

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

Forthcoming events

The Adjudicator to HM Land Registry – Who, What and How?

On 27th July 2006 6pm the Hardwicke Building Property Team will be hosting a seminar provided by the Adjudicator to HM Land Registry, Edward Cousins and one of his full time deputies Ann McAllistar. This session will provide you with a chance to learn about this relatively new jurisdiction and get lots of practical hints about how it operates. The seminar will be followed by a reception to which all those attending are invited. If you would like to book a place please contact Sarah Taylor on 0207 242 2523 or sarah.taylor@hardwicke.co.uk. £25 person or £50 for 3 from one firm.

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

Conveyancing

Completion date

Northstar Land Ltd v. Brooks & another [2006] EWCA Civ 756

R property owners- A exercised option to purchase- standard conditions of sale to apply- disagreement about price- A served notice to complete in ten working days- R attended their solicitors office on final day, agreed to complete- A's solicitor (X) 'phoned R's solicitor (Y) and suggested one week extension- X did not have cleared funds for deposit- Y said he would take instructions- did not respond that day- A brought claim for specific performance- unsuccessful at first instance- appeal.

Held: The J was correct. Y's failure to revert to X could not be construed as an agreement or assurance that completion was not required on that day. Y had no duty to communicate a "no" response to X. Y's indication that he would take instructions was equivocal, as was his failure to respond. No reasonably competent conveyancing solicitor would have understood Y's silence as an agreement to postponing the completion. A was not entitled to specific performance as he was not able to complete on the day set for completion.

Landlord and tenant

Period of statutory tenancy

Church Commissioners for England v. Meya [2006] EWCA Civ 821

A landlord, R tenant- lease of residential premises for one year less one day- rent £17,600 per annum, payable quarterly in advance- R held over on expiry of the fixed term- A served notice under s.21(4) Housing Act 1988- question whether statutory tenancy arising under s.5 Housing Act 1988 on expiry of the fixed term was a yearly tenancy or a quarterly tenancy- s.5(3) provided the period of tenancy were "the same as those for which rent was last payable under the fixed-term tenancy"- J dismissed A's claim for possession- appeal:

Held: Appeal allowed. The word "last" qualified the word "payable". The "last" payment under the fixed term tenancy had been a quarterly instalment in advance. R was therefore a quarterly periodic tenant, and A's notice was valid. A was entitled to possession.

Succession

Birmingham CC v. Walker [2006] EWCA Civ 815

A's mother and her husband became joint tenants of their house in 1965- husband dies 1969- Housing Act 1980 subsequently came into force, introducing the concept of "successor" under that Act- A lived with mother until her death- A claimed to succeed to tenancy on her mother's death- R disputed A's right to succeed on the basis that A's mother was herself a successor on the death of her husband in 1969- R argued that that A's mother "was a joint tenant and has become a sole tenant" within the meaning of s.88(1)(b) of the Housing Act 1988, and was therefore herself a successor- J agreed, possession order made- appeal:

Held: Appeal allowed. A's mother had become the sole tenant by survivorship on the death of her husband in 1969. She was not however a "successor" within the meaning of s.88. The mother had only become a secure tenant when the 1980 Act came into force. There could not therefore have been a succession by her "under a secure tenancy" before that date. Nothing in the provisions themselves or in the interests of fairness indicated that the succession provisions were to have retrospective effect.

VAT on sale and leaseback

Abbey National plc v. Commissioners of Revenue & Customs [2006] EWCA Civ 886

R embarked on restructuring whereby it sold its entire property portfolio to M Ltd- R took back leases or subleases of accommodation it wished to continue to occupy- certain of the leasehold property subject to covenants against assignment without landlord's consent- R concerned they might not get consent in certain cases- these properties subject to a "virtual assignment" whereby M Ltd took all the economic benefits and burdens of the lease- R remained in occupation- R paid fees to M Ltd that were similar to rent- A assessed R for VAT on the transaction as it was no a supply involving "leasing or letting of immovable property" within art. 13B(b) Council Directive 77/388/EC (Sixth Directive)- assessed as a supply of agency and property management services- VAT tribunal upheld assessment, overturned on appeal, appealed to CofA:

Held: Appeal allowed. The right of occupation was an essential and fundamental element of a transaction of leasing or letting for the purposes of art. 13B(b). M Ltd had acquired no contractual or proprietary right to occupy the premises. R remained in occupation by virtue of their pre-existing status as tenant. The supply could not therefore be one of "letting or leasing" but was properly characterised as the supply of agency and property management services.

Procedure***Tomlin order- issues settled between the parties***

The Carphone Warehouse UK Ltd v. Malekout [2006] EWCA Civ 767

R statutory tenant of residential premises- protected under s.2 Rent Act 1977- A landlord, action for rent arrears- R counterclaim for breach of repairing covenant- argued premises uninhabitable due to disrepair- proceedings compromised using a Tomlin Order- A undertook to carry out various works- R unhappy with works- withheld rent- A sought possession- argued R's security lost as not occupying premises as his residence- claim for possession dismissed- appeal:

Held: Appeal dismissed. A had challenged R's status as a statutory tenant in the earlier proceedings. This issue had however been decided between the parties by the Tomlin Order. The agreement (including works to be carried out by A) was predicated on the assumption that R was the statutory tenant and that, even if he was not in actual occupation, he would be once the works were completed. A had therefore waived its right to argue that the security had been lost prior to the Tomlin Order. The J had decided that R had retained his intention to return throughout the period following the Tomlin Order. He was entitled to do so.

Case summaries by Arthur J. Moore