

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00HN/LVL/2007/0001**

**REASONS**

**Application** : Section 35 Landlord and Tenant Act 1987 (“the 1987 Act”)

**Applicant/Landlord** : Villa Capri (Bournemouth) Limited (“the Company”)

**Respondent/Leaseholders** : Mr Colin Arthur Patterson (Flat 1), Mr Warren Braham and Mrs Jacqueline Braham (Flat 2) , and Mr Roy Breaks and Mrs Dorothy Breaks (Flat 3)

**Building** : Villa Capri, 14A Grove Road Bournemouth BH1 3DB

**Flats** : the 3 flats comprising the Building

**Date of Application** : 22 January 2007

**Date of Directions** : 23 March 2007

**Date of Hearing** : 2 July 2007

**Venue** : Committee Room 1, Bournemouth Town Hall, Bourne Avenue, Bournemouth

**Attendances on behalf of the Applicant/Landlord** : Mr G H Perrins of Perrins Stevenson Solicitors

**Also in attendance** : Mr Patterson, Mr and Mrs Breaks, and Ms K Richards

**Attendances on behalf of the Respondent/Leaseholders** : Mr and Mrs Braham

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr D L Edge FRICS, and Mr R T Dumont

**Date of Tribunal’s Reasons** : 10 July 2007

## **Introduction**

1. This Application by the Applicant/Landlord is under section 35 of the 1987 Act
2. At the directions hearing on the 23 March 2007 the parties agreed that :
  - a. the lease of each Flat did not make satisfactory provision for the insurance, repairs and maintenance of the Building
  - b. the leases should be varied in order to make such provision
3. The following matters were identified as issues for the Tribunal to determine at the substantive hearing of this application :
  - a. whether any such variation should be by way of a deed in the format of the draft deed annexed to the application
  - b. if so, whether the terms of the draft deed should be adopted as drafted, or whether there should be omissions, amendments, or additions
  - c. if not, whether the variation of the leases should be in a different format, and, if so, what that form should be
4. In a statement by Mr and Mrs Braham dated the 4 May 2007 they agreed in principle that the variation of their lease should be by way of a deed in the format of the draft deed annexed to the application, but contended for 25 points of omission, amendment, and addition
5. Mr Patterson and Mr and Mrs Breaks, although technically Respondents, supported the application
6. The hearing of the application took place on the 2, July 2007

## **Documents**

7. The documents before the Tribunal are the application and supporting documents numbered 1 to 116 in the Tribunal's bundle, and the statement by Mr Patterson submitted at the hearing
8. References in these reasons to page numbers are references to page numbers in the Tribunal's bundle

## **Preliminary and procedural matters**

9. The 3 flats had originally been demised in 1970. Copies of the leases are at pages 26, 44, and 57 ("the Old Leases")

10. Mr Perrins confirmed at the hearing that all the Old Leases were in materially the same terms
11. Each lessee entered into a separate maintenance agreement with DD Management Company Limited in 1970. A copy of the agreement relating to Flat 2 is at page 76 (“the DD Management Agreement”)
12. The Company subsequently acquired the freehold of the Building
13. New leases were granted to each lessee on the 2 October 1998. Copies are at pages 38, 55, and 68 (“the Current Leases”)
14. Deeds of variation were entered into in relation to Flats 1 and 3 on the 16 April 2002. Copies are at pages 40 and 70

### **Inspection**

15. The Tribunal inspected the Building on the morning of the hearing on the 2 July 2007. All the Respondent/Leaseholders were present. Mr Breaks informed the Tribunal that the Building had been built in 1969
16. The Building comprised 3 flats, one on each of 3 storeys, with random stone finish at ground level, Tyrolean rendering above, and a pitched roof. Each flat had a balcony at the front, with patio doors, a mosaic tiled finish to the floor, and tiled walls. The windows at the front and rear of the ground and second-floor flats were replacement double-glazed UPVC, and, at the front and rear of the first floor flat, double-glazed Crittalls. The stairwell at the side was enclosed with wood panels and single glazed Crittalls
17. The front garden was landscaped with lawn and shrub borders. At the rear was a small strip of lawn at the base of the Building, a tarmac area, and a single-storey garage block comprising 3 double garages, with a flat roof
18. The Tribunal also inspected the second-floor flat, at the invitation of Mr and Mrs Breaks, who showed the Tribunal the extensive refurbishment works which they had carried out

### **The Old Leases**

19. For the purposes of these proceedings the material parts of the lease of the Old Leases are as follows :

#### ***Clause 1***

*... the Lessor ... demises unto the Lessee ... the flat ... [and] the garage*

**Clause 2(iii)**

*[The Lessee covenants] not to make any structural alterations or structural additions to the demised premises nor to erect any new buildings thereon...*

**Clause 3(ii)**

*[The Lessee covenants] to keep the demised premises the front door and the windows of the flat and all walls party walls... in good and tenable repair... [provided that] this clause shall not render the Lessee individually liable as Lessee for matters which are the responsibility of DD Management Company Limited under [the DD Management Agreement]*

**Clause 3(vii)**

*[The Lessee covenants] not to do [anything] which may render void or voidable any policy... of insurance...*

**Third Schedule paragraph 1**

*[The Lessee covenants] not to use the demised premises... for any purpose whatsoever other than as a private dwellinghouse in the occupation of one family only...*

**DD Management Agreement**

20. For the purposes of these proceedings the material parts of the lease of the DD Management Company Limited are as follows :

