Hardwicke Building

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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Stephen Lennard	1976	Alexander Bastin	1995
Robert Leonard	1976	Edward Rowntree	1996
Wendy Parker	1978	David Pliener	1996
Karl King	1985	Fiona Scolding	1996
Michelle Stevens-Hoare	1986	Brendan Mullee	1996
Steven Woolf	1989	Nicola Muir	1998
Sara Benbow	1990	Alison Meacher	1998
Daniel Gatty	1990	Alastair Redpath-Stevens	1998
Rupert Higgins	1991	Andrew Lane	1999
Arthur Moore	1992	Sarah McCann	2001
Kerry Bretherton	1992	Dean Underwood	2002
Alexander Goold	1994	Michael Wheater	2003
Andrew Skelly	1994	Alice Marshment	2003

Property Team Newsletter

Did you see…….. ? Recent cases you may have missed

Landlord and Tenant

Mixed business and residential use

Broadway Investments Ltd v. Grant [2006] EWCA Civ 1709

BI Ltd appellants (A) acquired freehold of premises occupied by G (R)- basement, ground floor and first floor- ten year lease from 1995- described as "shop premises"- permitted use in lower part, sale of fish- R occupied upper part as his home- started selling from shop premises in 2000- lease contained covenants, inter alia, to keep shop open in normal shop hours- initial rent £1000- raised to £8100 in 2003- arrears of £25,000 in 2005- A sought possession- order made on basis R a business tenant- R appealed on basis he entitled to protection as a residential occupier under Housing Act 1985 or Housing Act 1988- appeal allowed, possession set aside- appeal by A:-

Held: Appeal allowed. R occupied the premises, and he did so (in respect of the ground floor and basement) for the purposes of his business. It was irrelevant that he had only begun to trade in 2000. The question posed by s.23 of the 1954 Act was a factual one. Did R occupy all or part of the premises for the purposes of a business carried on by him? He did, both at the date proceedings were commenced and at the date of hearing. The lease was therefore excluded from protection under the 1985 or 1988 Acts.

Discrimination

Williams v. Richmond Court (Swansea) Ltd [2006] EWCA Civ 1719

RC(S) Ltd appellants (A) landlords of W (R) - R lived in block of flats on third floor, with no lift - R elderly- needed stair lift for easy access to her flat- A refused consent to install stair lift on basis other tenants had voted against, aesthetics, cost of repair, inconvenience as a whole and the Disability Rights code did not require it- County Court held (as a preliminary issue) that the refusal of consent amounted to discrimination against R on the basis of her disability under s.24(1)(a) Disability Discrimination Act 1995- A appealed:-

Held: Appeal allowed. The Judge had fallen into error. He should have carried out a two stage test. He should firstly have identified the relevant act or omission on R's part, and secondly, he should have looked towards relevant comparators to see if they would have been treated differently. None of the reasons for A's refusal of consent related to R's disability and that was sufficient in itself to dispose of R's claim. The underlying complaint was that A had refused to put R into a better position that that to which she was entitled by her underlease. Managers of premises were under no positive obligation to make adjustments to the common parts of buildings to make them more suitable for disabled people.

Rent arrears

Reichmann & another v. Beveridge & another [2006] EWCA Civ 1659

B & another (A) were tenants of R & another (R)- five year lease from January 2000- A ceased to trade and quit premises in march 2003- R waited, and then sued for rent arrears- A defended on basis that R had failed to mitigate loss by finding new tenants- DJ held R under no such duty to mitigate- upheld on appeal to CJ- A appealed further:-

Held: Appeal dismissed. A landlord was under no obligation to mitigate its loss when seeking to recover rent arrears. It was for the party in breach to establish that the innocent party's conduct was wholly unreasonable. Only in extraordinary circumstances would a tenant be able to show that a landlord's conduct could be so characterised. There was no English authority for the proposition that a landlord could recover damages from a tenant for future loss of rent after termination. Damages were either not an adequate remedy for the landlord, or it would be acting reasonably in taking the view that it should not terminate the lease as it might be unable to recover such damages.

