Landlord and Tenant (2018), Coursework 1

(1)

The first question asks us to examine information on two freehold premises owned by a client, and advise them as to how they can reclaim both properties with the intent to take possession for their own business. I will state the facts of the case, clarify assumptions made based on the wording of the question and general inference, and advise accordingly on what steps could be taken to gain possession of both units.

To begin with the facts of the case. The client owns two adjacent freehold premises. The client intends to take possession and occupation of both premises for the purpose of running their own property management business from the property. The client has applied for planning permission, which has not yet been granted. For the purposes of this argument we can assume the premises either share an adjoining wall, or are otherwise close enough to allow for redevelopment, being either partially reconstructed or demolished completely, due to the Landlord having already applied for planning permission. The client has owned the estate for ten years. Neither tenant's lease is excluded from the Landlord and Tenant Act 1954. I will assume that the Tenant or Landlord have not served notices under the Act, and that neither lease is subject to a break clause. Given there are date-specific variables included in the question, we will assume the time of writing to be the end of the first financial quarter of 2018.

With regard to the tenants of the units in question. The first tenant in occupation of Unit 1, Status Palmer Ltd, could be said to be of poor covenant strength. Their lease expired in December 2017, therefore they are currently holding over. They stopped paying rent in June 2017, now owing three full quarters rent to the client. The premises are reportedly in poor repair. In the case of Unit 1, our client may be able to reclaim the property by serving a S25[1] notice, Landlords intention to refuse a renewed tenancy, specifying the date of termination to be 6 months from the date of the notice. The notice would specify discretionary grounds S30 (a)[2] and (b)[3] as reasons for opposing a new tenancy. Although grounds (f)[4] and (g)[5] could be used due to the intention to take possession and reconstruct the property, and grounds (f) and (g) would be sure to succeed as they are mandatory grounds, if the client is successful on grounds (a) or (b) they will not be liable to pay any compensation to the tenant. Ground (c)[6] would not apply as the problems outlined in the question relate to disrepair and non-payment of rent, which are covered under ground (a) and (b). Ground (c) tends to be applicable when additional circumstances surrounding the Landlord and Tenant relationship apply; for example, in the case *Horne & Meredith Properties V Cox* [2014][7], the Landlord was subjected to a campaign of spurious litigation by the Tenant. The court favoured the Landlord as it would not be in their interests to continue a business relationship given the campaign.

[1] Landlord and Tenant Act 1954, Part II, S.25
[2] Landlord and Tenant Act 1954, Part II, S.30 (2) (a)
[3] Landlord and Tenant Act 1954, Part II, S.30 (2) (b)
[4] Landlord and Tenant Act 1954, Part II, S.30 (2) (f)
[5] Landlord and Tenant Act 1954, Part II, S.30 (2) (g)
[6] Landlord and Tenant Act 1954, Part II, S.30 (2) (c)
[7] *Horne & Meredith Properties V Cox* [2014] CA, EWCA Civ 423

S30 (a) states;

"where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations"

One could argue that the disrepair of the property is irrelevant given the intention of the Landlord to redevelop the property entirely. As Asquith, L. J. states in *Cunliffe V Goodman*[8]*,*

"…and in particular no damage shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement."

This could be mitigated should the professional opinion of a surveyor find the property had not been kept in good condition for some time. In *Lyons V Central Commercial Properties Ltd*[9]*,* the tenant's surveyor found the property to have been in disrepair for approx. 2-3 years prior to the case being brought to court. The Landlords intent to grant permission for the incoming tenant to redevelop the site in its entirety, demolishing the existing building, was found to be irrelevant given the property had been allowed to fall into disrepair by the tenant prior to the Landlord or incoming Tenant having settled intention to redevelop the property. Indeed, the Tenant is on record as having stated they did not pay any heed to honouring their covenants. The Judge ruled in favour of the Landlord in not granting the Tenant a new tenancy, as they were not deemed to be the sort of Tenant the court ought to give relief to in light of their blatant refusal to honour the covenants of their tenancy, and that the benefactor of a judgement in their favour would not be the Tenant, whom the Act is intended to afford protection, but rather the third party both the Landlord and Tenant had been in negotiations with. The judge ruled in favour of the Landlord, opposing a new Tenancy on the basis of non-compliance with repairing covenants.

