UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Service charges – amendment of leases under S.35 Landlord and Tenant Act 1987 in order to make satisfactory provision with respect to the computation of service charge – lessee purchasing lease of flat in knowledge of the ongoing application to a leasehold valuation tribunal to amend the leases in this manner – amendments introduced fair percentage contributions – whether at a subsequent hearing F-tT wrong to conclude appellant had suffered no relevant loss or disadvantage such that no compensation was payable under S.38(10)

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

BETWEEN:

FRANK PARKINSON **Appellant**

and

KEENEY CONSTRUCTION LIMITED **Respondent**

Re: Flat 9,
Classic Mansions,
Well St,
London
E9 7QH

Determination on Written Representations

There are no cases referred to in this decision

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DECISION

Introduction

1. The appellant appeals, with permission granted by the Upper Tribunal, from a decision of the First-Tier Tribunal Property Chamber (Residential Property) (hereafter "the F-tT") dated 30 May 2014 whereby the F-tT decided that the appellant was not entitled to be paid by the respondent any compensation under section 38(10) of the Landlord and Tenant Act 1987 consequent upon an order previously made by a leasehold valuation tribunal in a decision dated 27 January 2010. By this earlier decision the LVT had varied the provisions for the payment of service charges in the leases of 1-9 Classic Mansions, Well Street, London E9 7QH ("the block"). The appellant is the holder of a long lease of flat 9 in the block.

2. This matter has a lengthy history. For the purpose of the present appeal it is not necessary to set the background out in any great detail. In summary the position is as follows:

(1) Classic Mansions consist of three broadly similar detached blocks each of which comprises nine flats on three upper floors with a number of ground and basement floor commercial units. Originally the freehold reversion to Classic Mansions was owned by a single company. Long leases at low rents were granted in respect of most if not all of the 27 flats. The leases contain service charge provisions.

(2) It appears that the total costs to be shared between the various lessees through the service charge were costs referable to the upkeep of the entirety of Classic Mansions rather than to merely the block in which the relevant flat was situated. However it also appears that the service charge percentage to be paid by a lessee of any particular flat was calculated (anyhow as regards some flats) by reference to the relative rateable value of that flat as compared with the values of either all the other units in the relevant block or all the other residential units in the relevant block (F-tT's decision paragraph 35). Accordingly there was a mismatch between the basis of calculating the total costs and the basis of calculating the relevant percentage share of those costs to be paid by any particular lessee. Separately from that, it became thought that the use of proportions based upon rateable values was inappropriate in a mixed use development because commercial property was more highly rated than residential property.

(3) At some point the freehold reversion to each of the three blocks was sold so that each block came under separate ownership. It is thought that this may have occurred after the grant of the lease of flat 1 in March 1987 and before the grant of the lease of flat 3 in June 1989, because although flat 3 is virtually identical to flat 1 the service charge percentage for flat 3 was 11.31% as compared with 4.34% for flat 1, even though each was stated to be calculated by reference to the rateable value of the flat.

(4) In fact, in apparent recognition of the unsatisfactory nature of the service charge provisions, the service charge contributions were not collected strictly in accordance with the provisions of the leases but were calculated by reference to the block costs rather than the costs in relation to the whole of Classic Mansions.

(5) The respondent acquired the freehold reversion of the block in August 2000. It had difficulty recovering 100% of its costs through the service charge provisions of the residential and commercial leases. Also the block had fallen into a state of considerable disrepair. The respondent however did not remedy the disrepair for which it was responsible under the terms of the residential leases. The F-tT noted that no explanation was offered for this delay and the F-tT concluded that the work was deferred pending the outcome of the present protracted litigation.

