

BETWEEN

BEACON ONE MANAGEMENT COMPANY CLG

PLAINTIFF

AND

BEACON LEISURE INVESTMENTS LIMITED

DEFENDANT

**JUDGMENT of Mr. Justice Allen delivered on the 23rd day of July, 2019***Introduction*

1. Beacon Court is a large mixed-use development in Sandyford, Co. Dublin. It comprises, in a number of blocks, apartments, shops, offices, a hotel, and a hospital.
2. Block E comprises, on one side, about 70 apartments over seven floors and, on the other, a hotel. At the end of the corridors on each of the second to seventh floors on the apartment side, there are doors which lead to the hotel. Immediately behind the doors (coming from the apartment side) is a small lobby which opens, on one side, into a stairwell and, on the other, into the hotel.
3. The block was built and sold in 2005. The apartments were marketed under the name "*One Beacon*" and described in the glossy sales brochure as "*an aparthotel development*" and as a unique place to live, which combined, beautifully, the comfort of a home with the convenience of a superior hotel. The same documentation suggested that hotel services were, or would be, available at One Beacon comprising room service, food, dry cleaning and restaurant bookings, with the caveat that hotel services were subject to changes.
4. The advertisements published by the developer in 2005 offered "*a slice of Miami life in Dublin's Southside*" and held out the prospect that purchasers would "*live within Dublin's most cosmopolitan hotel – the Beacon – and avail of its facilities ...*" as well as benefit from the medical and consultants' clinics and the hospital, then in the course of construction.
5. The lavish specification promised included (besides the marbled bathrooms with jacuzzi style baths, and the like, all de rigueur at the time) a private residents' lobby and hotel lobby access.
6. Since the block was completed, the apartment owners have had access through the doors at the end of the corridors, through the access lobbies, into the stairwell, and along the hotel bedroom corridors to the lifts serving the hotel lobby.
7. In 2016 the hotel changed hands. The new operator was unhappy that the apartment owners and their tenants had free access to the hotel and gave notice of its intention to deactivate the fob access on the doors, but to link the door locks to the fire alarm in the apartment building, so as to allow egress through the hotel in the event of fire.
8. The issue now before the court is whether the hotelier is entitled to do what it has said it intends to do or whether the owners and occupiers of the apartments are entitled to come through the hotel as they heretofore have been doing.
9. There is some difference of opinion as to whether the decision of the hotel to close the doors was justified by the behaviour of those coming through the hotel, but it is accepted on both sides that the case must turn on whether, as a matter of law, the hotel is entitled to restrict access.
10. I should emphasise that, for the moment, for reasons to which I will come, the summary I have given of the development and marketing of the apartments is by way of *mise-en-scene* only, to explain how the dispute has come before the court.

*The proceedings*

11. This action was commenced by plenary summons issued on 24th September, 2018, by which the plaintiff, the management company of the block, claimed an injunction restraining the hotel from interfering with or restricting access from the One Beacon apartments to the defendant's adjacent hotel.
12. By notice of motion issued on 20th November, 2018 the plaintiff moved for interlocutory orders and there was an exchange of affidavits. It was recognised by both sides, however, that the case turns on the construction of a number of deeds and the parties agreed that the court, on this application, should finally decide the dispute.
13. The plaintiff, as I have said, is the management company for the block but the action, for all practical purposes, is brought for the benefit of the apartment owners. The defendant wishes to see the substantive issues disposed of and Mr. Micheál O'Connell S.C., for the defendant, does not make the point that one or all of the apartment owners ought to have been, or ought to have been joined as, plaintiffs.
14. Mr. Robert Beatty S.C., for the plaintiff, argues the case by reference, first, to a sample lease of one of the apartments and the deed of transfer to the plaintiff of the block, before looking at the defendant's lease, in which he points to a number of inconsistencies which he attributes to problematic drafting.
15. Mr. O'Connell, however, argues that legally and logically the correct approach is to look at the several deeds in the order in which they were executed, and suggests that if that is done, the difficulties identified by Mr. Beatty will be seen to be difficulties with the construction for which he contends rather than any shortcoming or inconsistency in draughtsmanship. Further, Mr. O'Connell points out that the hotel lease was the first in time so that even if the apartment leases did purport to create the rights contended for (which he says they did not) the earlier deeds must prevail.
16. In principle, Mr. O'Connell is correct. If the developer in a later lease purported to grant easements over lands devised by an earlier lease without exception or reservation, the earlier lease takes priority as a matter of law. Moreover, the plaintiff, as will be

seen, was party to all of the relevant deeds so no issue as to priority of registration arises.