**Clause 1**

*[DD Management Company Limited] agrees*

*(a) to maintain repair and redecorate and renew*

*(i) the... main structure... of the block of three flats and three garages*

*(c) ... in every third year... to decorate the exterior of the mansion and garages...*

*(d) to insure the mansion and garages... in the joint names of [DD Management Company Limited] and... the Lessee*

**Clause 7**

*(e) the expression "main structure" shall not include the window glass or window frames of the demised premises*

**The Current Leases**

21. The Current Leases incorporate the covenants on the part of the lessees and the provisions contained in the Old Leases, except in relation to ground rents

### **The draft deed of variation**

22. The draft deed is at page 10

### **The points of contention**

23. Mr and Mrs Braham's points are set out in detail in their statement dated the 4 May 2007 at page 82. Mr Patterson's responses are set out in detail in the statement submitted at the hearing

24. A summary of those points, of the oral evidence and submissions at the hearing, and of the Tribunal's decision and reasons in relation to each point, with a note in each case of the relevant clause number of the draft deed of variation and page number of the Tribunal's bundle, is as follows

#### ***Point 1 : heading ( page 10)***

25. Mr and Mrs Braham's contention : the date of the deed should be 2007

26. Mr Patterson's response : agreed

27. Tribunal's decision : the date of the deed should be 2007

#### ***Additional point : definition (a) (page 10)***

28. Mr Perrins submitted that garage doors and patio doors should be included in the definition of the demised premises. The garage doors were part of the structure of the garage, and, as such, repairs should be the responsibility of individual lessees, but exterior redecoration should be carried out communally

29. Mr Braham said that he had no concerns about them being part of the definition of the demised premises from an ownership point of view, but that maintenance and repairs should be the responsibility of the Company, not of individual lessees

30. Mr Breaks said that lessees had motorised the doors of two of the garages at their own expense

31. Mr Patterson said that repairs and maintenance of the garage doors should be the responsibility of individual lessees, but that that the lessees should agree to paint them at the same time and in the same colour

32. The Tribunal finds that :

- a. the definitions on page 10 identify the parts of the Building which are included in the “demised premises”
- b. the demised premises in each case include the flat and garage
- c. the garage doors and the patio doors are, on the face of it, parts of the structure of the garages and flats respectively
- d. there is nothing in the Old Leases to indicate that the garage doors and patio doors are excluded from the demised premises in either case
- e. in the Tribunal’s collective knowledge and experience, it is quite common for there to be a distinction in a residential long lease between ownership of a part of building as part of the demised premises on the one hand, and responsibility for the maintenance of that part of the building on the other hand, for example, by allocating the leasehold ownership of a window to a lessee by including the window in the demised premises, but allocating responsibility for its exterior redecoration to the landlord, so as to ensure uniformity of exterior decoration of the building as a whole
- f. the fact that the window glass and window frames of the demised premises were excluded from the definition of “main structure” in the DD Management Agreement was for the purpose of allocating responsibility for maintenance repair redecoration and renewal, not for the purpose of excluding the window glass and window frames from the definition of the demised premises in the Old Leases
- g. in any event, garage doors were not excluded from the definition of “main structure” in the DD Management Agreement, and the exterior decoration of the garages was the responsibility of DD Management Company Limited in the DD Management Agreement
- h. the fact that lessees may have motorised two of the garage doors is itself an indication that the garage doors were part of the demised premises in each case, but is not inconsistent with the repair, decoration and maintenance of the doors being the responsibility of the Company
- i. the lessees are individually responsible for repair, maintenance and decoration of windows under clause 3(ii) of the Old Leases
- j. the term “windows” is not defined in the Old Leases, but, by its ordinary meaning, is wide enough to include the patio doors in this case

33. Tribunal’s decision :

- a. the garage doors and patio doors are part of the demised premises, but :

- b. the repair, decoration and maintenance of the garage doors are the responsibility of the Company
- c. the repair, decoration and maintenance of the patio doors are the responsibility of the individual lessees
- d. for the avoidance of doubt, garage doors and patio doors should be expressly included in the definition of the demised premises in the draft deed of variation

***Point 2 : definition (g) ( page 11)***

- 34. Mr and Mrs Braham's contention : the maintenance and decoration of the exterior fabric should be the Company's responsibility
- 35. Mr Patterson's response : it was intended to refer to the internal, not the external faces of the external walls
- 36. Mr Braham's response : agreed
- 37. Tribunal's decision : the proposed definition should remain, but with a reference to "internal faces"

***Point 3 : insert new definition ( page 11)***

- 38. Mr and Mrs Braham's contention : there should be a reference in the draft deed of variation to the old Head Lease referred to in the Old Leases
- 39. Mr Patterson's response : unnecessary, because the old Head lease had merged when the Company had acquired the freehold
- 40. Mr Perrins's submissions : in any event, the old Head Lease was not referred to in the draft deed of variation, and accordingly there was no need for it to be referred to in the definitions
- 41. Tribunal's decision : there should be no definition of the old Head lease, for the reasons advanced by Mr Patterson and Mr Perrins