(6) In 2008 the respondent made an application to the LVT to vary the leases in accordance with section 35 and following of the Landlord and Tenant Act 1987. The variations sought were to vary the definition of the "Building" so as to refer only to the block rather than to Classic Mansions as a whole and secondly to vary the service charge percentages in the residential leases by substituting percentages calculated by reference to internal floor areas in place of the percentages previously calculated on the basis of relative rateable values. This application came before the LVT for a hearing on 8 and 9 December 2009. The LVT gave its decision dated 27 January 2010 by which it varied the service charge percentages for each of the nine flats as recorded in paragraph 17 of the F-tT's decision. As regards flat 9, which is the appellant's flat with which the present appeal is concerned, the original percentage was 3.40% and the varied percentage was 8.53%.

(7) The LVT in paragraph 30 of its decision dated 27 January 2010 stated:

> "The effect, however, is to increase the residential Lessees' total share of the property's service charges from 46.31% under the present Leases, to a total of 69.49% (including the new contribution from Flat 8). The variation is a material departure from the present Leases – the terms of which the Landlord knew or should have known when he entered into them – to the financial disadvantage of the Lessees taken together, and to all but two of them individually. The Tribunal concludes, in the exercise of its discretion under s.38(10) of the 1987 Act, that compensation should be paid to the Lessees, having regard to their increased share of the cost of the prospective future service charges."

(8) In this decision the LVT gave directions as to how the matter should proceed for the purpose of quantifying the amount of compensation to be paid to the lessees. Unfortunately this matter proceeded to a decision by the LVT taken on paper, and without any representations from the respondent, dated 25 August 2010 whereby the LVT calculated the total compensation payable (i.e. for all the lessees together) at £72,238.80.

(9) The present respondent appealed to the Upper Tribunal against this decision. By a decision dated 11 July 2013 the Upper Tribunal allowed the respondent's appeal on the grounds that there had been a procedural irregularity causing substantial prejudice to the respondent. It was ordered that the question of compensation should be remitted to a fresh decision by the LVT (now the F-tT) which should be the subject of a hearing at which the respondent had the opportunity to appear and call evidence.

(10) The hearing before the F-tT, which led to the decision dated 30 May 2014 which is the subject of the present appeal, was the hearing consequent upon this decision of the Upper Tribunal.

3. At the hearing before the F-tT the respondent was represented by counsel. The lessees (of whom the appellant is one) were represented by Mr Maunder Taylor, chartered surveyor. Expert evidence was called by both parties.

4. The F-tT considered the effect of paragraph 30 of the LVT's decision of 27 January 2010. The F-tT concluded that this paragraph could not be taken as a binding conclusion that it must award compensation to the lessees collectively. The F-tT concluded that as regards the variation made to the leases whereby the definition of the "Building" was varied so that it included only the block rather than Classic Mansions as a whole, this was a variation which in theory (albeit not in practice) worked to the advantage of lessees. However the F-tT concluded that the respondent as lessor was not entitled to be paid any compensation by the lessees in respect of this variation. The F-tT concluded that it must consider the payment of compensation under section 38(10) to the lessees individually in respect of the other variation which was made, namely the variation in the percentage each lessee was required to pay towards the total of the service charges.

5. The appellant does not seek to challenge (and has not been given any permission to challenge) any of the aforesaid findings by the F-tT.

6. The F-tT examined the bases for the calculation of compensation as advanced in the evidence by Mr Shapiro on behalf of the respondent and Mr Maunder Taylor on the half of the lessees. In paragraph 42 the F-tT stated:

> "Section 38(10) confers a wide discretion. The section envisages a three stage processes (sic). We must first identify any loss or disadvantage that may be suffered by any of the respondents as a result of the variation. We must then decide if we should exercise discretion and award compensation. Finally if we do decide to award compensation, we must quantify it. That is the approach that we have adopted in the following paragraphs."

7. The FTT then went on to consider what if any compensation should be paid to the lessees.

8. As regards the lessees of flats 3 and 4 the F-tT pointed out that their percentages were reduced so they had suffered no loss or disadvantage and could not be entitled to any compensation.