#### *Legal principles*

17. Before looking at the deeds, it is useful to recall the legal principles applicable to construction of deeds, upon which counsel are agreed.

18. In *The Square Management Limited v. Dunnes Stores Dublin Company* [2017] IECA 256, the Court of Appeal cited with approval the summary of the law by the authors of Wylie & Woods, *Irish Conveyancing Law* (3rd ed., 2005) where it is said:-

*"[17.15] The overriding rule of construction of a deed is to give effect to the intention of the parties as expressed in the deed. It is important to note that this does not justify the ignoring of the express words in pursuance of what is otherwise conceived to be the intention of the parties. The essential question is what is the meaning of the words actually used by the parties, not what did the parties mean to say and, perhaps, fail to make clear by the words they used. As Ball J. put it in O'Donnell v. Ryan (1854) 4 I.C.L.R. 44: -*

*'The very plain and well-established principle is that in construing legal instruments, we are not at liberty either to transpose language or to reject words out of the instrument, or to import them into it, unless it becomes necessary to do so in order to carry out the manifest intention of the parties, appearing by the language they have used. I say the manifest intention apparent on the instrument; for it would be obviously a vicious construction to transpose, or reject, or supply words, in order to give effect to an intention not manifested by the parties, but only conjectured by the court, that is, an intention which, in the mind of the court, the parties may have entertained, but which the language of the instrument did not clearly import that they did. To reject words having a definite signification, and treat them as insensible, or to import into the instrument words which the parties themselves have not thought fit to use, or to transpose words so as to alter the meaning of a legal instrument, would be manifestly to take such a liberty with it as neither law nor reason could justify, unless it be absolutely necessary to do so for the purpose of preventing the defeat of the object which the parties have clearly shown they had in view.'*

*The meaning of a deed must be gained from reading it as a whole, and where the transaction is effected by two or more documents these should be construed together.*

*[17.16] In determining the meaning of the words used in the conveyance, the general rule is that the 'grammatical and ordinary' sense of the words is to be taken, unless this would lead to some absurdity, repugnance or inconsistency with the rest of the deed. ...*

*[18.38] A narrative recital explains the entitlement of the grantor to make the conveyance in question. ...*

*[18.40] An introductory recital links the narrative recital or recitals with the rest of the deed. It does this by explaining the intended operation of the current deed, e.g. that it is to give effect to a contract for sale entered into by the parties."*

19. Whelan J. (with whom Ryan P. and Hogan J. concurred) said that these excerpts represented a correct statement of the key principles of interpretation governing the construction of deeds and indentures in this jurisdiction and applied them to resolve the construction issues arising on the appeal on that case.

20. In *The Square Management Limited* Whelan J., noting that the relationship of landlord and tenant in Ireland is founded on contract, noted and quoted extensively from the decision of the Supreme Court in the *Law Society of Ireland v. MIBI* [2017] IESC 31, which reiterated that the operative principles in the construction of a contract are those formulated by Lord Hoffman in *Investors Compensation Scheme v. West Bromwich Building Society* [1998] 1 All E.R. 98, which had been since repeatedly adopted by the Irish courts.

21. The starting point, then, is to examine the deeds.

#### *The Hotel Lease*

22. By lease made 4th March, 2005 between Taleside Developments Limited, which was called the Lessor, Beacon Court (Sandyford Management) Limited, which was called the Management Company, Beacon One Management Company Limited, which was called the Block Management Company, and Pinnacle Properties Limited, which was called the Lessee, Taleside demised, and Beacon Court (Sandyford Management) Limited and Beacon One Management Company Limited confirmed the demise of, the Demised Unit (more particularly described in Part I of the First Schedule, but said to be known as the Hotel Site) together with the easements, rights and privileges specified in Part II of the First Schedule, and excepting and reserving the easements, rights and privileges specified in Part III of the First Schedule, for 225 years less the last three days thereof, at an initial rent of €5.00 per annum, and subject to payment of a contribution to the cost of insurance and services.