***Point 4 : definition "Main Structure" ( page 12)***

42. Mr and Mrs Braham's contention : the definition should include all external surfaces, except former external surfaces where balconies had been enclosed, but should exclude window glass and window frames of the demised premises
43. Mr Patterson's response : unnecessary, because windows had already been included in the definition of demised premises, and everything else, including balconies, were automatically part of the definition of "Reserved Property"
44. Mr Perrins's submissions : it was not possible for a lessee to enclose a balcony, because that would involve a breach of clause 2(iii) of the Old Lease, which was an absolute covenant
45. The Tribunal finds that :
- a. the reason for defining "Reserved Property" and "Main Structure" separately is that the two expressions serve different purposes
  - b. the Reserved Property is an expression of ownership, in that it defines the parts of the Estate which are not part of the Demised Premises, whereas the Main Structure is an expression of responsibility, in that it defines those parts of the Estate for which the Company is responsible for the repair, decoration and maintenance
  - c. for reasons already given, windows, patio doors, and garage doors are all demised to individual lessees, and, without contrary definitions in the leases, would be regarded as part of the main structure of the Building
  - d. however, in this case the lessees have responsibility for the repair, decoration and maintenance of the windows and patio doors, whereas the Company has responsibility for the repair, decoration and maintenance of the garage doors
  - e. it appears to the Tribunal, contrary to Mr Patterson's comment in that respect, that
    - individual balconies may well be included in the demise of each Flat, and are not part of the Reserved Property, in that they appear on inspection to form parts of the Flats, rather than the common parts, the floors of the balconies appear to be extensions of the floor of the Flats, and not to extend in any case further than the external wall of the rest of the Flat concerned, and only the individual lessees have access to the balconies of their own Flats
    - but, in any event, the parties have expressly agreed that the Company has responsibility for repair, decoration and maintenance of the balconies
  - f. it would be preferable to clarify the definition of the Main Structure accordingly, for the avoidance of doubt
  - g. the wording of the proposed definition is otherwise clear enough, without requiring the extra wording suggested by Mr and Mrs Braham



46. Tribunal's decision : the definition of Main Structure in the draft deed of variation should expressly include balconies and garage doors, but should expressly exclude windows and patio doors

***Point 5 : background (c) ( page 12)***

47. Mr and Mrs Braham's contention : the provision should be deleted

48. Mr Patterson's response : the reason for the application to the Tribunal is that there is no mutually enforceable scheme for repair, decoration and maintenance, and the fact that informal arrangements have succeeded in the past does not mean that a legally binding scheme should not now be put in place

49. Tribunal's decision : the provision should remain, because it merely records the reason for the making of the application to the Tribunal, as recorded in the Tribunal's directions

***Point 6 : background paragraph (d) ( page 12)***

50. Mr and Mrs Braham's contention : a reference to precedent and practice over 35 years should be added

51. Mr Patterson's response : unnecessary, because the draft deed of variation was intended to clarify the position

52. Mr Perrins's submissions : the draft deed of variation should be a "stand-alone" document, and references to outside matters would merely introduce uncertainty

53. Tribunal's decision : the provision should remain as originally drafted, for the reasons advanced by Mr Perrins

***Point 7 : clause 4A(c)(i) ( page 14)***

54. Mr and Mrs Braham's contention : replace "buildings comprised in the Reserved Property" with "Mansion and Garages"

55. Mr Patterson's response : not agreed, because the definition of Reserved Property is clear, namely what is not demised by the 3 leases
56. Mr Perrins's submissions : the words "Mansion and Garages" later in the clause should be replaced by the words "the Estate". Windows were the responsibility of individual lessees, and should be expressly excluded from clause 4A(c)(i)
57. Mr Braham's response : windows and garage doors were the responsibility of the Company, and should remain so
58. Tribunal's decision : the words "Reserved Property" and "Mansion and the Garages" should be replaced with the word "Estate", to avoid confusion, and, for the avoidance of doubt, garage doors should be expressly included, and windows and patio doors expressly excluded, for reasons already given

***Point 8 : clause 4A(c)(i) ( page 14)***

59. Mr and Mrs Braham's contention : insert more detailed provisions after "two coats at least of best paint"
60. Mr Patterson's response : agree amendment to cover appropriate treatment of different surfaces, but remainder not agreed, as unnecessary
61. Mr Perrins's submissions : the previous words "in a good and workmanlike manner" were already sufficient
62. Mr Braham's further comments : Mr and Mrs Braham's patio doors were aluminium with a hardwood frame, whereas the other lessees had now replaced their similar doors with UPVC
63. Tribunal's decision : the words "or preservative" should be added, to take account of different surfaces, but otherwise the present wording should remain, for the reasons advanced by Mr Perrins

***Point 9 : clause 4A(d) ( page 14)***

64. Mr and Mrs Braham's contention : insert a more detailed description of "the Estate" and require

insurance to be in the joint names of the Company and the lessees

65. Mr Patterson's response : "the Estate" was already adequately defined. An amendment to include a requirement to note the interest of the lessees and their mortgagees would be agreed
66. Mr Braham's further comments : noting was not enough. There were only 3 Flats, so there was no administrative problem with the policy being in joint names. Each lessee would then have more control
67. Tribunal's decision : in the Tribunal's collective knowledge and experience, noting would be more usual than joint names, and there is nothing unusual in this case requiring a different approach. Noting will be required

***Point 10 : clause 4A(d) ( page 15)***

68. Mr and Mrs Braham's contention : insert "minimum" after "comply with the"
69. Mr Patterson's response : unnecessary, because the Company is in control, and can decide on the risks to cover, provided that the Council of Mortgage Lenders' requirements are also complied with. It is important to show potential buyers, who may require mortgages, that the cover complies with the Council of Mortgage Lenders' requirements
70. Tribunal's decision : the insertion should not be made, for the reasons advanced by Mr Patterson