9. Before turning to the F-tT's decision in relation to flat 9, which was dealt with together with flats 5, 7 and 8, it is useful to note how the F-tT dealt with the compensation payable to the lessees of flats 1, 2 and 6 who had all purchased their flats well before the application to the LVT (namely in 1999, 2004 and 1988 respectively). The F-tT pointed out that the upward variation in their percentages would result in an increase in their service charge liability. The F-tT then continued as follows in paragraphs 46 to 51:

> "46. We deal firstly with the ongoing annual service charge, which Mr Maunder Taylor put at £12.500 per annum for the Block although that estimate was disputed by Mr Shapiro. The respondents' increased liability for that service charge has to be seen in the context of the second variation. It is apparent that the tribunal considered that the apportionment of the

service charge costs on the basis of relative rateable values placed an unfair burden on the applicant who it seems was either directly or indirectly responsible for the service charge contributions due from the ground and basement floor commercial units. That is no doubt because under the old rating system commercial property was relatively more highly rated than residential property. The tribunal corrected that unfairness by reallocating the service charge percentages on the basis of relative internal floor areas. Thus it is clear that prior to the variation these respondents had paid too little whilst after the variation they would pay a fair share. The advantage that they enjoyed prior to the variation fell to be set off against any increased service charges that would be paid in the future. Consequently taken over a period of time they have not suffered any loss or disadvantage and it would not be appropriate to award any compensation in respect of their increased share of the ongoing annual service charge cost.

47. Different considerations however apply in respect of the refurbishment cost because it is not an ongoing liability and is only paid once. If the applicant had maintained the Block in accordance with its repairing obligations the refurbishment works would have been completed long before the leases were varied and these three respondents would have paid a lower share of the cost. The higher share of the cost that they would now have to pay was a direct consequence of the variation. These three respondents had therefore suffered a loss or disadvantage as a result of the variation. Furthermore their loss was quantifiable and they were entitled to be compensated for it. We therefore consider it reasonable and appropriate to exercise our discretion and award compensation to these three respondents.

48. The amount of compensation is their increased share of the refurbishment cost resulting from the variation. Mr Maunder Taylor estimated the cost of the proposed refurbishment work at £176,009 whilst Mr Shapiro estimated it at £118,141 plus VAT, totalling £141,769. We prefer Mr Shapiro's estimate of the refurbishment cost because it results from a competitive tender and is supported by an independent tender analysis included in the hearing bundle. Consequently we adopt Mr Shapiro's estimate of £141,769 for the cost of the refurbishment works.

49. Dr Brooke is the lessee of flat 1. As a result of the variation her share of the estimated cost will increase by 5.5% (9.84%-4.34%). We therefore order the applicant to pay her £7,797.

50. Holdmanor Ltd is the lessee of flat 2. As a result of the variation its share of the estimated cost will increase by 3.2% (sic) (7.32%-4%). We therefore order the applicant to pay it £4,707.

51. Twillam Ltd is the lessee of flat 6. As a result of the variation its share of the estimated cost will increase by 3.22% (7.33% - 4.11%). We therefore order the applicant to pay it £4,565."

10. Accordingly the lessees of flats 1, 2 and 6 were not awarded compensation to reflect the fact that for the future they would have to contribute a higher percentage (which reflected a fair share)

towards the cost of servicing the block as regards future yearly costs. What they were however compensated for was this, namely that they had been lessees in the block for a substantial period, but the respondent had wrongly failed to carry out the necessary major repairs to the block in previous years. If these major works had been done in previous years then they would have been done at a time when these lessees' service charge percentages were at the original lower figures. However there was now an accrued liability for major refurbishment works totalling £141,769 towards which these lessees would now have to contribute at the new higher percentage rates. It was in respect of this loss or disadvantage that the F-tT in its discretion considered it fit to make an order for payment of compensation.

