



Neutral Citation Number: [2023] EWHC 1945 (KB)

Case No: KB-2023-002233

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 July 2023

Before :

MR JUSTICE SWEETING

Between :

Selfridge Estate Limited
- and -
Winchester Property Limited

Appellant
Respondent/Applicant

James Davies (instructed by **Bishop and Sewell**) for the **Respondent/Applicant**

Hearing date: 26 July 2023

Approved Judgment

This judgment was handed down remotely at 10.30pm on 28 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWEETING

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1. By a lease dated 15 October 2020 made between the Appellant, (“Selfridge”) and the Respondent, (“Winchester”), Winchester demised premises at 198 Edgware Road, London W2 2DS (the “Premises”) to Selfridge for a term of three years commencing on 28 September 2020 and ending on 28 September 2023 (the “Lease”). The Premises are commercial being used as a dry cleaners and grocers and latterly a bakery.
2. Under clause 7 of the Lease, Winchester had an option to terminate the Lease by serving written notice three months before a relevant break date, these being 29 September 2021 and 29 September 2022. Where such a notice was served, clause 7 provided that the Lease would terminate on the relevant break date.
3. Winchester contended that it gave notice to Selfridge that the Lease would terminate on 29 September 2021 in accordance with clause 7 of the Lease. It was Winchester’s case that the Notice was served in two ways (both permitted by the terms of the Lease):
 - a. by special delivery post; and
 - b. by Winchester’s agents personally leaving a copy of the Notice at the Premises.
4. Selfridge denied that the Notice had been served.
5. Winchester issued possession proceedings on 29 April 2022, relying on the Notice as a valid termination of the Lease. On the 6th of March 2023 there was a contested hearing before Recorder Hodge Malik KC in the County Court at Central London. The Recorder found that the Notice had been served in both of the ways relied on. The Lease had therefore terminated on 29 September 2021 and Winchester obtained an order for possession, forthwith.
6. In addition:
 - a. Selfridge were ordered to pay mesne profits and to meet Winchester’s costs of the proceedings, summarily assessed in the sum of £28,809.55 plus VAT (if applicable); and
 - b. the proceedings were transferred to the High Court pursuant to section 42 of the County Courts Act 1984 for enforcement.
7. An appellant’s notice was filed by Selfridge on 17 March 2023 at the County Court. An appeal in these circumstances is in fact to the High Court.
8. A combined writ of possession and control was issued by the High Court on 20 April 2023 and left at the premises on 24 April 2023. The writ was executed on 9 May 2023 when Selfridge was evicted from the property.
9. Selfridge applied by Notice of Application in the County Court on 9 May 2023 to stay the writ of possession and for permission to appeal against the order for possession. The application for a stay has been overtaken by events given that eviction has already taken place.

10. On the 11th of May 2023 Master Dagnall referred the application to a High Court Judge. The matter came before Mrs Justice Collins Rice on the 15th of May 2023. She made an order giving directions intended to progress the application for permission to appeal and ensure that the relevant material was before the court in compliance with the rules.
11. The order transferred the appeal from the County Court at Central London to the High Court to proceed as if it had been filed in the Kings Bench Division.
12. Paragraph four of the order was in the following terms:

“By 4pm on 12 June 2023, Selfridge shall file at court and serve on Winchester a paginated and indexed appeal bundle, which must contain only those documents relevant to the Appeal and the Application, but which must include:

- i. the appellant’s notice dated 17 March 2023;
- ii. application notice issued on 9 May 2023;
- iii. the order of the Recorder dated 6 March 2023;
- iv. the Transcript;
- v. grounds of appeal clarifying, in simple language, clearly and concisely why Selfridge says the order of the Recorder was wrong or unjust because of a serious procedural or other irregularity (in accordance with paragraph 4.2(d) of the Practice Direction to Part 52 CPR);
- vi. any skeleton argument relied upon by Selfridge in accordance with paragraph 8.2 of the Practice Direction to Part 52 CPR;
- vii. any further evidence relied upon by Selfridge in support of the Application;
- viii. this order and the order of Master Dagnall dated 11 May 2023; and
- ix. any other documents referred to in paragraph 6.4(2) of the Practice Direction to Part 52 CPR upon which Selfridge wishes to rely”

13. Paragraph five of the order provided:

“There shall be liberty to Selfridge to apply for an extension of time for filing and serving the appeal bundle referred to in paragraph 4 above (or any of the documents required to be within that bundle, as set out in sub-paragraphs 4a. to i. above) provided that any such application is made before 4pm on 12 June 2023. Any such application shall be supported by evidence explaining:

- i. why an extension of time is required:

