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Property Law UK

Monthly Update

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the online resource for property lawyers

Editors

Gary Webber	General Editor
David Keighley	Deputy Editor Solicitor's practice points
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Tanfield Chambers	Residential tenancies, long leases and property litigation
Samantha Jackson	Boundaries, co-ownership and estoppel, nuisance and trespass
Emma Humphreys & Georgina Redsell, Charles Russell Speechleys	Easements and restrictive covenants
Tim Selley	Mobile Homes
Sarah Thompson-Copsey	Landlord and Tenant (General)
Jonathan Welch	Planning

Topics this month

- **Co-ownership:** Quistclose Trust - creation - Land Registration Act 2002; Beneficial interest - detrimental reliance.
- **Long Leases:** Service Charges - construction of lease clause.
- **Mortgages:** Redemption - liability for contingent costs – clog on equity of redemption; Abuse of process - possession order.
- **Planning:** Multiple Permissions – implementation.
- **Property Transactions:** Option Agreement - meaning of “planning permission”; Land Registration - purchaser’s ability to rely on register as conclusive.
- **Residential Tenancies:** Succession - validity of Notices to Quit - s18 Law of Property (Miscellaneous Provisions) Act 1994; Housing Act 1988 – s8 Notices – addresses.
- **Solicitors Practice Points:** Land Registry Practice Guide 12; Land Registry Requisitions; Revised Anti Money Laundering Guidance.

Boundaries and adverse possession

The editor of this section is Samantha Jackson of Clerksroom, London and Taunton (Samantha.Jackson@Clerksroom.com)

No report this month.

Business lease renewal

The editor of this section is Sarah Thompson-Copsey, solicitor and freelance property law trainer (sarah@thompsoncopsey.com)

No report this month.

Co-ownership

The editor of this section is Samantha Jackson of Clerksroom, London & Taunton (Samantha.Jackson@Clerksroom.com)

There are two cases this month:

- Whether an arrangement was sufficient to constitute a Quistclose trust?
- Whether the claimant/appellant had established that she had a 50% beneficial interest as an equitable co-owner in a Property?

Creation of a trust
Land Registration Act 2002

Huseyin Ali v Dinc
[2020] EWHC 3055 (Ch)

Summary
The court held that the arrangement between Claimant ("C") and the first defendant ("D1") was sufficient to constitute a *Quistclose* trust. A *Quistclose* trust occurs where a property is given to someone for a specific purpose. If the purpose fails the property is held on trust for the transferor (*Barclays Bank Ltd v Quistclose Investments Ltd* [1968] UKHL 4)
This meant that D1 held the properties on resulting trust for C, but with a power in D1 to use the properties for the agreed purpose of raising funds for C. That arrangement had failed and subject to certain qualifications, C was entitled to an order requiring D1 to re-transfer the properties back to him, and D1 and the second defendant ("D2") to surrender the lease over one of the properties.