11. As regards flats 5, 7, 8 and 9 the F-tT dealt with the claim for compensation in paragraph 44 of its decision in the following terms:

> "We deal next with the lessees of flats, 5, 7, 8 and 9. All four lessees purchased their flats after both the application to the tribunal in August 2008 and after the hearing on 9 and 10 December 2009. The lessee of flat 9 purchased his flat 6 days before the tribunal issued its decision whilst the lessees of flats 5,7 and 8 purchased their flats well after the decision was issued. None of them either submitted a witness statement or gave oral evidence identifying any loss or disadvantage that they suffered as a result of the variation. Mr Parkinson (the lessee of flat 9) must have been aware that his service charges liability might be increased whilst the other three lessees must have been aware of the decision of 27 January 2010 that increased their service charge liabilities. Mr Maunder Taylor's suggestion that they might have paid higher prices for their flats to reflect the possibility of an award is unsupported by any evidence and is fanciful. No rational buyer of a flat would agree to pay a higher price relying on the hazard of an uncertain and potentially costly compensation claim. In short these four lessees bought their flats in full knowledge that they might have to pay increased service charge contributions and in the absence of any evidence to the contrary we are satisfied that none of them suffered a loss or disadvantage as a result of the variation. Indeed the prices that they paid for the flats would have reflected the disrepair of the Block and would have been discounted accordingly."

12. The appellant, who is the lessee of flat 9, sought permission to appeal against this refusal of any compensation so far as he was concerned. The F-tT refused permission to appeal. However the Upper Tribunal granted permission to appeal and made, inter alia, the following observations:

> "2. The First-tier Tribunal refused the applicant compensation on the basis that he knew at the time he contracted to purchase his flat, that Keeney Construction Ltd had applied for a variation of the service charge proportions payable under the leases of all flats in the building, and that he had therefore suffered no loss for which he was entitled to compensation. It is arguable that the applicant's state of knowledge was irrelevant to the determination of compensation.
>
> 3. The applicant has suggested that his son was prevented from making submissions on his behalf at the hearing but, for the reasons explained by the First-tier Tribunal when it refused permission to appeal, this suggestion appears misconceived. The applicant was represented by Mr Maunder-Taylor at the hearing and the First-tier Tribunal was entitled to refuse to permit a second representative to make submissions. Nonetheless, if on considering the

appeal this Tribunal is satisfied that the approach taken by the First-tier Tribunal was wrong, the applicant will be entitled to make such submissions and give such further relevant evidence as he wishes.

4. The appeal will be dealt with by the Tribunal as a review with a view to rehearing under its standard procedure."

13. At one stage it was envisaged that this matter would come before the Upper Tribunal for an oral hearing. However in due course the respondent indicated that it did not wish to participate in the appeal (although it said that it would wish to be an observer at any oral hearing) and the appellant made clear that he would be content for the matter to be decided upon the written representations. The Tribunal notified both parties that the matter would be determined without an oral hearing upon the written representation procedure. There has been no objection to that course by either party.

The appellant's submissions

14. In his e-mail dated 13 July 2015, in which he agreed to the matter being determined upon written representations and without a hearing, the appellant summarised the details of his case which he said:

> "…… boil down to a simple chronology demonstrating that I could not have anticipated that the award of compensation made 9 months after I purchased the flat would be revoked several months later still."

15. The appellant developed his arguments further in a 41 page bundle dated 21 April 2015 submitted to the Tribunal, which helpfully included various formal documents including the F-tT's decision which is under appeal. In the course of this documentation the appellant advanced the following points (page references are references to the pages in this bundle):

