

Capitol Park Leeds Plc v Global Radio Services Ltd [2020] EWHC 2750 (Ch)

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Facts

The defendant (G) was the current tenant under a lease that ran for 24 years from 12 November 2001 (having taken an assignment of the lease in June 2014). It had an option to break the lease on 12 November 2017 on condition (amongst other things) that it delivered vacant possession of the property to the landlord (C). The 'Premises' were defined in the lease as including:

"all fixtures and fittings at the Premises whenever fixed, except those which are generally regarded as tenant's or trade fixtures and fittings, and all additions and improvements made to the Premises..."

Having exercised its break option G started dilapidations work and stripped out significant elements of the base build and landlord's fixtures in the property (including radiators, lighting, pipework, ceiling grids and tiles and floor finishes). It stopped work in the hope of negotiating a settlement and surrender with C and when the parties failed to reach an agreement, G returned the keys to C and left its work unfinished at the break date.

Issue

Had G delivered vacant possession of the property on the break date (as required by the terms of the break option)?

Decision

The expanded definition of 'Premises' in the lease ensured that a tenant exercising its break option could not do so by handing back an empty shell of a building which was dysfunctional and unoccupiable (which was exactly what G had done). G purported to give back to C considerably less than the 'Premises' and accordingly had not given vacant possession.

Points to note/consider

1. This case is yet another example (if one were needed) of how strictly courts interpret conditions attached to the exercise of a break option and how a failure to comply with those conditions will result in a tenant losing its right to terminate a lease.

It shows how important it is for a tenant to try to resist a break condition requiring the delivery of vacant possession on the break date. Instead, a tenant might seek to adopt the position contained in the recently updated Code for Leasing Business Premises 2020. This suggests that a tenant's break option should be conditional only on the tenant paying all basic rent payable on any date before the break date, giving up occupation and leaving behind no subtenants or other occupiers (leaving disputes about the state of the property or what has been left behind or removed to be settled at a later date).

2. Case law has established that a tenant will not be deemed to have handed property back with vacant possession where the physical condition of the property is such that there is a substantial impediment to the landlord's use of it (or of a substantial part of it). This case though is a novel application of that principle since, up until now, all the cases have concerned situations where tenants have failed to remove items from property (whereas this case turned on whether the tenant had removed too much from a property).
3. The expanded definition of 'Premises' used in this case is very common in leases. Tenants who find themselves in a similar position to G will need to start their preparations for exercising a break option as early as possible as they will need to understand exactly what they will be expected to hand back at the break date. In particular, they will need to identify all additions and improvements which have been carried out since the grant of the lease (except tenant's fixtures) to ensure that they are all in place at the break date.

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