

Commercial Leases: Dilapidations, Alterations and Reparations

South Essex Partnership University NHS Foundation Trust v Laindon Holdings Limited [2016] EWCA Civ 337

In the recent Court of Appeal case of *South Essex Partnership University NHS Foundation Trust v Laindon Holdings Limited*, two issues were discussed in light of a dilapidations claim brought by the landlord at the end of a commercial lease:

- The interaction between the tenant's right to make certain alterations and its obligations to repair; and
- The loss of rent that could be claimed by the landlord.

Background

The lease from Laindon Holdings to the tenant, South Essex Partnership University NHS Foundation Trust, contained:

- An obligation on the tenant to repair or replace the landlord's fixtures and fittings in the premises as necessary;

- A right for the tenant to make internal non-structural alterations without the need for the consent of the landlord; and
- A right for the landlord to request removal of any alterations made by the tenant if reasonable to do so.

The tenant exercised a break option in the lease and contacted the landlord to say that the tile carpets would be replaced by strip carpets of the same quality and colour. It is not clear why the tenant chose to replace the carpet in strips rather than tiles; perhaps the former was a slightly cheaper option. Since the landlord did not respond, the tenant installed the new carpet which was in a good condition when the lease subsequently terminated.

The landlord chose not to exercise the right under the lease to request removal strip carpet. At the end of the lease the parties were unable to agree a figure for the tenant's dilapidations liability.

The Carpets

The landlord brought a dilapidations claim against the tenant for breach of its obligations under the repair covenants in the lease. It argued that:

- The old tile carpets were landlord's fixtures and fittings required to be repaired and replaced by the tenant;
- The new strip carpets were not a like-for-like replacement of the tile carpets; and
- The old tile carpets did not fall within the unqualified right of the tenant to make internal non-structural alterations because they were the property of the landlord.

In the Technology and Construction Court, HHJ Waksman QC accepted the landlord's submissions and awarded damages in the amount of £41,445 for the tenant's breach of its repairing obligations in installing the carpet in strips rather than tiles.

On appeal, Briggs LJ held that the carpets did fall within the permitted alterations according to the tenant's rights under the lease. He agreed with HHJ Waksman QC that the carpets were the landlord's property but said that commercial common sense dictates that the tenant's rights to make alterations extended to any of the landlord's property within, or forming part of the building, save for the structure and exterior.

Given that the carpets were in a good condition, it was therefore held that the tenant did not breach its covenants as:

- It was entitled to alter the carpet by replacing it with strips rather than tiles; and
- The new strip carpets were not in disrepair.

The Loss of Rent

The landlord intended to carry out extensive refurbishment works on the premises of which the work required to remedy any disrepair left by the tenant formed only a small part.

HHJ Wakesman QC awarded damages for loss of rent for a period of two months during which the landlord would not receive rent since, for cash flow reasons, it intended to carry out all the refurbishment work on the premise once a new tenant had been found.

On appeal, LJ Briggs held that once damages to cover the remedial works had been paid to the landlord by the tenant, any further delay in carrying out the works due to the landlord's commercial considerations was not the tenant's fault. Accordingly he held that, once the landlord is in receipt of damages to cover the remedial works, additional delays before carrying out the works cannot be visited as a further recoverable loss against the tenant.

Practical Implications

The Carpets

- The landlord was within its rights not to respond to the tenant regarding the proposed carpet works and may well have been advised not to, especially if the tenant's break right was conditional on its compliance with obligations regarding repair and alterations (which it was not, in fact, in this case).
- The carpets could have been discussed by the parties before the lease terminated. If this had been done, the need for a trial may have been avoided.
- If a landlord wants to exclude landlord's fixtures and fittings from a tenant's permitted alterations it must do so explicitly.

The Loss of Rent

- Once a tenant has paid damages for dilapidations, if the landlord chooses for commercial reasons not to carry out the remedial works straight away, it cannot claim for further loss of rent.

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