Browne Jacobson

S Franses Ltd v The Cavendish Hotel (London) Ltd [2018] UKSC 62

A landlord who would only carry out works if its tenant did not leave voluntarily could not rely on ground (f) of section 30(1) of the Landlord and Tenant Act 1954 to defeat the tenant's application for a new lease.

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Facts

The tenant carried on a business specialising in antique tapestries and textile art on the ground floor and basement of the Cavendish Hotel (in the heart of a district well known for its art galleries). As the contractual terms of its leases were coming to an end, it served notices on its landlord requesting new leases under section 26 of the Landlord and Tenant Act 1954 (the 1954 Act) (and following receipt of counter-notices from its landlord opposing renewal, it applied to the court for new leases).

The landlord opposed the tenant's application for new leases on ground (f) of section 30(1) of the 1954 Act (broadly that the landlord intends to demolish or reconstruct the premises (or a substantial part of them) or to carry out substantial work of construction on them on the termination of the current tenancy and that it could not reasonably do so without obtaining possession). The landlord admitted that the proposed works would not be carried out if the tenant left voluntarily, but nonetheless gave an undertaking to the court to carry out all the works if vacant possession were ordered. The works would convert the premises into two retail units but had little practical utility because planning permission would be needed to use the new units (which the landlord did not intend to seek) and one of the units did not have direct access from the street. In addition, the landlord planned to lower the basement floor for no practical reason and to demolish an internal wall and replace it with a similar one in the same place.

The landlord's predominant purpose (as it freely admitted) in devising its scheme of works was to obtain possession under ground (f). The works were expensive (estimated by the landlord at £776,707) and commercially and practically useless, but the premises themselves were highly desirable.

The High Court upheld an earlier County Court decision that as the landlord genuinely intended to carry out the works (as evidenced by its undertaking to the court), it could rely on ground (f). However, Jay J gave permission for a leap-frog appeal to the Supreme Court.

Issue

Does a landlord who intends to carry out works only if they are necessary to satisfy ground (f) (and who would not carry out the works if the tenant left voluntarily or if the tenant persuaded the court that the works could reasonably be carried out whilst it remained in possession) have the requisite intention for the purposes of ground (f)?

Decision

To rely on ground (f), a landlord has to show a firm and settled intention to carry out the works in question and the landlord's purpose or motive for doing the works is irrelevant (save for testing whether such a firm and settled intention exists).

However, to rely on ground (f), the landlord's intention to carry out the works must exist independently of the tenant's statutory claim for a new lease, so that the tenant's right of occupation under a new lease would serve to obstruct that intention. A conditional intention where a landlord would not do the works if the tenant left voluntarily or if the tenant persuaded the court that the works could reasonably be carried out whilst it remained in occupation is not a firm and settled intention for the purposes of ground (f). As Lord Sumpton succinctly put it:

"The acid test is whether the landlord would intend to do the works if the tenant left voluntarily."

Points to note/consider

Tenants will be much relieved by this decision as the Supreme Court has found a way of resolving a contentious issue within the spirit of the 1954 Act (there was much concern amongst tenants that the High Court decision threatened to undermine the very essence of the 1954 Act). After all, Parliament (when enacting the 1954 Act) cannot have intended to allow landlords to subvert the Act's protection by carrying out works solely to evict tenants (where the works would not be done if a tenant left voluntarily). In fact, ironically, had the High Court decision stood, apart from statutory compensation, most landlords would never have had actually to spend any money on doing the works in question because a tenant would recognise that its case was hopeless and would leave voluntarily (rather than fighting the matter in court).

One tricky issue is the situation where a landlord intended to do some works irrespective of whether the tenant left voluntarily, but other work only if necessary to obtain possession (i.e. to fall within the strict wording of ground (f)). In that case, Lord Sumpton felt that a tenant's claim to a new tenancy would have to be resolved solely by reference to the works which the landlord unconditionally intended.

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