CASE REPORT

MAJORSTAKE LIMITED v CURTIS 2008 House of Lords decision

This case which was heard in the House of Lords in November last year concerns the landlord's counter-notice seeking a declaration that the tenant was not entitled to a lease extension by reason of the landlord's plans to redevelop part of the building of which the flat formed part.

The facts were as follows:-

The tenant was the owner of flat 77 on the seventh floor of Block B Boydell Court. Block B contained 50 flats on nine floors. Block A contained 60 flats on 11 floors.

The tenant served a notice on his landlord under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") claiming a statutory lease extension. As the tenant's lease had less than 5 years left to run, the landlord served a notice under section 45 of the Act stating that it intended to apply to the Court for an order under section 47(1) of the Act that the tenant's right to acquire a new lease should not be exercised on the ground that it intended to redevelop the premises in which flat 77 was contained.

The landlord intended to develop flat 77 and the flat below, number 74, in order to convert both flats into one "duplex" apartment on two floors. The question arose as to whether the conversion of the two flats constituted redevelopment of the "premises in which [flat 77] is contained" in order to satisfy section 47(2)(b) of the Act. Arguments were advanced as to whether or not the "premises" referred to were the two flats to be developed, Block B itself or Blocks A and B taken together and also whether or not it is for the landlord to decide what works it wishes to do and the extent of the premises upon which is wishes to do them.

Their Lordships decided there was no doubt as to what the 1993 Act was designed to achieve. It was designed to give long-leaseholders of flats the rights as close as possible to those of freeholders at a price approximating to the market price, though subject to some statutory assumptions. They agreed that this purpose would be frustrated if the landlord could defeat either of those rights by proposing to carry out comparatively minor works to the building involved. Their Lordships also looked at the scale of redevelopment that would defeat a claim for collective enfranchisement under the Act which they found contemplated demolition or construction of or substantial works or construction to a whole or a substantial part of a whole building or substantial part of a building. They thought that the definition had in mind major works requiring a large investment not simply the reconstruction of a small part of the building for the purpose of making a profit on that part.

Their Lordships did not agree that the intention of Parliament was to allow the landlord to define the "premises" itself and further that there has to be some objective way of estimating how likely it is that the landlord will be able to defeat a claim. Therefore they thought that the "premises" must be an objectively recognisable space.

Lord Scott drew an analogy from the works of J K Rowling and stated that "Harry Potter, we are told, received letters addressed to him at 'The Cupboard under the Stairs, 4 Privet Drive, Little Wingeing'. The Cupboard under the Stairs might have constituted 'premises' for the purposes of letters from Hogwarts but for the purposes of construction of the 1993 Act a normal use of the English language must be assumed." He did not accept that it could possibly have been the intention of Parliament that the "premises in which [flat 77] is contained" could consist of flat 77 and a contiguous flat.

There was also discussion as to what a visitor to premises would perceive as being the "premises" and it was agreed that a visitor to the flat would recognise Block B as the premises of which the flat formed part. It therefore followed that if the definition of the "premises" was Block B then two flats out of that block would not constitute "a substantial part" for the purposes of section 47 of the Act. The tenant's appeal was allowed and his claim to a lease extension will proceed.

A victory for the tenant and life made harder for landlords wishing to defeat tenant's claims. However, mention was made of the fact that each case turns on its own facts, possibly leaving the door open a crack for landlords to devise schemes to defeat tenant's claims, perhaps by using 9 and three quarters of the building?