SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of section 27A of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act")

and

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

Re Vinery House, 154 Winchester Road Southampton ("the property")

Case Numbers: CHI/00MS/LIS/2006/0006

BETWEEN

Barbara and Gerald Kerin and Susan Barry — Applicants

and

Seager and Hughes Limited — Respondent

Appearances:

Mrs Kerin for the Applicants

Mrs Veale, Mrs Hirst and Mr O'Sullivan, all of Belgarum Property Management, for the Respondents

Hearings: 24th July 2006, 19th September 2006 and 5th January 2007

Decision

Issued: 15th January 2007

Tribunal:
Mr R P Long LLB (chairman)
Mr D Lintott FRICS
Mr J Mills

Introduction

1. There were two primary applications before the Tribunal, both of which were originally made by Mr & Mrs Kerin. The first of those ("the first application") related to the service charges at Vinery House, and covered the years 1991 to 2001 and 2003 to 2006. It was made under section 27A of the 1985 Act. The second ("the second application") related to the possible variation of their lease of flat 2 at Vinery House and was made under section 35 of the 1987 Act. Miss Barry of flat 12, whose lease was in similar form, was given leave to be joined as an applicant in the second application, and attended that part of the hearing on 5th January 2007 ("the third hearing") that related to it.

2. The amounts of the service charge payable were in dispute. There was no issue as to as to the person by whom the service charge is payable, the person to whom it is payable, the date at or by which it is payable, and the manner in which it is payable.

3. Both the first application and the second application were accompanied by applications for determinations under section 20C of the 1985 Act that the Respondent's costs of the proceedings relating to the application in question should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. No other persons than the applicants in each case were specified in those applications.

4. For reasons that became apparent during the course of the third hearing, it was found that it would be appropriate to deal with the first application in respect of the period from 24 June 2000 to 23 June 2006 and the Tribunal agreed that that application may be treated as amended to cover that period.

Decisions

5. Paragraphs 4 and 5 set out a summary of Tribunal's decisions in respect of the matters that were before it. The figure in square brackets following each sub paragraph refers the paragraph(s) in the reasons with which the matter is dealt with substantively. If any difference arises, the decision stated in the reasons is to be regarded as the actual decision rather than that stated in the summary. The Tribunal's reasons for these decisions appear from paragraph 10 onwards.

6. As to the first application, the Tribunal determined that the following amounts should be disallowed from the service charges demands upon the grounds that they were not reasonably incurred:

    a. an amount equal to 14.388 per centum of the amount of insurance premium shown in the accounts produced by the Respondents at the third hearing in each of the years ended 23 June 2004 to 23 June 2006. [39]

b. the sum of £350 in total for cleaning charges in the years 2003-04 and 2004-05 being the amount overpaid in that period to Croft Estate Services. [40]

c. all of the expenditure shown as professional charges for the years 2000 to 2006 inclusive other than the solicitors' costs for Section 146 notices amounting to £163-13 included in those figures for the year 2004-05 and shown as recovered separately as other income on the service charge statement for Vinery House produced by Mrs Hirst at the third hearing. [48]

7. The Tribunal determined that it is appropriate to make the Order sought under section 20C in respect of the first application and further determined to order that the Applicants be refunded their fees paid to the Tribunal in respect of the first application by the Respondents. [50]

8. As to the second application, the parties are all agreed that the Tribunal should order the variation sought, and the Tribunal is also satisfied that it should do so. With the intention of limiting the cost of implementing that variation, the Tribunal has prepared a formal Order effecting that variation that appears as the Schedule to this decision pursuant to its powers contained in section 38(6) of the 1987 Act. It has done that with the intention that copies of the Order may be annexed to the leases and counterparts in question and appropriate memoranda or the Order may be endorsed thereon, and that the need for formal deeds of variation may thereby be avoided. [55]