***Point 11 : clause 4A(d) ( page 15)***

71. Mr and Mrs Braham's contention : insert new provisions to avoid the possibility of the Council of Mortgage Lenders' requirements conflicting with the lease, and to provide extra cover
72. Mr Patterson's response : not acceptable, for the same reasons as before, and because a policy through an insurance office of repute should at least equate to the cover requested by Mr and Mrs Braham
73. Tribunal's decision : the insertion should not be made, for the reasons advanced by Mr Patterson

***Point 12 : clause 4A(d) ( page 15)***

74. Mr and Mrs Braham's contention : delete "and such other risks as the Company acting reasonably from time to time decides to insure against" and substitute "and such other comprehensive risks as will provide adequate protection from all perils against which prudent property owners would normally insure"

75. Mr Perrins's submissions : agreed

76. Tribunal's decision : the substitution should be made, for the reasons advanced by Mr and Mrs Braham

***Point 13 : clause 4A(d) ( page 15)***

77. Mr and Mrs Braham's contention : delete "and likewise to effect such insurance as will cover contingent liability to any third party for which the Company is liable" and substitute "and likewise to the same standard effect such insurance as will cover contingent liability to any third party (which relationship shall include that of the Company and the owners and occupiers of the Flats inter se)"

78. Mr Patterson's response : agreed, but prefer the wording as originally drafted

79. Mr Perrins's submissions : the existing wording was adequate

80. Mr Breaks's comments : holiday lettings would increase the risk needing to be covered

81. Mr Perrins's further submissions : clause 3(vii) of the Old Leases covered Mr Breaks's concerns

82. Mr Braham's response : there had been no previous increases in premium as a result of sub-lettings

83. Tribunal's decision : the substitution should be made, for the reasons advanced by Mr and Mrs Braham

***Point 14 : clause 4A(d) ( page 15)***

84. Mr and Mrs Braham's contention : delete "or default on the part of the Company owner or occupier of the Estate" and substitute "or default on the part of any Lessor owner or occupier of the property or any of the flats and garages"
85. Mr Patterson's response : not agreed, because the wording as drafted was clear
86. Tribunal's decision : the principle of the suggested substitution is accepted, for the reasons advanced by Mr and Mrs Braham, but in order to achieve consistency throughout the draft deed of variation it would be preferable to adopt existing definitions, and accordingly, as "Estate" is already defined as including all land and buildings, the only necessary alteration is the insertion of the words "any part of" before "the Estate"

***Point 15 : clause 4A(e)(i) ( page 15)***

87. Mr and Mrs Braham's contention : delete "(unless the policy or policies of insurance shall have been vitiated by any act or default of the Lessee or the owner or occupier of any other Flat)"
88. Mr Patterson's response : not agreed, because if a lessee causes the policy to be vitiated the lessee cannot look to the Company for recompense. It was a standard provision
89. Mr Braham's response : there would be no problem if the policy was in joint names, but a problem could arise if there was only a noting of interests. The insurance company could find in the lease a means of avoiding liability
90. Tribunal's decision : the provision should remain as drafted for the reasons advanced by Mr Patterson, and because if a lessee had done something to vitiate the policy there would simply be no insurance money to enable the Company to comply with the covenant to reinstate

***Point 16 : clause 4A(e)(i) ( page 16)***

91. Mr and Mrs Braham's contention : delete "and to apply any moneys received in respect of the insurance in so rebuilding or reinstating the Estate" and substitute "and to apply any moneys received in respect of the insurance above provided for in so rebuilding or reinstating the Mansion or garages as far as such insurance moneys shall extend"
92. Mr Patterson's response : not agreed, because the definition of Estate was clear enough

93. Mr Braham's further comments : the existing wording could remain if the Tribunal were content that the word "Estate" covered the Mansion and garages
94. Tribunal's decision : the expression "the Estate" is defined as including "all the land and buildings comprised in the freehold title", and, although the freehold title has not been copied to the Tribunal, the Tribunal is happy to accept Mr Perrins's assurance that the Building and garages are included within the title. Accordingly, the original wording should remain

***Point 17 : clause 4A(e)(ii) ( page 16)***

95. Mr and Mrs Braham's contention : delete the whole paragraph
96. Mr Patterson's response : not agreed. The provision was standard and sensible to provide for the possibility of the company being exposed by a lessee's default
97. Mr Braham's further comments : the original wording was acceptable in principle, but the problem was in determining fault. A lessee should not be at risk of the Company not putting forward a claim simply because the Company wanted to take a certain position
98. Tribunal's decision : the original wording should remain for the reasons advanced by Mr Patterson. Any difficulties with determining fault in a particular case or with a legitimate claim not being put forward in a particular case would be a matter, ultimately, of litigation, rather than of rewording the present clause

***Point 18 : clause 4A(f) ( page 16)***

99. Mr and Mrs Braham's contention : delete the present clause, and substitute "If the rebuilding or reinstatement of the Estate proves impossible or impractical any money received by the Company shall be divided equally between the three Leaseholders and paid to them in full and without deductions within 14 days of receipt". Each leaseholder was paying an equal share of the insurance premiums. The Company had only a nominal interest
100. Mr Patterson's response : not agreed, because the proportions should be according to the respective open market values of the Flats, in accordance with usual clauses in residential leases to that effect
101. In response to questions from the Tribunal Mr Breaks confirmed that the insurance value was

based on the rebuilding cost of the Building, and not on the market values of any of the Flats, and that Mr Breaks had not notified the insurers of any suggested differential value based on the extra cost which Mr and Mrs Breaks had incurred on refurbishment

