S Franses Ltd v Cavendish Hotel (London) Limited

Franses Gallery Saved By Supreme Court Judgment

S Franses Gallery, 80 Jermyn Street, St James's, London

Summary

In a landmark judgment, handed down on Wednesday 5 December, the UK's highest Court confirmed that Cavendish Hotel (London) Ltd as landlord did not have the requisite intention to carry out its proposed *demolition and reconstruction* of 80 Jermyn Street and that the tenant, S Franses Ltd, was entitled to a new lease of the premises. The judgment is of interest to commercial tenants and their landlords and underlines the statutory protection provided by the Landlord and Tenant Act 1954 for all protected business tenants wishing to renew their leases.

Background

Some months before expiration of its 25-year lease the tenant had served a section 26 notice requesting a new tenancy. At a meeting the landlord (owned by Singapore real estate giant CapitaLand since 2012) informed the tenant that it wished to occupy the premises for its own use as the new main hotel entrance with a food-beverage offering. After litigation was commenced the proposal changed to one in which the premises would be expanded into the hotel's adjoining bar. Then the scheme changed again when the landlord claimed to require the demolition and reconfiguration of S Franses so as to create two fashion outlets. To achieve this the landlord needed planning consent.

In private meetings, the tenant was described disparagingly to the local planning authority and key local councillors as a "carpet shop" needing regeneration. The prestigious premises are in fact a gallery and unique as the only purpose-built tapestry and textile art gallery in the world. Its proposed removal was surprising as the gallery is within the St James's Special Policy Area and the historic St James's Conservation Area. It is one of the most prominent sites in the St James's Art District, now the greatest concentration of art expertise in the world. Once the true facts about the art gallery - known for its non-profit research archive, pro bono work for museums and scholarly publications - emerged these controversial plans were recommended for refusal by Westminster Council. Learning this, the landlord withdrew its planning application.

However it still would not engage and still refused to grant a new lease. In order to overcome this planning obstacle the landlord pressed ahead with an unprecedented legal argument that the Landlord and Tenant Act 1954 allowed it to repossess the premises providing it stated an intention to carry out sufficiently disruptive *internal* demolition and reconstruction - which was outside planning control - even if the premises would be unuseable following the works because of the planning restrictions and even if the works would have to be undone or reversed.

The landlord conceded there was no purpose to the disruptive £920,000 (including VAT) building specification it had paid surveyors to draft, and offered to undertake to carry out, other than the objective to regain vacant possession. Most significantly it agreed that if the tenant left voluntarily none of the work would be carried out at all.

Judge Saggerson in the Central London County Court gave judgment in the landlord's favour and even refused any right for the tenant to verify the work was fully completed in line with the undertaking.

Mr Justice Nicol in the High Court granted leave to appeal

At the appeal Mr Justice Jay, recognizing the public importance of the case granted a leapfrog certificate to allow an appeal directly to the Supreme Court.

Lords Kerr, Carnwath and Hughes granted leave to appeal to the Supreme Court.

Had the Supreme Court Justices (Ladies Hale and Black and Lords Sumption, Briggs and Kitchin) acquiesced in the landlord's interpretation of the 1954 Act, the statutory protection of all business tenants would have been at risk and any landlord would have been able to advance similar bogus or artificial schemes of works to evict tenants or use the threat of such a scheme to unbalance negotiations entirely in the landlord's favour. Fortunately the Supreme Court allowed the appeal.

Comment

Simon Franses says

“I am delighted with the news: this has been a David versus Goliath battle which has been a huge and costly distraction which has lasted almost four years. Several staff members have left us whilst CapitaLand with its aggressive attitude and deep pockets has orchestrated a sustained campaign to evict us, employing a large team of consultants: lawyers, repossession tacticians, planning advisers, architects, engineers, building surveyors and PR consultants in an attempt to obtain approval from the Courts and Westminster City Council.

However their barrister Nicolas Taggart, solicitor Dellah Gilbert of Maples Teesdale and repossession specialist Charles Batchelor have unintentionally achieved a strengthening of tenants’ rights. In an online paper for Landmark Chambers Mr Taggart wrote that Ground (f) "is great, because it is all about knocking things down, digging things up and generally thoroughly trashing some place - often just for the sake of it". This was still online on 6 December 2018.

We owe a great debt of gratitude to our small legal team: Joanne Wicks QC, Ben Faulkner, our solicitor David Cooper and to my wife Barbara, sister Sara as well as to our loyal staff who, against the odds, enabled a small company to prevail over the might and resources of a centralized and inflexible overseas multinational, part-owned by the Singapore Government.”