



Alexander Reece Thomson

DILAPIDATIONS CASE SUMMARY (For internal purposes only)

**CAR GIANT LIMITED
ACREDART LIMITED
-v-
THE MAJOR AND BURGESS OF THE
LONDON BOROUGH OF HAMMERSMITH
[2017] EWHC 197 (TCC)**

Court: High Court of Justice: Queens Bench Division
Technology and Construction Court

Judgment Date: 14 February 2017

Case No: HT-2013-000071

Judge: Mr Stephen Furst QC

Claimant Counsel: Neil Mendoza of Selbourn Chambers
(Instructed by IBB Solicitors – Mr Ryan Diamond)

Defendant Counsel: Miss Tiffany Scott of Wilberforce Chambers
(Instructed by Browne Jacobson – Mr Tim Rayner)

Expert Surveyor (Claimant) Mr Paul Tomlinson of Vail William LLP

Expert Surveyor (Defendant) Mr Rob Knight of Jones Lang Limited

Expert Valuer (Claimant): Mr Andrew Outterside of Vail Williams LLP

Expert Valuer (Defendant): Mr Nigel Lenson of Alexander Reece Thomson

Property: Land and Buildings at Salter Street, London NW10 6UG

SYNOPSIS

A dilapidations claim concerning 35 secondary 1980's light industrial units in Willesden. The Defendant held a 25 year lease on FRI terms. At the expiry date of 20 February 2011, 18 units were occupied by sub-tenants and the remaining units were vacant. The agreed extent and cost of Dilapidations was £402,887. The Claimant undertook agreed works of Dilapidations of £183,897. It was agreed that remaining works of £218,990 were not undertaken. Claimant sought £402,887 contending no diminution cap. Defendant sought £110,000 forming a Diminution cap. Judgment at £166,000, plus fees for preparation of the schedule of £13,125, plus interest. Costs acknowledged to be largely in favour of Defendant.



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KEY POINTS

- Car Giant (Claimant) -v- LB Hammersmith and Fulham (Defendant);
- Common Law Claim: **£402,887**;
- Total cost of works undertaken: £183,897;
- Total cost of works not undertaken: £218,990;
- Claimant Valuer's assessment of diminution: £500,000 (no diminution cap);
- Defendant Valuer's assessment of diminution: £110,000 (diminution cap applicable);
- Held: £166,000 plus cost for preparing schedules of £13,125;
- **Judgment: £179,125 plus 1% simple interest**;
- Part 36 Offer (Defendant): £250,000 plus costs from 7 May 2014;
- Costs Judgment pending – Largely in favour of Defendant.

HIGHLIGHTS

- Total agreed cost and extent of works form the building blocks of diminution valuations and this is the figure to be taken;
- Agreed cost of works carried out represents diminution in value of the reversion;
- In respect of works not carried out, burden of proof of diminution in value rests on the Claimant;
- Claimant required to demonstrate that works not undertaken would still be carried out, were major defects or were serious or substantial;
- Justifiable reasons for not undertaking work could include a lack of finance, disturbance to tenants, a rolling programme of works, holding back expenditure until claim is resolved. In all cases, it must be supportable with evidence;
- If works not carried out represented either one-off expenditure or decorations and were either minor or unimportant, say where market rents were still achieved, then no loss can be suffered;
- Claimant's (possibly incorrectly expressed as Defendant's) actions and inactions after the Valuation Date throw light upon the value of the reversion at the valuation date;
- Cost of preparing schedules treated as a head of loss and to fall outside of the diminution cap because it is cancelled out within the valuations;
- Finance cost calculated at 6% over half the period of the works but not specifically clear from Judgment whether this was intended to be over the whole period. Finance could be offset or reduced by rent receipts under new leases and holding over leases;
- Ability to recover from sub-tenancies on leases holding over but with allowance of 50% representing risk of recovery. No recovery allowed from former sub-tenants who entered into reversionary leases;
- Speculative investor allowing for medium term development opportunity considered doubtful as "the timescale is wholly uncertain";
- Unusual to require tenants holding over to bear cost of remedying pre-existing defects through a service charge;
- Evidence required to support any claim for Professional fees;
- Interest on the award may be calculated from a date later than the Valuation Date where evidence is presented demonstrating that the Claimant is not out of pocket and had spent the money over a number of months and years.

END OF CASE SUMMARY