8 May 2014

PRESS SUMMARY

L Batley Pet Products Ltd (appellant) *v* North Lanarkshire Council (respondent) [2014] UKSC 27
[2012] CSIH 83

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Reed, Lord Carnwath, and Lord Hodge

BACKGROUND TO THE APPEALS

This appeal from an Extra Division of the Court of Session raises two issues of contractual construction in documents relating to the letting of commercial premises at 1 and 3 South Wardpark Place, Wardpark South Industrial Estate, Cumbernauld, Scotland. The appellant (Batley) was the mid-landlord of sub-let premises and the respondent (the Council) was the sub-tenant. Batley and the Council disagreed on whether the Council was obliged to remove its alterations and reinstate the sub-let premises on the expiry of the sub-lease when the request to do so was made orally by Batley's surveyor and not put in writing in a schedule of dilapidations or otherwise before the sub-lease expired. The two issues were

a) whether under a minute of agreement that authorised alterations to the sub-let premises Batley was obliged to give written notification that it required the Council to remove the alterations and reinstate the sublet premises; and
b) whether under the repairing obligation in the head lease, which was applied to the sub-lease, Batley had to give a written notification that it required the Council to carry out the repairs before the expiry of the sub-lease.

The Extra Division dismissed Batley's claim on the basis that it was 'irrelevant', meaning that Batley's pleadings did not, on the face of them, set out a claim that was properly founded in law.

As the repairing obligation in the head lease was in terms commonly used in commercial leases, this appeal raises an issue of law of general importance.

JUDGMENT

The Supreme Court unanimously allows the appeal. It also allows a proof before answer of the appellant's case. This means that the question whether the appellants have made out a good case in law will be reserved pending an evidential hearing in the Court of Session.

REASONS FOR THE JUDGMENT

Lord Hodge gave a judgment with which the rest of the Justices agree.

The Court first addressed basis (b) of Batley's claim. Batley's pleadings on this issue were sufficiently detailed to give notice of both the contractual basis of the claim and also, by reference to the revised schedule, the works which Batley asserts were required at the expiry of the sub-lease to meet the obligation to repair. **[11]**

This basis was also sound in law. The Extra Division, in accepting the Council's submission, appeared to have imposed on the landlord a hurdle that was not there. The head lease obliged the tenant to repair, maintain, and where necessary reinstate the premises in order to keep them in a tenantable condition at all times during the period of the lease. That obligation to keep premises in (and put them into) a good condition was a continuing obligation of a sort that, it was well established, did not require any notice from the landlord to activate it. **[14]**

Basis (b) of Batley's claim was therefore relevant to go to proof before answer. Issues of fact, such as whether Batley has carried out the needed repairs, and, if it has, the legal consequences to its claim (which is based on estimated costs) could be addressed at that hearing. **[15]**

Basis (a) depended on whether Batley had to give written notice before the expiry of the sub-lease of that it required the Council to remove the licensed works. It was not straightforward, as the document could bear more than one interpretation, but the Court concluded that no written notice was required. **[16]**

The words had to be construed in the context of the Minute of Agreement as a whole and having regard to the admissible background knowledge, which is often called 'the factual matrix'. **[18]**

Starting with the words of the Minute of Agreement, the Court noted that the disputed words in clause 2.5 ('if so required by the Mid-Landlord') contrasted with two provisions in the Minute of Agreement that expressly required written forms. So the parties appeared to state expressly in this document when a communication had to be in writing and when less formal communication was permitted. **[19]**

Further, contrary to the Council's submission, no requirement for written notice was incorporated into the Minute of Agreement. That submission depended on a convoluted argument that clause 5 of the Minute of Agreement subjected clause 2.5 to the requirement of writing (in clause 5.8 of the head lease) because the sub-tenant's obligation in that clause was conditional upon the mid-landlord requiring the sub-tenant to remove the licensed works. The Court strongly preferred the simpler construction of clause 5 of the Minute of Agreement. **[21]**

It was also relevant to see the Minute of Agreement in its context as a document required by clause 5.7 of the sub-lease: the mid-landlord's consent to the sub-tenant's works. The Minute of Agreement existed in the context of the head lease and the sub-lease, both of which were part of the factual matrix. But it was a separate contract and the starting point was the words it contained. Those words pointed towards the conclusion that writing was not required for communications in all circumstances. The fact that the communications in the head lease and the sub-lease that fell within the scope of clause 5.8 of the former had to be in writing did not overturn that conclusion. **[23]**

Moreover, this made business common sense. First, the commercial purpose of the deemed incorporation of the obligations into the sub-lease was stated in clause 5 to be to give the mid-landlord the power of irritancy. Secondly, the context was important; the landlord would require the removal of the licensed works only at the end of the sub-lease, when the sub-tenant would have to address its separate and continuing obligation to keep the property in repair. An indication that the mid-landlord wanted the licensed works removed required no formality. A sub-tenant that conscientiously addressed its mind to its obligations under clause 5.1 of the sub-lease to keep the sub-let premises in repair could readily respond to an intimation by the mid-landlord or its surveyor that it include the removal of the licensed works in the works it carried out at the end of the sub-lease. If in doubt, it could ask the mid-landlord. The benefits of certainty, which the Council emphasized, did not make its interpretation of the Minute the only commercially sensible construction. **[24]**

The Court was therefore satisfied that the Minute of Agreement did not require the mid-landlord to give written notice of its requirement that the licensed works be removed at the end of the sub-lease. Batley averred that it instructed a named firm of chartered surveyors to produce a schedule of dilapidations and that on 22 December 2008 a named surveyor from that firm informed a named official of the Council that the mid-landlord would be requiring the reinstatement of the premises to their original condition. Those averments met the well-known test of relevancy in *Jamieson v Jamieson* 1952 SC (HL) 44, *per* Lord Normand at 49–50. The appellant was not to plead evidence; and, as the Council could not only enquire of its official but also take steps to recover from Batley and the surveyor any documents relevant to those averments, there was no unfair lack of notice of the case Batley sought to prove. **[25]**

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at
http://www.supremecourt.uk/decided-cases/index.shtml.