BMR Bagshot Ltd v Dorchester Mansions (1997) Ltd


No Substantial Judicial Treatment

Court
Chancery Division

Judgment Date
12 October 2021

Where Reported
[2021] 10 WLUK 140

Subject
Landlord and tenant

Other related subjects
Civil procedure; Company law

Keywords
Alterations; Authority; Costs; Directors; Interim injunctions; Leases; Licences for alterations; Repairs

Judge
Falk J

Counsel
For the appellant: Edward Levey QC, David Warner.
For the respondent: James Potts QC, Philip Byrne.

Solicitor
For the appellant: SBP Law.
For the respondent: Cullimore Dutton (Chester).

Case Digest

Summary
Extensive alterations to a flat required the licence or approval of the lessor under the terms of the lease even though they did not affect the structure of the building.

Abstract
The appellant company appealed against the grant of an injunction preventing it from carrying out building works to a flat and against the refusal to make a costs order in its favour.

In 2020 the appellant had acquired a lease of the flat for a 999-year term commencing in 2000. The flat was in a block containing 11 flats. The respondent company was the freeholder. It was a lessees' freehold company and the flat owners were its directors and shareholders. The appellant's director already owned a flat in the block and was a director and shareholder of the respondent. After acquiring its flat the appellant began works to the flat which involved demolishing internal walls and creating a new bathroom, replacing suspended ceilings, electrical wiring, radiators, doors and the kitchen window, and installing air conditioning. The building was constructed of concrete slabs on a steel frame and the demise of the flat was only of the internal walls, plaster ceilings and the floor screed. The demise expressly excluded the main structure of the building and the concrete slabs beneath the floors and above the ceilings. The respondent said that the appellant's works were within paras 9 and 13 of Sch.6 to the lease which prevented the lessee from carrying out alterations to the flat without a licence from the lessor, not to be unreasonably withheld, and prevented the lessee from installing additional apparatus connected to the communal water system or altering the existing connections. The appellant refused to stop its works, contending that no

licence or approval was required since the works did not involve any structural alterations. The respondent then applied for an interim injunction. The judge considered that it was highly likely that the works were alterations requiring permission and granted an interim injunction, but he also accepted a point raised by the appellant that the respondent had not shown that the injunction application had been properly authorised and directed that the injunction should not continue unless the respondent filed the necessary written resolution. The respondent failed to comply with that requirement and the injunction lapsed. At a further hearing the judge made no order as to costs.

The appellant submitted that the judge should not have granted an injunction, applying the long-standing authority of *Bickmore v Dimmer [1903] 1 Ch. 158, [1902] 12 WLUK 30* that "alterations" had to be structural, and because the application for an injunction had not been properly authorised. It further submitted that the judge was wrong to make no order as to costs on the basis that the lack of authority point had been raised late and for tactical reasons and should have made a costs order in the appellant's favour.

Held
Appeal dismissed.

Construction of lease - Although the injunction had lapsed, the judge had reached a view on the interpretation of the lease which led him to make the order he did and it was open to the appellant to challenge that interpretation, *Hadmor Productions v Hamilton [1983] 1 A.C. 191, [1982] 2 WLUK 150* considered. The authority of *Bickmore* had to be applied in context and the terms of the lease had to be construed in context, *Arnold v Britton [2015] UKSC 36, [2015] A.C. 1619, [2015] 6 WLUK 320* followed. In the instant case the demised premises consisted of the internal walls, ceilings and floors, and excluded the structural elements of the building. Since what was demised was only the inner skin, the "form or structure" for the purpose of applying *Bickmore* was that inner structure, rather than the building as a whole. On that basis it was clear, and the judge had been entitled to find, that the extensive works to the flat were alterations to the premises requiring the licence or approval of the respondent under para.9. That was consistent with other provisions of Sch.6 which required the premises to be kept in good repair and decorated and contained provisions to prevent nuisance and preserve the overall appearance of the building. There would be no sense in giving the lessor a measure of control over the state of repair of the flat but to permit the whole inner skin to be altered without consent. It was arguable in any event that fixing the suspended ceilings had impinged on the structure. It was also likely that the works had involved adding connections to the water system or at least altering them within para.13. There was no complaint about the judge's application of the American Cyanamid principles and it followed that he had been entitled to grant an interim injunction.

Lack of authority - There had been no error in the judge's approach to the lack of authority issue. He was right to consider it as a technical issue which could be resolved. Unfortunately he had adopted the wrong procedure since a written resolution was not available unless all the directors agreed. It was clear that a technical irregularity would not nullify the injunction, *Browne v La Trinidad (1887) 37 Ch. D. 1, [1887] 10 WLUK 9* and *Bentley Stevens v Jones [1974] 1 W.L.R. 638, [1974] 3 WLUK 58* considered. The judge had given the respondent the opportunity to rectify the position and the injunction had lapsed when it failed to do so. The court could be satisfied that the result would have been the same if the will of the majority had been expressed through a meeting.

Costs - The judge had been entitled to make no order for costs on the basis that, apart from the authority issue, the respondent would have been the successful party. It was also right to say that although the appellant had raised the question of authority generally, it had only focussed on the written resolution point after the injunction had lapsed. When the judge had directed use of that procedure he was entitled to assume that it was effectively agreed between the parties to be appropriate. Making no order for costs was well within the broad ambit of the judge's discretion, bearing in mind the appellant's conduct, the fact that the nature of the works justified the relief sought and the fact that the lack of authority could be retrospectively rectified. The fact that the respondent had failed to obtain that authority was reflected in the judge's decision to make no order for costs.

