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Dilapidations - “a warzone with grease”

COMMERCIAL LEASES

Hannah Bayliss explores a legal dispute between Peachside Limited and former tenants over a dilapidated property in Manchester’s Chinatown. Hannah delves into the arguments and legal principles surrounding the tenants’ failure to uphold their repair obligations and the landlord’s intentions to redevelop the property.

Peachside Ltd v Lee & Anor [2024] EWHC 921 (TCC) (23 April 2024). [BAILII link.](#)

Summary

This case concerns dilapidations, the process of a property/building/structure falling into a state of disrepair or deterioration. When a property undergoes dilapidation, it is usually in a generally poor condition due to the lack of maintenance or neglect over a period of time.

Facts

The claimant company, Peachside Limited, was the freehold owner of a property purchased in 1963. The property

was a former textile warehouse, located in Manchester's Chinatown area, built with brick walls and a pitched slate roof with concealed lead gutters.

Peachside Limited leased part of the property to the defendants Mr Lee and Mr Cheung to be used as a Chinese restaurant "Pearl City." The business tenancy was granted for the first to fourth floors of the property for a term of 14 years, expiring on 26 February 2017. Though the lease had expired, the defendants remained in possession of the property until March 2021.

The claimant sought judgment against the defendants for the sum of £542,671.17

for dilapidations, alleging that the defendants failed to comply with their repairing obligations. The claimant decided to repair the property pursuant to a schedule of dilapidations to re-let the premises as an office space. The defendants strongly contested this use and argued, in short, that the premises were never realistically lettable as self-contained offices, due to difficulties with access to the premises.

Issues

The legal issues in the case were twofold. Firstly, whether the claimant's claim for dilapidations was justified and, secondly, whether the claimant's



intention to redevelop the property for office use was genuine.

The Defendants Repairing Obligation

The lease contained an express repair covenant in standard terms, whereby the Tenant was required to keep the property in good and substantial repair and condition and to keep the premises clean. Additionally, the Tenant was to redecorate the property internally and externally on the five-year anniversary of the lease and in the final year.

The standard to which a Tenant must put a property into repair can depend on the specific facts. The case of Proudfoot v Hart details that the age, character and locality of a particular property are relevant to the standard of repair needed under a covenant to keep a property in good repair. In the absence of a schedule of condition, the standard of repair extends to an obligation to put the property into repair, even if it is in disrepair at the start of the lease, highlighting the potential burden of the repairing obligation on the Tenant.

On 10 March 2021, the defendants returned the keys and had vacated the premises. On inspection, the defendants had removed items used for the purposes of their business but had otherwise not taken any steps to comply with their repairing covenants. The property was described by the claimant as being left like “a warzone with grease.” The claimant was unable to let the property in its current state and had in the meantime served a schedule of dilapidations.

The Defence

The defendants tried to rely on the statutory cap set out under Section 18 (1) of the Landlord and Tenant Act 1927, which has two limbs. The first is that damages cannot exceed the amount by which the value of the landlord's reversion is diminished by reason of the breach and the second is that no damages are recoverable where the premises are to be demolished or structural alterations are to be carried out at or shortly after the end of the term.

The defendants also tried to argue that some of the repair works undertaken were unnecessary and/or





involved betterment of the premises. In short, they expressed that the claimant's intentions were not genuine and accused them of using the repair works as a pretext to support a claim for damages.

This legislation is both objective and subjective. The first limb is an objective assessment and requires the court to find the difference between the value of the premises in disrepair on the open market and the value that the premises would have had had there been no breach of the repair covenant. The second limb requires a subjective assessment, where the relevant intention is that of the claimant, and not just a reasonable purchaser.

The Judgment

The judge made reference to *Sunlife Europe Properties v Tiger Aspect Holdings*, particularly highlighting that the tenant is entitled to perform his covenants in the manner that is least onerous to him and therefore, in general, such performance should be the starting point for any assessment of damages. The judge further added that the tenant is obliged to return the premises in a good and tenable condition and with the mechanical and electrical systems in satisfactory working order, but is not required to return the premises with new

equipment or with equipment that has any particular remaining life expectancy. The standard to which the building is to be repaired or kept in repair is to be judged by reference to the condition of its fabric, equipment, and fittings at the time of the demise, not the condition that would be expected of an equivalent building at the expiry of the lease.

The judge affirmed that any claim by the landlord for the cost of repairs is subject to the general rules that one, he cannot recover for a loss which, by acting reasonably, he could have avoided and two, he cannot recover the cost of remedial

work that is disproportionate to the benefit obtained. By contrast, the judge clarified that where there is a need to carry out remedial work as a result of the tenant's breach of repairing covenants, the fact that the landlord has carried out more extensive work than was caused by the breach does not of itself prevent recovery for the cost of such work as would have been necessary to remedy the breach. Further, where the landlord has carried out works which exceed the tenant's liability, one way of identifying the reasonable cost of the works for which the tenant is liable is to reduce the cost of the work actually carried out so as to





reflect any element of betterment.

It appears that, where a tenant is in breach of his covenant, in the absence of any evidence provided to the contrary, the court is entitled to infer that remedial work is necessary to remedy the breach.

The court rejected the defendants' argument that the claimant's intentions were a charade and assessed the value of the premises in disrepair against their value if no breach had occurred. The judge acknowledged that the defendants' conduct did in fact cause the claimant loss over an extended period due to their failure to vacate the premises and their failure to provide notice on returning the keys and found the claimant's actions and intentions regarding the property to be reasonable and genuine.

Award

The judge found in favour of the claimant and awarded the total claim of £542,671.17, but reiterated the principle that a landlord cannot recover for losses that could have been avoided or for disproportionate remedial works. The claimant's intention to redevelop the property for use as offices was not determined indefinitely, but the judge ruled this depended on commercial viability.



Meet the editor

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Hannah is a trainee solicitor in the Commercial Property team at Wilson Browne Solicitors, due to qualify as a Solicitor in November 2024. Having graduated in 2020 with a First Class Honours in Law LLB, Hannah went on to graduate from the Legal Practice Course and Masters in Law in 2021, before securing her training contract. Hannah has previous experience in Clinical Negligence, Commercial Litigation and Private Client and currently work on all things Commercial Property including the grant/renewal of leases, sales, purchases, refinance and development work.

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