

**IMPLICATIONS OF *NO 1. WEST
INDIA QUAY (RESIDENTIAL) LTD*
[2018]
AND UNRESOLVED ISSUES**

***No 1 West India Quay (Residential)
Ltd v East Tower Apartments Ltd***
[2018] HLR 20

Facts:

*999 year residential underleases (42) granted by D (landlord)
to C (tenant)*

T sought consent to assign

3 reasons for refusal:

- 1. pay £1600 for each consent = £1250 legal costs and £350 surveyors fees
- 2. Allow L's surveyor to inspect each flat for underlease breaches
- 3. Provide a bank reference from the prospective assignee to ensure assignee could pay further service charges (£5k max per annum, per flat)

Refusal of consent:

'My client is not prepared to proceed with the Licences for the following reasons:

- 1. Costs ('my client is not prepared to proceed until I receive the undertaking requested')*
- 2. Inspection ...*
- 3. Reference ...*

Circuit Judge - all conditions unreasonable

High Court Judge - conditions (ii) and (iii) reasonable but (i) legal costs element, unreasonable (£350 was appropriate and not the £1250 demanded)

But **key point** of HC Judge's decision: as there was no evidence L would have accepted the reasonable figure if T had agreed to the other (reasonable) conditions, consent had **still** been unreasonably withheld

CA the issue:

Whether, where L had established good grounds for refusal of consent, an independent bad reason meant that refusal was still unreasonable

The Law

If a good reason and bad reason are given, the refusal may be reasonable if the good reason is not a makeweight and so is sufficient in itself, and not otherwise vitiated by the bad

(BS Northern Ltd v Templeheights Ltd (1998))

Tenant's Key Argument

- **S.1(3)(b)** of Landlord and Tenant Act 1988 obliges L to serve notice of decision stating:
 - *(i) if consent is given subject to conditions, the conditions*
 - *(ii) if consent is withheld, the reasons for withholding it*
- **S.1(4)** giving consent subject to any condition that is not a reasonable condition does not satisfy the duty under **s.1(3)(a)**
(i.e. the 'duty to give consent, except in a case where it is reasonable not to...')

T argued:

- See 1(4): No difference between imposing unreasonable condition and giving good and bad reason
- Policy of Act was implicitly against notices being overloaded with reasons so s1(3) should be read narrowly. Landlords should know the difference between good and bad reasons and only state good ones

- CA rejected arguments and allowed the Appeal
- CA found the 'bad' reason did not infect the good and the good were not dependent on the bad. Therefore the HC Judge had asked the wrong question. The correct question was:

Would L still have refused consent on the reasonable grounds if he had not put forward the unreasonable ground?

Implications

- Law is settled: if a good reason and bad reason for refusal is given, the refusal is valid...

(Berenyi v Watford BC [1980] CA, confined to its facts); the test in BRS Northern 'is broadly speaking still good')

- ...provided that 'freestanding' reasons are given, so the good are not 'infected' by the bad
- So question is: has there been any infection of the good by the bad?

Second implication

- The 1988 Act does not change the common law position as regards the validity of notices which include good and bad reasons for refusing consents

Third Implication:

- The landmark Supreme Court case of ***Braganza v BS Shipping Ltd*** [2015] will continue to have growing implications regarding Landlord's contractual discretions in leases

(see e.g. ***Victory Place Management v Kuehn*** [2018] HLR)

Unresolved Issues:

- **First:**

In practice, what does it mean to say that a bad reason may infect a good reason?

As a tenant, how does one confidently distinguish them, or decide that there is infection?

- Example:

‘I am not prepared to proceed unless I receive an undertaking for costs of £1,250; and if this is agreed I will need to inspect at a cost of £100’

If this is construed to mean a (bad)pre-condition is being imposed as a gateway to consideration, would that infect the good reason (i.e. inspection)?

Second:

The (unresolved) s.1(4) point

- ***‘Giving consent subject to any condition that is not a reasonable condition does not satisfy the duty under subsection 1(3)(a) above’***

L’s duty under **1(3)(a)**:

‘within a reasonable time –

(a) to give consent, except in a case where it is reasonable not to...

- *(b) to serve on the tenant written notice of his decision....specifying in addition –*
 - (i) If the consent is given subject to conditions, the conditions,*
 - (ii) If the consent is withheld, the reasons for withholding it*

- Note however:

s.1(4) does not say that imposing an unreasonable condition is a breach of duty, it only says that '*the imposition of an unreasonable condition does not satisfy the duty under subsection (3)(a)*'

Practical Implications

Thank you