

10706



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AU/LVT/2015/0002**

Property : **364-370 Camden Road, London N7
OLG**

Applicant : **364-370 Camden Road Freehold
Limited**

Representative : **Comptons LLP**

Respondent : **Various lessees**

Representative : **None**

Type of Application : **Application for variation of a lease
pursuant to section 37 of the
Landlord and Tenant Act 1987**

Tribunal Members : **Judge S O'Sullivan**

Date of Decision : **23 March 2015**

: :

DECISION

The application

1. This is an application for the variation of leases pursuant to section 37 of the Landlord and Tenant Act 1987 (the "1987 Act"). The Applicant is the owner of the freehold interest in the properties known as 364-370 Camden Road, London N7 OLG (the "Property"). The Property comprises four separate buildings made up as follows;

364 Camden Road – 7 flats
355 Camden Road – 4 flats
368 Camden Road – 4 flats
370 Camden Road – 5 flats

2. Each of the four blocks is registered at HM Land Registry variously under title numbers 261521, 273390 and 260808 and copies of those titles were produced to the tribunal.
3. The tribunal is informed that historically the insurance and service charge expenditure on each building has been apportioned between the leaseholders of each building, by way of example the leaseholders of 364 bearing the cost of replacing the roof of 364 rather than the leaseholders of the Property. However having considered the leases recently the Applicant is informed that there is some ambiguity in this regard and that there is an issue as to whether the costs in relation to any particular building should be apportioned between the leaseholders of the Property as a whole. This is because the definition of "property" contained within the leases is "*all those pieces of parcels of land with the buildings erected thereon and known as 364, 366 and 370 Camden Road, London N7*". A sample lease of Flat 3 366 was provided to the tribunal. Thus as drafted it appears that the definition of "property" refers to all 4 buildings and that each of the leaseholders is therefore responsible for paying an apportionment of the service charge and insurance expenditure as a whole.
4. It is noted that the application is made in respect of 19 of the flats at the Property. The lease in respect of Upper Ground Floor Flat 368 does not form part of this application. As each of the buildings is separate the Applicant does not consider it reasonable for a leaseholder of one building to contribute towards the cost of another.
5. The Applicant has therefore made an application for an order varying the leases to clarify this ambiguity and to expressly provide for each building to be independently managed with the costs of each building being apportioned between the leaseholders of that building. Associated variations are also requested in relation to rights of passage over neighbouring properties.
6. The variations proposed are set out in the draft deed of variation attached to this decision. However the main variation sought is to

amend the definition of property to refer to each individual building separately as appropriate.

7. The Respondents to the application are the 19 long leaseholders of the as set out in Appendix 1 attached to this decision. The landlord is also a party to the application. The Applicant says that 16 parties out of the 20 have consented to the application and 4 neither oppose nor consent to it. Signed consent forms from 15 of the leaseholders were included in the bundle. As a result the Applicant submits that 80% of the parties consent to the application and that the tribunal therefore has authority to vary the leases pursuant to section 37 if 75% consent to it and not more than 10% oppose it.
8. Directions were made dated 20 January 2015 which provided for a copy of the directions to be served on all Respondent leaseholders to the application. At the time of the application it was confirmed that 15 of the 19 leaseholders party to the application had consented to it. It was also confirmed by the Applicant that at that time the remaining 5 had not consented but did not actively oppose the application. The directions provided for any Respondent leaseholder who wished to oppose the application to serve a statement of case by 27 February 2015 and the parties were also given an opportunity to request a hearing should they wish to do so. None of the Respondents has served any statement of objection and the tribunal therefore concludes that the application is unopposed.
9. No application for an oral hearing was received from any of the parties and accordingly the application was determined on the papers. The Applicant provided the tribunal with a bundle of papers for the determination.

The tribunal's decision

10. The tribunal notes the relevant provisions of section 37 of the 1987 Act as follows:

Application by majority of parties for variation of leases.

(1) Subject to the following provisions of this section, an application may be made to the court in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

(2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be

satisfactorily achieved unless all the leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.