9. As to the application under section 20C of the 1985 Act made in conjunction with the second application, the parties agreed and the Tribunal determines that each party should bear its, their or her own costs of the variation proceedings. It follows that the Respondent's costs of those proceedings may not be recovered as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. [56]

Reasons

Inspection

10. The Tribunal inspected Vinery House on 24 July 2006 immediately before the first hearing. It saw a large brick built house under a tiled roof that has been converted at some time into twelve flats. UPVC windows had been fitted. The exterior condition was generally good, save that at the time of inspection gutter repairs appeared necessary to a second floor dormer window, and some flashing was adrift on the front elevation. There was a car park at the rear, and it appeared that small garden areas had been let with some of the flats. The property abuts a busy main road, and stands some three miles from the centre of Southampton. The Tribunal formed the view that the house had perhaps originally been constructed in the latter part of the nineteenth century, and to that extent the cost of rebuilding it was likely to be higher than that of rebuilding a modern property. The building appeared to be in a reasonable state of repair and external decoration, as were the common parts.

The Leases

11. There were copies before the tribunal of the leases of flats 2 and 12 at Vinery House. Both were granted in December 1989, and the leases appeared for all purposes material to the matters before the Tribunal to be in similar form. They were granted for terms of ninety-nine years from 25th December 1988 at rents that rise from £75 per annum in the first thirty-three years of the term to £300 per annum for the last period of thirty-three years. In addition to the rent a service charge is also payable, and is reserved as additional rent.

12. The service charge (in the leases referred to as a 'maintenance charge') is defined in clause 5 of the lease. In the leases of flats 2 and 12, it is defined as one eighth of the cost of electricity to common parts, cost of maintaining garden and grounds, the premiums paid by the lessor for insurance of the property, the maintenance decoration and repair of the structure, exterior and common parts, the reasonable costs and expenses incurred by the lessor in the management of the property, the garden and grounds, and a contribution to a reserve fund for reasonably anticipated future expenditure.

13. The charge is payable annually in advance against a certificate (expressed to be final and binding) of anticipated expenditure drawn up by the lessor's managing agent or accountant, and there is provision for credit to be given for any excess paid. The lease confers the ability for the lessor to employ a managing agent and/or any appropriate staff, and the costs of such agent or staff are to be included in the service charge.

The Law

14. Section 27A (1) of the 1985 Act provides that application may be made to a leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable, and the manner in which it is payable. That subsection applies whether or not any payment has been made.

15. Section 18 of the same Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable , directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs. Improvements fall within the definition unless the cost of them was incurred before 30 September 2003.

The first and second hearings

16. Following a pre trial review held on 4 May 2006, the Tribunal gave directions that required the parties to file statements of case, and after certain formal directions provided for the matter to be heard on or about 26th July 2006. The directions were complied with, and the first hearing was fixed to take place on

24th July. It was apparent from the statements that considerable issues arose from the accounts, copies of some of which were supplied by the Respondent's agents, Belgarum Property Services ("Belgarum"). No one from the Respondents or from Belgarum attended the first hearing. On behalf of the Applicants, Mrs Kerin said that they were anxious to clarify matters arising from the accounts and could not do that in the absence of any representative of the Respondents. At that stage she was willing to abandon the application as to the years 1999 to 2001 because she felt that nothing useful was likely to be served by looking onto them. The hearing was adjourned until 19 September 2006.

17. The second hearing took place on that day. It was apparent from the responses that the Respondents' representatives were able to give on that day that the reservations that Mrs Kerin had expressed about the accounts (which included concerns about the make up of stated 'management' funds, the absence of some vouchers, and concerns over individual items of expenditure) could not be answered from the accounts as they stood, which were cast in a limited commercial form and did not show details of expenditures in each year. The Tribunal gave indications at that stage of the sort of accounts that appeared to it to be desirable not only to enable this matter to go forward but also to enable the lessees at Vinery House to see how the service charge was being expended and what funds may be in hand.