The second ground for refusing a new tenancy, S30 (b) states:

"that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;"

The key part of this statement is the definition of 'persistent delay'. In the case of *Horowitz v Ferrand* (1956)[10], the Tenant would persistently delay their weekly rent payments between 1951 and the end of 1952, therefore over a period anywhere between 12-24 months. The Landlord was found to be inconvenienced by having to constantly chase the Tenant's rent payments, and their right to refuse a new tenancy under S30 (b) was upheld by the court. The Judge held that the outstanding rent did not need to be of a substantial amount or owed for a significant amount of time, given it is a tenants duty as per the terms of their covenant with the Landlord to pay the rent on time as specified within the lease. By this logic, Status Palmer Ltd's non-payment of 3 rent instalments over 9 months could be deemed a persistent delay, and therefore the court ought to rule in favour of the Landlord.

[8] *Cunliffe V Goodman* [1950] CA, 2 K. B. 237
[9] *Lyons V Central Commercial Properties* Ltd [1958] CA 1 W. L. R. 869
[10] *Horowitz v Ferrand* [1956] C. L. Y 4843

If the Landlord's attempt to reclaim the property under grounds (a) or (b) from Status Palmer Ltd succeeds, the Tenant will not be entitled to claim any compensation, as they will be deemed at fault. In the case of the Tenant occupying the second unit, Billy Skynard PLC, it does not appear to be possible to reclaim the unit without paying them compensation. The tenant has been running their business from the unit for 15 years, and they do not wish to relocate. There is no fault on their part in terms of rent payment or other non-compliance with the lease, and the relationship between our client and the Tenant we can assume is cordial given there is no mention of the situation being otherwise. The client would need to rely on mandatory grounds (f) and (g) to reclaim the property.

Section 30 (f) states that a mandatory ground for possession by the landlord can be made under the following circumstances;

"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;"

For the client to succeed on ground (f), they must prove their settled intention, that their intention is to reconstruct or demolish the existing property, and that their intention cannot be achieved without possession of the property[11]. In the case of *Cunliffe V Goodman*[12], the Landlord was deemed not to have proved their intent to redevelop the site. To again quote Asquith L.J;

"…project (had not) moved out of the zone of contemplation — out of the sphere of the tentative, the provisional and the exploratory — into the valley of decision."

In *Gregson V Cyril Lord Ltd*[13], the Landlord had not sought planning application, and therefore was not deemed by the judge to have a firm and settled intention to redevelop the premises. In the present case the Landlord could be said to have settled intent, given they have submitted a planning application to the local authority. Of course simply applying for planning permission does not mean planning permission is granted. There is a disconnect between the subjective nature of having firm and settled intention, and the objective state of the possibility of bringing this intention about. This concept was explored further in *Cadogan V MacCarthy Stone Ltd*[14], in which Saville, L.J. clarified the position laid out in *Gregson V Cyril Lord Ltd.* To prove a settled and firm intent to reconstruct or demolish, it is not enough to simply apply for planning consent, but there must also be a degree of reasonable foreseeability that consent would be granted. In *Cadogan V MacCarthy Stone Ltd*, it was held that consent would not be reasonably granted due to the proposed development of bungalows removing recreational areas (tennis courts in this instance) which would have no chance of being replaced with alternative facilities, due to the scale of development precluding any opportunity to do so within the locality. The planning policy at the time would have prevented the removal of the tennis courts in favour of the bungalows. In this instance I have no doubt planning application would not be refused given we can assume it would be a self contained development with little to no impact on neighbours or local facilities. The two adjacent units will be presumably knocked through to form a whole. There is no public interest in the case, as there was in *Cadogan V MacCarthy Stone Ltd.*

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[11] Wilkie, M et al, "Landlord and Tenant Law" (5th Edition), P314, Chippenham and Eastbourne 2006.
[12] *Cunliffe V Goodman* [1950] CA, 2 K. B. 237
[13] *Gregson V Cyril Lord Ltd* [1963] CA W. L. R. 41
[14] *Cadogan V MacCarthy Stone Ltd* [2000] CA L. & TR 249

However, ground (g), while requiring a similar argument to ground (f) is the more compelling ground for the Client to reclaim the second unit on. Ground (g) states;

"subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence."