23. The several drawings annexed to the Lease, which described themselves as "*Lease Maps*", identified the project for which they had been prepared as "*Proposed Hotel for Taleside*" and showed the Demised Unit outlined by a red line shown in the legend to the drawings as "*Hotel*". Significantly, however, the permitted user was not limited to use as a hotel but to such purpose as might be authorised under the Planning Acts and permitted by the Management Company and the Block Management Company, and, it follows, there was no covenant on the part of the Lessee to keep open as a hotel. Those drawings also showed, coloured yellow, and unquestionably on the hotel side of the red boundary line, the access lobbies and stairwell, which areas are described in the legend as "*Escape stairs serving Apartments & Hotel*".

24. The Demised Unit was defined in the First Schedule by reference to the annexed plans, on which it was shown outlined in red, and included the whole of all doors and windows set in the walls which bounded the demised unit and their frames and fixings.

25. The demise included, in the First Schedule, Part II, the right for the Lessee and all personnel authorised by it (in common with the Lessor, the Management Company/Block Management Company and the lessees of the other units and all persons authorised to the like right) to pass and repass over the Common Areas and the Retained Parts insofar as such rights were required for the proper use of the Demised Unit and for the purpose of which each might be designated from time to time by the Lessor and or the Management

Company and/or the Block Management Company, subject to such reasonable rules and regulations for the common enjoyment thereof as the Lessor and/or the Management Company and/or the Block Management Company might from time to time prescribe.

26. Part III of the First Schedule excepted and reserved for the Lessor, the Management Company and/or the Block Management Company their servants and agents and all other persons granted similar rights by the Lessor and/or the Management Company and/or the Block Management Company at all times by day or by night with or without vehicles to go, pass or repass over and along the Common Areas and the Retained Parts.

27. The "Common Areas" were defined by clause 1.6 as meaning those parts of the Park (defined as the entire Beacon Court development, shown on a plan annexed) "not for the time being let or sold or intended to be let or sold", and the "Retained Parts" as "... (excluding those parts which exclusively serve the Apartments or the Demised Unit) the parts of the Block that are not constructed or adapted for letting and the use and benefit of which are common to the Lessee and the occupiers of all other parts or floors of the Block,, including without prejudice to the generality of the foregoing any parts of the main structure, roof, external walls and internal load bearing walls, foundations, fire escape and structural parts of the roof along with the lift, stairs, lobbies, hallways, corridors, ceilings, floors, beams, joists, which are party structures, boundary walls, railings, and fences and all exterior parts of the Block."

28. Clause 3.13 of Part III of the First Schedule, under the heading "Adjoining Buildings" excepted and reserved:-

*"In the event of fire or other emergency the right for the owners and occupiers of the Apartments and the Hospital their undertenants, servants, agents and visitors egress over and along the areas coloured yellow and coloured yellow and hatched black (respectively) shown as Plans B1 to B11."*

29. Those are the plans which show "Escape stairs serving Apartments & Hotel" to which I have referred. They also show, on each floor, a separate lobby and stairwell marked on the plans as "Escape stairs serving Hospital & Hotel".

#### *The Apartment Leases*

30. The apartments were all sold in 2005. In the ordinary way, the purchasers were given a long lease at a nominal rent, and rights and easements over the common areas, subject to a covenant to contribute to the maintenance of the common areas and the provision of services. In the ordinary way, the leases contemplated the transfer by the developer of the common areas to a management company on completion of the sales of the apartments. Slightly unusually in this case, because the apartment block was part of a much bigger development and because the purchasers would need easements over the estate roads and estate common areas, as well as easements over the common areas in the apartment building, there were, as there had been in the case of the Hotel Lease, two management companies.

31. The sample apartment lease is dated 26th September, 2005 and was made between Taleside Developments Limited, referred to as the Lessor, Beacon Court (Sandyford) Management Limited, referred to as the Estate Management Company, Beacon One Management Company Limited, referred to as the Block Management Company, and the purchaser, referred to as the Lessee. The name of the Estate Management Company is not precisely the same on the Hotel Lease and the Apartment Leases, but it is the same company.

32. By the Apartment Leases, the Lessor demised, and the Estate Management Company and the Block Management Company confirmed, an apartment identified by number and shown on a plan attached inlined in red, together with the easements, rights and privileges specified in Part 4 of the First Schedule, and excepting and reserving to the Lessor, the Estate Management Company and the Block Management Company and all persons authorised by any of them the easements, rights and privileges specified in Part 5 of the First Schedule, for 225 years, less the last three days thereof, subject to the initial yearly rent of €5.00, and the Block Service Charge and Estate Service Charge as provided for.

