

Great Dunmow Estates Ltd v Crest Nicholson Operations Ltd and others [2019] EWCA Civ 1683

An expert appointed to determine market value did not have jurisdiction to determine the correct valuation date under an agreement.

03 January 2020

An expert appointed to determine market value did not have jurisdiction to determine the correct valuation date under an agreement.

Facts

A buyer entered into an agreement (the Contract) to buy land from the seller. Completion of the sale and purchase was conditional on the buyer obtaining a satisfactory planning permission for the land. The Contract provided that if the parties could not agree an 'Assumed Value' for the land (for the purpose of fixing the purchase price for the land), the Assumed Value was to be determined by a valuer acting as an expert.

The Contract provided that it could:

"only be varied or modified in writing by letter or memorandum signed by both the Parties or their solicitors specifically referring to this clause 30 and stating that this Agreement is varied in the manner specified..."

In a Statement of Agreed Facts presented to the expert, the parties' valuers agreed that the relevant valuation date under the Contract for fixing the Assumed Value was the date that the expert issued his determination.

The expert took his own legal advice from a QC on various assumptions to be made under the Contract as part of the valuation process. Although not part of his instructions, that QC gave his opinion that the relevant valuation date under the Contract was actually the date when a satisfactory planning permission became immune from legal challenge (the Challenge Expiry Date).

Issues

1. Were the parties bound by the agreement reached between them as to the correct valuation date in the Statement of Agreed Facts?
2. If not, did the expert have jurisdiction to determine himself the correct valuation date given that this was a question of law (not a question of value)?

Decision

1. The parties were not bound by the agreement reached between them in the Statement of Agreed Facts because that agreement did not comply with the provisions of the Contract (set out above) dealing with how the Contract could be varied or modified.
2. The expert did not have power to determine himself the correct valuation date since the task of the valuer (as set by the express terms of the Contract) was to ascertain the assumed value of the land at the correct date (although this did not ultimately affect the outcome of the case since the Court of Appeal agreed with the trial judge's interpretation of the Contract that the correct valuation date was indeed the Challenge Expiry Date).

Points to note/consider

1. In the case of *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2018] UKSC 24, the Supreme Court decided that there was no reason why parties to a contract could not bind themselves to specified formalities for varying that contract and that any purported variation that did not comply with those formalities would be invalid. Applying that ratio to this case, the parties' agreement as to the valuation date in the Statement of Agreed Facts was not an effective variation of the Contract.

This aspect of the case is a reminder to check what an agreement says about the formalities for varying that agreement and to ensure that any proposed variation of the agreement fully complies with those formalities.

2. Generally an expert's determination pursuant to a disputes resolution clause in an agreement will be binding on the parties. An expert brings their own expertise to an issue and reaches a decision based on their own conclusions and the parties agree to be bound by that decision, as long as the expert has done the job they were instructed to do.

However, in this case, the expert had not done the job he was instructed to do. He was required to decide upon value and, in arriving at that value, it was not part of his job to interpret the Contract (a matter of law which should be left to the jurisdiction of the courts).

Contact



David Harris

Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

Related expertise

Sectors

Government