102. Tribunal's decision : the clause contended for by Mr and Mrs Braham should in principle be substituted for the wording as originally drafted, for the reasons advanced by Mr and Mrs Braham, and also because the present insurance cover is based on reinstatement cost of the Building, and not on the market values of any of the Flats. However, the Tribunal has adjusted the suggested wording to take account of the fact, as the Tribunal finds, that the draft deed of variation does not contain a definition of "Leaseholders", and that the wording as presently drafted, could be interpreted as meaning that the proportions payable to each lessee will vary according to the numbers of lessees at any one time, whereas the intention is to pay one third to each Flat

***Point 19 : clause 3A(c) ( page 18)***

103. Mr and Mrs Braham's contention : insert after "shall have ascertained" the words "checked and certified which shall not be in any event later than four calendar months following each year ended the 29 September"
104. Mr Patterson's response : unnecessary, because the position is covered by clause 4A(h)
105. Mr Perrins's submissions : the new wording is agreed, subject to adding "in accordance with clause 4A(h)" after "certified"
106. Tribunal's decision : the wording proposed by Mr and Mrs Braham should be added, for the reasons advanced by them, although with the additional words suggested by Mr Perrins, which the Tribunal finds to be appropriate to accord with the aim of making the document consistent throughout, and with a slight adjustment of the order of the final words to avoid any confusion

***Point 20 : clause 3A(d) ( page 18)***

107. Mr and Mrs Braham's contention : insert "per annum" after "flat rate of 10%"
108. Mr Patterson's response : agreed
109. Tribunal's decision : the insertion should be made for the reasons advanced by Mr and Mrs

Braham

***Point 21 : clause 3A(d) ( page 18***

110. Mr and Mrs Braham's contention : delete "whether formally demanded or not" and substitute "provided that such sum has been formally demanded in writing by the Company or its agent and"
111. Mr Patterson's response : not agreed because it is a standard provision and each lessee knows what is payable
112. Mr Perrins's submissions : proposed amendment agreed
113. Tribunal's decision : the proposed amendment should be made in principle, for the reasons advanced by Mr and Mrs Braham, but the word "sums" should be used to ensure consistency with the earlier wording in the same clause

***Point 22 : clause 6A(d) ( page 19)***

114. Mr and Mrs Braham's contention : delete the proposed arbitration clause
115. Mr Patterson's response : agreed
116. Tribunal's finding : the Tribunal finds that this is not a matter within the Tribunal's jurisdiction under section 35 of the 1987 Act, in that it concerns the question of dispute resolution, rather than the question whether the lease makes satisfactory provision for the insurance, repairs and maintenance of the Building, as such. However, the Tribunal notes that the parties appear to be agreed that the clause should be deleted, and the Tribunal has deleted it from the draft deed of variation attached to these reasons accordingly

***Point 23 : clause 4 ( page 19)***

117. Mr and Mrs Braham's contention : add a reference to the old Head Lease continuing
118. Mr Patterson's response : not agreed because the Head Lease has already merged in the freehold. If there was anything of relevance then it should be incorporated expressly in the draft



deed of variation

119. Mr Braham said that the only clause in the old head Lease which he wished to bring to the Tribunal's attention as being of current relevance was the user clause at page 107
120. Mr Perrins's submissions : the question of user was already dealt with in paragraph 1 of the third schedule to the Old Lease at page 34, which was a narrower provision than the clause in the old Head Lease at page 107
121. Tribunal's decision : there should be no reference to the old Head Lease, for the reasons advanced by Mr Patterson and Mr Perrins

***Point 24 : second schedule paragraph 5 ( page 21)***

122. Mr and Mrs Braham's contention : delete this paragraph, as the old Head Lease might still have some relevance
123. Mr Patterson's response : not agreed for the same reasons as before
124. Tribunal's decision : the original wording should remain, for the same reasons about the old Head Lease as before

***Point 25 : second schedule paragraph 6 ( page 21)***


125. Mr and Mrs Braham's contention : delete the proposed addition to the user clause, and add extra words to the third schedule
126. Mr Patterson's response : extra words to the third schedule not agreed, but the deletion of paragraph 6 of the second schedule is agreed
127. Mr Perrins's submissions : this is not a matter within the Tribunal's jurisdiction in that it concerns the question of user, rather than the question whether the lease makes satisfactory provision for the insurance, repairs and maintenance of the Building, as such
128. Tribunal's finding : the Tribunal finds that this is not a matter within the Tribunal's jurisdiction under section 35 of the 1987 Act for the reasons advanced by Mr Perrins. However,

the Tribunal notes that the parties appear to be agreed that paragraph 6 of the second schedule should be deleted, and the Tribunal has deleted it from the draft deed of variation attached to these reasons accordingly

### **Summary of the Tribunal's findings**

129. The Tribunal orders that the leases should be varied in accordance with the draft deed of variation, amended as shown in the amended copy of the draft deed of variation attached to these reasons
130. In the version of the draft deed of variation sent to the Tribunal electronically by Mr Perrins after the hearing to enable the Tribunal's amendments to be noted, a new clause 3A(b) had been inserted, which did not appear in the version of the draft deed in the Tribunal's bundle except by way of a deleted marginal note. The Tribunal finds that this clause accordingly does not form part of the application before the Tribunal, and the Tribunal has therefore simply deleted that new clause, without considering its merits. As a consequence of making that deletion, the Tribunal has also made consequential amendments to the remaining paragraphs of clause 3A
131. The Tribunal has not checked whether the version attached to these reasons differs in any other way from the version in the Tribunal's bundle, and the Tribunal's order is subject to the version of the draft deed attached to these reasons being otherwise in the same terms as the version of the draft deed in the Tribunal's bundle