Facts
The claimant was the registered proprietor of two properties (No 19 and No 67). On 27 April 2016, the properties were transferred by C to D1 via signed transfer forms indicating the transfers were for nil consideration.
To enable the transfers to be registered, it was necessary to redeem an existing charge over No 19 in favour of Santander UK Plc securing a debt of approximately £67,500. Both C and D1 accept that D1 provided the funds for this.
Later that year, on 6 December 2016, D1 gifted to D2 (his brother) a 999-year lease of the first floor of No.67. On 2 March 2017, and D1 granted a charge to D3 over No.19 as security for a loan in the sum of £460,000. Both the Lease and the Charge were registered. On the evidence, the loan was used exclusively for D1's and/or D2's own purposes and benefit.
No.19 was C's home, and he continued in occupation rent-free notwithstanding the transfer to D1 and the dispute before the court. No.67 was a rental property, split into two flats on the ground and first floors. In 2007, C granted a 999-year lease of the ground floor flat to a Mr Thompson for a premium of £295,000. C was still named as the landlord of the first floor flat, which was let to an assured shorthold tenant with C receiving the rent of c.£1,500pcm for himself notwithstanding the transfer to D1, the Lease to D2, and the dispute before the court.
C's case was that the transfer of the Properties was subject to an oral agreement for sale at a price of £1.35 million (£750,000 for No.19 and £600,000 for No.67), made on 26 April 2016 (the day before the Properties were transferred to D1), and that, in addition, D1 would discharge the Santander Charge. The Santander Charge was discharged, thus enabling the registration of No.19 in D1's name, but C received no part of the £1.35 million. C's primary claim was to recover the Properties, or the £1.35 million sale price on the basis that he was entitled to various declarations and injunctions in support of equitable proprietary in the properties. Further, or in the alternative, he claimed to be entitled to various personal remedies by way of restitution or equitable compensation.
D1 and D2 maintained that C suggested a plan by which C would gift the Properties to D1; D1 would then use the Properties to raise finance to give back to C. D1 alleged that C orally requested his assistance in raising finance that C needed. D1 and D2 denied C's version of events, and all the legal consequences that followed, but advance no counterclaims. D3 claimed that even if C did

Co-ownership (continued)

have an equitable proprietary interest of any sort in No.19, it was postponed to D3's subsequent registered charge.

Issues

- Whether there was an enforceable contract between C and D1 or whether the C could enforce the terms of any resulting or constructive trust?
- Whether, as D1 held the properties on resulting trust (or a constructive trust on the same terms) for C, whether C's earlier interest took priority over the subsequent registered proprietary interests of D2's lease and D3's charge?

Decision

1. On the evidence an arrangement or agreement between C and D1 had existed and was not an arrangement intended by either party to be by way of gift or binding in honour only. That arrangement – on both parties' versions – was to involve the transfer of the properties from C to D1 and the payment of money by D1 to C.
   Whatever its detail, the arrangement was not in writing but it could be inferred it was C and D1's clear intention, understood by both, that the properties would be transferred by C to D1 for D1 to use exclusively for raising funds which were to be transferred to C.
   As those restrictions were sufficiently clear and certain the court was able to determine D1 had acted in breach of the restrictions as apart from the permitted use of the properties it was C, not D1, who was beneficially entitled to the properties under a resulting trust (or constructive trust) despite the transfer of legal title to D1.
   Therefore, as a legal consequence of this arrangement between C and D1 it could be inferred there was a *Quistclose* trust; C understood and accepted that the properties would be used to raise all or some part of the funds that were required in order for D1 to pay C whatever sums were due under their arrangement. However, the arrangement between C and D1was void and unenforceable.
   Neither C nor D1 presented sufficient evidence to establish the truth of their own version of the arrangement between the parties. The only evidence of a contract of sale for £1.35 million was C's own assertion. Without clear agreed terms, there could be no contract.
   Further and even assuming the terms had been clear, an oral contract for the disposition of an interest in land was void unless in writing: s.2 of the Law of Property (Miscellaneous Provisions) Act 1989. Thus, the intended contract was not simply unenforceable; it was of no effect. Since the intended contract (whatever its terms) could not be enforced, given the want of writing, any remedies which depended on court enforcement of the contractual obligations undertaken by either side were also not available.
   Consequently, even if C had been able to advance firm proof that there had been an oral contract for the sale of the property for £1.35 million, he could not enforce that contract, and in particular could not enforce payment of the purchase price for £1.35 million. In unwinding what had happened between the parties as a result of that void arrangement, or alternatively in enforcing the *Quistclose* trust that could be proved on the facts, C had established that D1 and D2 held their respective interests in the transferred properties on trust for C. Accordingly, and subject to the qualifications, C was entitled to an order requiring D1 to re-transfer the properties, and D1 and D2 to surrender the lease over No 67.

