



LANDLORDS MUST INDEPENDENTLY INTEND TO COMPLETE REDEVELOPMENT IN ORDER TO OPPOSE TENANCY RENEWAL

Introduction

1. In an eagerly awaited judgment, the Supreme Court confirmed on 5th December 2018 that a landlord must intend to demolish or reconstruct premises independently of the tenant's statutory claim to a new tenancy, in order to rely on ground (f) of the Landlord and Tenant Act 1954: *S Franses Limited v. The Cavendish Hotel (London) Limited* [2018] UKSC 62.

Background

2. The appeal concerned the qualified security of tenure enjoyed by business tenants, pursuant to Part II of the Landlord and Tenant Act 1954 ("the Act"). The ground for opposition in issue was section 30(1)(f) ("ground (f)"), which provides as follows:

"...that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding, or a substantial part of those premises, or to carry out substantial work on the construction of the building or part thereof and that he could not reasonably do so without obtaining possession of the holding."

3. The tenant occupied the ground floor and basement of a building under an underlease for a 25-year term from 2nd January 1989. The tenant ran a retail art gallery, showroom and archive. The rest of the building was occupied and managed by the landlord, as a hotel.

4. On 16th March 2015, the tenant served a statutory notice requesting the grant of a new tenancy. On 15th May 2015, the landlord served a counternotice opposing the grant of a new tenancy under section 30(1)(f). The tenant issued a claim for a new lease. As is usual, the question of whether ground (f) was made out was tried as a preliminary issue.
5. The facts were unusually stark. In its defence, the landlord put forward successive schemes reflecting the work it intended to carry out. In the words of the trial judge, the works were “*designed with the material intention of undertaking works that would lead to the eviction of the tenant regardless of the works’ commercial or practical utility and irrespective of the expense*”. The estimated cost of the works to the landlord was £776,707 (excluding VAT), plus £324,000 in statutory compensation. It was common ground that the proposed works had no practical utility other than eviction of the tenant.
6. At first instance, the judge considered that the landlord genuinely intended to carry out the works and that ground (f) was made out. On appeal to the High Court, Mr Justice Jay agreed, but gave permission for a leap-frog appeal to the Supreme Court. The justification for the leap-frog appeal was that the decision of the courts below was based on a line of authority in the Court of Appeal and the House of Lords to the effect that the operation of the section depended on a two-part test. The landlord had to prove (i) that it had a genuine intention to carry out qualifying works; and (ii) that it would practically be able to do so. It was submitted on behalf of the landlord that the effect of these decisions was that nothing else mattered. In particular, the landlord’s motives, the reasonableness of its intentions, or the objective utility of the works, whether for its own purposes or in the public interest, were all irrelevant, except (as the landlord accepted) as material from which the court might infer that the intention to carry them out was not genuine.

Supreme Court Judgment

7. The Supreme Court unanimously allowed the appeal, deciding that ground (f) could not be invoked by the landlord. At paragraph 19, Lord Sumption described the correct test:

“Section 30(1)(f) of the Act assumes that the landlord’s intention to demolish or reconstruct the premises is being obstructed by the tenant’s occupation. Hence the requirement that the landlord “could not reasonably do so without obtaining possession of the holding”. Hence also the provision of section 31A that the court shall not hold this requirement to have been

*satisfied if the works can reasonably be carried out by exercising a right of entry and the tenant is willing to include a right of entry for that purpose in the terms of the new tenancy. These provisions show that the landlord's intention to demolish or reconstruct the premises must exist independently of the tenant's statutory claim to a new tenancy, so that the tenant's right of occupation under a new lease would serve to obstruct it. The landlord's intention to carry out the works cannot therefore be conditional on whether the tenant chooses to assert his claim to a new tenancy and to persist in that claim. **The acid test is whether the landlord would intend to do the same works if the tenant left voluntarily.**" (emphasis added)*

8. On the facts, the tenant's possession of the premises did not obstruct the landlord's intended works and the landlord did not intend to carry them out if the tenant persuaded the court that the works could reasonably be carried out while he remained in possession. The entire value of the proposed scheme therefore lay in removing the tenant and not in any benefit to be derived from reconstruction itself. It follows that the landlord's intention to carry out the works cannot be conditional on whether the tenant chooses to assert his claim to a new tenancy. The intention to demolish or reconstruct the premises must therefore exist independently of the tenant's statutory claim to a new tenancy.

9. In terms of the practical implications of the judgment, Lord Briggs acknowledged that applying Lord Sumption's "acid test" may introduce an element of complexity and expense into proceedings in the County Court. However, he could "see no other way of giving effect to...the plain intention of Parliament, that a tenant's statutory right to renew...should not be circumvented by the proposed works which, viewed as a whole would not have been undertaken by the landlord if the tenant had left voluntarily".

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