- ii. What steps Selfridge has taken to comply with the deadline of the 12th of June 2023 and why Selfridge is unable to comply with that deadline; and
 - iii. where the application seeks an extension of time for filing the transcript, the steps taken by Selfridge to comply with paragraph 3.”
14. The costs of the hearing of the 15th of May were reserved.
 15. By order dated 6 June 2023, His Honour Judge Monty KC, sitting in the County Court at Central London, dismissed Selfridge’s appeal. It follows that he must have been unaware that, by paragraph 1 of the order of Collins Rice J, the appeal had already been transferred to the High Court. His order was therefore of no effect.
 16. On 12 June 2023, at 3.55pm, Mr Negm, a director of Selfridge, sent an email to Winchester’s solicitors attaching a copy of an unsigned witness statement dated 24 February 2023. It throws no light on the basis on which any appeal might be pursued and appears to set out the evidence which Selfridge relied on at the substantive hearing before the Recorder.
 17. Selfridge has not complied with the requirement to file and serve an appeal bundle, whether by 4pm on 12 June 2023 or at all. Neither has it made an application to extend time for complying with paragraph 4 of the order of Collins Rice J. Selfridge is now over six weeks late in complying. There are still no grounds of appeal and the only indication as to the basis of Selfridge’s appeal is that which can be identified in the appellant’s notice. Selfridge has plainly failed to comply with the court’s order or offered any explanation for its failure to do so.
 18. In relation to the present hearing Mr Negm sent an email to Winchester’s solicitors on 20 July 2023 making a request for an adjournment. The material part of his e-mail was as follows:

“ I am writing to request a postponement of the hearing scheduled for 26 of July as both myself and my partner are currently away and unable to attend. Due to unforeseen circumstances, we had to make travel arrangements, and it has coincided with the hearing date. We deeply apologize for any inconvenience this may cause and assure you that we value the importance of the hearing. We kindly ask for your understanding and consideration in granting us a new hearing date after 26th of August. This would enable us to fully participate in the proceedings and provide the necessary information. Please let us know if there are any alternative dates that could be suitable for rescheduling the hearing. We will do our best to accommodate any proposed dates. ”

19. Selfridge was therefore aware both of the application, of 22 June, and the hearing date. Winchester responded by email of 24 July 2023, advising Mr Negm that it was Winchester's intention to proceed with the hearing. There has been no application to the court for an adjournment.
20. The court nevertheless has a general discretion to adjourn the hearing pursuant to part 3 of the CPR. Winchester submitted that the court should not exercise that discretion in circumstances where:
 - a. this Application has been made due to Selfridge's wholesale failures to comply with the CPR and with the order of Collins Rice J of 15 May 2023;
 - b. there is no explanation at all for those failures;
 - c. Selfridge has previously been represented by direct access counsel (as recorded in the order of Recorder Hodge Malek KC dated 6 March 2023) and there is no explanation as to why arrangements cannot be made for Selfridge to be represented in that manner at this hearing;
 - d. the adjournment of this hearing merely prolongs matters, resulting in an unmeritorious appeal remaining on foot for longer; and
 - e. Winchester is severely prejudiced by any further delay because unless and until this appeal is concluded, it cannot deal with the Premises, including reletting them, with certainty.
21. I agree. There is no good reason to adjourn this hearing; it would result in further delay in circumstances where Selfridge has ignored the court's orders in relation to complying with its own obligations under the rules, has given no sufficient reasons for an adjournment and appears to have no real prospect of succeeding in its appeal on the only material which is before the court.
22. Selfridge failed to attend the hearing either by its director or counsel. Under CPR rule 1.1(2), the court is required to ensure a case is dealt with proportionately, expeditiously and fairly; and that an appropriate share of the court's resources is allotted, taking into account the need to allot resources to other cases. CPR 23.11 provides that where a party to an application fails to attend the hearing the court may proceed in their absence. It should only do so where it is satisfied that it was right to grant the applicant the relief sought (*Fox v Graham Group Limited*, The Times, 3rd of August 2001).
23. By virtue of rule 52.18(1), the court may strike out the whole or any part of an appeal notice. Rule 52.18(2) provides that the court will only exercise that power where "there is a compelling reason for doing so".
24. Winchester submitted that, there is a compelling reason for doing so due to:
 - a. the background to the order made by Collins Rice J dated 15 May 2023 being Selfridge's failure to comply with the rules;

- b. Selfridge's non-compliance with that order;
 - c. the lack of any application to extend the deadline in paragraph 4 of that order, as provided for by paragraph 5;
 - d. the passage of time since the deadline in paragraph 4 of that order, being a period now in excess of six weeks; and
 - e. the lack of any explanation from Selfridge as to its non-compliance; and
 - f. the appeal in its current state being bound to fail.
25. In my view these factors do amount to a compelling reason for striking out the appeal notice and I am satisfied that it is right to grant Winchester the relief sought notwithstanding the absence of Selfridge at the hearing. A stay is redundant given that the writ of possession has been executed. Winchester seeks:
- a. an order striking out the application for permission to appeal and dismissing the application for interim relief and;
 - b. an order adjourning generally the question of whether Selfridge should pay Winchester's costs of (1) this application, (2) Selfridges application dated 9 May 2023 and (3) of the hearing on the 15th of May 2023 with liberty to apply to restore on notice to Selfridge.
26. I allow Winchester's application for the reasons given above and make an order in those terms.