

Bella Italia Restaurants Ltd v Stane Park Ltd and others [2019] EWHC 2747 (Ch)

The obligation in an agreement for lease to complete the lease was not personal to the original landlord.

06 January 2020

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Facts

An agreement for lease was entered into between the freehold owners (the Trustees) and the tenant (B) of premises under construction. During the construction process, the Trustees sold the freehold to a buyer (R).

Clause 15.1 of the agreement for lease stated that:

"In consideration of the Tenant's obligations under this Agreement, the Landlord shall (at the direction of the Developer) grant to the Tenant and the Tenant shall accept from the Landlord the Lease on the terms set out in this Agreement."

Following completion of the building work, B refused to complete a lease directly with R, arguing that the agreement for lease had been entered into with the Trustees and that the provisions of clause 15.1 were personal to the Trustees. B purported to terminate the agreement for lease with the Trustees because of their failure to complete directly with B.

Issue

Were the provisions of clause 15.1 personal to the Trustees or were the Trustees entitled to perform their obligations under clause 15.1 by procuring the grant of the lease by R?

Decision

B was liable to complete the lease with R.

The agreement for lease did not say expressly that the parties included their successors in title (unlike the draft lease attached to the agreement for lease) because a large number of its provisions were expressed to be personal to one or other of the parties and clause 15.1 was not one of them. The only sensible interpretation therefore was that clause 15.1 was not intended to create a personal obligation (after all, if every obligation in the agreement for lease was intended to be personal, the specific clauses containing personal obligations would be redundant).

This conclusion was reinforced by clause 15.2 (which provided that B could not require the landlord to grant the lease to anyone but B) and by clause 15.3 (which prevented B from assigning the benefit of the agreement). Similar provisions had not been included in respect of the Trustees' obligations and there must have been a reason for that different treatment.

Point to note/consider

This case shows that if obligations in an agreement for lease are intended to be personal, it is important to say so expressly. Given the importance of the tenant's covenant strength, similar provisions to clauses 15.2 and 15.3 are very common in agreements for leases in

relation to tenants. However, they are rare in relation to landlords, but should perhaps at least be considered by a tenant where the landlord's identity is important to the tenant.

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