Franses v Cavendish: landlord's works, renewal leases and ground f

The decision in Franses v the Cavendish Hotel [2017] EWHC 1670 has attracted a lot of concern as to whether a landlord’s motive is relevant to its ability to utilise section 30(1)(f) ("Ground (f)") of the Landlord and Tenant Act 1954 (the "LTA 1954"). Tenants and their representatives are concerned that Ground (f) is being used openly to defeat the purpose of the LTA 1954 to protect tenants’ business tenancies.

WHAT WERE THE FACTS IN THIS CASE?

The tenant occupied ground and lower ground units at 80 Jermyn Street, St James’, London W1, which it used as a retail art gallery. The landlord occupied the rest of the building as a high-end hotel.

The tenant requested a new tenancy which the landlord opposed under Ground f on the basis that, on termination of the existing tenancy, it intended to carry out works to ready the premises for conversion into two retail units. At first instance the judge dismissed the tenant’s claim for a new tenancy so the tenant appealed.

At the Court of Appeal, the tenant’s claim succeeded in part. The judge decided that the landlord’s underlying motive did not undermine its genuine and settled intention to carry out its works.

HAS THIS CASE CHANGED THE LAW?

In fact, the law has not changed since the decision in Fisher v Taylors Furnishing Stores [1956] 2WLR 985 in which Parker LJ said: “It matters not to what use the landlord ultimately intends to put the building – he may intend to let it when the work is done to a third party. He may intend ultimately to occupy itself for his own business; or he may not have made up his mind at all.”

This decision was approved by the House of Lords in Betty’s Cafes Limited v Phillips Furnishing Stores Limited [1958] 2WLR 513; [1959] A.C. 20. In Betty’s Cafes, the landlord purchased the reversion less than 5 years before the end of the lease. It wished to occupy premises itself but could not benefit from the 5 year requirement within section 30(1)(g) of the 1954 Act. It also intended to carry out development works and relied on Ground (f) for terminating the tenancy. The House of Lords found that the landlord’s desire to obtain possession of the premises with the end result of occupying them was irrelevant as to whether it had satisfied Ground (f).
HOW HAS THIS BEEN INTERPRETED BY THE COURTS?

There are numerous authorities on this sub-section of the 1954 Act. All are fact sensitive. Some general propositions can be drawn from these relating to the meaning of the sub-section:

- The works must be carried out on or very soon after the termination of the existing tenancy, not at some point considerably in the future or at an unknown date.

- The landlord’s intention must exist when the section 25 notice is served and also at trial.

- The intention must be a firm and settled intention. This may be shown by a landlord's board resolution and an application for planning permission. That means that there is a genuine intention to carry out the works which goes beyond simply investigating what works will be carried out or whether to carry them out and also that there is a reasonable prospect of the landlord being able to carry out the works. This may be supported by evidence of planning permission, funding and tendering for construction contracts.

- Demolish does not necessarily mean removal of structural parts of the premises. It is a matter of fact and degree relating to whether or not a tenant could continue to use the premises.

- Reconstruct normally implies structural works to rebuild premises.

- What amounts to a substantial part of the premises is also a matter of fact and degree. Section 31A(1)(a) LTA 1954 permits a tenant to retain possession by taking an economically separable part of a holding or agreeing terms into a new tenancy that permits the landlord access to carry out its proposed works. The proposed works must be to such a substantial part of the premises that section 31A(1)(a) cannot be utilised if a landlord is to be successful under Ground (f).

- Substantial works of construction are likely to relate to the structure and are likely to need to be more than simply works on fittings and equipment, partitioning, pipework and other insubstantial works.

- The landlord must not be able to carry out the works without obtaining possession of the holding. The landlord will not be able to succeed on ground (f) if:
  - the landlord has rights under the lease to go in and carry out the proposed works;
  - the works are works of repair for which either the landlord or the tenant is responsible;
  - the works can be carried out from outside the holding;
  - the tenant can benefit from section 31A(1)(a) by permitting access under a new lease or accepting an economically separable part of the holding; or
  - the tenant can continue to possess and occupy the premises during the works.

What does Section 30(1)(f) LTA 1954 say?

Section 30(1)(f) requires 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 works of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.”
MOTIVE AND INTENTION

"It matters not to what use the landlord ultimately intends to put the building."

The courts have suggested that motive may be evidence of whether or not a landlord has a firm and settled intention to carry out works. In Franses and in Betty’s Cafes, this concern was overcome by the landlord offering the court an undertaking to carry out works. If it did not proceed to do the works, the tenant could apply to the court to enforce the undertaking.

Actions such as the landlord’s admission that it simply wants to remove a tenant enjoying security of tenure, as in Betty’s Café and Franses or that the proposed works would create something which was not economically viable or usable, as in Franses and Dolgellau Golf Club v Hett [1988] 2EGLR 75 CA, do not affect whether a landlord is found to have an intention to carry out works.