18. The Tribunal therefore, and rather reluctantly, adjourned the matter once more to enable accounts to be prepared in a form that might convey the information that the lessees at Vinery House as well as the Tribunal itself might need to deal with the issues presented by the first application. It gave some further directions for the preparation of those accounts and for a further statement from each of the parties to deal with the issues that they may present. For various reasons it was not then possible to arrange a date for the third hearing before 5th January 2007.

The third hearing

19. By the time of the third hearing, the Respondents had produced a revised account and Mrs Kerin had in turn provided a statement dealing with the issues that she considered arose in the light of the information contained in it. Substantial parts of her statement dealt with numerous and very clear differences between the figures in the new account and those in the accounts that had previously been produced, as well as discrepancies arising from the print outs from Belgarum's books that had been provided.

20. Mrs Hirst explained at the outset of that hearing that she had been given the task of preparing accounts in the form discussed at the previous hearing. When she had come to do that, she had come to the conclusion that the original accounts appeared inaccurate in some respects, and she had set out to prepare accounts based on the bank statements going back to 24th June 2000. There was just one bank account for Vinery House. It was separate from any of the other accounts held by Belgarum. Accordingly, it had been easier to identify

all the receipts and payments made over the period, and to reconcile the accounts that she had prepared with the banks statements.

21. In consequence of the work she had done, Mrs Hirst said that it would in her opinion be potentially misleading to rely on the earlier accounts. She explained that the first sheet of the accounts she had prepared showed a balance sheet as at 23 June 2006, and indicated that there was a surplus at that time of £449-81. The work that she had done enabled her to conclude that there was a balance brought forward at 24 June 2000 of £808-10 as that account showed.

22. This was in sharp contrast to the sum of £1897 shown as carried forward on that day in the accounts provided to the Tribunal at page 28 of the bundle of documents sent with the Respondent's statement made in response to the directions given in May. By 2002 (no copy of the 2001 accounts was provided, but the 2000 and 2001 figures appear for comparison in the 2002 accounts) the figure carried forward for 2000 was shown not as £1897 but as £12261-79 and the carry-forward figure for 2001 as £11688-26.

23. Mrs Hirst said that her investigations, which had occupied some sixty hours of her time, had been sufficient to satisfy her that not only were there never such funds held at the relevant times but nor were there debts due to the accounts of such a size that would justify a figure of anything like the size the accounts initially provided indicated. Mrs Hirst believed that the accounts that she had now prepared would adequately explain the numbers of errors and inconsistencies in the accounts to which Mrs Kerin had drawn attention in her statements that were before the Tribunal. She said that she believed them to be accurate.

24. Mrs Kerin made the point that one of her purposes in bringing these proceedings was to endeavour to establish the true accounts position. When she and her husband had bought flat 2 in late 2002 they had been told there was a sum of some £11000 in hand but had never been able to see accounts and receipts to show what the true position was, and her enquiries to seek to deal with matters that arose had never been satisfactorily answered. She remained concerned that the present accounts were not fully supported by receipts and statements that were available for inspection at the hearing. She said that even so, she was prepared to proceed to deal with the matter on the basis of the accounts that Mrs Hirst had now produced. Had she been aware of the position as Mrs Hirst now presented it she would have wished to test the service charges from 2000, and would not have made the concessions she did at the first hearing mentioned at paragraph 16 above.

25. The parties agreed that if the matter were to be approached on this basis, which was now very different from the position when Mrs Kerin had indicated at the first hearing that she could see little point in looking at the 2000 and 2001 accounts, it was right to approach the it from the commencement of Mrs Hirst's account on 24 June 2000.

26. The Tribunal accepted that this was the appropriate approach, and that Mrs Kerin should not be bound by the concessions, in the changed circumstances. It therefore proceeded to hear the parties on the question of the service charges that Mrs Kerin sought to challenge from Mrs Hirst's accounts. These fell under six broad headings, namely those of the accounts themselves, the insurance premiums, the cost of cleaning, bank interest, management charges and professional fees. The points made by each side in connection with those aspects and the Tribunal's determinations in respect of them are grouped under those sub headings.