Dated the 10 July 2007



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor

## THE LAND REGISTRY

**Administrative Area** : Bournemouth  
**Freehold Title** : DT257566  
**Leasehold Title** : DT  
**Property** : Flat [ ] Villa Capri 14a Grove Road  
Bournemouth BH1 3DB and garage

Date 2007

Deleted: 2006

In this Deed the following expressions shall have the following meanings:-

"the Demised Premises" means Flat [ ] Villa Capri 14a Grove Road  
Bournemouth and garage number [ ] registered  
at the Land Registry under Title Number DT [ ]  
and includes:

- (a) the window glass and window frames of the  
Flat, including, for the avoidance of doubt, the patio  
doors and the casement door, if any, of the Flat, and  
the door of the garage
- (b) the floors and floor finishes of the Flat but  
not the part of the Main Structure to which they are  
affixed
- (c) the ceilings and ceiling finishes but not the  
part of the Main Structure to which they are affixed
- (d) the internal non-load bearing walls within the  
Flat
- (e) the front door and doorframe but not the  
outer decorative surface

(f) one half severed medially of the party walls where they adjoin the Reserved Property

(g) the plaster finishes of the interior faces of the exterior walls of the Flat

“the Reserved Property” means all those parts of the Estate that have not been demised by the leases of the Flats

“the Company” means Villa Capri (Bournemouth) Limited (Company Number 3394948) whose registered office is situated at 328a Wimborne Road Winton Bournemouth BH9 2HH

“the Registered Proprietor” means [.....] and [.....] of [.....] [.....] (and this expression shall include their successors in title)

“the Lease” means the Lease dated [ ] 1998 made between the Company (1) [ ] [ ](2)

“the Old Lease” means the underlease dated [4 August 1970] referred to in the Lease

“the Lessee” means the Registered Proprietor

“the Freehold Title” means Title Number DT257566

“the Mansion” means the block of three flats numbered 1 to 3 called “Villa Capri” 14a Grove Road Bournemouth

“the Estate”	means all the land and buildings comprised in the Freehold Title
“the Garages”	means the block of three garages situate at the rear of the Estate
“the Garden and Grounds”	means the Estate excluding the Mansion and the Garages but including the paths drives hedges and fences
“Flats”	means the three flats in the Mansion
“Flat”	means any one of the Flats
“Main Structure”	means the roof foundations load bearing walls and the supporting structure to which the floors and ceilings are affixed, <u>and, for the avoidance of doubt, includes the balconies of the Flats and the doors of the garages, but excludes the window glass and window frames of the Flats, the patio doors and the casement doors, if any, of the Flats</u>

**BACKGROUND:**

- (a) At the time of acquisition of the freehold reversion of the leases of the Flats no steps were taken either to assign to the Company the benefit of the agreement with DD Management Company Limited referred to in the Old Lease (“the Maintenance Agreement”) or to create a new scheme of enforceable obligations to replace the same.
- (b) Such steps as have been taken to remedy this defect have been found to be lacking and have not included the owners of Flat 2.

- (c) Accordingly it is agreed that there is currently and prior to this deed no mutually enforceable scheme providing for the proper maintenance repair management and insurance of the Estate
- (d) This deed is based upon the provisions of the Maintenance Agreement but the opportunity has been taken to identify the obligations for repair in relation to Demised Premises and the Mansion to clarify where the obligations fall upon the Company and where they fall upon the Lessee

**OPERATIVE PART:**

1.(a) **THIS DEED is SUPPLEMENTAL TO** the Lease [ (in the case of flats 1 and 3) and revokes the Deed dated [ ] 2002 made between the Company (1) and [ ] (2) ]

1.(b) The freehold reversion of the Lease is vested in the Company

1.(c) The term of years granted by the Lease is vested in the Registered Proprietor

2. The Lease shall henceforth be read and construed subject to the variations set out in the Second Schedule to this deed and as if the following provisions were incorporated therein:-

2.1 At the end of Clause 4 of the Old Lease as Clause 4A:

4A In consideration of and subject to receipt of the payments hereinafter referred to the Company hereby covenants that during the residue of the term created by the Lease:

- (a) to maintain in good and substantial repair and redecorate and renew:-
  - i. the Main Structure boundary walls fences gutters soffits and rainwater pipes of the Reserved Property
  - ii. the gas and

water pipes drains and electric cables and wires and conduits for any other services in and upon the Reserved Property enjoyed or used by the lessees and occupiers of the same in common and

- iii. the entrance halls passages landings staircases and the lift at the Mansion enjoyed or used by the lessees and occupiers of the Mansion in common
- (b) so far as practicable to keep clean and lighted the entrance halls passages landings staircases and other parts of the Reserved Property used by the lessees and occupiers in common and the exterior of the window glass of the Mansion and to keep the Garden and Grounds in good condition and (as to the garden) cultivation
- (c)(i) in 2007 and in every third year thereafter to decorate the exterior of the buildings comprised in the Estate including for the avoidance of doubt the doors of the garages but excluding the window glass and window frames of the Flats, the patio doors and the casement doors, if any, of the Flats in a good and workmanlike manner as the same was last previously decorated or as near thereto as circumstances permit and in particular to paint the exterior parts of the Estate usually painted with two coats at least of the best paint or preservative
- (c)(ii) in 2007 and in every seventh year thereafter or at such other interval as the Company may think proper during the term and during the last year thereof decorate or suitably treat all the inside wood and ironwork of such staircases halls passages and other internal parts (if any) of the Mansion (including the outside surfaces of the exterior doors of all Flats) and every other building and outbuilding on the Estate as are