(5) Any such application shall only be made if—

(a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.

(6) For the purposes of subsection (5)—

(a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and

(b) the landlord shall also constitute one of the parties concerned.

11. The tribunal was satisfied that it had authority to grant the variations sought given that 80% of the parties had consented and no-one had opposed the application. The tribunal was further satisfied that in accordance with section 37(3) of the 1987 Act the object to be achieved could not be satisfactorily achieved unless all the leases were varied to the same effect. The tribunal was satisfied that it was appropriate to grant the variations as set out in the Draft Deed of Variation attached as Appendix II to this decision. The tribunal notes that 16 of the parties to this application had consented. None of the leaseholders opposed the application.
12. In conclusion the tribunal makes an order in respect of part of the Applicant's application for variation of the leases set out in Appendix I to this decision as per the Draft Deed of Variation attached as Appendix II.

Name: Sonya O'Sullivan

Date: 23 March 2015

LEASE VARIATION DETAILS

| Property | Lease Date | Title | Term | Current Lease terms | Proposed variation |
|--------------------------------------|------------|-----------|----------------------------------|--|---|
| Flat 1B 364 Camden Road | 28.02.2005 | NGL846641 | 125 years from 25 December 2004 | <p>1. FIRST SCHEDULE ALL THOSE pieces of parcels of land with the buildings erected thereon and known as 364, 366, 368 and 370 Camden Road, London N7 as the same are registered at H.M. Land Registry under Title Nos 261521, 269879, 273390 and 260808.</p> <p>2. Second paragraph of the Fourth Schedule of the Lease "2. The free right of passage and running of gas electricity water and soil from and to the demised premises through all cistern tanks sewers drains gutters pipes wires cables ducts and conduits which now or may be at any time hereafter be in or under or upon any part of the property for the service of the demised premises together with all easements rights and privileges proper for repairing maintaining and reinstating the same."</p> <p>3. Clause 2(f): "(f) the Lessee will repair maintain and renew all internal walls and structures separating the demised premises from any other part of the property (which are deemed to be party walls and structures) as party walls and structures."</p> <p>4. The last paragraph of the Third Schedule: "PROVIDED THAT all internal walls and structures separating the demised premises from any other part of the property being party walls and structures and being used repaired and maintained as such and PROVIDED FURTHER that the demised premises shall not include parts of the property forming part or intended to form part of the reserved property or any portions included or intended to be included in the Lease of any adjoining or neighbouring flat or neighbouring building."</p> | <p>1. FIRST SCHEDULE "All that piece or parcel of land with the building erected thereon and known as [364/366/368/370 as appropriate] Camden Road London N7 OLG as registered with the Land Registry under Title Number [as appropriate]"</p> <p>2. Second paragraph of the Fourth Schedule of the Lease "2. The free right of passage and running of gas electricity water and soil from and to the demised premises through all cistern tanks sewers drains gutters pipes wires cables ducts and conduits which now or may be at any time hereafter be in or under or upon any part of the property <u>or neighbouring property</u> for the service of the demised premises together with all easements rights and privileges proper for repairing maintaining and reinstating the same."</p> <p>3. Clause 2(f): "(f) the Lessee will repair maintain and renew all internal walls and structures separating the demised premises from any other part of the property <u>or any neighbouring property (as appropriate)</u> (which are deemed to be party walls and structures) as party walls and structures."</p> <p>4. The last paragraph of the Third Schedule: "PROVIDED THAT all internal walls and structures separating the demised premises from any other part of the property <u>(or from neighbouring property as appropriate)</u> being party walls and structures and being used repaired and maintained as such and PROVIDED FURTHER that the demised premises shall not include parts of the property forming part or intended to form part of the reserved property or any portions included or intended to be included in the Lease of any adjoining or neighbouring flat or neighbouring building as appropriate."</p> |
| Flat 1 364 Camden Road | 05.05.2009 | EGL554994 | 189 years from 25 December 1991 | | |
| Flat 2 364 Camden Road | 05.05.2009 | EGL554979 | 189 years from 25 December 1991 | | |
| Flat 3 364 Camden Road | 29.11.2010 | AGL223019 | 999 years from 25 December 2009 | | |
| Flat 4 364 Camden Road | 14.01.2011 | AGL225950 | 999 years from 29 September 2010 | | |
| Flat 5 364 Camden Road | 29.11.2010 | AGL223020 | 999 years from 25 December 2009 | | |
| Flat A 364 Camden Road | 27.11.2007 | NGL891012 | 189 years from 25 December 1987 | | |
| Flat 2 366 Camden Road | 05.05.2009 | EGL554987 | 189 years from 25 December 1991 | | |
| Flat 3 366 Camden Road | 14.08.1992 | NGL700351 | 99 years from 25 December 1991 | | |
| Flat 9 366 Camden Road | 05.05.2009 | EGL554970 | 189 years from 25 December 1991 | | |
| Basement Flat 366 Camden Road | 28.02.2005 | NGL846989 | 125 years from 25 December 2004 | | |
| Ground Floor Flat 368 Camden Road | 25.03.2007 | NGL885320 | 99 years from 25 March 2007 | | |
| Upper First Floor 368 Camden Road | 28.02.2005 | NGL847482 | 125 years from 25 December 2004 | | |
| Third Floor Flat 368 Camden Road | 14.01.2011 | AGL225978 | 999 years from 29 September 2010 | | |
| Flat A 370 Camden Road | 29.11.2010 | AGL223022 | 999 years from 25 December 2009 | | |
| Flat 1 370 Camden Road | 29.11.2010 | AGL223027 | 999 years from 25 December 2009 | | |
| Flat 6 370 Camden Road | 28.02.2005 | NGL846988 | 125 years from 25 December 2004 | | |
| Flat 7 370 Camden Road | 28.11.2005 | NGL846820 | 125 years from 25 December 2004 | | |
| Flat 8 370 Camden Road | 29.11.2010 | AGL223031 | 999 year from 25 December 2009 | | |

