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Hull v Liddiment and another

[2021] EWHC 3418 (Ch), [2022] All ER (D) 04 (Jan)

The Business and Property Courts, dismissing the appellant freeholder owner's appeal, held that the Deputy Master had not erred in refusing to grant an adjournment and ordering possession of the land pursuant to s 36 of the Administration of Justice Act 1970.

Catchwords

LAND – POSSESSION – AGRICULTURAL LAND

Background

The appellant was the freehold owner of land that comprised buildings and farmland. He entered into a loan agreement secured by a legal charge over the land. A default arose on the loan and the respondent receivers were appointed. The receivers sought possession of the land. The appellant filed a defence challenging the enforceability of the loan agreement. The appellant also contended that possession of the property should not be ordered in circumstances where the receivers had already sold part of the land and where he was looking to enter a facility agreement to meet the outstanding debt. The Deputy Master refused to adjourn the matter under s 36 of the Administration of Justice Act 1970 (AJA 1970) and ordered possession. The appellant appealed. He submitted that the Deputy Master had erred on the grounds, inter alia, that he should have refused to exercise his discretion under AJA 1970 s 36 until after the trial in the proceedings, that he had erred by stating that the appellant had conceded that he had had no defence to the possession claim when the appellant was in fact relying upon AJA 1970 s 36, and that when exercising his discretion the Deputy Master had failed to evaluate or take into account a finance offer that the appellant had procured.

Issues and decisions

Whether the Deputy Master had erred in refusing to grant the possession proceedings.

As the Deputy Master had pointed out, it had been established that the exercise of discretion under AJA 1970 s 36 could be exercised in advance of trial even in a case where the validity of the loan contract was being attacked. However, that was not the position. The Deputy Master was not wrong to conclude that the validity of the loan as a whole was not in dispute and that he should consider a minimum debt for the purposes of engaging AJA 1970 s 36, which minimum debt had been accepted. That was a decision that was open to the Deputy Master on the facts. Further, AJA 1970 s 36 did not provide a defence to a possession action and the Deputy Master's recording that the appellant had had no defence was not wrong. The Deputy Master had not failed to exercise his discretion properly because he had already made the decision that a possession order was appropriate. In addition, the Deputy Master had recorded that he had considered all the offers and there was no basis to find that he had given no consideration to the finance offers that the appellant had procured (see [37], [40], [50], [60] of the judgment).

Judgment date

17 December 2021

Judge

Smith J

Representation

Emily Windsor (instructed by Sheridans) for the appellant.

Christopher Snell (instructed by Knights Plc) for the respondents.

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