

Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd

[2019] EWCA Civ 1755, [2019] PLSCS 201, [2019] All ER (D) 138 (Oct)

Court: CACivD

Judgment Date: 22/10/2019

Catchwords & Digest

ELECTRONIC COMMUNICATIONS - COMPANY – MAST

Background

Vodafone owned a mast standing on leased land which was owned by the respondent freeholder (Compton). The lease granted Vodafone the right to install and use the mast and ancillary apparatus, together with rights of access to it. The lease expired and Vodafone's apparatus remained on site. Under para 21 of the Electronic Communications Code (the Code) there were two methods by which an 'operator' could acquire Code rights. The first was by agreement. The second was by order of the Upper Tribunal Lands Tribunal (UT). The appellant (Cornerstone) a joint venture company formed by Vodafone and another company (Telefonica) served notice under para 20 of the Code on Compton seeking the conferral of code rights by Compton on Cornerstone in respect of the mast situated on the land. The UT decided that, at all times, Vodafone had been in occupation of the site and that because Compton was not in occupation of the land, Compton could not have conferred code rights by agreement under para 9 of the Code. That paragraph provided that a Code right in respect of land might only be conferred on an operator by an agreement between the occupier of the land and the operator. It followed that the UT had no jurisdiction to make the order sought. Cornerstone appealed.

Issues and decisions

Whether the UT had jurisdiction to require a freeholder who was not in occupation of land to confer rights under the Code on an operator, at a time when there was another operator in occupation of the land exercising code rights.

Cornerstone submitted, amongst other things, that 'relevant person' in para 20 of the Code should be interpreted as: (i) the person with 'title' to grant the rights sought; (ii) the person with the right to control access to the site; (iii) the person who was entitled to require the operator to remove its apparatus (see [26] of the judgment).

None of the arguments advanced by Cornerstone would be accepted.

The consent of the occupier to the exercise of rights connected with telecommunications had been a feature of the legislation for many years (see [36] of the judgment).

The UT had not decided that a 'relevant person' could only be an occupier. The relevant person would either be an occupier who was to be compelled to confer rights, or would be a person who was to be bound by rights conferred by another (see [31], [32] of the judgment).

In legal usage, the meaning of the words 'occupier' and 'occupation' was intensely sensitive to context (see [43] of the judgment).

The reference to the person 'who exercises powers of management or control' meant a person who actually exercised such powers, rather than simply a person who had the right to do so. If there was no such person, then (and only then) was the concept extended to a person with an interest in the land who would be prejudicially affected by the exercise of a code right (see [54] of the judgment).

If the operator was already in situ and wished to renew or vary his code rights, the Code clearly envisaged that a sitting operator might enter into an agreement conferring new or varied code rights (see [57] of the judgment).

Cornerstone and Vodafone could enter an agreement and seek Compton's agreement to be bound by it. If

that agreement had not included rights over land which Compton was said to occupy, then as regarding that land, Cornerstone and Compton could enter into an agreement. If Compton refused, then Cornerstone could serve a fresh notice under para 20 of the Coda, seeking to bind Compton to the terms of any agreement between it and Vodafone; and seeking the conferral of Code rights by Compton limited to those Code rights which affected the land of which it was said that Compton was the occupier. That was a practical way forward (see [89] of the judgment).

Case History

Annotations	Case Name	Citations	Court	Date	
—	Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd	[2019] EWCA Civ 1755, [2019] PLSCS 201, [2019] All ER (D) 138 (Oct)	CACivD	22/10/2019	
Affirming	Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd	[2019] UKUT 107 (LC), [2019] RVR 247, [2019] PLSCS 65	UKUT	03/04/2019	

Cases referring to this case

Annotations: All Cases **Court:** ALL COURTS

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Treatment	Case Name	Citations	Court	Date	
Considered	University of London v Cornerstone Telecommunications Infrastructure Ltd	[2019] EWCA Civ 2075, [2019] PLSCS 226, [2019] All ER (D) 169 (Nov)	CACivD	26/11/2019	

Cases considered by this case

Annotations: All Cases **Court:** ALL COURTS

Sort by: Judgment Date (Latest First)

Treatment	Case Name	Citations	Court	Date	
Considered	Chaudhary v Yavuz	[2011] EWCA Civ 1314, [2013] Ch 249, [2012] 2 All ER 418, [2012] 3 WLR 987, [2012] 1 P & CR 206, (2011) Times, 29 December, [2011] All ER (D) 167 (Nov)	CACivD	22/11/2011	
Applied	Bridgewater Canal Co Ltd v GEO Networks Ltd	[2010] EWCA Civ 1348, [2011] 1 WLR 1487, [2011] 1 P & CR 381, [2011] RVR 13, [2010] All ER (D) 307 (Nov)	CACivD	30/11/2010	
Considered	Link Lending Ltd v Bustard (by her litigation friend Walker)	[2010] EWCA Civ 424, [2010] 2 P & CR D35, [2010] 2 EGLR 55, [2010] 28 EG 86, [2010] 18 EG 98 (CS), 154 Sol Jo (no 17) 28, [2010] All ER (D) 161 (Apr)	CACivD	23/04/2010	

Considered	Principal and Fellows of Newnham College in the University of Cambridge v Revenue and Customs Comrs	[2008] UKHL 23, [2008] 2 All ER 863, [2008] 1 WLR 888, [2008] STC 1225, [2008] 16 EG 152 (CS), (2008) Times, 17 April, [2008] SWTI 1231, [2008] All ER (D) 210 (Apr)	HL	16/04/2008	
Considered	Customs and Excise Comrs v Sinclair Collis Ltd	[2001] UKHL 30, [2001] STC 989, [2001] 3 CM-LR 86, [2001] 27 EGCS 131, [2001] All ER (D) 29 (Jun)	HL	07/06/2001	
Applied	Bruton v London & Quadrant Housing Trust	[2000] 1 AC 406, [1999] 3 All ER 481, [1999] 3 WLR 150, 78 P & CR D21, 31 HLR 902, [1999] 2 EGLR 59, [1999] NLJR 1001, [1999] 30 EG 91, [1999] EGCS 90, (1999) Times, 25 June, [1999] Lexis Citation 2594, [1999] All ER (D) 670	HL	24/06/1999	
Considered	Graysim Holdings Ltd v P & O Property Holdings Ltd	[1996] AC 329, [1995] 4 All ER 831, [1995] 3 WLR 854, [1996] 1 EGLR 109, [1996] 02 LS Gaz R 28, [1995] NLJR 1813, [1996] 03 EG 124, (1995) Times, 24 November, 140 Sol Jo LB 23	HL	23/11/1995	
Considered	The Lord Mayor and Citizens of the City of Westminster v Tomlin and another	[1984] Lexis Citation 833	QBD	22/10/1984	
Considered	Williams & Glyn's Bank Ltd v Boland	[1981] AC 487, [1980] 2 All ER 408, [1980] 3 WLR 138, 40 P & CR 451, 10 LDAB 243, 124 Sol Jo 443, [1980] RVR 204	HL	19/06/1980	
Considered	Woodcock v South Western Electricity Board	[1975] 2 All ER 545, [1975] 1 WLR 983, 119 Sol Jo 380	QBD	27/01/1975	
Applied	Wheat v E Lacon & Co Ltd	[1966] AC 552, [1966] 1 All ER 582, [1966] 2 WLR 581, [1966] RA 193, 110 Sol Jo 149, [1966] RVR 223, 197 EG 969	HL	15/02/1966	

Document information

Court

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