33. The plans attached to the leases comprised an ordnance survey map showing the boundaries of the Beacon Court development; a floor plan of that part of the floor of the block on which the apartment was located, showing the apartment identified by number; and a layout plan of the carpark, showing the assigned carparking space. The map of the development site shows the hotel marked "Hotel" and the apartments marked "Apartment-hotels".

34. By clause 4 of the Apartment Leases, each of the lessees covenanted with the Lessor, the Estate Management Company, and the Block Management Company, for the benefit and protection of all of the Units (defined as meaning all of the apartments and commercial units as might be built on the Estate) and of the Managed Areas (defined as the Common Areas and so forth to be managed by the Lessor, the Estate Management Company or the Block Management Company), and the owners of all Units and persons deriving title under them to perform and observe the covenants and so forth in the Second Schedule to the lease. Those covenants included, at clause 7, a covenant not to use or permit the Demised Premises to be used for any purpose other than a single private residence.

35. The Third Schedule, in Part 1, set out the Lessor's and the Block Management Company's covenants in relation to the Block Common Areas, and in Part 2, the Lessor's and the Estate Management Company's covenants in relation to the Estate. Those covenants were, in each case, in the usual way, subject to payment by the Lessee of the relevant service charge, to provide the usual services provided by a management company of a residential apartment building in the way of repair, maintenance, cleaning, planting and insurance and the like.

36. The easements, rights and privileges granted to the Lessee for the benefit of the Demised Premises in Part 4 of the First Schedule included:-

*"1. Full right and liberty at all times with others and for all purposes connected with the use of the Demised Premises to go, pass and repass with or without motor cars and other vehicles however propelled (if appropriate) over and along all such parts of the Common Areas as afford access and egress from the Demised Premises, subject to such reasonable rules and regulations for the common enjoyment thereof as the Lessor and/or the Estate Management Company and/or the Block Management Company as the case may be may from time to time prescribe leading from the Demised Premises to the public roadway.*

*7. The right in the case of emergency only to use or pass along such means of escape across fire escapes provided over the Block.*

*11. The right to use the lifts in the Block at all times by day and by night for all purposes in connection with the use of*

*the Demised Premises as a single private residence for the purpose of obtaining access to the Block Common Areas."*

37. The Apartment Leases define "*the Block*" as meaning collectively the Apartments presently constructed or to be constructed on the Estate, including the Demised Premises, and "*Block E*" as the Block in which the Apartments are located, and which also contains a Hotel development. The "*Block Common Areas*" are defined as all parts of the Block excluding the Apartments (including lobbies, lifts, steps, halls, staircases, passages, walkways, landings, storage areas within the Block, roof space and conduits) which are used in common by the owners and occupiers of any two or more Apartments in the Block. The "*Estate Common Areas*" are defined as all parts of the Estate excluding the Block (including the roads, footpaths, steps, passages, walkways, courtyards, storage areas, gardens, landscaped areas, waterways and the conduits). The "*Common Areas*" are defined as collectively the Block Common Areas and the Estate Common Areas.

38. The Apartment Leases recite the incorporation of a Block Management Company, the plaintiff, and the execution of a Block Management Company Agreement dated 24th August, 2005 between Taleside and the plaintiff by which Taleside had agreed to grant, convey and assign all of its estate, right, title and interest in "*the Block*" (which, it will be recalled, is defined as the Apartments, as opposed to "*Block E*" which is the Apartments and the Hotel), subject to and with the benefit of the Leases of the Apartments.

#### *The transfer of the common areas*

39. The last core document is the deed of transfer dated 10th December, 2010 made between Taleside Developments Limited and Beacon One Management Limited. This recites the Block Management Company Agreement by which Taleside agreed to transfer all of its estate, right, title and interest in the Sold Lands to the plaintiff, and, in consideration of the sum of €10.00 does so, subject to and with the benefit of the Leases, and the covenants, conditions, easements, rights, privileges, exceptions and reservations therein contained, for the unexpired residue of the terms of years granted by the Head Leases, on foot of which Taleside owned the site.