2. C was entitled to an order requiring D1 to surrender the lease. No.19 remained encumbered by D3's registered security interest. Whilst it followed that C was not entitled to an order requiring D1 to pay him £1.35 million by way of purchase price, the loss could not be left to lie where it fell. The intended transaction had to be unwound, and both sides put back in the position they were in before the deal was entered into but D2 and D3's positions had to be considered.
   There was force in the C's unjust enrichment claim based on the argument that there was an intended contract that never materialized. Despite obiter comments in Mortgage Express v Lambert [2016] EWCA Civ 555, [2017] Ch. 93, s.26 of the Land Registration Act 2002 did not prevent a party from asserting a potentially overriding interest as against a registered disponee as s. 26 was directed at protecting the disponee's legal title, not its priority.
   If there was a Quistclose trust, D1 was acting perfectly properly in using the properties to acquire secured finance from D3, and to that extent C's interest in the properties was overreached. C could not complain about the fact that effecting the parties' intended purpose had delivered a valid and effective security interest to D3: that was an essential outcome of the parties' arrangement. It was immaterial for priority purposes that D1 had then been supposed pay those funds to C, pursuant to his fiduciary duties. That had been a breach of D1's duty to C, but it did not have any impact on D3 overrising interest.

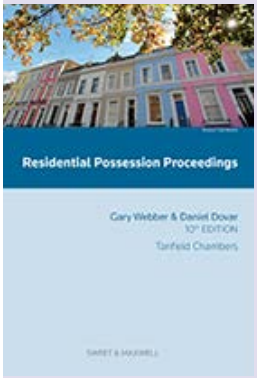
Co-ownership (continued)

If there was a *Quistclose* or constructive trust - because the claimant's proprietary interest in the properties was held under a Quistclose trust or a resulting trust under the Westdeutsche analysis, D3's charge was not subject to any overriding interest held by the claimant, but D2's lease was subject to the claimant's overriding interest.
If there was no *Quistclose* or constructive trust, but the C had an interest under a presumed resulting trust, the same priorities consequences would follow as per *Credit and Mercantile Plc v Kaymuu Ltd* [2015] EWCA Civ 655. In this case, there was no evidence that prescribed D1's activities as an agent for the claimant. The C's equitable interest in the properties was subject to D1's use of them as security to raise the funds to be provided to C, and the C's equitable interest was never intended to survive D1's disposition in favour of D3, which was undertaken for the purpose of raising funds. Thus, the Cs interest was overreached by the disposition in favour of D3. Conversely, the C's interest took priority over D2's, notwithstanding the registration of D2's interest, because D2's interest was not acquired for valuable consideration, so was not protected by the Land Registration Act 2002

Beneficial interest
Detrimental reliance
O'Neill v Holland
(2020) EWCA Civ 1583

Summary
Successful second appeal to the Court of Appeal, overturning a County Court appeal decision and re-instating the first instance decision (albeit on slightly different reasons). The Circuit Judge had been wrong to hold that, following the transfer of the property into the Defendant's sole name, the Judge had been wrong in taking the view that detrimental reliance had not been pleaded sufficiently or at all in the Claimant's statement of case.

Facts
The Ms O'Neill (the Claimant) had lived with Mr Holland (the Defendant) and their children at 53 Worsley Road ("the Property") between 2000 – 2012. It had been bought by her father 1999. In July 2012 the relationship came to an end. The claimant left the Property with the children and the defendant continued to live there.
In 2008, the Claimant's father had transferred the legal interest in the Property into the Defendant's sole name for no consideration. From the available evidence it appeared that it had originally been intended that the Property be transferred into the parties' joint names, but a mortgage offer had only been taken out in the Defendant's name, because on her evidence he said that she was not able to get a mortgage and thus it should be transferred into his sole name.
In February 2016, the Claimant commenced proceedings, seeking (amongst other relief) a declaration that the Defendant held the beneficial interest in the Property on trust for the two of them in equal shares.
She also sought similar declarations in relation to a portfolio of 12 buy-to-let properties, which had been acquired in the sole name of the Defendant (or, in one case, in the name of a company of his) on various dates between 2002 and 2010; and a further property at 30 Broadway Street, Worsley, Manchester ("30 Broadway"), which she alleged had been bought by them jointly as a future family home, although again it had been acquired in the Defendant's sole name.
In support of her case that she had a 50% beneficial interest in the 12 buy-to-let properties, the Claimant alleged that she and the Defendant had established a joint property business, to which she had materially contributed in various ways, or in the alternative that there had been a partnership at will between them. The Claimant's father had passed away in 2009.