APPENDIX I

Current Lease terms

5. The Fourth paragraph of the Fourth Schedule:

"4. The right of support so far as may be necessary to the demised premises as the same is at present enjoyed from the adjoining flat or flats and any part of the property which may be below or beside the flats and the foundations thereof and the right to the protection and shelter afforded by the roof of the building and structure thereof and the remainder of the property."

6. Paragraph 3(a) of the Fifth Schedule:

"(a) the purpose of executing repairs to any part of the property or cisterns tanks sewers drains gutters pipes wires cables ducts and conduits or other things serving any part of the property or neighbouring property which cannot otherwise be executed and of complying with their respective obligations hereunder or under any covenants relating to any other flat the person executing such rights making good any damage caused by such entry such rights not to be exercised unless reasonable notice has previously been given except in the case of emergency, and"

7. Paragraph 1(a) of the First Part of the Sixth Schedule

"(a) the main structure of the buildings forming part of the property including all foundations roofs exterior walls and all walls dividing one flat from another or from other parts of the property and common halls staircases landing steps passages and other parts and the walls bounding the same (other than any party walls for which the lessee is responsible) and all electrical and other fittings and windows (but not the glass therein) in the buildings forming part of the property (but excluding the windows electrical and other fittings inside any individual flat for which the owner thereof is responsible under any provisions in his Lease) and all doors therein save such doors as give access to the individual flats and all roofs and every part of the buildings forming part of the property above the level of the top floor ceilings."

Proposed variation

5. The Fourth paragraph of the Fourth Schedule:

"4. The right of support so far as may be necessary to the demised premises as the same is at present enjoyed from the adjoining flat or flats and any part of the property or neighbouring property which may be below or beside the flats and the foundations thereof and the right to the protection and shelter afforded by the roof of the building and structure thereof and the remainder of the property."

