Browne Jacobson

Monosolar IQ Ltd v Woden Park Ltd [2021] EWCA Civ 961

The court comes to a tenant's aid to correct an error in the drafting of an index-linked rent review clause.

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Facts

The tenant (M) held a lease of land for 25 years to develop a solar energy farm at an initial rent of £15,000 per annum. The lease had a tenant's break right at any time on giving six months' prior notice.

The rent payable under the lease was subject to annual reviews to reflect increases in the Retail Prices Index (RPI). The relevant clause provided that the revised rent would be calculated according to the following formula:

Rent payable prior to the Review Date x (Revised Index Figure (RIF) / Base Index Figure (BIF))

BIF was the RPI for the month two months before the start of the lease term and RIF was the RPI for the month two months before the relevant review date.

Read literally, the way the indexation clause was drafted meant that, on the first anniversary of the lease, the rent was to be increased by the RPI increase over the first year of the term. However, on the second anniversary, the revised rent was to be increased again by the aggregate RPI increase over the first and second years of the term and, on the third anniversary, that further revised rent was to be further increased by the aggregate RPI increase over the first, second and third years of the term - and so on. Applying this cumulative formula, one set of figures put forward by M suggested that the rent could escalate to more than £76m per annum by year 25 of the term (as opposed to around £30,000 with non-cumulative RPI increases).

Issues

1. Was it clear that the indexation clause in the lease was a mistake?

2. If so, was it clear what the indexation clause in the lease should have said?

Decision

1. Whilst the drafting here was clear and unambiguous, it was also clear that a mistake had been made. This was not just a case of a rent review clause that was unduly favourable to one party or imprudent for the other party to enter into. Instead, it was a clear example of a clause which, read literally, would lead to arbitrary and irrational results in circumstances where it was perfectly possible for the concepts employed (the starting or passing rent, changes in the index etc.) to be employed in a wholly orthodox and rational way.

2. The landlord argued that it was not clear what the clause should have said as it was possible that the parties intended an upwards only rent review.

However, the Court of Appeal rejected this argument on the basis that including provision for an upwards only rent review would have nothing to do with correcting the mistake; it would be including a new provision and there was no basis for supposing that the parties intended to include such a provision.

As a result, the Court of Appeal saw no reason to overturn the decision of the original trial judge that the mistake could be corrected by reading BIF to be the RPI for the month two months before the last review date.

Points to note/consider

1. A court can correct a mistake in a contract where there is a clear mistake on the face of the document and it is clear what correction ought to be made to cure the mistake. Whilst a court cannot alter an unambiguous provision in a contract in pursuit of commercial common sense (e.g. just because one party has agreed to something unwise, imprudent or unreasonable or has agreed to pay too high a price for something), a court may correct drafting if there is a clear mistake which results in an irrational or absurd outcome that the parties cannot have intended.

2. Despite the outcome here, this case is still a reminder of how careful you need to be where a lease (or indeed any commercial contract) contains a mathematical formula for calculating payments and costs. It is a sensible precaution for such a formula to be double-checked by a colleague to ensure that it operates as the parties intended. Where the formula is particularly complex, worked examples within the body of the document should also be considered.

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