Residential Possession Proceedings. 10th edition. **Gary Webber and Daniel Dovar. Sweet and Maxwell, 2016**
The definitive guide to the law and procedure relating to the possession of residential property in a single text.
"For a lawyer who wants to bring an eviction claim – this book is great." *The Landlord Law Blog*
It succinctly explains the action a landlord can take to regain possession of a property and how a tenant or occupant might oppose any such action. It also explains the possession rights of landlords, tenants and occupiers under the various forms of tenancy. Finally, Residential Possession Proceedings details the court proceedings necessary to affect or defend possession.
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Co-ownership (continued)

Issues
Whether the claimant/appellant, on the second appeal had established that, on the basis of the facts found by the District Judge at the trial in 2017, she had a 50% beneficial interest as an equitable co-owner in a Property which she co-habited with the defendant/respondent between late 2000 and July 2012.

First Instance
The District Judge rejected the Claimant's claim that there had been a business agreement between her and the Defendant (or a partnership at will) in relation to the buy-to-let properties and found that any assistance which she had given him in relation to his business was explicable on the basis of their personal relationship.
As regards the Property the District Judge found it had been purchased by the Claimant's father, John O'Neill, using money from identified and unidentified sources to be a family home for his daughter and her family. The circumstances were such as to give rise to a common intention constructive trust in favour of the Claimant, and that her beneficial interest in the Property was a half share.
In relation to 30 Broadway the Claimant would have a beneficial interest in it as there was clearly an intention that it would be a family home and rejected the evidence of the Defendant that he purchased it with his own funds as an investment property.

First Appeal in the County Court
Permission was granted to the Defendant on two areas:
The first group, grounds 1 and 3, challenged the District Judge's findings that the Claimant had a beneficial interest in the Property and 30 Broadway respectively, relying particularly upon the absence of any finding that she had acted to her detriment in reliance on any common intention, or on any other circumstances justifying the imposition of a constructive trust.
The second group consisted of three grounds challenging various aspects of the way in which the District Judge had dealt with the equitable accounting issues.
The Circuit Judge allowed the appeal on the basis the District Judge had misdirected herself and as a consequence failed to identify the need to find the Claimant had acted to her detriment in reliance upon the common intention. That requirement was fundamental.

Second Appeal to the Court of Appeal
The Claimant was granted limited permission to appeal by Lewison LJ on 30 July 2019. The two grounds for which Lewison LJ granted permission both related to the Property and permission was granted as it raised "an important point of principle, namely whether the fact that the Appellant's father provided the funds for the purchase of 53 Worsley Road amounts to detriment upon which the Appellant can rely".
In overview the Claimant sought to uphold the District Judge's finding of a constructive trust of the Property in equal shares as being a justified exercise of her discretion in the light of her findings that:

a) the parties intended to share the beneficial interest in the Property;
b) John O'Neill (the Claimant's father) provided the money required to purchase the Property;
c) but for the Defendant's assertion that the Claimant could not obtain a mortgage, the Property would have been transferred from John O'Neill to the Claimant and the Defendant as joint owners;
d) the parties' intention (deduced objectively from their conduct) was that the parties were each to have a 50% share of the beneficial interest in the Property; and
e) it would be unconscionable for the Defendant to deny or renege on the parties' agreement that the Claimant had a beneficial share in the Property.

