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April 2024

Landlord and Tenant Act 1954: Tenant Prevails in Opposed Lease Renewal Case on Ground F

The County Court’s recent decision in *Sainsbury’s Supermarkets v Medley Assets Limited* has re-examined the redevelopment ground under the Landlord and Tenant Act 1954 (the Act) at a time when the Law Commission is in the process of reviewing the future of the legislation. Because publication of the Law Commission’s findings has been delayed from December 2023 until Autumn 2024, currently there is no visibility on whether its recommendation will be to repeal the Act in its entirety or, instead, to simplify various areas of the Act.

In *Sainsbury’s Supermarkets v Medley Assets Limited* the court has decided a novel point of law relating to the Act, despite it having been in existence for over half a century. In brief, the decision highlights a potential new strategy for tenants when served with a section 25 notice by their landlord opposing a new tenancy relying on section 30(1)(f) of the Act (commonly known as “Ground F”) and also re-examines what a landlord needs to be able to prove in order to succeed under Ground F.

Background

Ground F allows a landlord to oppose the grant of a new lease if they can demonstrate that “on the termination of the current tenancy the landlord intends to *demolish or reconstruct* the premises comprised *in the holding* or a substantial part of those premises or to carry out substantial *work of construction on the holding* or part thereof and that he could not reasonably do so *without obtaining possession* of the holding” (emphasis added).

Sainsbury's is the tenant of retail premises opposite Kentish Town Station, London. The landlord, Medley Assets Limited (Medley) served a hostile section 25 notice on Sainsbury's on 13 January 2021, seeking to rely on Ground F on the basis that it intended to convert the upper floors of the property (demised in its entirety to Sainsbury's) into residential flats. It later obtained planning permission for these works.

Sainsbury's challenged Medley's ability to rely on Ground F and issued proceedings. Medley's ability to rely on Ground F was tried as a preliminary issue in January 2024.

By the time this preliminary issue got to trial, Medley had abandoned its plans to convert the upper floors into residential flats and instead alleged that it intended to convert the upper floors into offices (which did not require planning permission); widen the property's staircase; and lower the basement floor (for which it had obtained planning permission in January 2023).

The extent of the holding

Whilst the entirety of the property is demised to Sainsbury's, it only trades from the ground floor. The basement and the rooms on the upper floors were largely disused and any items had been cleared by the end of 2023. Sainsbury's had, until the start of 2024, occupied the entirety of the ground floor and Medley's proposed widening of the staircase would have encroached into this space by 26 square metres. One week before the trial of the preliminary issues, Sainsbury's vacated this encroached area and erected a partition wall to block it off.

Medley argued that, as it had invoked section 32(2) of the Act (which required Sainsbury's to take a lease of the whole of the original demise and not just the parts it was occupying), the "holding" for the purposes of Ground F should be interpreted as the whole of the demised premises, including the basement and the 26 square metre area on the ground floor that Sainsbury's had recently vacated.

The judge, however, agreed with Sainsbury's submission that the "holding" for the purposes of Ground F was the occupied part of the demised premises as at the date of the hearing. As none of Medley's proposed works were to the "holding", Medley could not rely on Ground F.

It is important to note that this finding would not prevent Sainsbury's from later seeking a lease of the entire property, as, now that Medley had failed to prove its case under Ground F, Sainsbury's could decide to go back into occupation of the whole of the demised premises before the hearing dealing with the terms of its new lease.

Medley's intention to redevelop

Following the Supreme Court's landmark decision in *S Franses Ltd v Cavendish Hotel (London) Ltd [2018]*, in order to rely on Ground F, a landlord must show that:

- at the date of the hearing, it has a genuine and settled intention to carry out the works which is unconditional;
- it would be practically able to carry out the works; and
- it would carry out the works whether or not the tenant voluntarily vacated.

The judge held that Medley had not demonstrated a genuine, firm, and settled intention to carry out the proposed works to the property even if Sainsbury's had vacated voluntarily. The evidence given by their witness and expert was unconvincing and the judge considered that the proposed scheme of works had not been advanced and had been engineered to try to get Sainsbury's out of the demised premises. The

undertaking offered by Medley (on the third day of trial and after hearing all the evidence) was held not to be genuine and refused by the judge.

The judge also held that Medley would not be able to lawfully and practically carry out the works, on the basis that the works would not comply with building regulations; Medley did not have planning permission to make a new entrance to the front of the property (which would have been required to make the space usable); and Medley had not considered the need for parking suspensions.

Wording of Ground F

Furthermore, the judge held that the works proposed by Medley, namely the widening of the staircase and lowering of the basement floor, did not amount to demolition, reconstruction, or a substantial work of construction for the purposes of Ground F and that the works could be reasonably carried out without obtaining possession of the “holding”.

Conclusion

This decision raises an interesting point of law about the extent of the “holding” in contentious lease renewal cases and, in theory, could give tenants an extra argument to frustrate a landlord’s use of Ground F. However, in reality, not many tenants can simply move out of part of their demised premises to reduce the “holding”, so there may be some practical limitation to this strategy.

The decision is a further reminder of the court’s approach to Ground F as confirmed in *S Franses Ltd v Cavendish Hotel (London) Ltd* mentioned above. The court expects a landlord to show a settled and unconditional intention to carry out their proposed scheme of works, whether the tenant leaves the demised premises voluntarily or not. Going forward, the court (as well as tenants and their representatives) will likely scrutinise landlords’ redevelopment plans and intentions even more carefully than before, so proper preparation by the landlord and clear expert evidence is key.

Whether Medley intends to appeal this decision is yet to be seen.

Finally, this latest point of law may prove academic, should the Law Commission recommend, and the government at the time agree, that the Act should be repealed.

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