Deleted: Reserved Property

Deleted: Mansion and the Garages

used in common by lessees of the Flats in common with other lessees or any of them or by the Company and all additions thereto in a good and workmanlike manner as the same was last previously decorated or treated or as near thereto as circumstances permit

- (d) to insure the Estate under a comprehensive blocks of flats policy issued by an insurer of repute with the interest of the Lessee and of his chargee or mortgagee being noted on the policy in an amount equal to the full reinstatement value index linked plus a reasonable percentage for architects and surveyors fees and all other professional persons fees and the cost of site clearance and service charge income for three years against loss or damage by fire storm tempest earthquake lightning explosion riot civil commotion malicious damage impact by vehicles and by aircraft and aerial devices and articles dropped from aircraft and aerial devices flood damage escape of water or oil and bursting and overflowing of water pipes apparatus and tanks theft or attempted theft falling trees and branches and aeriels subsidence heave of site landslip collision terrorism (if available at an economic rate) accidental damage to underground services and such other comprehensive risks as will provide adequate protection from all perils against which prudent property owners would normally insure and to comply with the insurance requirements of the Council of Mortgage Lenders handbook (or any body replacing the same) and likewise to the same standard effect such insurance as will cover contingent liability to any third party (which relationship shall include that of the Company and the owners and occupiers of the Flats inter se) for nuisance

**Deleted:** the Company acting reasonably from time to time decides to insure against

**Deleted:** for which the Company is liable



- negligence breach of statutory duty neglect or default on the part of the Company owner or occupier of any part of the Estate or any of the Flats and Garages or arising out of the occupation or control of any part of the Estate and to produce to the Lessee on demand a copy of the policy or policies of insurance and the receipt for the last premium paid
- (e)(i) as often as any part of the Estate is destroyed or damaged by fire or other peril insured against to rebuild and reinstate the same (unless the policy or policies of insurance shall have been vitiated by any act or default of the Lessee or the owner or occupier of any other Flat) in accordance with the bye laws regulations and planning or development schemes of any competent authority for the time being affecting the same and to apply any monies received in respect of the insurance in so rebuilding or reinstating the Estate
- (e)(ii) In the event of the Estate or any part of the Estate being destroyed or damaged by any of the risks insured against and the insurance money under any policy of insurance effected by the Company being wholly or partly irrecoverable by reason of any act or default of the Lessee or the Lessee's servants agents or invitees then and in every such case the Lessee will forthwith pay the Company the whole or (as the case may require) the irrecoverable proportion of the cost of rebuilding and reinstating the Estate
- (f) if the rebuilding or reinstatement of the Estate proves impossible or impractical the Company shall pay to the Lessee a one third part of any money received without deductions within 14 days of receipt.

**Deleted:** shall be divided between the Company and the Lessee in the proportions which the open market value of their respective interests in the Estate bear to one another such proportions to be determined in the event of dispute by a single arbitrator appointed under the provisions of clause 6A(d) of the Old Lease (as inserted by this Deed) making the appointment at the request of either party

- (g) if and so far as the same shall be assessed to pay all existing and future rates taxes assessments and outgoings now or hereafter imposed upon or payable in respect of the Reserved Property
- (h) to keep proper books of account of all costs charges and expenses incurred by the Company in carrying out its obligations hereunder and to have the same checked (but not audited unless required by law) by a competent accountant and to obtain from such accountant or from a competent managing agent or surveyor such certificates as may from time to time be required by the Company for the purpose of establishing or vouching its expenditure or provisions for its obligations hereunder and the contributions due from the lessees of the Flats
- (i) generally to maintain and superintend the Reserved Property for the mutual benefit convenience and comfort of the owners and occupiers thereof
- (j) provide and arrange for the emptying of receptacles for rubbish for the use of the lessees of the Flats

2.2 At the end of Clause 4 of the Old Lease as Clause 4B:

4B The Company shall be entitled to carry out its obligations by general delegation to professional managing agents surveyors or by independent contractors

2.3 At the end of Clause 3 of the Old Lease as Clause 3A:

3A (a) in consideration of the agreement by the Company hereinbefore contained the Lessee agrees to pay to the Company in advance one third part of the estimated annual cost in the forthcoming year of account of carrying out or providing for such maintenance repairs

insurance and services of the Estate and other matters specified in the First Schedule hereto

(b) on the 25<sup>th</sup> March and 29<sup>th</sup> September in each year the Lessee shall pay to the Company one half part of his estimated liability under paragraph (a) of this clause,

(c) the actual annual cost shall be calculated on the 29<sup>th</sup> September in each year and as soon as the actual annual cost shall have been ascertained checked and certified in accordance with clause 4A(h) which shall not be in any event later than four calendar months after the 29 September in any year the Lessee shall pay to the Company any deficit or be allowed as a credit against future liability for sums due to the Company the balance as the case may be

(d) the Lessee shall pay interest at the rate of 4% above the base rate of HSBC Bank plc (or its successor) but if base rate shall cease to exist then at a flat rate of 10% per annum on any sums due under the foregoing provisions that are not paid within 14 days of the date due, provided that such sums have been formally demanded in writing by the Company or its agent and so long as the Company has complied with its obligations imposed on it by law in relation to any such payment