Decision of the Court of Appeal
The mere fact that the Claimant's father, having purchased the property intended it to be a family home for her could not, by itself, have given rise to a constructive trust in her favour.
Judge Pelling on the first appeal was right to hold that detrimental reliance remained an essential ingredient of a successful claim to a beneficial interest in a residential property under a common intention constructive trust, in the class of case where the legal estate is in the sole name of the other party.
The requirement tracing back to *Gissing v Gissing [1971] AC 886, Grant v Edwards [1986] Ch 638 (CA)* and confirmed in *Curran v Collins* [2015] EWCA Civ 404. However, Judge Pelling adopted too narrow a view of the District Judge's findings of fact, and he was also wrong to take the view that detrimental reliance had not been pleaded sufficiently or at all by the Claimant.
The Claimant had pleaded that she had only agreed for the Property to be transferred into the sole name of the Defendant because he had falsely

Co-ownership (continued)

represented that he would have otherwise been unable to obtain a mortgage over the Property. The Claimant had pleaded that she had been given assurances by the Defendant that he would then hold the Property on trust for himself and her in equal shares. It had been implicit in those allegations that but for the representations made by him, the Claimant's father would have transferred the Property into her sole name, or into their joint names.
Thus on the Claimant's pleadings, there had been clear detriment to her. She had exchanged a situation in which the Property had been in the sole beneficial ownership of her father, and she had been able to occupy it rent-free for the foreseeable future, for a situation in which the beneficial and legal interest had been vested in the Defendant alone.

Comment
Detrimental reliance needs to be identified and pleaded in a statement of case as relying on unconscionability. Detrimental reliance does not necessarily require out-of-pocket expenditure on the property as being tricked or misled into being left off the registered legal title can be sufficient.

Easements

The editors of this section are Emma Humphreys, solicitor, partner in Charles Russell Speechlys LLP and Georgina Redsell Senior Associate at Charles Russell Speechlys (www.charlesrussellspeechlys.com)

No report this month.

Landlord and tenant (general)

The editor of this section is Sarah Thompson-Copsey, solicitor and freelance property law trainer (sarah@thompsoncopsey.com)

No report this month.

Long leases

The editors of this section are Richard Alford, Katie Gray, Diane Doliveux, Will Beetson, James Castle, Chloe Sheridan, Richard Granby, Piers Harrison, Jonathan Upton, Edward Blakeney, Ceri Edmonds and Mitchell Hayden-Cook barristers of Tanfield Chambers, London (www.tanfieldchambers.co.uk)

Service charges
Construction of lease clause – communal grounds – power to add item to the service charges
Curo Places Ltd v Pimlett
[2020] EWCA Civ 1621

Summary
The appellant landlord successfully appealed against the Upper Tribunal's decision that, on a proper construction of the tenancy agreement, the respondent tenant was not liable to pay an additional service charge in respect of ***grounds maintenance*** when he had not previously been charged for such services. The Court of Appeal found that the relevant clause in the lease did entitle the landlord to vary the agreement by adding services if it believed that this would be useful.

Facts
By a tenancy agreement, dated 18 August 2008 and made between the landlord and the tenant, the tenant occupied a one-bedroom bungalow in a sheltered housing scheme. The bungalow was one of 32 residential units set in communal grounds with lawns, trees and paths. The landlord maintained the communal grounds and had done so prior to the tenancy agreement.
Until 2017, the landlord did not seek to levy a charge for grounds maintenance on tenants whose tenancies commenced before the end of April 2010 (when a change was made to the standard tenancy agreement terms to expressly cover grounds maintenance).
The landlord served a notice of variation, dated 16 January 2017, on the tenant seeking to add grounds maintenance to the services under the tenancy agreement. The tenant objected. In circumstances where grounds maintenance had been provided without charge since his tenancy commenced in 2008, he argued that the landlord had no power under the terms of the tenancy agreement to add it to the service charge.
The same issues existed in over 3,400 other

Long leases (continued)

tenancy agreements so the determination of this case would have significant financial implications for the landlord.

