



5 December 2018

PRESS SUMMARY

S Franses Ltd (Appellant) v The Cavendish Hotel (London) Ltd (Respondent)

[2018] UKSC 62

On appeal from [2017] EWHC 1670 (QB)

JUSTICES: Lady Hale (President), Lord Sumption, Lady Black, Lord Briggs, Lord Kitchin

BACKGROUND TO THE APPEAL

This appeal concerns qualified security of tenure enjoyed by business tenants, pursuant to Part II of the Landlord and Tenant Act 1954 (“the Act”). Section 24(1) of the Act provides a procedure to landlords for contesting the grant of an application for a new tenancy. The ground for opposition in issue on this appeal is that under 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.”

The premises in issue are the ground floor and basement of 80 Jermyn Street in the St James’s area of London. The appellant, the tenant, is a textile dealership and consultancy. The appellant occupies the ground floor and basement under an underlease for a 25-year term from 2 January 1989 and uses them as a retail art gallery, showroom and archive. The rest of the building is occupied and managed by the respondent, the landlord, as a hotel. Planning permission is required for any material change of use.

On 16 March 2015, the tenant served statutory notices requesting the grant of a new tenancy. On 15 May 2015, the landlord served a statutory counternotice opposing the grant of a new tenancy under section 30(1)(f) of the Act. On 8 June 2015, the tenant applied for an order in the Central London County Court. A preliminary issue raised was whether that ground of opposition was made out.

The landlord’s defence put forward successive schemes reflecting the work it intended to carry out. It was accepted by the landlord that the proposed scheme of works was “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 third scheme, which was in issue on this appeal: (i) omitted external works which would have required planning permission and (ii) added more extensive internal works, many of which were objectively useless. 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.

His Honour Judge Saggerson in the County Court 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 this Court (by-passing the Court of Appeal).

JUDGMENT

The Supreme Court unanimously allows the appeal, deciding that ground (f) cannot be invoked. Lord Sumption gives the leading judgment, with which Lady Hale, Lady Black and Lord Kitchin agree. Lord Briggs gives a concurring judgment, with which Lady Black and Lord Kitchin also agree.

REASONS FOR THE JUDGMENT

Lord Sumption considers ground (f) requires a firm and settled intention to carry out the scheme of works – the landlord’s purpose or motive is immaterial except to test whether the intention required by section 30(1)(f) exists [16]. It is irrelevant whether a landlord’s intention is reasonable or whether reasonable changes to the scheme could be made so as to allow the tenant’s continued possession [15].

This appeal does not turn on the landlord’s motive or purpose, nor on an objective assessment of the reasonableness of the proposed scheme of works, but on what it is that the landlord must intend if ground (f) is to apply [17]. The reason why the landlord’s approach cannot satisfy ground (f) is not merely the conditionality of its intention to do the proposed works, but the nature of the condition. Ground (f) assumes that the landlord’s intention to demolish or reconstruct the premises is obstructed by the tenant’s occupation. This is exemplified by (i) the words “could not reasonably do so without obtaining possession of the holding” in section 30(1)(f) and (ii) section 31A, which precludes a finding that ground (f) has been satisfied if the works can reasonably be carried out by exercising a right of entry that the tenant is willing to include in the terms of the new tenancy [19].

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 exist independently of the tenant’s statutory claim to a new tenancy [19]. 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 [19]. The entire value of the proposed scheme lies in removing the tenant and not in any benefit to be derived from reconstruction itself [17].

Although not directly relevant in itself, the landlord’s motive or purpose may be evidence of (i) his genuine intention to carry out the proposed works and (ii) the conditional character of that intention. Similarly, a lack of utility of works may allow an inference as to the conditional character of the landlord’s intention [21].

Lord Briggs agrees with Lord Sumption that the appeal should be allowed [24]. He clarifies that the Court’s decision does not depart from the rule laid down by the House of Lords in *Betty’s Cafés Ltd v Phillips Furnishing Stores Ltd (No.1)* [1959] AC 20 that whether the landlord had the requisite intention to rely on ground (f) falls to be assessed at the time of the hearing, not at any earlier date [25].

Lord Briggs explains that examining evidence as to the landlord’s purpose or motive is likely to be a valuable means of testing not merely the genuineness (i.e. honesty) but also the conditionality of the landlord’s intention, so as to ascertain whether it is in accordance with the statutory objective behind section 30(1)(f) [26-31].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>