Accounts

27. The Tribunal found Mrs Hirst to be a competent and credible witness. Whilst no certified accounts reflecting her conclusions were before it, it concluded from an examination of the certified accounts that had previously been provided, and from the information that she gave, that there was little doubt that the certified accounts appearing between pages 26 to 57 of the Respondent's original bundle were unlikely to be reliable as a record of the transactions that actually occurred whether or not they may have a more theoretical value of a sort sometimes used in commercial accounting.

28. It bore in mind in reaching that conclusion the very substantial disparity between the figure carried forward at 23rd June 2000 appearing at page 28 (£1897) and the figure stated in the accounts for 2002 to have been carried forward at that date of £12261-79. There is no explanation of this discrepancy in the papers before the tribunal, which noted in that connection that it had no copy of the 2001 certified accounts that might perhaps have borne one. However, even if there is a technical explanation the information in the certified accounts would have led the leaseholders to believe that they had considerable funds in hand, as indeed seems to have been the case when Mr & Mrs Kerin made the usual enquiries at the time of their purchase.

29. The Tribunal determined in the light of Mrs Hirst's evidence that it should not rely on the certified accounts, and in the light of the apparent discrepancies that arose, both those mentioned and those highlighted by Mrs Kerin, (some of which were discrepancies in the printouts at pages 92-112 of the respondent's bundle) that it was appropriate to proceed on the basis of Mrs Hirst's account for the reasons that she advanced.

Insurance Premium

30. Mrs Kerin challenged the amount of the insurance premium as being unreasonably high. She pointed out that the lease required the leaseholders to refund the premiums paid by the landlord. For the period starting February 2004 the landlord had paid a premium of £2077 for cover of £827739, for the period starting February 2005 it had paid £2190-18 for cover of £865153 and for the period starting February 2006 it had paid £2256 for cover of £943017.

31. She had obtained a quotation from Brevent Insurance of £1217-90 in October 2006. She had done that by sending Brevent a copy of the insurance schedule

for 2006 for the property so that the quotation was as nearly as may be on a like for like basis. She accepted that Brevent would have wanted to see a claims history before effecting insurance on that basis, but as far as she was aware there was nothing exceptional in the claims history at that time that might have affected their ability to place the insurance at that price. The quotation no doubt included a sum for Brevent's own commission.

32. Amongst the receipts that she had been able to see and to copy following her various requests made pursuant to section 22 of the 1985 Act Mrs Kerin had obtained a copy of a credit note from the brokers, Messrs Williamson Moore Limited, to Belgarum for £663-00. That was 29.388% of the gross premium paid, and appeared to amount to commission that she contended should be credited to the service charge account.

33. Mr O'Sullivan dealt with the point for Belgarum. He said that Williamson Moore Limited was a quite separate company from Belgarum. Under the FSA rules, Belgarum was an appointed representative of Williamson Moore. Each year Williamson Moore tested the market to fid the best cover on Belgarum's behalf. To that extent the cover was obtained in the proper way in the open market. If a claim arose, Belgarum obtained the details from the lessee in question and arranged for him or her to provide quotations for the necessary remedial work. It completed a claim form as far as it was able and passed the whole lot on to Williamson Moore. It might sometimes accompany a loss adjuster to the property. He understood that the refund of premium was a payment by Williamson Moore Ltd. to Belgarum for handling claims.

34. The existence of the refund indicates a net premium for comparison with the Brevent quotation of £1593. That is a little higher than the Brevent quotation but, also bearing in mind that Brevent had not seen the claims record, it would not be appropriate for the Tribunal to hold that that the premium actually paid is unreasonable by comparison. The Tribunal bore in mind too that it is bound by the decision of the Court in Williams v London Southwark BC [2001] 33HLR22 that monies paid for such work as claims handling are not commission payments.