40. The "*Sold Land*" is defined in the First Schedule, Part One, as the Apartment Common Areas and the balconies and roof terraces, which are shown on eleven plans attached to the deed, and the Party Structures, the Retained Parts, the Apartments and the Hotel comprised in Block E, known as Beacon One Apartments and The Beacon Hotel situate at Beacon Court, Sandyford in the county of Dublin, subject to and with the benefit of the Leases.

41. The Transfer (mirroring, more or less, the definition of Block Common Areas in the Apartment Leases) defines "*The Apartment Common Areas*" as all those parts of Block E (including lobbies, lifts, steps, halls, staircases, passages, walkways, landings, storage areas within Block E, roof space and conduits) which are used in common by the owners and occupiers of any two or more Apartments in Block E and which, for the avoidance of doubt, exclude the Apartments and the Hotel; and (mirroring, precisely, the definition in the Hotel Lease) defines "*The Common Areas*" as those parts of the Park not for the time being let or sold or intended to be let or sold, including all roads, bridges, pedestrian ways, atrium roof and so on and so forth.

42. The Transfer, mirroring more or less the definition of Retained Parts in the Hotel Lease, defines "the Retained Parts" as "... (excluding those parts which exclusively serve the Apartments or the Hotel) the parts of Block E that are not constructed or adapted for letting and the use and benefit of which are common to the Lessees of the Apartment Leases and the Hotel Leases and the occupiers of all other parts or floors of Block E, including without prejudice to the generality of the foregoing any parts of the main structure, roof, external walls and internal load bearing walls, foundations, support beams, columns, fire escape and structural parts of the roof along with the lift, stairs, lobbies, hallways, corridors, ceilings, floors, beams, joists, boundary walls, railings, and fences and all exterior parts of Block E."

43. The Transfer defines "*the Park*" as the residential and commercial development known as Beacon Court; "*the Hotel*" as The Beacon Hotel; and "*the Hotel Lease*" as the Lease of 4th March, 2005.

#### *Discussion*

44. By divers mesne assurances, acts in the law, and events, the detail of which is immaterial, the Defendant is now bound by the Hotel Lease.

45. The plaintiff's case that it, or more correctly its members, are entitled to a right of access at all times and for all purposes through the interconnecting doors between the hotel and the apartments is based on the construction of the Apartment Leases.

46. Clause 1 of Part 4 of the Apartment Leases, it is said, confers full right and liberty at all times and for all purposes to go, pass and repass over "*the Common Areas*", which includes both the Block Common Areas and the Estate Common Areas. The Block Common Areas are limited to "*the Block*", which is limited to the Apartments. But the Estate Common Areas, it is said, extend to the entire Estate, save only "*the Block*", that is the Apartments. Since the Estate Common Areas include everything except the Apartments, so the argument goes, they include the hotel: so the Apartment Leases confer on the owners a right of access to the hotel. Clause 7 of Part 4, which creates the right of escape in case of emergency, is limited to "*the Block*", that is the Apartments, and so, it is said, makes little sense.

47. It is argued that it is significant that the Apartment Leases contain "no specific exclusion from the various definitions of entitlement to utilise any portion of the hotel which is incorporated into Block E." If I understand this argument correctly, it is that the Apartment Leases do expressly preclude the use by the apartment owners of that part of the building which at the time of the demise of the apartments had already been demised to the hotelier, as a hotel.

48. It seems to me that to the extent that it is material that the Apartment Leases make no reference to the hotel, it is a point against the plaintiff. There is no reference in either of the leases, or in the Transfer of the common areas, to the provision of hotel services to the apartments. The right of full and free access to the hotel for the benefit of the apartment owners contended for would not, without a corresponding right for the hotelier to access to the apartments, facilitate the provision of hotel services, unless, perhaps, an offering of a take-away menu, or a facility for apartment owners to help themselves from the linen cupboards.

49. The purpose of identifying the apartments, collectively, and the building, separately, was to apportion the service charges. The plaintiff is the management company for the building which comprises, in part, a hotel and in part, apartments. The apartment part of the building has extensive common areas, which are shared by the apartment owners. The hotel, by contrast, has no common areas. There are no doubt public rooms, open to members of the public as well as hotel residents, and the use of the corridors and lifts serving the bedrooms is shared by the hotel guests but those using these facilities do so by licence of the hotel for the purposes for which they come to the hotel and not for the benefit of any part of the hotel in which they have an interest. It seems to me that part of the factual matrix in which these leases are to be construed is that the nature of services required for either side of the

building is quite different and so the usual model of sharing the cost of services by reference to the size of the demised units would not be appropriate.