6. Paragraph 3(a) of the Fifth Schedule:

"(a) the purpose of executing repairs to any part of the property or neighbouring property or cisterns tanks sewers drains gutters pipes wires cables ducts and conduits or other things serving any part of the property or neighbouring property which cannot otherwise be executed and of complying with their respective obligations hereunder or under any covenants relating to any other flat the person executing such rights making good any damage caused by such entry such rights not to be exercised unless reasonable notice has previously been given except in the case of emergency, and"

7. Paragraph 1(a) of the First Part of the Sixth Schedule

"(a) the main structure of the buildings forming part of the property including all foundations roofs exterior walls and all walls dividing one flat from another or from other parts of the property (and/or neighbouring property as appropriate) and common halls staircases landing steps passages and other parts and the walls bounding the same (other than any party walls for which the lessee is responsible) and all electrical and other fittings and windows (but not the glass therein) in the buildings forming part of the property (but excluding the windows electrical and other fittings inside any individual flat for which the owner thereof is responsible under any provisions in his Lease) and all doors therein save such doors as give access to the individual flats and all roofs and every part of the buildings forming part of the property above the level of the top floor ceilings."

8. ADDITIONAL CLAUSE 3(a)(iii):

3(a)(iii) the cost (including any surveyor's, solicitor's and/or agent's fees) of any other steps, service or amenity that the Landlord may in its absolute discretion take or provide for the benefit of the property and/or the tenants and occupiers of the property

APPENDIX II

DATED

DEED OF VARIATION

relating to

[364/366/368/370] CAMDEN ROAD LONDON N7 0LG

between

(1) 364-370 CAMDEN ROAD FREEHOLD LIMITED

and

(2) [TENANT]

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This deed is dated

HM Land Registry

Landlord's title number:

Administrative area:

Tenant's title number:

Administrative area:

PARTIES

- (1) **364-370 CAMDEN ROAD LIMITED** whose registered office is at 1341 High Road Whetstone London N20 9HR (**Landlord**).
- (2) [TENANT] of [Address] (**Tenant**).

BACKGROUND

- (A) This deed is supplemental and collateral to the Lease.
- (B) The Landlord and the Tenant have agreed to vary the Lease on the terms set out in this deed.
- (C) The Landlord is entitled to the immediate reversion to the Lease.
- (D) The residue of the term granted by the Lease is vested in the Tenant.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions in this clause apply in this deed.

Lease: a lease of the Property dated [DATE] and made between (1) Maple Investment Company [and] (2) [Original Tenant].

Property: Flat [] [364/366/348370 (as appropriate)] Camden Road London N7 0LG as more particularly described in and demised by the Lease.

1.2 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Tenant** include a reference to its respective successors in title and assigns.

1.3 A reference to the Lease includes any deed, licence, consent, approval or other instrument supplemental to it.

- 1.4 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.5 A **person** includes a corporate or unincorporated body.
- 1.6 Each of the expressions **landlord covenant** and **tenant covenant** have the meaning given to them by the Landlord and Tenant (Covenants) Act 1995.
- 1.7 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.8 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.9 Clause, Schedule and paragraph headings do not affect the interpretation of this deed.
- 1.10 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this deed, the definitions and interpretations in clause [NUMBER] of the Lease shall apply to this deed.

2. VARIATIONS OF THE LEASE

2.1 Variations made

From and including [the date of this deed], the Lease shall be read and construed as varied by the provisions set out in the Schedule.

2.2 Lease remains in force

The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in this deed had been originally contained in the Lease.

3. TENANT'S COVENANT

The Tenant covenants to observe and perform the tenant's covenants in the Lease as varied by this deed.

4. REGISTRATION OF THIS DEED

4.1 Application for registration

Promptly following the completion of this deed, the Landlord shall apply to register this deed at HM Land Registry against [the Tenant's registered title number [TITLE NUMBER OF LEASE] and the Landlord's registered title number [TITLE NUMBER OF REVERSION].

5. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

6. CONTRACTUAL RIGHTS OF THIRD PARTIES

No term of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party [but this does not affect any right or remedy of a third party which exists or is available apart from under that Act].

