

Property Team

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The members of the Hardwicke Property Team have specialised skills and experience in all aspects of the law relating to Real Property, Landlord & Tenant, Housing and other property-related subjects.

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Kerry Bretherton	1992	Dean Underwood	2002
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Did you see..... ? Recent cases you may have missed

Landlord and Tenant

Leasehold enfranchisement

Cawthorne & others v. Hamdan [2007] EWCA Civ 6

Block of 6 flats- R tenants- gave notice to landlord A of right to collective enfranchisement under Part 1 LRHUDA 1993- A served counter-notice under s.21- no provision for leaseback- no agreement on terms- referral to LVT- R appealed against LVT's decision on price payable for acquisition- pending appeal, A served leaseback notice claiming lease of one of the flats pursuant to s.36 and para. 5 Sch. 9- on appeal, Lands Tribunal considered lease-back notice invalid in that it was given too late- A appealed- question arose whether it was ever possible to serve a leaseback notice where the s.21 notice did not specify lease-back:-

Held: Appeal dismissed. A landlord could seek a lease-back of a flat which had no qualifying tenant at the "appropriate time". However, the provisions of s. 21(3) are mandatory. The landlord had to say in the counter notice if he was seeking such a lease-back. Having said that he was intending to take a lease-back, the landlord was then entitled to such a lease-back as long as there was no qualifying tenant (in the flat of which he was seeking the lease) at the date of acquisition. The reference to the absence of a qualifying tenant at the "appropriate time" did not extend the opportunity of the landlord to seek the lease-back. Rather, the absence of such a tenant was a condition subsequent to the service of the notice, which condition had to be satisfied at the date of acquisition.

Expert Evidence

Nuisance- criminal prosecution

Hackney LBC v. Rottenberg [2007] EWHC 166 (Admin)

Noise from Synagogue and school un by R - abatement notice served- alleged breaches- R convicted by Magistrates- R appealed by way of re-hearing in the Crown Court -R contended not a nuisance, and that prosecution was breach of Art. 9 of the ECHR - evidence lead by A from expert environmental protection and pollution control officers that noise was a nuisance- appeal allowed in Crown Court on basis that noise did not constitute a nuisance, and was therefore not a breach of the abatement notice- appeal by A to Divisional Court by way of case stated:

Held: Appeal dismissed. The Court is not obliged to accept unconditionally the evidence of an expert that specific noise amounts, in the expert's view, to a nuisance. This is the case even where the evidence is unchallenged. The fact that the noise had arisen in the course of use for which the site had planning permission (religious worship) was a relevant consideration in deciding whether the noise amounted to a nuisance such that a criminal

offence had been committed. This was a subjective decision for the Court to make, and not for an expert, however experienced.

Boundary disputes

Haycocks & another v. Neville & another [2007] 04 EG 186 (CS)

A and R registered owners of adjoining land- R had bought from developer in 1992- A bought from original owner- boundary in dispute, in particular the position of a "pivot point" where boundary turned- experts on both sides- agreed to plot point by process of scaling and measuring from developers plan before houses built (plan J)- Judge agreed J relevant plan- disagreed with R's surveyor's method- declined to apply A's surveyor's method- Judge referred to other extrinsic factors- point found by Judge nearer that contended for by R-A appealed on the basis that, having found R's surveyor's method to be at fault, the Judge should have accepted A's surveyor. She should not have drawn her own line, which had not been contended for by either party.

Held: Appeal dismissed. The Judge had accepted that J was the correct plan to use, but found that it was deficient in some respects. It was permissible for her to have regard to matters occurring since the boundary had been fixed, including features that the parties had placed on the ground, in circumstances where there as uncertainty as to the boundaries in the relevant conveyances. All the points contended for were within the tolerance of the plan. The Judge was therefore perfectly entitled to draw her own line by reference to all the evidence.

Landlord and tenant

Break clause

Legal & General Assurance v. Expeditors International [2007] EWCA Civ 7

A landlord R tenant of commercial premises under two leases- 10 yrs from January 2001- R had option to determine leases at end of December 2004- not less than 6 months notice required- exercise of option conditional upon usual conditions of R having paid all rent, complied with covenants and delivering vacant possession at date of expiry of the notice- notice served June 2003- negotiations between A and R- settlement whereby R to pay a sum of money to A for dilapidations (including a sum for notional loss of rent after expiry of the leases when A would carry out the work) - in return A released R from all obligations under the leases in respect of condition of the premises- R further agreed to keep premises in no worse state than at visit of A's surveyor (August 2004)- premises not vacated by end of December 2004 - A claimed lease not terminated as conditions for exercise of break clause (vacant possession) not complied with – J found it was an implied term of the settlement that A had waived compliance with the remaining conditions of the break clause- appeal:

Held: Appeal dismissed. (Lloyd LJ, dissenting) Whether on proper construction or by way of implication, it was a term of the settlement that the leases would terminate at the end of December 2004, whether or not vacant possession was given. There was no sensible basis on which R could agree to pay a sum in respect of notional rent after the termination of the leases, unless the leases in fact terminated. The intrinsic assumption was clearly that the right of possession was irrevocably set to expire on the agreed date, so that any consequences of failure to yield possession would lead to a right to claim damages for trespass but could not constitute a breach of the conditions of the break clause

Case summaries by Arthur J. Moore