

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
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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
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Rupert Higgins	1991	Andrew Lane	1999
Jon Holbrook	1991	Sarah McCann	2001
Arthur Moore	1992	Dean Underwood	2002
Kerry Bretherton	1992	Michael Wheeler	2003
Alexander Goold	1994	Alice Marshment	2003

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

Landlord and Tenant

Forfeiture

Pirabakaran v. Patel & another [2006] EWCA Civ 685, CA

R landlord A tenant- lease of premises of shop, with residential flat above- lease protected by Part II Landlord and Tenant Act 1954- R exercised right of re-entry for non-payment of rent- locks on shop changed- access to flat by separate door- possession proceedings taken in respect of flat- A charged with criminal damage to flat, and R changed the locks- A sought injunction to restrain R from excluding him from the flat- A argued forfeiture of shop unlawful, as prohibited by s.2 Protection from Eviction Act 1977- question whether premises which were partly commercial and partly residential were "let as a dwelling" for the purposes of the Act- J decided not and, in light of the criminal damage, refused relief from forfeiture- tenant appealed:-

Held: Appeal allowed. "let as a dwelling" meant let wholly or partly as a dwelling. This was the effect of s.31 Rent Act 1965, which was the precursor to s.2 Protection from Eviction Act 1977. Moreover, where there was an issue as to whether a tenant might or might not be entitled to relief from forfeiture in respect of his home, it was better that this issue should be decided before rather than after eviction.

Possession orders

Bristol City Council v. Hassan; Bristol CC v. Galstonbury [2006] EWCA Civ 656, CA

As were secure tenants of R under Housing Act 1985- suspended possession orders made for rent arrears- standard form N28 used for Order which specified a date for possession, but provided order was not to be enforced for so long as certain payments were made- settled law that effect of these orders was to render the As tolerated trespassers from the date of possession, even if the payments were kept to- on appeal the issues were (i) was the J obliged to make possession orders specifying a date and (ii) if not, what forms of order were permissible-

Held: Appeals allowed in part. The J was not obliged to set a date for possession when making an order. He could set a date, and then provide that that date would be postponed for so long as the conditions were met. This would have the effect of postponing the date for a fixed period in the first instance, and thereafter for so long as the tenant complied with the conditions. Further, J could make an order where no date was specified, and requiring the LL to make an application to the Court to fix a date, in the event of default. Terms of the order could include a requirement for the LL to notify the tenant of the breach and its intention to apply to the Court. The LL could then apply to the Court on a "without notice" basis, including the response from the tenant (if any) and the up to date rent account. The matter could be dealt with on paper. It was not however appropriate to implement a procedure that required a separate hearing, with all the expense and delay that this would cause.

Procedure

Non-attendance of party at trial

Estates Acquisition & Development v. Wiltshire & another [2006] EWCA Civ 533

Appellant (A) leaseholders did not attend trial of action to forfeit their residential lease- they had moved out and paid no further ground rent- LL (R) had no other address- R sent rent demands and finally proceedings, to the address- no response- proceedings commenced- claim form and hearing date properly served – CPR 6.5(6)- A did not receive them, unaware of proceedings- when A became aware of order, applied under CPR 39.9(3) to set aside- J allowed application- R appealed- successful on the basis that J should have considered the reason why A were unaware of the proceedings: namely that they had not left any other address with R- A appealed:

Held: Appeal allowed. Where parties were in a legal relationship, what might be required of one party in respect of his legal relationship with the other in terms of providing an address was different from what was required in respect of litigation. Whether a party was required to notify the other of his address for the purposes of steps to be taken in connection with their legal relationship would depend on the terms of that relationship. The mere existence of a continuing legal relationship did not oblige the parties to ensure that they had a system for ensuring that, in the event that litigation occurred, they received communications relating to the litigation. It was undesirable to seek to define a "good reason" within the meaning of [CPR r.39.3\(5\)\(b\)](#) but it was necessary to interpret that rule so as to give effect to the overriding objective. If the phrase "good reason" was interpreted too strictly against an applicant, there was a danger that the interpretation would not give effect to the overriding objective nor comply with the [European Convention on Human Rights 1950 Art.6](#). The approach adopted by the judge produced a result that was unjust and unfairly denied a fair hearing to the A who, by definition, had a reasonable prospect of success on the merits and had acted promptly to make the application. There was no finding that A had failed to take any steps to get their post forwarded or to notify R of their new address in order to avoid their contractual responsibilities or in order to frustrate the litigation.

Property

Constructive trusts

Oates v. Stimson & another [2006] EWCA Civ 548

A and R1 buy house- joint tenants- joint mortgage- paid by both until A made redundant- A orally agrees to leave and to sell his share to R1 for £2500- R1 does not have the money, so they agree orally that R1 will pay when he can- A agrees to transfer his share to R1 once he has been paid- A leaves and has nothing further to do with the property- R1 pays mortgage- keeps up property- R1 then sells the property (with permission of the Court)- buys new property with R2- in 2000 R1 had the £2500- A denied existence of agreement and refused to transfer his interest- at trial, R1 relied on s.2(5) Law of Property (Miscellaneous Provisions) Act 1989, saying that the agreement gave rise to a constructive trust in R1's favour- J believed R1 on the evidence in relation to the agreement and held R1 entitled to the full proceeds of sale- A appealed, contending that that the relief granted was disproportionate to the detriment he suffered-

Held: Appeal dismissed. J was entitled to conclude that the agreement had been made, as R1 contended, and that R1 had then changed his position or acted to his detriment in reliance on that agreement. As a result, a constructive trust arose in R1's favour (the agreement could not be specifically enforced because it was not in writing and did not therefore comply with the requirements of s.2 of the 1989 Act). All relevant circumstances should be taken into account in assessing the minimum equity to do justice between the parties. R1 had taken on the mortgage, and the outgoings. He took the risk that house prices might fall as well as rise. A was entitled to his £2500, but must surrender his interest to the R1.

Case summaries by Arthur J. Moore