> (1) He contended that the F-tT had failed to understand the timeline associated with his purchase of flat 9 and that the result of this misunderstanding was an inaccurate and presumptive judgement of his position with consequent financial loss. He also said that he was badly represented before the F-tT, that the advocate for him (and the other lessees) had been forbidden to present additional evidence and that he wanted to be sure his circumstances were fully understood (page 1).
>
> (2) He contended that the F-tT was working to the wrong dates. He accepted knowledge of increased service charges but he claimed that compensation had been granted when he signed a purchase contract and that nine months later that compensation was quantified (as a global figure for all the lessees together) by the F-tT at £72,238.80. He contended therefore that he could not have had prior knowledge that this process (regarding compensation) was at risk when he purchased the property and that had he had that knowledge he would not have paid the same price. He objected to the F-tT's reference to "risk" and he contended that the documents clearly stated that the only outstanding issue was the amount of compensation (clarified nine months after purchase) not the actuality of the compensation (pages 2-3).

(3) He complained that the F-tT declined his son permission to speak at the hearing; that he was not advised that only one representative on his behalf could be heard; and that if he had been so advised he would have removed the instructions from Mr Maunder Taylor so that the F-tT could receive the correct evidence and information (page 3).

(4) He included (page 3) a passage for the purposes of summary and clarification as follows:

> "When I bought flat 9 I was aware of the long running dispute but that compensation had been granted in principle.
>
> I would not have proceeded at the same price had I known that the LVT would first define then revoke the said compensation.
>
> The 9 month gap between purchase and definition of compensation (August 2010) removes any reason for me to have knowledge that the situation was still subject to risk.
>
> The Tribunal has admitted using incorrect information but has declined to correct this matter, raising the question of injustice."

(5) As regards the evidence which the appellant would have wished to place before the F-tT and which he contends he was wrongly prevented from presenting, this is summarised in his application to the Upper Tribunal for permission to appeal (page 31). In particular he drew attention to the importance of his particular details and evidence of the critical timeline in relation to the purchase of his flat. He stated that the F-tT did not assess his case using the correct purchase information and it made assumptions and presumptions which could not be substantiated.

(6) The facts regarding his purchase which the appellant contended the F-tT should have been aware of and should have taken into account are set out on pages 6-7 (duplicated at pages 33-34, after which are to be found copies of the documents referred to therein) in the following terms:

> "The grounds upon which I support this claim are as follows:
>
> 1. My legal contract to purchase was dated 18/12/09 not 5/01/10 (see enclosed). Furthermore I had been negotiating to buy since August 2009 (see letter from Dr Ward, enclosed).
>
> 2. The application statement of claim dated 17/02/10 clearly states: "It is, therefore, submitted there has already been a decision in this matter that in principle the protection **will** be granted and the issue now to be decided is the amount of compensation not the fact of compensation in principle."
>
> 3. Compensation was indeed granted in the 25/08/10 in the sum of £72,238.80 bearing this in mind, how could I have known in December 2009 that Compensation would not or may not be granted? If as was understood, the service charge was increased.

4. I have suffered loss and damage as a result, unlike your further presumption, in the form of legal fees and eventually when any work is undertaken by payment of vastly increased restoration costs as a result of persistent neglect by the freeholder. This is in addition to the inflated annual service charge which is proposed to increase by more than its original value.

5. Also mentioned is that none of the residents including me submitted a witness statement or gave evidence. I was not made aware that this would be required either by the Property Chamber, London Residential Property, First-tier Tribunal, Bruce Maunder-Taylor, the freeholder or his agents. Indeed I have had no direct communication on this matter with the freeholder (despite several letters), nor the courtesy of a letter explaining his need for more of my money, at this junction it may be worth remembering that Bruce Maunder-Taylor was representing all the residents and I had no reason to suspect that my own individual submission of evidence of loss was required. However, if that was the case, as the decision implies, why then were the residents not notified to that effect by the tribunal? Be that as it may I was represented by my son Adam Parkinson who was accompanied by other residents at the 7th May 2014 tribunal hearing. My son was briefed to make oral representations, but both he and his co-applicants were forbidden to speak and given no opportunity to address the Tribunal. Please rescind this astonishing misrepresentation from the statement.

