

Case Report: *The Creative Foundation v (1) Dreamland Leisure Limited (2) Jeremy Michael Godden and (3) Jordan Harry Godden*

If something is removed from a building by a tenant, who owns it? It depends on the lease and how much it's worth...

The work of the famous street artist Banksy recently became the subject of an interesting dispute heard before the High Court. Banksy exhibited his art without permission on a tenant's wall. The tenant saw an opportunity for windfall, and shipped the mural (and the wall) to New York. But the people of Folkestone wanted the graffiti back.

This led to the High Court being asked to consider the question of whether, if a tenant removed part of the property that was demised to it, that part would be the landlord's property or the tenant's property.

The High Court upheld the principle that, in the usual circumstances, a leased property and every part of it belongs to a landlord. However, it also held that whether that is always the case will depend, amongst other things, on the value of the part of the property. The conclusion in this case seems to be that if the tenant had removed rubbish, then it would have belonged to the tenant, but because the landlord could obtain a substantial windfall from the part in question, then the Banksy graffiti belonged to the landlord.

Background

In September 2014, the famously secret street artist Banksy graced Folkestone with his presence, and left his mark on the side of a property let by Dreamland in the form of a graffiti mural. The property was an amusement arcade, and the mural, known as "Art Buff", showed a woman wearing headphones, staring at an empty plinth. As with all Banksy works, the mural attracted much attention.

Dreamland has a long lease of the property in question, which is due to expire in 2022. Under the terms of that lease, Dreamland is demised the structure and exterior of the property, and as is usual, it has obligations to both keep the property in good repair and to yield it up in good repair. In addition, Dreamland was also obliged under the terms of its lease to make good and restore any outside painting, and to not maim or injure any of the property's walls without the landlord's consent.

The local council initially shielded the mural with Perspex to stop it being defaced. Its authority for doing so is unclear. Approximately a month later, and without requesting the landlord's consent, Dreamland arranged for the section of the wall on which the mural was painted to be cut out and replaced. The section of wall was then transported to New York to be exhibited for sale – in the hope no doubt that Dreamland would secure a windfall from Banksy's work. A valuation of approximately £470,000 was suggested.

However, the landlord wanted to preserve the work for the people of Folkestone. Before the mural was sold, it transferred its interest in it to the Claimant, The Creative Foundation, and they brought proceedings against Dreamland to get the mural back to Folkestone.



Decision

Dreamland tried to argue that it was obliged, or even entitled to, remove the mural in accordance with its repairing conditions, and that once removed it became a chattel and their own property in accordance with an implied term of the lease.

The High Court disagreed that the mural was removed in accordance with Dreamland's repairing obligations. It hinted that the removal of the wall, as opposed to simply say, painting over the mural, was not a reasonable way of complying with a repairing condition. It disagreed with Dreamland's argument that it was likely that the removal of the mural would deter graffiti artists from once again defacing the wall.

The High Court confirmed that, while the wall on which the mural was imposed was originally a part of the structure of the building, the bricks in question had become a chattel once they had been removed.

Dreamland tried to argue that such a chattel belonged to a tenant, and that they were entitled to dispose of it as they wished because of an implied term of their lease. The High Court disagreed. It said that, in principle, the default position is that every part of a property belongs to the Lessor. While a term could be implied that the tenant owns the chattel if that chattel was simply rubbish, the position was different here where the value was significant. The High Court held that the Foundation was entitled to the return of the mural.

Comment

If the graffiti had been of no value, the landlord would have arguably held the tenant in breach of its repairing conditions had it failed to do anything about the works. However, due to the value, this case resulted in the court having to reconsider important principles of law.

The case confirms the position that the starting point is that the landlord retains ownership of any parts of a structure that a tenant removes. However, it is implicit in the reasoning that the landlord does not necessarily retain their ownership of the material if it is simply rubbish. The question arises of where the threshold of what is rubbish is lies – a point which remains to be considered as the court was not asked to rule on it in this case where the estimated value of the chattel in question was close to £500,000.

Our national real estate litigation team is experienced in dealing with disputes between landlords and tenants, including those regarding disrepair, the removal of chattels at the end of leases, and dilapidations queries. We will be happy to advise you if you are experiencing any difficulties with those issues.

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