



LEGAL BRIEFING

Shining a light

Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd

Ch D, Gabriel Moss QC

The Facts

In the original reserved judgment the judge found that the defendants were liable to the claimants for infringing a right to light to two windows which illuminated some stairs leading to the basement of the claimant's building. However, the judge declined to grant an injunction and left the question of assessment of damages in lieu of an injunction to be determined.

The Issue

There was no dispute between the parties that the correct measure of damages was the greater of: (a) damages for loss of amenity to the dominant owner, and (b) damages to compensate for loss of the ability to obtain an injunction. The issue was how such damages were to be assessed.

The Decision

The Judge deduced the following principles in relation to the assessment of damages for loss of the ability to prevent an infringement of a right to light: (a) the overall principle is that the court must attempt to find what would be a "fair" result of a hypothetical negotiation between the parties; (b) the context, including the nature and seriousness of the breach, must be kept in mind; (c) the right to prevent a development (or part) gives the owner of the right a significant bargaining position; (d) the owner of the right with such a bargaining position will normally be expected to receive some part of the likely profit from the development (or relevant part); (e) if there is no evidence of the likely size of the profit, the court can do its best by awarding a suitable multiple of the damages for loss of amenity; (f) if there is evidence of the likely size of profit, the court should normally award a sum which takes into account a fair percentage of the profit; (g) the size of the award should not in any event be so large that the development (or relevant part) would not have taken place had such a sum been payable; (h) after arriving at a figure which takes into consideration all the above and any other relevant factors, the court needs to consider whether the "deal feels right".

In light of the foregoing principles, the Judge took the view that as hypothetical reasonable commercial people the parties would have taken the halfway point between the two figures given by the expert valuer for loss based on the rival right to light expert reports, namely £174,500. They would then have agreed a one-third split of that profit at £58,166. Further, in the context of the relatively modest nature of the infringement, as in the present case, it was likely that the sum would be reduced to £50,000 as a "fair result".

Comment

This is an interesting decision which clarifies how a court should assess damages for loss of the ability to obtain an injunction to prevent an

infringement of a right to light. It is now clear that such damages should not be so high as to deter a developer from building at all. Indeed, the indication is that a one-third split of profit is appropriate on the basis that if a developer agrees to pay a third of an expected development profit regardless of whether it is actually made or not, he is taking a risk and the other party is not. Accordingly, a 50/50 or 40/60 split is not likely to be reasonable.

Iftikhar Khan
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