Sequent Nominees Ltd v Hautford Ltd

[2019] UKSC 47, [2019] 3 WLR 981, [2019] PLSCS 205, [2019] All ER (D) 186 (Oct)

Court: SC

Judgment Date: 30/10/2019

Catchwords & Digest

LANDLORD AND TENANT - LEASE – CONSTRUCTION

Background

The landlord owned a property (the property) subject to a 100-year lease at a peppercorn rent. The property was part of a block of properties also owned by the landlord. Under cl 3(19) of the lease, the tenant was under an obligation not to apply for planning permission without the prior written consent of the landlord, such consent not to be unreasonably withheld. Under cl 3(11) of the lease, the tenant could use any part of the building for (among other things) retail, offices or residential purposes. The landlord refused consent to the tenant's request to apply for planning permission for a change of use of part of the demised premises from business to residential use on the grounds that such change of use would increase the prospect of successful enfranchisement under the Leasehold Reform Act 1967 which would damage the management of the wider estate. The tenant claimed that the landlord was unreasonably withholding consent.

The trial judge and the Court of Appeal agreed. That was because although the premises had been in mixed use at the time of its grant, the lease permitted the tenant to use the whole of the premises for residential purposes. That inevitably exposed the landlord to the risk of a compulsory purchase of the freehold (enfranchisement). To refuse permission to the tenant to seek planning permission for a change of use of part of the premises to residential use was to seek to obtain an uncovenanted advantage falling outside the purpose of the fully qualified covenant against seeking planning permission. The landlord appealed upon the basis that protection against an increased risk of enfranchisement was a well-recognised and legitimate reason for refusing consent under a fully qualified covenant, within the general purposes of restrictive covenants in leases, namely the protection of the value of the reversion and, a fortiori, its very existence.

Issues and decisions

Whether the courts below had been correct in construing the lease in such a way as to exclude resisting an increased risk of enfranchisement as a legitimate purpose of the right to refuse consent under cl 3(19) of the lease.

The relevant principles at play in the instant case could be condensed into three overriding principles. (i) a landlord was not entitled to refuse his consent to an assignment on grounds which had nothing to do with the relationship of landlord and tenant in regard to the subject matter of the lease; (ii) the question of the reasonableness of the landlords' behaviour would be one of fact not limited by the contract to any particular grounds, not even under the guise of construing the words; and (iii) the landlord's obligation was to show that his conduct was reasonable, not that it was right or justified (see [21]-[27] of the judgment).

Three reasons had been advanced in support of the construction of the lease in such a way so as to exclude resisting an increased risk of enfranchisement as a legitimate purpose of the right to refuse consent under cl 3(19) of the lease. The first, (reached by the judge) was that cl 3(19) had another, different, purpose which necessarily excluded minimising the risk of enfranchisement as a purpose. The second (adopted by the Court of Appeal) was that it made no sense to attribute such a purpose to cl 3(19) if third parties could apply for the same planning permission free of any such restraint and with the same adverse consequences to the landlord. The third, was that to treat clause 3(19) as permitting the landlord to refuse consent to an application for planning permission for a change of use to any of the uses permitted by cl 3(11) would amount to sanctioning a derogation from grant (see [34] of the judgment).

None of those three strands of reasoning supported the conclusion reached by the courts below. All of them

sought to address the question whether the landlord's consent had been unreasonably withheld by reference to an over-refined attempt to identify a limited original purpose behind cl 3(19), contrary to the law that it was wrong in principle to address the question under the guise of construing the words (see [35] of the judgment).
The courts below treated the question whether consent had been unreasonably refused as effectively determined by an erroneous construction of the lease, contrary to strand (ii) of the guidance. They therefore had made an error of law which required the court to consider the matter afresh, upon the same undisputed facts (see [39] of the judgment).
On the facts, when consent had been sought, it had remained unlawful in planning terms for the first and second floors of the property to be used for residential purposes. There had been, as at that date, no real risk of enfranchisement. Planning permission, if it had been requested, was likely to be granted, and the consequence would have significantly increased the risk of enfranchisement which would, in turn, have had a real rather than purely theoretical adverse consequence in terms of the value of the freehold reversion to the appellant. No third party had applied, or was threatening to apply, for similar planning permission for change of use (see [40] of the judgment).
Applying principle (i) above, it could not possibly be said that seeking to avoid a significant increase in the risk of enfranchisement, with consequential damage to the reversion, was something extraneous to or dissociated with the landlord and tenant relationship created by the lease. On the contrary, damage to the reversion was the quintessential type of consideration rendering reasonable the refusal of consent (see [41] of the judgment).
Applying principle (ii) a down to earth factual analysis of the economic consequences to the landlord of giving or refusing the requested consent in the present case plainly suggested that a refusal was reasonable.
Applying principle (iii), the landlord did not need to show that a refusal was right or justifiable, but merely that it was reasonable, which it had been (see [42] of the judgment).
Applying principle (ii) a down to earth factual analysis of the economic consequences to the landlord of giving or refusing the requested consent in the present case plainly suggested that a refusal was reasonable.
Applying principle (iii), the landlord did not need to show that a refusal was right or justifiable, but merely that it was reasonable. Which it had been (see [42] of the judgment).
The appeal would be allowed. Arden LJ and Wilson LJ dissenting (see [52] of the judgment).

Case History

Annotations	Case Name	Citations	Court	Date	
–	**Sequent Nominees Ltd v Hautford Ltd**	[2019] UKSC 47, [2019] 3 WLR 981, [2019] PLSCS 205, [2019] All ER (D) 186 (Oct)	SC	30/10/2019	
Reversing	**Rotrust Nominees Ltd v Hautford Ltd (a company registered in the British Virgin Islands)**	[2018] EWCA Civ 765, [2018] 2 P & CR 268, [2018] EGLR 25, (2018) Times, 27 April, [2018] 2 P & CR D29	CACivD	17/04/2018	

Cases considered by this case
Annotations: All Cases**Court:** ALL COURTS
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Treatment	Case Name	Citations	Court	Date	
Applied	**Ashworth Frazer Ltd v Gloucester City Council**	[2001] UKHL 59, [2002] 1 All ER 377, [2001] 1 WLR 2180, [2002] 05 EG 133, [2002] 1 EGLR 15, [2001] 45 LS Gaz R 27, [2001] NLJR 1695, (2001) Times, 12 November, [2001] All ER (D) 113 (Nov)	HL	08/11/2001	

Applied	**Bickel v Duke of West-minster**	[1977] QB 517, [1976] 3 All ER 801, [1976] 3 WLR 805, 34 P & CR 22, 120 Sol Jo 604, [1977] 1 EGLR 27	CACivD	01/07/1976	

Document information

Court
Supreme Court
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