6. What decision was issued on Christmas Eve 2009, that was not overridden by the decision in August 2010?"

The position of the respondent

16. The respondent has indicated that it does not wish to participate in the present appeal. The respondent has not made any representations in relation thereto. That however does not, of course, mean that the appellant's appeal must be allowed. The Upper Tribunal can only allow the appellant's appeal if it concludes that the F-tT's decision was wrong.

Discussion

17. The F-tT identified a three stage process (paragraph 42 of its decision) namely first to decide whether any lessee has suffered any loss or disadvantage, secondly to decide whether the F-tT should exercise its discretion to award compensation, and thirdly (if it decides to do so) to quantify that compensation. So far as concerns the appellant, whose case was analysed in paragraph 44 of decision, the F-tT was satisfied that the appellant did not suffer any loss or disadvantage as a result of the variation. In other words the appellant lost at the first stage of the three stage process.

18. The F-tT rejected the argument that section 38(10) should be applied so as to put any claimant for compensation into the same position as that claimant would have been in if the financial contributions toward service charge made by that claimant under the lease remained in the original unamended percentage. This argument was analysed in paragraph 41 of the F-tT's decision. The F-tT rightly observed that, having provided a mechanism in the 1987 Act to amend leases where the lease fails to make satisfactory provision in respect of certain matters, it seems unlikely that Parliament would have intended that this cure would be effectively nullified by the award of compensation. A pertinent example was given by the F-tT, namely a case where the lease needed to be amended because the landlord was entitled to recover more than 100% of the service costs. It would indeed be surprising if the landlord in such circumstances was entitled to say that the appropriate amendment (whereby recovery was limited to 100% of the service costs) gave rise to a relevant loss or disadvantage within section 38(10) for which the landlord could require compensation from the lessees to make good the loss of the yearly surplus which the landlord had hitherto been inappropriately receiving.

19. There is an advantage not only to a lessor but also to lessees that the leases under which flats are held should be well drafted and should, in particular, make satisfactory provisions with respect to the payment of service charge. Where the existing leases of the flats in a building do not make satisfactory provisions in this regard, then an amendment to secure that satisfactory provisions are made (such that each lessee pays a fair share of the relevant expenditure) is not an amendment which necessarily brings loss or disadvantage to a lessee even though that lessee may be paying a higher percentage of the service costs than previously. The F-tT was entitled to conclude that, as regards the lessees who were awarded some compensation (namely flats 1, 2 and 6), these lessees should not recover compensation merely because of the higher percentage of the normal yearly expenditure which they would in future have to pay (see paragraph 46 of the decision).

20. In theory it would have been advantageous to the appellant to hold flat 9 under a long lease which contained satisfactory provisions with regard to the computation of service charge (so as to enable the landlord, without trouble or delay, to collect appropriate sums by way of service charge from all the lessees so as to pay the service costs) but at the same time to have to pay only the original smaller percentage rather than the larger amended percentage of the service costs. However that theoretical advantageous position was a position that would never have been open to the appellant to achieve, because it involves embracing the amended terms (for the purpose of enjoying the benefits of holding his flat on a properly drafted lease which makes satisfactory provision for the computation of service charge) at the same time as embracing the unamended terms (for the purpose of reducing his service charge payments).

21. The appellant complained that the F-tT misunderstood the date upon which he exchanged contracts to purchase flat 9 namely he did so on 18 December 2009 not "6 days before the tribunal issued its decision" as recorded by the F-tT -- this would have put the date of exchange of contracts at 21 January 2010. However I do not see how this mistake of fact makes any difference to the analysis of the F-tT in paragraph 44 of the decision. The F-tT concluded that the appellant must have been aware, when he exchanged contracts on his purchase of the lease of flat 9, that the service charge liability (i.e. the relevant percentage) might be increased. There is nothing that the appellant has placed before the Upper Tribunal to suggest that this conclusion by the F-tT was wrong. Indeed the appellant accepts that when he bought the flat there was a long-running dispute. Thus there was