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule Variations to the Lease

1. REPLACEMENT OF EXISTING CLAUSES

- 1.1 The First Schedule of the Lease shall be deleted and replaced with the following Schedule:

**“ THE FIRST SCHEDULE above referred to
(The Property)**

All that piece or parcel of land with the building erected thereon and known as [364/366/368/370 as appropriate] Camden Road London N7 OLG as registered with the Land Registry under Title Number [as appropriate]”

- 1.2 The Second paragraph of the Fourth Schedule of the Lease shall be deleted and replaced with the following Paragraph

“2. The free right of passage and running of gas electricity water and soil from and to the demised premises through all cistern tanks sewers drains gutters pipes wires cables ducts and conduits which now or may be at any time hereafter be in or under or upon any part of the property or neighbouring property for the service of the demised premises together with all easements rights and privileges proper for repairing maintaining and reinstating the same.”

- 1.3 Clause 2(f) of the Lease shall be deleted and replaced with the following clause:

“(f) the Lessee will repair maintain and renew all internal walls and structures separating the demised premises from any other part of the property or any neighbouring property (as appropriate) (which are deemed to be party walls and structures) as party walls and structures.”

- 1.4 The last paragraph of the Third Schedule shall be deleted and replaced with the following paragraph:

“PROVIDED THAT all internal walls and structures separating the demised premises from any other part of the property (or from neighbouring property as appropriate)

being party walls and structures and being used repaired and maintained as such and PROVIDED FURTHER that the demised premises shall not include parts of the property forming part or intended to form part of the reserved property or any portions included or intended to be included in the Lease of any adjoining or neighbouring flat or neighbouring building as appropriate.”

- 1.5 The Fourth paragraph of the Fourth Schedule shall be deleted and replaced with the following clause:

“4. The right of support so far as may be necessary to the demised premises as the same is at present enjoyed from the adjoining flat or flats and any part of the property or neighbouring property which may be below or beside the flats and the foundations thereof and the right to the protection and shelter afforded by the roof of the building and structure thereof and the remainder of the property.”

- 1.6 Paragraph 3(a) of the Fifth Schedule shall be deleted and replaced with the following clause:

“(a) the purpose of executing repairs to any part of the property or neighbouring property or cisterns tanks sewers drains gutters pipes wires cables ducts and conduits or other things serving any part of the property or neighbouring property which cannot otherwise be executed and of complying with their respective obligations hereunder or under any covenants relating to any other flat the person executing such rights making good any damage caused by such entry such rights not to be exercised unless reasonable notice has previously been given except in the case of emergency, and”

- 1.7 Paragraph 1(a) of the First Part of the Sixth Schedule shall be deleted and replaced with the following clause:

“(a) the main structure of the buildings forming part of the property including all foundations roofs exterior walls and all walls dividing one flat from another or from other parts of the property (and/or neighbouring property as appropriate) and common halls staircases landing steps passages and other parts and the walls bounding the same (other than any party walls for which the lessee is responsible) and all electrical and other fittings and windows (but not the glass therein) in the buildings forming part of the property (but excluding the windows electrical and other fittings inside any individual flat for which the owner thereof is responsible under any provisions in his Lease) and all doors therein save such doors as give access to the individual flats and all roofs and every part of the buildings forming part of the property above the level of the top floor ceilings.”

2. ADDITION OF NEW CLAUSES

2.1 The following clause shall be added as clause 3(a)(iii):

3(a)(iii) the cost (including any surveyor's, solicitor's and/or agent's fees) of any other steps, service or amenity that the Landlord may in its absolute discretion take or provide for the benefit of the property and/or the tenants and occupiers of the property

EXECUTED as a **DEED** by the said
364-370 CAMDEN ROAD LIMITED
Acting by 2 directors or a director and
its secretary

.....Director

.....Director/Secretary

SIGNED as a **DEED** by the said)
[TENANT])

.....

in the presence of:-)

.

Signature of witness

Name of witness

Address

Occupation