2.4 At the end of Clause 6 of the Old Lease as Clause 6A

6A(a) Nothing herein contained shall prejudice the right of the Company to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to such part of the Reserved Property by the negligence or other wrongful act of such person

**Deleted:** [(b) for the like consideration the Lessee agrees to pay to the Company in advance one third part of the sum determined by the Company for the reasonable provision for anticipated expenditure by way of contribution to a sinking or reserve fund as the Company in its reasonable discretion allocates to that financial year]

**Deleted:** c)

**Deleted:** .

**Deleted:** s

**Deleted:** [and (b)]

**Deleted:** which shall be equal to the annual costs calculated in accordance with the provisions of clause 3(a) [and (b)] of this clause

**Deleted:** d

**Deleted:** e

**Deleted:** whether formally demanded or not

- (b) The Company shall before commencing any work of repair for which it is liable and for which it requires access to the Lessee's Flat give to the Lessee (except in case of emergency) at least 48 hours previous notice and in carrying out such repairs shall act carefully and reasonably doing as little damage as possible to the Flat and making good all damage done.
- (c) Where the Lessee consists of two or more persons all agreements by and with the Lessee shall be by and with such persons jointly and severally and the masculine gender shall include the feminine and the singular the plural and vice versa
- (d) .
- 3 The Old Lease shall be varied further as specified in the Second Schedule to this Deed
- 4 Save as specified in this Deed the Lease and the Old Lease shall continue in full force and effect in all respects
- 5 The parties request the Registrar to make appropriate entries on their respective title registers to record the provisions of this deed
- 6 IT IS HEREBY AGREED AND DECLARED that this deed shall not be deemed delivered until it is dated and it shall have no force and effect unless and until similar deeds have been executed and delivered by the Company and by the registered proprietors of each of the three Flats

**Deleted:** All disputes or differences which may arise touching the provisions of the Lease the Old Lease or this Deed or the operation or construction of the same or the rights or liabilities of the parties under any one or all of them shall (save as herein may be expressly provided) be referred to arbitration by a single Arbitrator under the provisions of the Arbitration Act 1996 such arbitrator to be appointed by agreement between the Company and the Lessee or in default of agreement by the President for the time being of the Royal Institution of Chartered Surveyors or his depute making the appointment at the request of either party

EXECUTED and DELIVERED as a DEED by the parties to it on the date of this document

**THE FIRST SCHEDULE** before referred to

Summary of items towards which the Lessee will contribute:

1. The actual or reasonably estimated cost to the Company as certified by its competent accountant, managing agent or surveyor of carrying out its obligations referred to in Clause 2.1 hereof
2. The actual or reasonably estimated sums paid or payable by the Company for rates taxes assessments and charges in respect of the Reserved Property other than any rates taxes and charges imposed on the owners and occupiers of the Flats
3. The actual or reasonably estimated reasonable and proper management fees of the Company or its managing agents or any person employed by the Company to supervise and manage the provision of services for the Reserved Property including the preparation of statements or certificates of the expenses of such services and of the insurance effected and the auditing of such expenses

**THE SECOND SCHEDULE before referred to  
Variations of the Lease**

- 1 The proviso at the end of Clause 3(ii) of the Old Lease shall be amended to read:  
"PROVIDED ALWAYS that this clause shall not render the Lessee individually liable as Lessee for matters which are the responsibility of the Company"
- 2 Clause 3(iii) of the Old Lease shall be deleted
- 3 Paragraph 8 of the First Schedule shall be amended to read:  
"All the above easements rights and privileges are subject to and conditional upon the Lessee's contributing and paying as provided in Clause 3A of this lease"

4 In paragraph 3 of the Second Schedule the words "and DD Management Company Limited" shall be deleted and in the last line the words "the said Maintenance Agreement" shall be amended to read "Clauses 4, 4A and 4B of this lease"

[5 All references to the Head Lease as described in the Old Lease shall be deleted]

6 \_\_\_\_\_

**Deleted:** After the words in clause 1 in the Third Schedule "for any illegal or immoral purpose " add the words "or to use the same for the purposes of holiday letting"

**SIGNED by**  
[.....]  
in the presence of:-

**Witness's signature** : .....

**Witness's name (capitals)** : .....

**Witness's address (capitals)** : .....

: .....

: .....

**SIGNED by**  
[.....]  
in the presence of:-

**Witness's signature** : .....

**Witness's name (capitals)** : .....

**Witness's address (capitals)** : .....

: .....

: .....

**THE COMMON SEAL of**  
**VILLA CAPRI (BOURNEMOUTH) LIMITED**  
was hereunto affixed in the presence of:

Director .....

Secretary:.....

DATED

2006

DRAFT DATE : 10 July 2007

- Deleted: 04 July 2007
- Inserted: 04 July 2007
- Deleted: 03 July 2007
- Inserted: 03 July 2007
- Deleted: 05 April 2006
- Inserted: 05 April 2006
- Deleted: 31 March 2006

VILLA CAPRI (BOURNEMOUTH) LIMITED (1)

-and-

..... (2)

**DEED OF VARIATION**

**Relating to Flat [ ] Villa Capri 14a Grove Road  
Bournemouth Dorset and Garage [.....]**

D'Angibau Willmot  
40 Haven Road  
Canford Cliffs  
Poole BH13 7LP

LC/C001085-2/Deed of Variation 24 3 06