

Briefing Note

Damages for interference in property rights



Ramzan v Brookwide Ltd [2010] EWHC 2453 (Ch)

The High Court has awarded damages of approximately £450,000 including exemplary damages of £60,000 against a property owner who incorporated part of his neighbour's property into his own.

This case serves as a reminder of the Courts' rarely used jurisdiction to award damages over and above actual loss suffered by a complainant in order to express their condemnation of particularly brazen breaches of the rights of others. In addition, it provides an example as to how the Courts may treat competing claims arising out of separate legal and beneficial ownership of land.

Legal and beneficial ownership of land

Land may be owned both legally and beneficially. When there are separate legal and beneficial owners the legal owner holds the land on trust for the beneficial owner. The beneficial owner may be entitled to any income generated from the land and proceeds of sale or to a share of both.

This case shows us an example of how beneficial ownership may arise: Part of the land purchased by the buyer was not registered by the Land Registry as belonging to the buyer and remained in the legal ownership of the seller. However, consequently, the seller held the property on trust for the buyer.

The facts

Agra Limited owned 123 and 125 Alcester Road. The Claimant's father, Mr Ramzan snr, purchased 125 Alcester Road from Agra in 1992 for his restaurant business. Owing to a mistake in the plan to the transfer a storage room forming part of the property and accessible from it was not registered. The storage room was located above an adjacent property, 123 Alcester Road. As a result of the error, the storage room was registered instead as forming part of that property. Unaware of the error Mr Ramzan snr used the storage room for his restaurant business.

In 1999, the Defendant owner of 123 Alcester Road, Brookwide Limited, the predecessor in title and a subsidiary of Agra, decided to convert the first and second floors of its property into flats. Brookwide broke down the wall dividing its property from the storage room and bricked up the doorway to 125 Alcester Road. It then incorporated the storage room into its development. This also blocked a fire escape from the first floor of 125 Alcester Road in consequence of which Mr Ramzan was unable to use it as a function room. Mr Ramzan snr protested throughout the conversion without avail.

The Claimant, Mr Ramzan acquired 125 Alcester Road from his father's trustee in bankruptcy in 2001 and claimed for the recovery of the storage room and damages. The Court held at a liability trial in 2008 that he was the beneficial owner of the storage room from 2001, but declined to order the rectification of the Register due to the subsequent involvement of interests of third parties (the occupiers of Brookwide's flats). Accordingly his claim fell to be assessed in damages only.

The basic rule

The Courts have jurisdiction to award damages for different losses. In respect of a claim by a beneficial owner of land against the legal owner, damages could include damages in lieu of recovery of the land (future loss), damages for trespass (past loss), damages for breach of trust (past loss) and exemplary damages. However, the Courts must avoid duplicating compensation owed to claimants for the same loss by reference to awards of damages under different headings.

The judgment

The Court awarded the Claimant damages in respect of:

- The value of the land: the Court awarded £55,000 in lieu of recovery of the storage room. The award reflected the loss of the use storage room in the future. It held that the correct method of valuing this loss was to assess the price that Brookwide would have agreed to pay for the interest;
- Damages for trespass: the Court awarded £23,210.64 in mesne profits, being such sum as Brookwide ought to pay for the use of the storage room up to the date of trial. The value of this sum was assessed by reference to the ordinary letting value of the storage room;
- Consequential losses: The Court awarded consequential losses arising out of Brookwide's trespass, including the cost of building a fire escape for 125 Alcester Road in the amount of £72,570 plus VAT and loss profits arising out of the loss of the use of the first floor function room prior to the construction of a new fire escape in the amount of £225,073.50;
- Damages for breach of trust: The Court awarded damages of £19,741.60 for breach of trust in respect of rents received by Brookwide in renting out the storage room as part of the developed flats. However, the Court accepted Brookwide's submission that this head of claim amounted to double recovery of the loss compensated for by the claim for mesne profits and it therefore ordered the mesne profits claim be reduced by the same amount;
- Exemplary damages: Finally the Court awarded exemplary damages of £60,000 to reflect its disapproval of Brookwide's conduct and to deter it and others from acting in a similar way in the future. As a matter of precedent, the Court noted that such awards ought to be moderate in amount and rarely given, to mark particularly outrageous conduct.

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This note does not constitute legal advice but is intended as general guidance only. It is based on the law in force on 25 October 2010.

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