Browne Jacobson

Beaumont Business Centres Ltd v Florala Properties Ltd [2020] EWHC 550 (Ch)

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07 April 2020

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Facts

In April 2015, a connected company of the claimant (BL) granted a lease of an office building that it owned to the claimant (BB) for 15 years (with options to renew) and then sold the freehold to an institutional purchaser based in Luxembourg (D). The defendant (FP) owned the property immediately to the north of BB's property.

At the same time as entering into the lease, D, BL and BB also entered into a 'rights of light' deed which allowed BL to retain all rights of light claims for increases in height in FP's property of up to 11.25 metres. If the development was higher than 11.25 metres, the rights belonged to D.

In May 2015, FP obtained planning permission to use its property as an apart-hotel. That involved building an extension into a lightwell which it owned (and which adjoined BB's property) and increasing the height of one of the elevations overlooking the lightwell. In July 2016, FP offered to settle any rights to light claim for £155,000, but withdrew that offer when it became aware of the rights of light deed. FP argued that this deed showed that BL was only concerned about a ransom payment, rather than with preserving light to BB's building.

FP started its works in July 2017 (after acquiring another adjoining building and obtaining revised planning permissions) and in February 2018, whilst the works were still in progress, BB sought an injunction (or alternatively damages) against FP in nuisance for the wrongful interference with its rights to light.

It was common ground by the end of the trial that all the windows from the first to the fourth floors of BB's property (except one) had acquired a prescriptive right to light pursuant to section 3 of the Prescription Act 1832.

Issues

1. Did FP's works cause a nuisance?

2. Was BB entitled to an injunction?

3. If an injunction were not granted, what damages would BB be entitled to?

Decision

1. To establish its claim in nuisance, BB needed to prove that, by virtue of the reduction in light, its property had been made substantially less comfortable and convenient than before. This, in practice, meant it had to show that it was likely to suffer a loss of rental income over the balance of its term in an amount which was more than trifling or de minimis. It was therefore irrelevant that the property had not been well lit before FP's works.

It was accepted that the reduction in light had caused, at least to some extent, a reduction in BB's rents. BB had therefore established that the reduction in light had caused a substantial interference with its rights so as to amount to a nuisance.

2. The court rejected FP's argument that an injunction should not be granted because BB's purpose throughout had simply been to extract a ransom payment from FP and that it did not have a genuine concern about the interference with its light. BB was a high-end luxury serviced office provider and the market it was operating in was becoming increasingly more competitive. Every little shift in advantage or disadvantage mattered. It was understandable therefore that BB should be concerned that it was not prejudiced by the reduction in light.

   In considering whether to grant an injunction, the starting-point was that an injunction should be granted and the burden of proof was on FP to show why it should not be. In this case, FP went ahead with its development knowing of the risk that it was taking. It had acted in a high handed (or at least unfair and unneighbourly) manner, BB's loss was not small and the loss of one or two rooms in FP's apart-hotel was not oppressive. It would therefore be appropriate to grant an injunction ordering FP to cut back its development.

3. If it wanted an injunction, BB would have to join in FP's tenant to the proceedings. If it chose not to do so (or if a court ruled that the injunction did not bind the tenant), BB was entitled to 'negotiating' damages of £350,000 (i.e. the sum BB could reasonably have demanded for giving up its rights), representing just under a third of FP's profits gained from its nuisance.

Point to note/consider

In the case of Coventry v Lawrence [2014] UKSC 13, the Supreme Court rejected the application of the previous rigid legal tests applied to determine whether damages should be awarded in lieu of an injunction when a property right has been interfered with. Instead, the court should have an unfettered discretion to award damages in lieu of an injunction where the facts of the case merit it. Despite this, an injunction remains the primary remedy in the court's armoury and the onus remains on a developer to show why it should not be granted. This case is a timely reminder of that principle and acts as a stark warning to developers of the risk in proceeding with a development which will interfere with another party's property rights.

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