Injunction Damages - Stokes v Cambridge lives!

The recent decision of Tamarcs (Vincent Square) -v- Fairpoint Properties (Vincent Square) (2007) has provided very useful clarification on the assessment of damages where there is an infringement of a property right such as a right to light or a restrictive covenant. The case concerned a development in Vincent Square, Westminster where a developer was proposing to erect a three storey building in place of a single storey one. A neighbour objected on the grounds of infringement of its right to light and commenced proceedings for an injunction.

The Court refused to grant the neighbour an injunction on the basis that such a remedy would be oppressive or unjust and inequitable. Instead, it ordered the developer to pay the neighbour damages. In arriving at its decision on the level of damages to award, the Court made the following points:-

- The overall principle was that the Court had to attempt to find what would be a "fair" result of a hypothetical negotiation between the parties;
- The context, including the nature and the seriousness of the breach, had to be kept in mind;
- The right to prevent a development (or part) gave the owner of the right a significant bargaining position;
- The owner of the right with such a bargaining position would normally be expected to receive some part of the likely profit from the development (or relevant part);
- If there was no evidence of the likely size of the profit, the Court had to do its best by awarding a suitable multiple of the damages for loss of amenity;
- If there was evidence of the likely size of profit, the Court would normally award a sum which took into account a fair percentage of the profit;
- The size of the award should not, in any event, be so large that the development (or relevant part) would not have taken place had such a sum been payable;
- After arriving at a figure which took into consideration all the above and any other factors, the Court would
Over recent years the government has responded in a number of ways to increasing public concern about noise:

- planning controls
- limits at source for plant and equipment, motor vehicles, aircraft etc
- excessive noise as a statutory nuisance
- street noise controls of loudspeakers, construction sites, intruder alarms and entertainment events

To some extent the initiatives are being drawn together as a consequence of the EU Noise Directive 2002/49/EC, the main aim of which is to provide a common basis for tackling noise problems throughout the Union. The Directive effectively requires local authorities in member states to prepare strategic noise maps for major roads, railways, airports and conurbations. Thereafter, member states will be required to create action plans to reduce noise and to maintain acceptable levels. Implementation in England started with the Environmental Noise (England) Regulations 2006 which set down the structure for progress. Now the Secretary of State has introduced the Environmental Noise (Identification of Noise Sources) (England) Regulations 2007 SI 2007 No 415. These Regulations are in force from 19 March 2007 and impose a programme for identification of "first round" noise sources, including:

- urban conurbations with more than 50,000 people and a population density of 500 people per square kilometre, or greater;
- major roads with more than 3 million vehicle passengers a year which will include most trunk roads, motor ways and principal or classified roads;
- major railways;
- major airports

All of these maps were required to be in place by the end of June 2007. The London Road Traffic Noise map is already available on www.noisemapping.org. These noise maps are likely to be a useful source of information for the property industry and its advisors. Please contact the Planning and Environment Group at K&L Gates if you require further assistance.
Deals

- **PRO Logis Park, Coventry**
  We advised CBRERT Coventry Limited, a subsidiary of CB Richard Ellis Realty Trust, on the acquisition of 602 Central Boulevard, Prologis Park, Coventry from an institutional fund based in the UK for £11.2 million. The property is fully let to Capita Business Services Limited. It is the first purchase in Europe for this US REIT, whose strategy is to invest up to 30% of its assets in quality properties in overseas markets where it can take advantage of its strategic relationships with affiliates. Financing for the acquisition was provided by The Royal Bank of Scotland. Our team advising CB Richard Ellis Realty Trust was led by Real Estate partner, Melanie Curtis. The loan was handled by Finance partner, Richard Hardwick.

- **Crawley**
  We acted for a private Irish investor on the sale of Woolworths premises in Crawley for a consideration of £9 million. Real Estate partner, Chris Major assisted by Real Estate associate Fiona McPhillips handled the transaction.

- **Thames Gateway**
  Real Estate partner Richard Smith acted for Ravenbourne in relation to various sales in the Thames Gateway area, indicating the positive effects of the London Olympics in 2012 on the property industry in this location.

- **Retail warehouse units in Croydon and South Shields**
  Real Estate partner Chris Major and Real Estate assistant Paul Alger acted on the acquisition of retail warehouse units by Windsor Life Assurance Company Limited (represented by Arlington Property Investors) for a consideration of £10.35 million.
Legal cases

Overriding Interest

Mistake

Where a condition attached to a break clause was included in the draft of a lease but omitted by mistake from the executed version of the lease, it was held that the lease be rectified to reflect the draft.

Comment: The mistake had been noticed but not corrected prior to execution.

Co-ownership

Where a co-habiting couple bought a property in their joint names but made no declaration as to respective interests in the property, it was held that the starting point for the assessment of those interests was an equal split.

Comment: The person seeking a different split had the onus of establishing it.

Prudential Assurance Co -v- PRG Powerhouse, ChD

Restrictive Covenants

It was held that the Lands Tribunal was right to treat the existence of a building scheme as relevant to its refusal to modify a restrictive covenant which prevented further development of land.

Comment: The tests set out in section 84 of the Law of Property Act 1925 were not satisfied by the landowner.

Dobbin -v- Redpath, CA

Insolvency

A company voluntary arrangement (CVA) that sought to release some, but not all, parent company guarantees in respect of premises leased by an insolvent subsidiary was held to be unfairly prejudicial.

Comment: A major decision that, if it had been decided otherwise, would have cost commercial landlords billions of pounds in lost value.

KPMG -v- Network Rail Infrastructure, CA

Easements

A claim for an easement of necessity on the severance of two plots of land failed because, when the first plot was sold, the landowner did not need a right of way over that plot as, at the time of the severance, there was a realistic possibility of alternative access.

Comment: The landowner should have reserved a specific right of access in favour of the retained plot.

Stack -v- Dowden, HL

Chattels

The owner of a tenant company provided paintings for leased premises which, on the failure and liquidation of the tenant, were removed by the landlord who said he was waiting to hear from the liquidator regarding returning them. The landlord was found guilty of conversion.

Comment: The landlord should have established the position with the liquidator within a reasonable period of time.

Adealon International Proprietary -v- Merton LBC, CA

Who to Contact

For further information contact

Steven Cox      steven.cox@klgates.com     T: +44 (0)20 7360 8213
Milton McIntosh milton.mcintosh@klgates.com T: +44 (0)20 7360 8259

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