



Haq-v-Island Homes Housing Association (20 July 2011)

The Message: Parties who jump the gun may well suffer the consequences.

The Case: The Court of Appeal has again had to deal with a dispute between parties over an agreement relating to considerable expenditure on land which was never properly documented. Mrs Haq is the tenant of a convenience store at the bottom of a block of flats at 286 Manchester Road, London, E.14. Her Lease expired in 1998 but she exercised her right under the Landlord and Tenant Act 1954 to renew for up to another 15 years at a market rent.

Her landlord then was the London Borough of Tower Hamlets and she negotiated terms with them in November 2001 to extend her property considerably onto adjoining land and premises owned by them on the basis she would fund the substantial costs of the works in return for a new 60 year lease at a rent of only £5,570 per year reviewable every 5 years but only up to 15% of the open market rental. The draft new lease recorded that the 85% reduction in the rent was to allow Mrs Haq to recover her building costs over the length of the lease.

Solicitors instructed by Mrs Haq negotiated the necessary documentation with Tower Hamlets for the new Lease and Licence for the works during 2002 and all such negotiations were on a subject to contract basis and conducted throughout by lawyers.

In July 2002, prior to the documentation being completed, Mrs Haq was given the keys for the adjoining premises by Tower Hamlets so she could start the works and she then proceeded to spend over £200,000 on the works during the next year. She claimed her solicitors had given her the go ahead to proceed on the basis all was agreed.

By 2005, when Tower Hamlets sold the building to Island Homes, the documentation had still not completed, mainly because of issues relating to the Licence for the works. Island Homes then claimed there was no enforceable agreement as the law requires any agreement relating to an interest in land to be in writing signed by the parties. They claimed that Mrs Haq was only entitled to a new lease of the extended premises for 15 years at a market rent of £36,000 per annum.

Under the Landlord and Tenant Act 1954, improvements carried out under the previous lease or within the last 21 years are disregarded when fixing the new rent on lease renewal. Accordingly, as no new Lease had been agreed by 2008, Mrs Haq was faced

with the prospect of paying a much higher rent on her next renewal as all her improvements would be taken into account then.

It was Mrs Haq's case that her landlord was prevented from arguing she was not entitled to the 60 year lease at a low rent as Tower Hamlets had let her proceed with the costly works without the relevant documents being executed and had waived the necessity for completion of all the usual formalities. At first instance, the Judge sympathised with her position and found in her favour.

On Appeal, Island Housing argued that the parties had always negotiated on a subject to contract basis and there had never been any agreement to dispense with the formalities and, accordingly, there was nothing to stop the landlord backing out at any time before the documentation was formally executed. At most, the release of the keys to the adjoining land was an informal licence just to start the works and it did not involve any representation that the need for formal documentation could be dispensed with.

Whilst the Court was critical of the incredibly slow way that both Mrs Haq's solicitors and Tower Hamlets had dealt with the matter, it was clear that the landlord had not acted unconscionably. It had always proceeded on a subject to contract basis and had been awaiting the relevant information to complete the documentation. Mrs Haq's solicitors would have had no basis to advise her that she could safely proceed. In any event, the Court held that Mrs Haq had not relied on the Council as she commenced the works prematurely because she had committed herself to the building contract before she had finalised the new Lease and Licence or obtained the keys to be able to proceed.

The Court noted that this was not a case where Mrs Haq would not be entitled to anything at all as Island Homes accepted she could have a new 15 year Lease at a rent which would disregard the improvements. What she had lost was the chance to amortise all her costs over 60 years by not providing the relevant information so the documentation could have been completed in 2002/3 before Tower Hamlets sold the building to a more commercial party.