50. It is clear on the face of the Apartment Leases that the demised apartments were in a building part of which had already been demised for use, in the first instance, at least, as a hotel. If, in practical terms, the right contended for is a right to pass and repass over the corridors of the hotel, the legal consequence of characterising the entire hotel as part of the Estate Common Areas would be that the apartment owners would have the right not only to pass and repass along the corridors but to wander about the entirety of the hotel. Such a consequence, if there was any merit to the argument, might be such as to drive the court to the conclusion that something must have gone wrong with the language used by the parties and engage the very limited jurisdiction of the court to intervene to make the language yield to business common sense.

51. As to the First Schedule, Part 4, clause 7, I disagree that a right of escape across fire escapes provided over "*the Block*" makes little sense. It may be that this clause does not confer the right of escape over the defendant's access lobbies and stairwell shown on the drawings annexed to the Hotel Lease, but this does not mean that there are no other escape routes, other than over the Apartment Common Areas, that may have been in the contemplation of the draughtsman: for example, along balconies which otherwise might be demised, or made exclusively available, to individual apartment owners.

52. In any event, the defendant does not make any point as to the entitlement of the plaintiff's members to use the lobbies and stairwell as an escape route. Its proposal is to lock the access doors but to link the locks to the fire alarms in the building so that in an emergency the doors will unlock, allowing egress from the apartments through the hotel.

53. Apart from the Apartment Leases, the plaintiff relies on the Transfer by the developer of 10th December, 2010. The effect of this deed, it is said, was to transfer not only the corridors and lobbies in the apartment building shown on the plans attached but also "*the Retained Parts*". In each of the Hotel Lease and the Transfer, so the argument goes, everything is included that does not exclusively serve the hotel.

54. The plaintiff's argument that the hotel is part of the Estate Common Areas depends on the proposition that the access lobbies and stairwells do not exclusively serve the hotel. It seems to me that the proposition that the lobbies and stairwells do not exclusively serve the hotel begs the question. More fundamentally, the argument is founded on applying the exception to what are the Retained Parts before contemplating what are the Retained Parts.

55. Rather than looking first at the Apartment Leases and then the Hotel Lease, it is more straightforward to look at the leases and the Transfer in the order in which they were executed.

56. By the Hotel Lease. Taleside demised the hotel, shown outlined in red on the eleven plans annexed, together with the easements, rights and privileges specified in Part II of the First Schedule, and excepting and reserving the easements, rights and privileges specified in Part III of the First Schedule. Included was the right to pass and repass over the Common Areas and Retained Parts, insofar as that might be required for the proper use and enjoyment of the hotel.

57. The "*Common Areas*" are defined as those parts of the Park, that is the entire Beacon Court development, not for the time being let or sold or intended to be let or sold, and the "*Retained Parts*" are those parts of "*the Block*", that is the entirety of Block E, not constructed or adapted for letting and the use and benefit of which are common to the Lessee and the occupiers of all other parts and floors of the Block. Since all that is retained is such parts as are for the use and benefit in common of the Lessee and the other occupiers of the Block, the exception of such parts as exclusively serve one or other of the hotel or the apartments is attributable to an abundance of caution.

58. The hotel was developed and sold as a hotel, surrounded by a red line. The hotel having been sold, it could not come within the definition of Common Areas. Similarly, the hotel having been constructed or adapted for letting, and let, it could not have come within the definition of Retained Parts.

59. By the Apartment Leases, Taleside demised the apartments, shown on the plans annexed inlined in red, together with the easements, rights and privileges set out in Part 4 of the First Schedule, excepting and reserving the easements, rights and privileges in Part 5. Included was the right to go, pass and repass over all such parts of the Common Areas as afforded access to and egress from the apartments. The Common Areas included the Block Common Areas and the Estate Common Areas. The Block Common Areas were a bit awkwardly defined as all parts of the Block (defined as, collectively the Apartments presently constructed or to be constructed on the Estate, including the demised premises) excluding the Apartments, but including the lobbies, lifts, steps etc. but the more particular description of the Block in Part 1 of the First Schedule incorporated a Plan No. 1, which showed the apartments outlined in blue.

