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REAL ESTATE ADVISORY

Recent Decision on Rights of Light Acts as a Warning to Developers

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This advisory discusses the need for developers to address rights of lights before beginning any development to prevent costly litigation following the recent High Court ruling in the case of *Beaumont Business Centres Ltd. v. Florala Properties Ltd*.

In the recent High Court case of *Beaumont Business Centres Ltd. v. Florala Properties Ltd.*, the Court awarded an injunction ordering a developer to cut back its development.

Background

Rights of light are a legal right for property owners to enjoy a reasonable amount of natural light to pass through apertures in a building, such as windows. They are not enjoyed by land automatically but are usually acquired either by:

1. an express grant in a transfer or lease; or
2. most commonly, over time by prescription under the Prescription Act 1892, provided that the light has been enjoyed without interruption for a period of at least 20 years or more without written consent.

The right does not amount to a right to direct sunlight, uninterrupted views and protection for the property from being overlooked nor (as was decided in the recent and widely publicised case of *Fearn and others v. The Board of Trustees of the Tate Gallery*) to protect against privacy.

In order to enforce a right of light, it is not sufficient to just show that there has been a net reduction in the amount of light but that the loss of light amounts to a nuisance. If a right of light has been infringed, the owner of the right of light is entitled to apply for an injunction, or the court can order damages in lieu of the injunction.

Beaumont Business Centres Ltd. v. Florala Properties Ltd. 2020

In *Beaumont Business Centres Ltd. v. Florala Properties Ltd.*, Beaumont owned property in the City of London and Florala acquired the property to the north, which Florala planned to redevelop as an aparthotel.

Beaumont then sold the freehold interest to its property to a third party property developer, who granted Beaumont a lease back of the property. Beaumont and the developer also agreed that Beaumont would retain the right for certain rights to light claims resulting from the development of Florala's property.

Florala subsequently developed their property but decided against agreeing to a financial settlement with Beaumont on the basis that their interpretation of Beaumont's rights of light deed was that it actually intended to penalise Florala's development intentions, rather than retain rights of light.

Several months into the development, Beaumont issued proceedings seeking a mandatory injunction and damages against Florala in nuisance for wrongful interference with their rights of light. Beaumont did not seek an interim injunction or include the operator of the aparthotel in the proceedings, and Florala completed the development in 2018 and let the property as an aparthotel.

Decision of the Court

The Court issued an injunction ordering Florala's developed property to be cut back. The Court did, however, go on to state that if Beaumont wanted to enforce the injunction, it would have to join the operator of the aparthotel in the proceedings. Otherwise, it would need to negotiate damages in lieu of the injunction. In coming to this conclusion, the Court rejected one of the arguments put forward by Florala that Beaumont's building was already poorly lit, and therefore further losses were not actionable. Florala has sought leave to appeal the decision.

Conclusion

The decision by the High Court should stand as a warning to developers, who may have previously been prepared to accept a high damages award against it on the basis that it would still be much less costly than scaling back a particularly profitable development.

Additionally, the ruling also endorses the view that an injunction is still seen as a Court's primary remedy in such cases; even since the decision in the 2014 case of *Coventry v. Lawrence*, where it may have appeared that the Courts' position was changing more towards awarding damages rather than awarding an injunction following the 2010 case of *HKRUK II (CHC) Limited v. Marcus Alexander Heaney*. In this recent case, the building was completed in 2018, and the Court was still prepared to grant an injunction two years later.

As a final thought, it is now more crucial than ever for developers to address rights of lights constraints before commencing any development to avoid unnecessary potentially costly litigation, substantial damages, or possibly a developer's worst case scenario, scaling back parts of a developed property.

Insurance products are available in the market to provide some protection for developers against rights of lights risks occurring during the development phase.

QUERIES

This is an explanatory reference note produced for guidance only. It should not be treated as legal advice on any specific situations. For more information, please contact Katten's Real Estate practice or any of the following attorneys:

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