

Permission to appeal to the Supreme Court granted – Julia Duval v 11-13 Randolph Crescent Limited

Submitted by: Ashfords LLP

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Permission to appeal to the Supreme Court has been granted in the case of Julia Duval v 11-13 Randolph Crescent Limited [2018] EWCA civ 2298. The case relates to the interpretation of a commonly used enforcement clause in long residential leases, i.e. if one tenant breaches their lease, another tenant in the block can require the landlord to take enforcement action against the tenant in breach, subject to appropriate indemnities being given.

By way of brief background, one tenant in the block of flats wished to carry out structural alterations to her flat which were prohibited under her lease. She requested permission to carry out the works, and the freehold company was minded to grant consent. However, another tenant in the block, Dr Duval, claimed that the freehold company could not grant consent for a number of reasons, including the fact that she had requested that the freehold company enforce the terms of the lease, under the enforcement clause in her lease.

There have been three hearings to date in this case and whatever the Supreme Court decides is likely to have widespread implications for the way in which blocks of residential flats are managed. In respect of the decisions of the lower courts, Dr Duval was successful in the trial at the County Court in January 2017, 11-13 Randolph Crescent Limited was successful on appeal in July 2017 and Dr Duval was again successful in the Court of Appeal in October 2018.

A full summary of the Court of Appeal ruling is set out here (<https://www.ashfords.co.uk/news-and-events/general/absolute-covenants-an-absolute-nightmare>) but the principal points to note are that if a freehold company permits a tenant of one flat to do something which is prohibited by its lease, then the freehold company will have breached the lease of all other tenants in the building, provided their leases contain an appropriate enforcement clause. The only way in which they will not be in breach, is to obtain the consent of all tenants in the building prior to permitting the tenant's request, which is usually neither practical or sensible.

There has been a substantial amount of commentary in the property world on the Court of Appeal judgment and, in particular, on the impact on management of residential blocks. It has been said that this is likely to have repercussions for the residential property market and, potentially, on the value of residential flats, as if a buyer knows it will not be able to carry out structural works, it may not be willing to pay the same for a property. In any event the judgment has provided surveyors and valuers with food for thought.

It will now be the turn of the Supreme Court and, in light of the contradictory findings of the lower courts, it will be interesting to see what they find. Clearly a lot will turn on the precise wording of the Supreme Court judgment and any view as to what it ultimately means for the property market will need to be based on a careful analysis of the same. For now, the fact that they have granted permission to appeal demonstrates the public importance of the case and that there is an arguable point of law.

Tom Leach
Ashfords LLP
Property Litigation
London
+44 20 7544 2435
t.leach@ashfords.co.uk
<https://www.ashfords.co.uk/our-people/tom-leach>

