SQUIRE PATTON BOGGS

THE PRINCIPLES AND CONSEQUENCES OF ANNEXATION ARE LAID BARE BY THE COURT OF APPEAL

Spielplatz Ltd v (1) John Pearson (2) Maureen Pearson [2015] EWCA Civ 804

Summary

The recent Court of Appeal decision in *Spielplatz Ltd v (1) John Pearson (2) Maureen Pearson [2015] EWCA Civ 804* has provided a reminder of the established principles of annexation in considering whether a chalet which had been constructed on the tenant's land constituted a chattel or a separate dwelling house under Section 1 of the Housing Act 1988 (the Act).

Facts

Spielplatz Ltd was the freehold owner of a naturist resort which leased plots of land to its members. The original intention was that the members would place a caravan or pitch a tent on the plot, which the member would own. Over time, many members constructed chalets or cabins on these plots.

On 14 August 1992, Spielplatz granted an annual tenancy of the plot to the Defendants, including the chalet which the Defendants purchased from the previous tenants. Between 2008 and 2012, the Defendants carried out some improvement works to the chalet and later began to live in the chalet permanently.

Spielplatz sought to serve a six-month notice to quit on the Defendants which was disputed by the Defendants on the basis that the 1992 tenancy was an assured tenancy under the Act.

The County Court, in applying the principles in *Elitestone Ltd v Morris [1997],* held that:

1. As a matter of fact, the chalet was incapable of being moved except by destruction, and it was annexed to the mains water and electricity. The chalet was therefore part and parcel of the plot;
2. The chalet therefore constitutes a separate dwelling house for the purposes of the Act and is accordingly an assured tenancy; and
3. The parties' shared belief that the Defendants owned the chalet was irrelevant.

The Appeal

The issue of whether the 1992 tenancy was protected under the Act was dependent entirely upon whether the chalet was a chattel.

On appeal, Spielplatz sought to argue that:

1. The County Court Judge had failed to consider and attach proper weight to the relevant intention of the parties and the purpose for which the chalet was annexed to the plot;
2. In any event, the 1992 tenancy only extended to the soil of the plot, so at most the Defendants had been given a gratuitous licence to occupy the chalet; and/or
3. The 1992 tenancy was excluded from the protection of the Act on the basis that it was only a holiday letting.

Decision

The Court of Appeal upheld the County Court's decision and found that it was correct to conclude on the evidence that the chalet was part and parcel of the plot when the 1992 tenancy was granted. In respect of the grounds of appeal argued by Spielplatz, the Court of Appeal held as follows:

1. The parties' subjective intentions are irrelevant. The question was whether the chalet formed part and parcel of the plot. Following the guidance in *Elitestone v Morris*, the findings that the chalet was immovable except by destruction led to the conclusion that the chalet formed part of the plot.
2. The argument in respect of the licence to occupy was merely an attempt to avoid the consequences of the 1992 tenancy being protected under the Act.
3. The 1992 tenancy was an annual tenancy and the Defendants were able to occupy the chalet all year round. It could not, therefore, be a holiday letting.

Comment

This case serves as a useful reminder of the principles of annexation and the potential consequences for the parties of attracting protection under the Act.

In particular, it highlights that the subjective intentions of the parties are not relevant to the finding of whether something is part and parcel of the land; it is the purpose which is served by the object which has to be regarded (see *Melluish v BMI* (No 3) [1996]).

In this case, the result is that, whilst possession proceedings can still be pursued by Spielplatz, the requirements of the Act, and the necessary grounds, must be complied with. Outside the scope of this case, there are wider consequences of annexation which must also be considered, including the passing of objects to purchasers on a property sale and the tenant's rights and obligations at the end of a lease term.

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