. The Applicant's position is that the Respondent has repeatedly failed to comply with the Tribunal's directions, and has necessitated a completely avoidable hearing in order to resolve the matters in dispute. The Applicants' costs in bringing the matter to the Tribunal could, as is advanced on behalf of the Applicants, have been avoided by the Respondent complying with the Tribunal's directions and simply agreeing the terms of the lease and the premium, which were effectively precisely what the Respondent had put forward on an earlier occasion and, so far as the premium is concerned, had proposed in this case. The Tribunal agrees with these submissions. The Tribunal's directions are given to be complied with and not ignored by parties. Further, the Tribunal accepts that the cost of the hearing could have been avoided by the Respondent simply engaging in this matter as referred to above. The Tribunal therefore makes an order for costs in favour of the Applicant, which the Tribunal considers is correctly fixed in the sum of £350.



Prepared by the Applicant's solicitor

Dated: \_\_\_\_\_ 2013

(1) JOSEPH KASNER AND BARUCH ERLICH

(trustees of the Kasner Charitable Trust)

(2) HARRIS NASIM MAKHDUMI AND RABIA MAKHDUMI

and

(3) ORKDAN FLAT MANAGEMENT COMPANY LIMITED

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LEASE  
of  
34 POPLAR GROVE COLNEY HATCH LANE LONDON N11 3NL

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**THE PRESCRIBED CLAUSES**

<p><b>LR1. Date of Lease:</b></p>	
<p><b>LR2. Title Numbers:</b></p>	<p><b>LR2.1 Landlord's Title Number(s):</b>  <b>NGL474859</b></p> <p><b>LR2.2 Other Title Number(s):</b>  <b>NGL456148</b></p>
<p><b>LR3. Parties to this Lease:</b></p>	<p><b>Landlord:</b>  <b>JOSEPH KASNER AND BARUCH ERLICH as trustees of the Kasner Charitable Trust of 21 Accomodation Road London NW11 8EP</b></p> <p><b>Tenant:</b>  <b>HARRIS NASIM MAKHDUMI AND RABIA MAKHDUMI of 74 Avondale Avenue London N12 8EN</b></p> <p><b>Other Parties:</b>  <b>ORKDAN FLAT MANAGEMENT COMPANY LIMITED of 39 Lyndhurst Avenue London N12 0LX</b></p>
<p><b>LR4. Property:</b>  <i>[insert full description of property or refer to relevant clause schedule or paragraph]</i></p>	<p>34 Poplar Grove Colney Hatch Lane London N11 3NL , as is more particularly described in the lease (hereinafter referred to as 'The Original Lease') whose short particulars appear in the FIRST SCHEDULE hereto, the extent of which is coextensive with that previously registered under Title Number NGL456148</p> <p><b>In cases of a conflict between this clause and the remainder of the lease then, for the purposes of registration, this clause shall prevail</b></p>
<p><b>LR5. Prescribed Statements etc:</b>  <i>[either give statement in full or refer to relevant clause schedule paragraph]</i></p>	<p><b>LR5.1</b>  <b>Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing And Urban Development Act 1993) of the Land Registration Rules 2003</b></p>



<p><i>[if a lease is not made under or by reference to the provisions of one of those Acts, omit or delete all of them]</i></p>	<p>Please see paragraph 4 of the THIRD SCHEDULE of this Lease</p> <p>This lease is made under section 56 of the Leasehold Reform, Housing And Urban Development Act 1993</p> <p>LR5.2</p> <p>This leases made under, or by reference to, provisions of:</p>
<p><b>LR6. Term for which the Property is leased:</b> <i>[include only the appropriate statement (duly completed) from the three options]</i></p>	<p>The term is as follows: The term specified in the SECOND SCHEDULE of the Lease</p>
<p><b>LR7. Premium</b> <i>[specify the total premium inclusive of any VAT where payable]</i></p>	<p>£10,250 (Ten thousand two hundred and fifty pounds)</p>
<p><b>LR8. Prohibitions or restrictions on disposing of this Lease:</b></p>	<p>This Lease does contain a provision that prohibits or restricts dispositions</p>
<p><b>LR9. Rights of acquisition etc:</b> <i>[insert the relevant provisions in the sub clauses or refer to the clause/schedule/paragraph in the lease which contains the provision]</i></p>	<p><b>LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another Lease of the Property or to acquire an interest in other land</b> NONE</p> <p><b>LR9.2 Tenant's covenant to (or offer to) surrender this Lease</b> NONE</p> <p><b>LR9.3 Landlord's contractual rights to acquire this Lease</b> NONE</p>
<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:</b> <i>[Insert the relevant provisions or refer to the clause/schedule or paragraph in the lease which contains the provision]</i></p>	<p>NONE</p>