35. The Tribunal concluded that that decision did not however prevent it from forming a view as to what appears to have been a reasonable remuneration for claims handling work in the period. It took that view because a payment in excess of that sum would in its view amount to no more than a commission by another name. The landlord (and by extension its agent) is required to hold monies paid by leaseholders and any income arising from it upon trust by virtue of section 42 of the 1987 Act.

36. These insurance premiums are contributed by the leaseholders as service charge and it follows that they are affected by the trust so imposed whether or not they have passed to, and back from, the hands of another party. It found that it could adopt that view only for the years 2004, 2005 and 2006 which are the years for which the evidence before it shows that Williamson & Moore Ltd were the brokers who dealt with the insurance. It considered that it may

readily infer that the arrangement of which it has evidence subsisted in those years, not least because similar premiums were charged.

37. The leases in this case require the leaseholders to repay "the premiums paid by the lessor for the insurance of the premises" within the service charge structure. If as here there is a credit note for an identifiable part of the insurance premium in favour of the lessor or his agent then in the Tribunal's judgement that element has not in practice been paid, except in the very limited sense that it is actually paid over before being returned to the payer. By section 19 of the 1985 Act the service charge must be reasonably incurred. What has been incurred as a result of the credit given is the net amount actually paid away (but including the fee for claims handling) rather than the gross sum.

38. In Williams v London Southwark BC, it was said that the council provided a "complete claims handling service". On Mr O'Sullivan's account, what is provided here is a partial claims handling service since there is an involvement of the broker who apparently acts as an intermediary between Belgarum and the insurer and has at the least also some involvement in completion of some parts of the claim form from information in its possession.

39. In Williams the Court thought it right to allow 20% of the premium for the full claims service. The Tribunal has formed the view in this case that an allowance of fifteen per cent is appropriate for the years in question because the service is not a complete one. Accordingly the remaining 14.388% of the gross premiums in each of the years 2004, 2005 and 2006 may properly be regarded as commission, and should be held as an accretion to the service charge account in accordance with the statutory trusts imposed by section 42 of the 1987 Act. That amounts to £298-84 for the year 2004, £315-10 for the year 2005 and £324-59 for the year 2006.

Cost of Cleaning

40. Mrs Hirst accepted on behalf of the landlord that there had been an overpayment to Croft Estate Facilities for the period from January 2004 to February 2005. In that period a standing charge of £25 per month had continued to be paid to Croft at a time when it had ceased to be responsible for cleaning work at the property, and that amount had not been credited back to the service charge account as it should have been. The total overpayment had accordingly been £350. After some discussion Mrs Kerin accepted that figure.

Bank Interest

41. Mrs Kerin challenged the cost of bank interest charged in 2001 of £11-41, in 2002 of £154-27, in 2003 of £288-22 and in 2004 of £16-36. She said that the lease did not allow for it to be charged as part of the service charge, although she accepted that in an emergency money may be expended. Originally she had not been able to understand why it was charged in any case because she had been led to believe that there was money held on account although she now understood that that had not been the case. Even if the lease had allowed

for interest to be charged, Belgarum had continually failed to answer her queries so that she and her husband had been entitled to withhold service charge payments. She did not consider that the inclusion of expenses of management in clause 5(2)(e) of the Lease as a service charge expense was adequate to allow interest to be charged, and said it would not be so in a commercial lease.

42. Mr O'Sullivan said that the lease did not prevent interest being charged. Less interest would have been incurred, he said, if Mr & Mrs Kerin had withheld only amounts that were in issue, but Mrs Kerin challenged the accuracy of that statement.

43. The tribunal was not addressed in any detail upon the law on the point, but is aware that there have been a number of decisions, ranging, for example only, from Sella House Ltd -v- Mears [1989] 1 EGLR 65, Iperion Investments Corporation v Broadwalk House Residents Ltd [1995] 2EGLR47, and St Mary's Mansions Ltd v Limegate Investment Co Ltd [2003] H.L.R. 24. These are cases relating to landlords' powers to charge costs rather than to the power to charge interest. They illustrate a wide range of approach that the Courts have taken to the question of the construction of a lease in terms of what may or may not be recovered.