no evidence before the F-tT (and no suggestion is made by the appellant to the Upper Tribunal) that the appellant was unaware when he exchanged contracts that there was an ongoing case before the leasehold valuation tribunal whereby the lessor was seeking a variation to the service charge percentages. Indeed from the documentation now presented by the appellant to the Upper Tribunal, including in particular the letter dated 28 August 2009 at pages 37-38 of the appellant's bundle, it appears that the appellant not only knew of the existence of this dispute but also knew a considerable amount regarding the details of the dispute and knew that there was an application that the percentage relevant to flat 9 should increase from 3.4% to 8.53%. However whether or not the appellant knew all of the facts in this letter prior to his exchanging contracts, he clearly was on notice that there was the ongoing case before the LVT and that the percentage relevant to flat 9 might well be increased pursuant to the 1987 Act.

22. As of the date that the appellant exchanged contracts, namely 18 December 2009, there was no finding of any tribunal that the lessee of flat 9 would be entitled to compensation under section 38(10) let alone any quantification of such compensation. All the appellant would have known, if properly advised upon the point, is that under the provisions of the legislation the lessees (including the appellant) could seek an order for compensation under that section. Whether such an order was made would depend upon any future decision of the tribunal based upon the terms of the legislation and the evidence before it. There was no guarantee available to the appellant when he exchanged contracts that he would definitely obtain some compensation with the only outstanding question being how much. The reference by the appellant to some "statement of claim" dated 17 February 2010 (see page 33 of the appellant's bundle) does not alter that position.

23. The appellant in his appeal documentation says (page 3 of his bundle) that he would not have proceeded at the same price had he known that the F-tT "would first define then revoke the said compensation". Mr Maunder Taylor on the appellant's behalf argued before the F-tT that the appellant may have paid a higher price for his flat in order to reflect the possibility of an award of compensation. While the appellant in his appeal documentation repeats this assertion he has not produced any material to indicate that, if he had tried to negotiate a lower price because of some perceived difficulty regarding compensation, he would have succeeded in doing so. Accordingly even if (as to which I make no finding) there was some procedural misunderstanding before the F-tT such that the appellant was prevented from putting evidence before the F-tT, the appellant has had the opportunity in his documentation to the Upper Tribunal on the present appeal to make reference to such evidence. There is nothing that has been placed before me to indicate that the F-tT was wrong in its conclusion in paragraph 44 when it stated:

> "Mr Maunder Taylor's suggestion that they might have paid higher prices for their flats to reflect the possibility of an award is unsupported by any evidence and is fanciful. No rational buyer of a flat would agree to pay a higher price relying on the hazard of an uncertain and potentially costly compensation claim."

24. It is true that major works are needed to the block and that under the new percentages the appellant will be required to pay a larger proportion of the substantial costs than would have been the case if the lease had not been amended. However the appellant purchased a flat knowing of the problems regarding the service charge, knowing that the percentage attributable to flat 9 might be increased, knowing of the condition of the block, and knowing that he would (if the amendments

were made to the lease) be required to contribute to the costs of major works in accordance with the new higher percentage. The F-tT was entitled to conclude (in paragraph 44) that:

> "Indeed the prices that they paid for their flats would have reflected the disrepair of the Block and would have been discounted accordingly."

I would only add that if the appellant did not discount the price paid for his flat to reflect the state of disrepair of the block and his prospective contributions (under potentially amended provisions regarding percentages) towards the costs of making this disrepair good, then that is a decision which he took voluntarily and it is that decision which is the cause of any loss or disadvantage to him. The additional cost to him of these works under the amended percentage (as opposed to the original lower percentage) is not a loss or disadvantage which has been caused to him by reason of the variation of service charge percentage in the lease.

Conclusion

25. The appellant's appeal is dismissed.

Dated: 16 November 2015

His Honour Judge Huskinson