<p><b>LR11. Easements:</b>  <i>[refer here only to the clause schedule or paragraph in this lease which sets out the easements]</i></p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property</b>  See Part I of the Schedule to the Original Lease</p> <p><b>LR11.2 Easements granted or reserved by this Lease over the Property for the benefit of other Property</b>  See Part II and Part II a of the Schedule to the Original Lease</p>
<p><b>LR12. Estate rent charge burdening the Property:</b></p>	<p>NONE</p>
<p><b>LR13. Application for standard form of restriction</b>  <i>[set out the full text of the standard form of restriction and the title against which it is to be entered. Standard forms of restrictions are set out in Schedule 4 to the Land Registration Rules 2003]</i></p>	<p>NONE</p>
<p><b>LR14. Declaration of trust where there is more than one person comprising the Tenant</b></p>	<p>The tenant is more than one person. They are to hold the property on trust for themselves as joint tenants</p>



Original Lease and shall be read and construed as if such covenants, conditions and provisions were hearing set forth verbatim with such modifications only as are necessary to make the same applicable to this present demise instead of the demise created by the Original Lease and the modifications set out in the Second and Third Schedules hereto

3. EACH of the Landlord, the Tenant and the Company, hereby covenant with the others to perform and observe the covenants conditions and provisions mentioned in clause 2 hereof
4. IF the Company goes into liquidation for any reason (whether compulsory or voluntary) or fails in a material way to observe and perform its covenants under this Lease then and in such case the Landlord and the Tenant will join with other lessees of the Block in arranging for the carrying out of the matters mentioned in Part IV of the Schedule of the Original Lease to be carried out subject to the Tenant contributing an appropriate part of the expense of so doing in accordance with the provisions of the Original Lease and this Lease

**IN WITNESS** whereof this deed has been executed by the parties hereto, and is intended to be added hereby delivered on the date first before written

**THE FIRST SCHEDULE  
(Short Particulars Of The Original Lease)**

Date	Parties	Term
18 April 1983	(1) Smardene Properties Limited (2) Hussein Salih (3) Orkdan Flat Management Company Limited (3)	99 years from 24 <sup>th</sup> June 1982

**THE SECOND SCHEDULE**

**(Demised for new term)**

One hundred and eighty nine years from 24 June 1982 with the ground rent being a peppercorn

**THE THIRD SCHEDULE  
(Modifications to the Original Lease)**

1. The Tenant will including any underlease (whether or not granted during the last 7 years of the said term) to which Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 (hereinafter referred to as 'the Act') would apply, but for section 59 (3) of the Act a provision stating that the underlease does not confer on the undertenant the right of the new lease from the Landlord in accordance with Chapter II of the Act.
2. The Landlord shall have the right at any time during the last 12 months of the Original Lease and at any time during the last 5 years of the term granted in the

Second Schedule to apply to the Court under section 61 of the Act for an order for possession of the premises on the ground that for the purposes of the redevelopment it intends to demolish or reconstruct or to carry out substantial works of construction of the whole or a substantial part of the building in which the flat is contained and that he could not reasonably do so without obtaining possession of the premises and the provisions of that section and of schedule 14 of the Act shall apply accordingly.

3. The landlord agrees that the company has a legal right to enter the Block (as defined in the Lease) for the purposes of carrying out its obligations pursuant to this Lease, including (without limitation) maintaining the common parts of the Block.
- 4.1 This Lease is granted by the Landlord as trustees of the Kasner Charitable Trust ('the Charity'), a non-exempt charity and this Lease is not one falling within paragraph (a), (b) or (c) of Section 36 (9) of the Charities Act 1993, so that the restrictions of disposition imposed by Section 36 of that Act apply to the land
- 4.2 The Landlord being the Trustees of the Charity certify that they have the power under the draft to be made to the disposition and that they have complied with the provisions of the said Section 36 far as applicable to this disposition

Signed as a Deed by  
**JOSEPH KASNER AND BARUCH ERLICH**  
as trustees of the Kasner Charitable Trust  
In the presence of:

Witness signature

Witness name

Address

Occupation

Signed as a Deed by  
**ORKDAN FLAT MANAGEMENT**  
**OMPANY LIMITED** acting by a  
director in the presence of:

Witness signature

Witness name

Address

Occupation

Signed as a Deed by  
**HARRIS NASIM MAKHDUMI**  
**AND RABIA MAKHDUMI**  
in the presence of:

Witness signature

Witness name

Address

Occupation