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Court Clarifies Enforcement of Section 75 Agreements in Scotland

[Turcan Connell v City of Edinburgh Council \[2025\] CSOH 7](#)

Date: 16 January 2025

Key Words:

Section 75 Agreement, Town and Country Planning (Scotland) Act 1997, Arbitration, Arbitration (Scotland) Act 2010, Legal Error Appeal, Title and Interest to Sue, Construction of Contract, Mutuality of Obligations, Real Burden, Jus Quaesitum Tertio, Statutory Powers, General Importance, Serious Doubt

Summary

This case concerns an appeal against a partial arbitration award on interpreting a s.75 agreement under the Town and Country Planning (Scotland) Act 1997. The petitioners (Turcan Connell) sought leave to appeal, citing legal errors in title to sue, agreement construction, and statutory powers. The respondent (City of Edinburgh Council) opposed the appeal. Lord Braid of the Outer House, Court of Session, refused leave, ruling the petitioners did not meet the threshold for legal error appeals [1-5].

Key Themes:

- Enforcement of Section 75 Agreements:** *The case delves into the complexities of interpreting and enforcing s.75 agreements, particularly regarding the rights and obligations of successors in title to land originally subject to the agreement.*
- Title and Interest to Sue:** *Considers if a partial landowner can enforce obligations against the planning authority for other land parts.*
- Construction of Contractual Provisions:** *Analyses the proper interpretation of specific clauses within the s.75 agreement, focusing on whether they establish minimum or maximum levels of affordable housing and the ability to vary certain provisions.*
- Interaction of Contractual and Statutory Provisions:** *Reviews the interplay between the obligations within the s.75 agreement and the statutory powers of the planning authority under the Town and Country Planning (Scotland) Act 1997.*
- Legal Error Appeal Thresholds:** *Highlights the high threshold required for granting leave to appeal an arbitration award based on legal errors, emphasising the need for points of general importance and serious doubt about the arbitrator's decision.*

Background

In 2003, the respondent and the original landowner (D) signed a s.75 agreement, binding successors via the Land Register [6]. The petitioners later bought part of the site [7], sparking disputes over affordable housing and road clauses [8-10]. The arbitrator dismissed their claims [11-15].

Legal Issues and Analysis

The petitioners challenged the arbitrator's decision on eight grounds, arguing errors in law. The key points:

1. **Title and Interest:** Argued for rights over the whole site via mutual obligations and real burdens, but Lord Braid found no legal basis for claims beyond their land [12, 19, 29, 37].
2. **Clause 2 (Affordable Housing):** Claimed a cap on housing units; the judge sided with the respondent's minimum interpretation [10, 13, 20, 30, 38]
3. **Variation of Clauses 2.5 and 2.6:** Asserted consent was needed for variations; the judge ruled only current owners could consent [13, 15, 21, 31, 39].
4. **Section 75(5)(a) Impact:** Disputed the arbitrator's reliance on this provision, but the judge upheld it as consistent with legal precedent [13, 14, 22, 23, 32, 40, 41].

Conclusion

Lord Braid refused leave to appeal, concluding that the petitioners failed to demonstrate that the arbitrator's decision was open to serious doubt on points of general importance. He found the respondent's arguments on title to sue and contractual construction more compelling, and he dismissed the challenges based on Section 75(5)(a).

Key Takeaway:

Successors in title under s.75 agreements can only enforce obligations over their owned land. Clear drafting is vital, especially regarding affordable housing terms. The decision affirms the high bar for legal error appeals in arbitration.

Parting Thoughts

The law, like a well-structured building, requires a solid foundation. In the realm of contractual agreements, especially those intertwined with statutory frameworks, meticulous attention to detail is paramount. Just as a successor in title cannot claim rights to a building they do not own, they cannot enforce obligations within a s.75 agreement that extend beyond the boundaries of their land. Clarity in drafting is key to avoiding disputes. Ambiguous language, like an unstable foundation, can lead to costly and time-consuming litigation. The courts will uphold the integrity of these agreements, ensuring that justice prevails like a sturdy roof over the edifice of the law.