

London Kendal Street No3 Ltd v Daejan Investments Ltd [2019] 7 WLUK 589

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Facts

The landlord (DI) served a section 25 notice on its tenant (LKS) indicating that DI would oppose the grant of a new lease on the basis of the ground contained in section 30(1)(f) (the redevelopment ground) of the Landlord and Tenant Act 1954.

The lease in question was one of four leases on the ground floor of the same building held by a group of companies (IWG). IWG's business was the granting of short-term licences to office occupiers and the property in question (Suite C2) comprised facilities available for common use by those occupiers. The building had a large disused basement and DI wanted to restore the basement so it could be let on a commercial basis. On Suite C2 specifically, DI wanted to create a new front entrance and lobby with a new lift and staircase to the basement. DI had previously started works on the basement, but these works had stopped when IWG threatened an injunction because of high noise levels.

Whilst LKS accepted that DI had a subjective intention to carry out the works, it argued that, objectively, DI had no reasonable prospect of being able to do so. IWG would seek an injunction to stop the works proceeding based on noise nuisance and on breaches of covenants for quiet enjoyment and non-derogation from grant. In addition, the fact that there were residential tenants on the upper floors of the building would make it impossible to do the works outside of office hours.

Issues

1. Did DI have an unconditional intention to carry out the works (a requirement to rely on ground (f) since last year – see below)?
2. Did DI have a reasonable prospect of being able to carry out the works (something that has always been a requirement to rely on ground (f)) ?

Decision

1. DI had an unconditional intention to carry out the works. DI had no difficulty funding the works, no difficulties with planning, a building contract was in place, timescales for starting the works were realistic and DI needed to start the works because of the problems in the basement that needed resolving (damp and corrosion needed attention to maintain the integrity of the building). In addition, DI had given an undertaking to the court to carry out the works after vacant possession had been given (subject to an injunction not being granted) and there was evidence that DI's intention to carry out the works was reached at an early stage well before the section 25 notice was served (and so that intention was untainted by this dispute).
2. Even if an injunction were to be granted (a question for another day and certainly not automatic), it would be unlikely to be absolute. A court would be reluctant to create a situation where one party is prevented from carrying out works to its own property. Instead, for

example, an injunction might limit the times when works can be carried out or contain other provisions limiting any potential disruption. LKS could not therefore definitively show that DI had no real prospect of being able to do the works in question.

Points to note/consider

1. This case has had more publicity than you might normally expect of a mere County Court decision. That is because it is the first reported case in which a court has had to apply the test set out by the Supreme Court last year in *S Franses Ltd v Cavendish Hotels (London) Ltd* [2018] UKSC 62. In that case, the Supreme Court ruled that to oppose a statutory lease renewal under ground (f), a landlord's intention to do the works in question cannot be conditional on whether its tenant chooses to seek a new lease. The acid test is whether the landlord would do the works if the tenant left voluntarily.
2. This case is also interesting for the judge's conclusion that, as a very rough rule of thumb, to rely on ground (f), a landlord needs to show that it will be able to start its works within six months and 21 days from the date of the court's judgment.
3. Despite the outcome on the facts, this case shows the importance of considering the effect of a landlord's proposed works on third parties when advising a landlord or a tenant on the prospects of success under ground (f).

Contact

David Harris

Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

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