Land

Easements

Jones v. Cleanthi [2006] EWCA Civ 1712

J tenant and appellant (A)- C freeholder and respondent (R)- block was a building in multiple occupation, for purposes of Part XI Housing Act 1985- A had right (in common with other long leaseholders) to access to bins at rear of block- local authority served notice on R under s.352 of the 1985 Act, requiring various works- works included erection of a wall which blocked A's access to the bins- R did not appeal against the notice- A did not notify local authority that the works would obstruct a right of way- A sought declaration confirming her right of way, and injunction- CJ dismissed claim on basis that right of way had been extinguished – J dismissed A's appeal- further appeal:-

Held: Appeal dismissed. The s.352 notice imposed a statutory obligation on R to carry out the specified works, including the erection of the wall. It followed that he had a statutory power to do so. The performance of that statutory obligation did not however, have the effect of extinguishing A's rights once and for all. There was a practical possibility that at some time during the remainder of the term granted by the lease there would no longer be any statutory impediment to the exercise of A's rights and that they might once again become exercisable. In carrying out the works required by the s.352 notice R committed no actionable wrong against A (whether in contract or otherwise). The fact that in erecting the wall R was discharging a statutory obligation was a complete.

Williams & another v. Sandy Lane (Chester) Ltd [2006] EWCA Civ 1738

The appellants (W and H) appealed against an order dismissing their claim for declarations that they were entitled to rights of way over neighbouring land in the ownership of the respondent company (S). W and H appellants (A)- owned the property since 1975-t rack from land to back garden across property formerly owned by Council- Council sold land to S (Respondents) in 2003- R wanted to erect houses on land- A sought declarations that they were entitled, by virtue of a lost modern grant, to use the track- also sought an injunction restraining R from erecting any building on the track or otherwise interfering with the exercise of those rights- track formed part of both primary route and secondary routes claimed as rights of way by A-. secondary route had been used by the former owner of A's property between the 1950s and 1975 but ceased in 1976 when A had moved the back door of property, erected a fence and carried out earthworks near the part of the track that formed the secondary route. In 1984 A wrote to council opposing the development of the land north of the property on basis that the occupants had used the land since 1947 and so acquired an easement over it. In 1974 A had taken over a business carried on at a boathouse that was let under a tenancy agreement dating back to 1908 Council and included a right of way along part of the track- claim in relation to the primary route relied on acquisition by way of prescription and the claim in relation to the secondary route was based on uninterrupted use J decided against A on both issues. Appeal:-

(1) In relation to the primary route, the questions for the court were whether the Council had knowledge that the primary route was being used to gain access from the track to the property of A and whether the Council was in a position to prevent that user. The presumption or inference of a grant, to which it was claimed the long uninterrupted use of the right claimed could give rise, was a grant by the freehold owner. Had a tenancy been in existence at the beginning of a period of use it would be unreasonable to imply a lost grant by the owner, as he might not have been able to stop the user even if he had known of it. Whether or not there was a tenancy of the land immediately to the east of the boathouse, and whether or not the terms of that tenancy were such that the Council could have prevented use of that land in conjunction with the primary route, there was no doubt that the Council could have prevented use of the track for that purpose. The Council's knowledge of the use was to be imputed following receipt of A's letter in 1984. The judge's conclusion that the Council had not acquiesced in the user of the primary route was therefore wrong. (2) Evidence of non-use alone was not sufficient for the presumption of abandonment, there had to be intention to abandon on the part of the owner. The question for the court was whether the judge had been entitled to infer that W and H had intended to give up their right to use the secondary route. The judge's conclusion (that there had been abandonment) had essentially rested on the fact that A had fenced their land so as to obstruct the right and the fact that they had carried out earthworks that made walking along the path difficult if not impossible. However, the evidence suggested that that fence was insubstantial and there was no reason to think that if A had wanted to remove it in order to use the secondary route it would have caused them any difficulty or even expense. Further, the evidence was that the earthworks made use of the secondary route more difficult but not impossible. The Judge had taken into account matters that were incapable of supporting the inference and had come to the wrong .

Appeal allowed.

Case summaries by Arthur J. Moore