Our Client's interest in the property has existed for 10 years, therefore outside of the 5 year period required for a Landlord to legally occupy a property for their own use following reversion as determined by the Landlord and Tenant Act 1954 S30 (2)[15]. The Client in this instance can prove a settled and firm intention to occupy the property for their own use owing to their having submitted a planning application to redevelop both sites into one, and by already owning, presumably, more than just these two units, given their intent to run their own property business from the redeveloped site. The fact they already own two units implies they own other properties, and therefore have a need for business premises from which to operate.

To conclude, should the court rule in favour of the client in the case of Billy Skynard PLC, due to the tenants continuous occupation of the unit for business purposes for over 14 years, they would have to pay the Tenant twice the rateable value of the holding as statutory compensation under S37[16]. As our Client would most likely succeed in refusing a new tenancy to Status Palmer Ltd on grounds (a) and/or (b) of S30, they would not have to compensate the Tenant, and ought to be able to release them of their tenancy by the end of Q3 2018 if notice is served before the end of Q1 2018.

(2)

For the second question of this assignment we have been asked to compare two leases, and identify any differences between them. The first lease of five years commencing 15th June 2005 is for two floors of an office building known as Milbank Court, with 8 parking spaces attached to the lease. The second lease of six years commencing 28th November 2006 is for a two storey building and the parcel of land surrounding it, Grantley House. Milbank Court has been contracted out of the Landlord and Tenant Act 1954 (II) S24-28[17] as per the notice attached to the lease in the proscribed form as required under Schedule 1 of the Regulatory Reform (Buisiness Tenancies) (England and Wales) Order 2003[18], whereas Grantley House remains within the framework of the Act, affording the tenant security of tenure on expiration of the initial tenancy. Milbank Court's rent is £26,730 per annum, and has no rent review specified in the terms of the lease. Grantley House's lease is for £105,000 per annum, and specifies an upwards only rent review on 29th September 2006, as per section 2 of the lease.

In terms of repairing covenants, Milbank Court's lease requires the tenant to decorate internally in the last three months of the last year of the term; this term is considered the year leading up to the expiry or any equivalent amount of time leading up to expiry prior to the natural course of the lease, such as in the case of either the tenant or Landlord exercising the mutual break clause, possible in 2008. As per clause 5.4.3 of Milbank Court's lease, there are some specific repairing covenants which must be completed by the incoming tenant within the first three months of the tenancy, namely; replacement of missing roof slates, surveying and if required overhauling the

[15] Landlord and Tenant Act 1954, Part II, S.30(2)
[16] Landlord and Tenant Act 1954, Part II, S.37
[17] Landlord and Tenant Act 1954, Part II, S.24-28
[18] Regulatory Reform (Buisiness Tenancies) (England and Wales) Order 2003 (Schedule 1)

roof of the building, replacing and repairing guttering specified in the clause, replace one rotting window frame (and should the Landlord decide to replace the remaining window frames during the course of the term, to pay for the replacement), and to clean and tidy all sanitary fittings. Grantley House's lease requires the tenant to decorate externally every three years, and in the last year of the term as per section 3.6, and to decorate internally in every fifth year of the term as per section 3.7. They must maintain any pipework serving the property, heating and ventilation systems, and maintain the grounds which form part of the demise. Under clause 20 the tenant is also required to bear the cost for any upgrades which are required by statute, for example improvements to fire alarm systems.

The tenants of Milbank Court are required to pay a fair proportion of the service charge, the details of which are laid out in the third schedule of the lease. Milbank Court's lease requires the tenant to pay two thirds of the Landlord's insurance rent (insured for three years). The lease for Grantley House is a full repairing lease, therefore the tenant is not required to pay towards a service charge, however they are expected to fully repair, maintain and insure the property.

Should either tenant wish to assign their interest in the property to another entity, they must only assign the entirety of the property. Milbank Court may be underlet at market rent, but only as the entirety of the premises. Grantley House may be underlet in two parts, at full rack rent, with upwards only rent reviews. Any covenants binding on the current tenant would be held binding to the under lessee.

Milbank Court's tenant is not VAT exempt. The tenant is liable for the cost of VAT at the point of payment to the Landlord. Payments by the Tenant to the Landlord in respect to Grantley House are VAT exempt, however clause 5.9 states in the case of any payments made by the Landlord which are subject the VAT, the Tenant will pay the full amount of any VAT the Landlord is liable for.

Bibliography

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