

## 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](mailto:property@hardwicke.co.uk)

Civil Clerks: Kevin Mitchell, Danny O'Brien, Daniel Kemp, Paul Martenstyn & Richard Evans

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
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Alexander Goold	1994	Michael Wheeler	2003
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### Did you see.....Recent cases you may have missed

#### Land

##### ***Proprietary estoppel***

*Yeoman's Row Management Ltd & another v. Cobbe* [2006] EWCA Civ 1139

A owned block of flats- oral agreement with R to sell freehold of block if R got planning permission to build six town houses on the site- agreed that A would pay £12m plus an overage of 50% of gross proceeds of sale of completed buildings over £24m- R obtained planning permission at considerable expense of time and money- A reneged and demanded £20m- R claimed against A an interest in the property or the proceeds of sale by reason of the A's unconscionable conduct which had induced R to expend time and money getting the planning permission- judgment in favour of R for one-half the increase in value consequent on the grant of planning permission- appeal:

Held: Appeal dismissed. With the doctrine of estoppel, the focus was on the unconscionable conduct and its effects. It was not the same thing as trying to enforce an agreement. The essence of the estoppel was unconscionable conduct inducing another to believe he would acquire an interest in, or a right over, the property. The R was in a position, and was willing, to fulfil his side of the bargain. He was only prevented from doing so by the A.

There was no real difference between a promise to give an interest in land or a promise to give a contract. Such a promise, assurance or arrangement could be relied upon to found an estoppel even if not sufficiently certain to be enforceable as a contract.

A "subject to contract" agreement would allow either party to withdraw until formal exchange of contracts. The present agreement had not been subject to contract.

The use of proprietary estoppel did not frustrate the purpose of s.2 of the Law of Property (Miscellaneous Provisions) Act as it was not enforcing the terms of the agreement, either directly or indirectly. The use of proprietary estoppel did not rely for its effectiveness on the existence of a concluded agreement for sale, but on the A's unconscionable behaviour.

##### ***Discharge of charge***

*Lexi Holdings v. Stainforth* [2006] EWCA Civ 988

R took a short-term loan from A to finance purchase of property- charge over property to secure loan- charge sufficient to cover purchase price and interest for a couple of months- R could not get re-financing- asked A if they knew a buyer- A had a buyer willing to pay more than the charge- R entered into an exclusive sale agreement with A whereby he agreed to "relinquish all rights" in the property and further agreed that A should keep any monies realised in excess of the sums he owed- sale fell through- A sought to rescind the agreement and sued R for the debt- R contended the agreement had discharged him from his liabilities and that the risk of there being no sale fell on A- J found for R- appeal:

Held: The agreement was inadequate to deal with the particular issue. Some of the terms were consistent with A's argument that it simply conferred authority on A to sell the property. However, it was difficult to read the agreement otherwise than that R was giving up his rights over the property. That would make sense only if it was being agreed that his liabilities would be discharged as well. Otherwise, he would be giving up his right to realise an asset, while facing continued liability on the loan, with no obligation on the A to do anything at all. The *contra proferentem* rule assisted in the final solution. It was A's agreement. A should bear the risk of any resulting ambiguity.

## **Landlord and tenant**

### ***Damages for disrepair***

*Earle v. Charlambous* [2006] EWCA Civ 1090

*R had 99 year lease of one bed top-floor flat- premises owned by A- damaged roof- R brings claim for damages- only issue quantum- J gave £20,000 for 35 months when R in occupation and £10,000 for 21 months when R not in occupation- J used rental values of the flat to "cross-check" his figures- appeal:*

Held: Allowed in part. A could not rely on the (modest) "tariff" applicable in housing disrepair which arose in the context of local authority periodic tenancies. A long lease was not only a home, but an asset as well, and as such was not analogous to a periodic tenancy. It was irrelevant that R in fact occupied the flat as a home, and not as an investment. Diminution in market value was a familiar basis for assessing loss in property disputes. It did not matter that no actual sale was contemplated. However, where, as here, the loss was temporary a notional judgment of the resulting reduction in rental value was likely to be the most appropriate starting point. It was irrelevant that R was in fact paying only ground rent.

However, the J's award of £20,000 could not be supported on the evidence. Reduced to £13,500.

### ***Business lease renewal***

*Pointon York Group v. Poulton* [2006] EWCA Civ 1001

*A landlord- let suite of offices to R- demise included: "The right during normal business hours for all purposes connected with the use by the tenant of the demised premises (a) to use the parking spaces subject to the rights of the landlord to substitute equivalent alternative parking spaces."- R sublet for the term of their lease less three days- informed A of intention to re-occupy after termination of sub-lease- sub-lessees re-decorated and re-carpeted- work completed day after expiry of sub-lease- computer work and telephone installation remained outstanding- A changed locks and excluded R the day after R's term expired- A clamped R's cars in the parking spaces- R served notice under s.23 Landlord and Tenant Act 1954- question whether R occupied the premises at termination of the lease, as required by s.23- issue arose whether parking spaces were "premises" which could be "occupied" and whether the factual situation between the end of the sub-lease and the termination of the R's lease could be "occupation". J found for R- appeal:*

Held: An incorporeal hereditament could be premises. A right to occupy a parking space could be "occupied" for the purposes of the Act. It mattered not that the permitted occupation was for discontinuous periods. On true construction, R was entitled to occupy the car parking spaces to the exclusion of A (unless A exercised its right to substitute different spaces) during the periods provided by the lease.

It was not necessary for R to be physically present in the premises to occupy them, so long as it was using them in a way incidental to its normal business. No other business occupied the premises in the three day period and they were not used for non-business purposes. J entitled to find that they had been occupied for the purpose of s.23.

Case summaries by Arthur J. Moore