44. Having considered those cases the Tribunal is satisfied that in the present case the ability to recover "expenses of management" is sufficient in this instance to enable the landlord to recover bank interest. That is because a service charge structure based on budgeting and subsequent recovery of any balance, as here, necessarily envisages, as Mrs Kerin accepted, that from time to time a deficit may arise. In the tribunal's opinion the term "expenses of management" is wide enough in the context of this particular lease to encompass bank interest as one of those expenses since it must necessarily have been within the contemplation of the parties in the circumstances it describes that such expenses may from time to time arise.

Management fees

45. The management fees had been raised, said Mrs Kerin, to £150 per flat plus VAT in September 2005. Previously they had been at or below £100 per flat plus VAT. She took issue with the new figure only, which she said represented a 50% rise in fees.

46. Mr O' Sullivan said that the new fee had not been implemented until 24th June 2006. As such it has not been charged in the period up to 23rd June 2006 with which the Tribunal is concerned in these applications and so does not fall for its decision on this occasion.

Professional fees

47. The Tribunal established that the professional fees shown in Mrs Hirst's accounts are all for accountancy charges, either raised by Belgarum or by its accountants, for the years in question, with one exception. That exception

relates to a sum of £163-13 charged by Messrs Dutton Gregory in connection with the preparation of a section 146 notice in 2004-05. Mrs Hirst pointed out that although that sum is not by definition a service charge it was included in these accounts having been dealt with through the bank account for Vinery House, and was credited back to the account when paid as "bank interest or other income" for the year in question.

48. Mrs Kerin said that in the light of Mrs Hirst's evidence it was apparent that the fees included had been for work that was manifestly incorrect and misleading, and as such it was not reasonably incurred. Mrs Hirst and Mr O'Sullivan did not seek to counter that argument save that Mr O'Sullivan said that because Finance Innovations were working from Mandair & Co's figures they could not be held responsible for them. That may be so, but the fact is that, perhaps for that reason, on Mrs Hirst's evidence the accounts that they produced have similarly not given an accurate picture either to the managers or to the leaseholders. The Tribunal had little difficulty in accepting it that on the evidence before it the accounting costs (both those of Belgarum and of the accountants) for the years in question were not reasonably incurred, and that they should be disallowed. The accounts created what was on the evidence before the tribunal shown to be a quite misleading situation. The amounts in question are £249-98 (00-01), £293-75 (01-02), £395 (02/03), £358.58 03/04), £311.38(04/5) and £385-00 (05-06).

The section 20C Application and the fees of the application

49. Mrs Kerin's evidence has been throughout that she made numerous attempts to clarify the matters now before the Tribunal, including the matter of the accounts, with Belgarum, and that she brought these proceedings only when her attempts to do so failed to produce the explanations she wanted. Mrs Hirst's candid evidence shows that that happened because the accounts were misstated, and it seems that no-one realised the fact until she looked into the matter.

50. It is in any event very doubtful (despite the more liberal approach that the Tribunal felt able to take in the matter of bank interest) whether the provisions of clause 5(2) of the lease are properly capable of being interpreted so as to allow the landlord to recover his costs of proceedings like these as service charges. To such extent, if at all, as that may be so the tribunal has no hesitation in the circumstances surrounding the need for this application in making the Order sought, that the Respondent's costs of the proceedings relating to the First Application shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant (no other person being named in the application).

51. The Tribunal further considered that in the circumstances described it is appropriate in this case to order that the Respondent refunds Mrs Kerin's fees paid to the Tribunal for the section 27A application. If it had dealt with her enquiries fully and carefully from the outset, or indeed at any time during the last three years before she made the application, then it is likely that it would

not have been necessary for it to be made, or at least that it would have had to be far less extensive and time consuming.

