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.

Telephone: 020 7242 2523
Web http://www.hardwicke.co.uk/property
Team Email: property@hardwicke.co.uk
Civil Clerks: Kevin Mitchell, Danny O'Brien, Daniel Kemp, Paul Martenstyn & Oliver Edwards

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

Hardwicke Building welcomes Andrew Skelly (1994) as the newest member of the Property Team

Andrew practises in all areas of property law, with a special interest in boundary disputes and easements, including public rights of way.
He has considerable experience in landlord & tenant matters (contentious and non-contentious) involving both commercial and residential property. He regularly deals with issues of forfeiture, lease renewal, service charges, dilapidations, rent review, alienation and enfranchisement.
Andrew's practice also encompasses housing matters, including homelessness. Andrew also deals with issues of professional negligence in relation to these areas of practice.
Andrew is instructed by a variety of clients, including private and corporate, local authorities, professional indemnity insurers and publicly-funded. In particular, he has:

- Advised and represented the High Commission of Sierra Leone in relation to several commercial properties in London.
- Advised the management company of Knebworth Estate in relation to various public rights of way issues.
- Advise and represent London Borough of Newham on various issues relating to its commercial properties.

As well as practising in his core areas, Andrew lectures for the BPP on these topics and presents accredited one-day courses for solicitors in private practice and local government, both within London and outside. He has also presented bespoke in-house training to solicitors' firms and various London Borough Councils.

Did you see……Recent cases you may have missed

Procedure

Service of proceedings

Nelson & another v. Clearsprings (management) Ltd [2006] EWCA Civ 1252
A sought possession of residential accommodation for rent arrears against R- postal service by court of claim form- mistake on claim form meant that address was wrong- no acknowledgement of service- possession order made in R's absence (i.e. CPR 55 not CPR 12 judgment in default)- R applied to set aside order on basis unaware of proceedings- DJ applied CPR 39.3(5)- held R had no reasonable prospect of success- refused to set aside- CC Judge overturned decision on appeal- on further appeal-:
Held: Appeal dismissed. To conclude that r.39.3(5) applied in circumstances where R had not in fact been served with proceedings involved disregarding the complex provisions for service of

process under the CPR and holding that the burden was on the defendant to satisfy the criteria of that rule notwithstanding the fact that the defendant had not been served or deemed to have been served with the proceedings. The judgment had been irregularly obtained, and Rule 39.3 (which contemplated a trial in the absence of a party who had been served under the rules or in respect of whom service had been dispensed with) did not apply.
R was not entitled however, to have the judgment set aside as of right. It was a matter for discretion. The attempted service at the wrong address was an error of procedure. It could be cured under the CPR (3.10 or 3.1(2)(m)). Unless R was guilty of inexcusable delay, or would suffer no prejudice, discretion would almost always be to set aside judgment.

Land

Rights to light

Tamares (Vincent Square) Ltd v. Fairpont Properties (Vincent Square) ltd [2006] PLSCS 195
C owner of office building- D erecting new building next door- alleged interference with C's right to light- C applied for injunction to prevent interference with its right to light in respect of four windows- two entrance lobby windows, two basement windows- no real dispute on basement windows- lobby windows had in fact been boarded up on the inside for whole of 20 year prescription period- issue whether such a blockage of the windows prevented right to light accruing-
HELD: The complete boarding up of the windows in the lobby area throughout the entire prescription period, even though it was on the inside, meant that no right to light was acquired in respect of those windows. With the basement windows, the grant of a mandatory injunction would be oppressive (as it required the demolition of D's building) and create a loss to D out of all proportion to any loss suffered by C. C's loss was capable of quantification and was modest. Damages ordered to be assessed instead of an injunction.

Tree root encroachment- nuisance

Perrin & another v. Northampton Borough Council & others [2006] EWHC 2331 (TCC)
2&3 D had large oak tree in their garden- encroached on garden of C- tree protected by a Tree Preservation Order (TPO)- C sought permission from 1D (the local authority) to fell tree- application refused- appeal to secretary of state refused- C sought declaration that they entitled to fell tree as it was "necessary for the prevention or abatement of a nuisance" within s.198(6)(b) of Town and Country Planning Act 1990- 1D said not "necessary" as there were other remedies e.g underpin C's house
HELD: The principle purpose of TPOs was to preserve trees. Any exemptions must be carefully construed so as not to frustrate the purpose. "nuisance" in s.198(6)(b) meant "actionable nuisance" where damage had been caused or, if no action was taken to prevent it, would imminently be caused. The determination of the question whether the lopping or felling of a tree was necessary to abate or prevent a nuisance was a question of fact. If lopping or felling works to the tree were necessary to prevent or abate an actionable nuisance, then such works were permissible. There was no requirement for the works to be "reasonably necessary in all the circumstances". "necessary" referred to the extent of the cutting down, uprooting, topping or lopping required to abate or prevent the nuisance, and nothing more. Section 198(6)(b) only identified works to the tree. The availability of alternative works did not therefore arise for consideration in the proper operation of the section

Case summaries by Arthur J. Moore