



LEGAL BRIEFING

Geoffrey Kaye v Matthew Lawrence [2010] EWHC 2678 (TCC), Mr Justice Ramsey

This appeal considers an important practical question regarding the extent to which security may be required under section 12(1) of the Party Wall etc Act 1996 (‘the 1996 Act’).

“Section 12(1) Security for expenses

An adjoining owner may serve a notice requiring the building owner before he begins any work in the exercise of his rights conferred by the Act to give security as may be agreed between the owner owners or in the event of dispute determined in accordance with section 10.”

The Facts

Mr Matthew Lawrence intended to carry out works on his property in Poole. As the works were to be built within 3 and 6 metres of the neighbouring property at a particular depth defined by the 1996 Act, Mr Lawrence duly served a notice under section 6(1) and 6(2) of the 1996 Act on Mr Geoffrey Kaye, his neighbour.

Mr Kaye responded to the notice challenging the works, confirmed that a dispute had therefore arisen and then appointed a surveyor for the purpose of resolving the dispute in accordance with section 10 of the 1996 Act. Mr Lawrence appointed his own surveyor and ultimately a third independent surveyor was appointed to determine the dispute.

The item which gave rise to this appeal was a request from Mr Kaye that Mr Lawrence provide a bond or project-specific insurance policy in respect of potential damage to his property during the course of the works to Mr Lawrence’s property.

The third surveyor held that:

“a bond or other form of security cannot be requested under section 12(1) of the 1996 Act unless the Building Owner intends to exercise rights conferred by the Act as in proposing to carry out some work to the Adjoining Owner’s land or property. That is not the case in this instance.”

The surveyor’s decision is in line with the commentary provided in the Party Wall Explained (2nd Edition) at page 106, produced by the Pyramus & Thisbee Club:

“Security can only be requested if the building owner intends to exercise rights “conferred by this Act”, ie he is proposing to carry out some work to the adjoining owner’s land or property. If he is simply excavating his own land then the adjoining owner has no right to receive security under this section.”

Mr Kaye appealed to the Technology and Construction Court (‘TCC’), submitting that an adjoining owner has the right to request security from a building owner who intends to carry out “any work in the exercise of rights conferred by this Act”.

The Issue

Under section 12(1) of the 1996 Act, can security be requested when works are being carried out only on the building owner’s land, and not just when works are being carried out on the land of the adjoining owner?

The Decision

Mr Justice Ramsey therefore had to consider the meaning of the phrase “any work in the exercise of the right conferred by this Act.” He held that, in accordance with the ‘plain meaning rule’ and the ‘commonsense construction rule’ when interpreting statutory provisions, the statutory wording meant both works which are carried out on the adjoining owner’s land as well as works which are carried out only on the building owner’s land. He stated that the views expressed by the Pyramus & Thisbee Club are therefore incorrect.

Accordingly, Mr Justice Ramsey found that the third surveyor erred in law in construing section 12(1) of the 1996 Act and as a result, the award should have read that:

“A bond or other form of security can be requested under section 12(1) of the Party Wall etc Act 1996 where the owner intends to exercise rights conferred by section 6(1) or 6(2) of the Act and section 12(1) applies where the building owner is proposing under the provisions of the Act to carry out work to his land or work to the adjoining owner’s land.”

Comment

This case potentially has significant financial consequences to those carrying out building works which engage the Part Wall etc Act 1996. If the adjoining owner demands security of some kind for use in the event of damage to his property, the building owner is now obliged to foot this bill.

It is also worth noting that appeals from an award of the third surveyor under the 1996 Act are to be commenced in the County Court. However, here, the parties applied to have the matter transferred to the TCC at the High Court in London. Mr Justice Ramsey considered the legislation relevant to his jurisdiction and held that given the importance of the matter and the fact that the parties were in agreement that the appeal should be determined in the TCC in London.

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