The Second Application

The Law

52. Part IV of the 1987 makes provision for the variation of leases by the Tribunal. Where the variation is sought without the consent of the majority of lessees mentioned in section 37 of that Act, the Tribunal may order the variation if it is satisfied that the circumstances fall within one of six specified grounds mentioned in section 35(2). It must also be satisfied that the variation would not be likely substantially to prejudice any respondent to the application or any person who is not a party to the application (if compensation would not be adequate to overcome that prejudice) and that there is no other reason as a result of which it would not be reasonable in the circumstances for the variation to be effected. The Tribunal's powers to make orders in connection with such variations are set out in section 38.

Decision on the Application

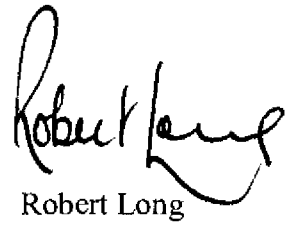
53. The parties (in this application that expression includes Miss Barry) are agreed that the leases of flats 2 and 12 are defective in that they do not make satisfactory provision for the computation of the service charge payable under them. That is because the leaseholders of those flats are to pay one eighth of the cost of the services each rather than one twelfth as is to be paid by the other ten leaseholders at Vinery House. It follows that the total service charge notionally payable for the whole of Vinery House is 13/12 of the total expenditure rather than 12/12.

54. That circumstance satisfies the indication of failure to make satisfactory provision in this respect contained in section 35(4) of the 1987 Act and so clearly falls within the tribunal's jurisdiction stated in section 35(2) (f) of the 1987 Act. The parties are further agreed that the leases should respectively be amended to show that the leaseholders of flats 2 and 12 should pay 1/12 only of the total service charge costs. None of the other leaseholders at Vinery House is prejudiced by such an action since the Tribunal is informed that it has been the practice over the years only to collect one twelfth of the total service charge costs from the lessees of flats 2 and 12 in any case.

55. The Tribunal determined that the lease may be varied in accordance with the application, and considers that it is most convenient to effect the variation by means of an Order that varies the lease without the need for a deed of variation in accordance with clause 38(1) and 38(9) of the 1987 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 t he leases and counterparts of them that are affected, and that such entries as are appropriate should be entered in the relevant registers at HM Land Registry

56. The Tribunal considers that it would be inequitable for the costs of the second Application to fall in another way than to require each party to be responsible for and to bear its own costs in the matter. To such extent, if at all, as the Respondent may be entitled to recover its costs of t he second application as service charges the Tribunal therefore orders that the Respondent's costs of the proceedings relating to the Second Application shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant (no other person being named in the application).

57. For the avoidance of doubt the Tribunal makes no Order for the repayment of the application fee in respect of the second application.



Robert Long
Chairman
12th January 2007

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

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

Re Flats 2 and 12 Vinery House, 154 Winchester Road Southampton ("the property")

Case Number: CHI/00MS/LIS/2006/0006

BETWEEN

Barbara and Gerald Kerin and Susan Barry — Applicants

and

Seager and Hughes Limited — Respondent

ORDER

Upon hearing the parties in this matter, and the Tribunal being satisfied that the lease of Flat 2 Vinery House dated 20th December 1989 and made between Bennett Charles Grenville Coulson of the one part and Steven Ian Gibbons and Kathryn Gail Masters of the other part and the lease of flat 12 Vinery House dated 22nd December 1989 and made between the said Bennett Charles Grenville Coulson of the one part and David Brian Webb of the other part do not make satisfactory provision for the computation of the service charge payable under them

It is ordered:

1. that the said leases are hereby each varied with effect from the date hereof so that in place of the words 'one eighth' in the first line of Clause 5(2) of each of the said leases there shall be substituted the words 'one twelfth', and

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

Dated 15th January 2007

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Chairman