



17 November 2010

PRESS SUMMARY

Multi-Link Leisure Developments Limited (Appellant) v North Lanarkshire Council (Respondent) (Scotland) [2010] UKSC 47

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lady Hale, Lord Clarke, Sir John Dyson SCJ.

BACKGROUND TO THE APPEAL

This appeal concerns the proper construction of a term of a lease which gives the Appellant (the tenant) the option to purchase the leased property from the Respondent (the landlord). The question was whether, given the particular drafting, the Respondent was entitled to take into account ‘hope value’ attributable to the potential for residential development when it determined the option price.

The lease in question was a fifty year lease of land near Cumbernauld, commencing on 1 June 1999. The Appellant was to develop a golf course on the land. The Appellant was given an option to purchase the land. The lease set out how the option price was to be calculated. The relevant part of the clause provided that it was to be “equal to the full market value of the subjects ... as at the date of entry for the proposed purchase (as determined by the landlords) of agricultural land or open space suitable for development as a golf course”. But, in determining the full market value, the landlords were to assume that the subjects were in good and substantial order and repair, that all obligations of the landlords and the tenants under the lease had been complied with and that they were ready for occupation. They were to disregard any improvements carried out by the tenants during the period of this lease otherwise than in pursuance of an obligation to the landlords, and any damage to or destruction of the subjects of the lease.

Neither party seems to have contemplated, when they entered into this lease, that the site might be used for residential development. However, it has now been identified as being in an area which has the potential for housing-led urban expansion. This gives it a hope value which was not in prospect when the lease was entered into. The Appellant exercised the option to purchase on 8 October 2007. The Respondent fixed the price at £5.3 million. This figure included value attributable to the development potential of the land. The Appellant took issue with this valuation on the ground that it was far in excess of the value of the land as a golf course. Eventually, the Respondent served notice on the Appellant requiring payment of £5.3 million. When the Appellant did not pay, the Respondent terminated the option contract. The parties are agreed that, if the termination was valid, the option was “spent” and could not be exercised again.

The Appellant sought a declaration that the option contract has not been validly rescinded and that the Respondent is to determine the full market value of the land without reference to any increase in value attributable to its potential for residential development. They relied, in particular, on the inclusion in the lease of the words “of agricultural land or open space suitable for development as a golf course”.

The Lord Ordinary found for the Appellant. His decision was reversed by the Inner House, which held that “full market value” meant what it said; that express wording would have been needed in order for considerations relevant to market value to be ignored, and that there was no such wording here. The Appellant appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. It holds that the Respondent was entitled, when determining the option price, to take full account of the land's potential for development.

REASONS FOR THE JUDGMENT

Lord Hope holds that the problem arises because of the conflict between the words of the first part of the clause (“full market value of the subjects ... of agricultural land or open space suitable for development as a golf course”) and the assumptions and disregards in the second part. These two parts of the clause approach the question of value on different bases. The earlier parts were designed to settle the price for the purchase of land that will have a value in the open market that takes account of the potential for development. The assumptions and disregards were designed to settle the basis for a purchase of the land in its existing use. The court has to recognise the poor quality of the drafting and try to give a sensible meaning to the clause as a whole, which takes account of the factual background known to the parties at the time they entered into the lease: [16] - [19]. The commercial or business object of the provision has to be taken into account: [21] The Appellant's construction would provide them with a substantial windfall at the expense of the Respondent: [23]. Had reasonable commercial parties directed their mind to the benefits which would accrue to the Appellant if the option was exercised, they would have agreed that the option price was to be the full market value of the land, taking account of any development potential. That is what the parties must be taken to have agreed in this case: [23].

Lord Rodger also holds that the lease should be construed as a commercial agreement. It seems unlikely that parties to such an agreement would have intended the Appellant's construction: [26]. Something had gone wrong with the drafting: [27]. In those circumstances, it is useful to start with those parts of the clause whose meaning was clear and then to consider those parts which are more difficult to understand: [28]. The meaning of the assumptions and disregards is clear: [28]. They provide that, contrary to the approach taken by the parties, the valuation is to be on the basis that the golf course has been constructed and is in good order and repair: [29] - [32]. The words “of agricultural land or open space suitable for development as a golf course” cannot be construed inconsistently with the clear directions in the assumptions and disregards so as to require the valuer to assume that the golf course had not been developed: [33]. The clause contains no instructions to ignore any other factor which might be relevant to the value of the golf course: [34]. The approach contended for by the Appellant would be an unusual and artificial approach to valuation, given that there was no limit on the use to which the land could be put after the option was exercised: [36].

Lady Hale agrees with Lord Rodger's approach and also concludes that the appeal should be dismissed: [44]. Lord Clarke agrees that the appeal be dismissed, emphasising that any other conclusion would flout business common sense: [45]. Sir John Dyson agrees that the appeal should be dismissed, preferring Lord Rodger's reasoning to Lord Hope's to the extent that there is any difference between them: [46].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html