Central London Property Trust Limited v. High Trees House Limited

[KING'S BENCH DIVISION]

1946 July 18.

Denning J.

By a lease under seal made on September 24, 1937, the plaintiffs, Central London Property Trust Ld., granted to the defendants, High Trees House Ld., a subsidiary of the plaintiff company, a tenancy of a block of flats for the term of ninety-nine years from September 29, 1937, at a ground rent of 2,500*l*. a year. The block of flats was a new one and had not been fully occupied at the beginning of the war owing to the absence of people from London. With war conditions prevailing, it was apparent to those responsible that the rent reserved under the lease could not be paid out of the profits of the flats and, accordingly, discussions took place between the directors of the two companies concerned, which were closely associated, and an arrangement was made between them which was put into writing. On January 3, 1940, the plaintiffs wrote to the defendants in these terms, "we confirm the arrangement made between us by which the ground rent should be reduced as from the commencement of the lease to 1,250*l*. per annum," and on April 2, 1940, a confirmatory resolution to the same effect was passed by the plaintiff company.

. . . The defendants paid the reduced rent from 1941 down to the beginning of 1945 by which time all the flats in the block were fully let, and continued to pay it thereafter. In September, 1945, the then receiver of the plaintiff company looked into the matter of the lease and ascertained that the rent actually reserved by it was 2,500*l*. On September 21, 1945, he wrote to the defendants saying that rent must be paid at the full rate and claiming that arrears amounting to 7,916*l*. were due. Subsequently, he instituted the present friendly proceedings to test the legal position in regard to the rate at which rent was payable. In the action the plaintiffs sought to recover 625*l*., being the amount represented by the difference between rent at the rate of 2,500*l*. and 1,250*l*. per annum for the quarters ending September 29, and December 25, 1945. By their defence the defendants pleaded (1.) that the letter of January 3, 1940, constituted an agreement that the rent reserved should be 1,250*l*. only, and that such agreement related to the whole term of the lease, (2.) they pleaded in the alternative that the plaintiff company were estopped from alleging that the rent exceeded 1,250*l*. per annum and (3.) as a further alternative, that by failing to demand rent in excess of 1,250*l*. before their letter of September 21, 1945 (received by the defendants on September 24), they had waived their rights in respect of any rent, in excess of that at the rate of 1,250*l*., which had accrued up to September 24, 1945.

. . . If I were to consider this matter without regard to recent developments in the law, there is no doubt that had the plaintiffs claimed it, they would have been entitled to recover ground rent at the rate of 2,500*l*. a year from the beginning of the term, . . .

But what is the position in view of developments in the law in recent years? . . . There has been a series of decisions over the last fifty years . . . in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on.

In such cases the courts have said that the promise must be honoured. . . In each case the court held the promise to be binding on the party making it, even though under the old common law it might be difficult to find any consideration for it. The courts have not gone so far as to give a cause of action in damages for the breach of such a promise, but they have refused to allow the party making it to act inconsistently with it. **.** . . In my opinion, the time has now come for the validity of such a promise to be recognized. The logical consequence, no doubt is that a promise to accept a smaller sum in discharge of a larger sum, if acted upon, is binding notwithstanding the absence of consideration: and if the fusion of law and equity leads to this result, so much the better. That aspect was not considered in *Foakes v. Beer* [(1884) 9 App. Cas. 605](http://www.justis.com/J-Net/J-Web.dll?Link?0&(1884)%209%20App.%20Cas.%20605). At this time of day however, when law and equity have been joined together for over seventy years, principles must be reconsidered in the light of their combined effect. It is to be noticed that in the Sixth Interim Report of the Law Revision Committee, pars. 35, 40, it is recommended that such a promise as that to which I have referred, should be enforceable in law even though no consideration for it has been given by the promisee. It seems to me that, to the extent I have mentioned that result has now been achieved by the decisions of the courts.

I am satisfied that a promise such as that to which I have referred is binding and the only question remaining for my consideration is the scope of the promise in the present case. I am satisfied on all the evidence that the promise here was that the ground rent should be reduced to 1,250*l*. a year as a temporary expedient while the block of flats was not fully, or substantially fully let, owing to the conditions prevailing. That means that the reduction in the rent applied throughout the years down to the end of 1944, but early in 1945 it is plain that the flats were fully let, and, indeed the rents received from them (many of them not being affected by the Rent Restrictions Acts), were increased beyond the figure at which it was originally contemplated that they would be let. At all events the rent from them must have been very considerable. I find that the conditions prevailing at the time when the reduction in rent was made, had completely passed away by the early months of 1945. I am satisfied that the promise was understood by all parties only to apply under the conditions prevailing at the time when it was made, namely, when the flats were only partially let, and that it did not extend any further than that. When the flats became fully let, early in 1945, the reduction ceased to apply.

In those circumstances, under the law as I hold it, it seems to me that rent is payable at the full rate for the quarters ending September 29 and December 25, 1945.

If the case had been one of estoppel, it might be said that in any event the estoppel would cease when the conditions to which the representation applied came to an end, or it also might be said that it would only come to an end on notice. In either case it is only a way of ascertaining what is the scope of the representation. I prefer to apply the principle that a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply. Here it was binding as covering the period down to the early part of 1945, and as from that time full rent is payable.

I therefore give judgment for the plaintiff company for the amount claimed.