60. The definition of Estate Common Areas might, I suppose, have been tighter by specifically excluding, besides the Block, those parts of the Estate not let or sold or intended to be let or sold, and not constructed or adapted for letting but, at least having regard to the factual matrix in which the Apartment Leases were agreed and executed, I think that the meaning is tolerably clear. If, as the plaintiff contends, the Estate Common Areas included everything in Beacon Court that was let or sold, other than so much of Block E as comprises apartments, the apartment owners would have not only the right to roam the hotel but to go, pass and repass over the hospital, shops, consultants' rooms and everything else. If detailed semantic and syntactical analysis of the definition was going to lead to such a conclusion, it would have to yield to common sense.

#### *Factual matrix*

61. At the beginning of this judgment I set out a summary of the circumstances which had brought the case before the court. In construing the leases, the court is entitled to, and should, take account of the background circumstances in which they were agreed and negotiated, which, in the case of the Hotel Lease, are that Block E was part of a large mixed-use development, and that the hotel was part of a building which was to include about 70 apartments. While the Demised Unit the subject of the Hotel Lease was built and laid out as a hotel, there was no covenant limiting user to a hotel, still less a covenant to keep open as a hotel.

62. To the extent that the availability of hotel services might have been background knowledge which might inform the meaning of a contract, as opposed to puffing, the availability of those services post-dated the creation of the Hotel Lease and so, on any analysis, could not be taken into account in construing the Hotel Lease. If the interconnecting doors between the two sides of the building were part of the factual matrix, their presence was consistent with, and necessary for, the availability of the escape route and would not have tended to convey to a reasonable man that the apartment owners might later have a right of access at all times and for all purposes to the hotel.

63. By the time the Apartment Leases were made, the hotel was trading and, it was said by the developer, offering services to the apartment owners. If that was background knowledge of which account might be taken in construing the Apartment Leases, so also, it seems to me, was the fact and terms of the Hotel Lease. The developer, the Block Management Company and the Estate Management Company were aware of the terms of the Hotel Lease because they had been party to it. Any reasonable person would have understood that the ability of the developer, or the Block Management Company, or the Estate Management Company to grant easements over the hotel was limited to what had been excepted and reserved by the Hotel Lease.

64. Statements in newspaper advertisements or estate agents' brochures are not part of the factual matrix but fall into the category of statements made in the course of negotiations, which are inadmissible. Evidence as to whether, after the Apartment Leases were signed, the hotel continued providing services or whether the apartment owners did or did not use the access doors is inadmissible in construing the leases. *A fortiori* evidence as to what an estate agent who sold a good number of the apartments in the 20 years after the building was completed thought, or said to prospective purchasers, is inadmissible in construing the lease.

65. The vast majority of what is said to have been part of the factual matrix in which the Apartment Leases were agreed is inadmissible. If the marketing material were admissible, it would be seen to be puffing. Whatever hotel services were then on offer were being provided by the hotelier, not the developer, and were expressly subject to change. The legal rights of the apartment owners were, and are, to be found in the leases and not in the glossy brochures.

66. The Apartment Leases, properly construed, as entire documents, which were created as part of a scheme for the use and management of a mixed-use building in a mixed-use development, did not confer the right contended for.

67. In any event, even if the Apartment Leases had purported to create the easement contended for, they would have been ineffective in law to create rights over the hotel which had already been demised, unless the Lessor, in the Hotel Lease, had excepted and reserved the right to do so: which it did not.

#### *Conclusions*

68. The Apartment Leases made between Taleside Developments Limited, Beacon Court (Sandyford) Management Limited, Beacon One Management Company Limited and the purchasers of the apartments in The One Beacon Apartments, Beacon Court, Sandyford, County Dublin do not create a general right of access through the interconnecting doors between the apartments and the Beacon Court Hotel.

69. Neither Beacon One Management Company CLG nor the owners of apartments at The One Beacon Apartments, Beacon Court, Sandyford, County Dublin are entitled to a general right of access through the interconnecting doors between the apartments and the Beacon Court Hotel.

70. Beacon Leisure Investments Limited is entitled to restrict the use by the owners and occupiers of the apartments at The One Beacon Apartments, Beacon Court, Sandyford, County Dublin of the interconnecting doors between the apartments and the hotel, to a way of egress, in the event of emergency, from the apartments over the lobbies and stairwells within the hotel.