

S FRANCES LTD V THE CAVENDISH HOTEL (LONDON) LTD

11th February 2019

SECTION 30(1)(f)

“that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding”

FRANSES: KEY FACTS

- T was textile dealership in Jermyn Street. LL was operator of adjoining luxury hotel. T serve a s.26 request and LL opposed on ground (f)
- LL's scheme of works went through a number of iterations. Local planning policy protected niche retail uses and constrained LL's development options
- Scheme 3 was before the court. It contained a number of factitious elements. It lacked any practical utility and had been designed solely to satisfy ground (f). LL was candid about its motives.

FRANSES – STAGES

- LL gave an undertaking to the court to carry out the works in the event it succeeded in its opposition. They would cost £776,707 and take 22 weeks.
- HHJ Saggerson held that LL had proved the necessary intention even though it was only proposing to do the works to get the tenant out. Its motives were irrelevant, applying *Cunliffe v Goodman*
- Jay J, on appeal, upheld the decision and there was then a leap frog appeal to the Supreme Court. The Supreme Court allowed the appeal.

SUPREME COURT – ACID TEST

- The new so-called “acid test” when assessing intention is whether the landlord would have carried out the same works if the tenant had agreed to leave voluntarily
- Considerations of motive and commercial viability whilst not themselves part of the test are likely to be of forensic value in assessing the quality of the landlord’s intention, namely in assessing whether the intention is both genuine and unconditional
- Acid test will also apply to schemes which have been “beefed up”. Artificial elements may need to be stripped out in considering if the scheme is substantial enough.

GROUND (F) WORKS

- **demolish the whole** of premises comprised in the holding
- **demolish a substantial** part of those premises
- **reconstruct the whole** of the premises comprised in the holding
- **reconstruct a substantial part** of those premises
- **carry out substantial work of construction** on the holding
- **carry out substantial work of construction on part** of the holding