The tenancy agreement contained the following particularly relevant terms:

> *Clause 2.10.1 (iii) ("Services"):*
> *"The Trust agrees to provide the Services (if any) listed in the Tenancy Agreement and for which you pay a service charge providing that, subject to consultation with tenants:*
> *…*
> *(iii)* ***it may provide extra Services*** *[sic] if it believes this would be useful."*
> *Clause 6.3.1 ("Altering the Agreement"): "Except for changes in rent or service charges the terms of this Tenancy may only be changed if you and the Trust agree to the changes in writing."*

Issues
Whether on a true construction of the service charge provisions in the tenancy agreement the tenant was required to pay a service charge for grounds maintenance, when he had not previously been charged for such services.

First instance
The tenant applied to the FTT for a determination, pursuant to s. 27A of the Landlord and Tenant Act 1985, of his liability to pay service charge in respect of grounds maintenance. The FTT found that on a true construction of the tenancy agreement the landlord was ***not*** entitled to designate grounds maintenance as an "extra service" pursuant to clause 2.10.1(iii) or to charge for it (the "Construction Point").
The tenant had also contended that if the tenancy agreement did permit the landlord to charge an additional service charge in respect of grounds maintenance the term was not binding on him by virtue of the Unfair Terms in Consumer Regulations 1999 (the "1999 Regulations Point"). The FTT did not decide the 1999 Regulations Point.
The Upper Tribunal dismissed the landlord's appeal on the Construction Point but granted the landlord permission to appeal to the Court of Appeal.

Decision on appeal
The Construction Point
Allowing the appeal, the Court of Appeal found that the Upper Tribunal had erred in reading "extra services" in clause 2.10.1(iii) as connoting services that were extra to those in fact being provided by the landlord. The Court of Appeal found that as a matter on construction "extra services" were those which were extra to the services listed in the tenancy agreement (paragraphs [21] – [23]). The Court of Appeal further found that sub-paragraph (iii) entitled the landlord to vary the agreement by adding services if it believes this would be useful (paragraphs [23]).
The landlord was therefore entitled to start charging for grounds maintenance in 2017 even though it had been providing the service, at no charge, for many years.

The 1999 Regulations Point
The landlord asked the Court of Appeal to also determine the 1999 Regulations Point if it were to find in favour of the landlord on the Construction Point. The Court of Appeal held that as the 1999 Regulations Point had not been determined by the FTT or the Upper Tribunal it was not appropriate to make a finding on the issue on a second appeal. The 1999 Regulations Point was remitted to the FTT for a determination.

Mobile Homes

The editor of this section is Tim Selley, solicitor and partner with Crosse + Crosse Solicitors LLP (www.crosse.co.uk)

No report this month.

Mortgages

The editor of this section is Nigel Clayton of Kings Chambers, Leeds and Manchester (www.kingschambers.com). Nigel also maintains the specialist website dealing with mortgages at www.legalmortgage.co.uk

There are two cases this month:

- Whether a mortgagee was entitled to retain security, notwithstanding the repayment of a loan, against a contingent liability for legal costs?
- Whether following an order for possession at a hearing attended by a party claiming an interest in the mortgaged property it was an abuse of process for that party to subsequently claim to be entitled to redeem the mortgage?

Mortgages (continued)

Redemption

Liability for contingent costs - clog on equity of redemption

Re: Industrial North West LLP (in Administration) [2020] EWHC 3052 (Ch)

Summary

A mortgagee was entitled to retain security, notwithstanding the repayment of a loan, against a contingent liability for legal costs.

Facts

Administrators of INW LLP sought directions on whether they should treat the third respondent (Fairfield) as a secured creditor of INW. Fairfield had provided INW with commercial finance pursuant to a facility which was secured by a Security Agreement. INW had repaid the loan in full following demand having been made but the first respondent (M) who owned INW and was himself an unsecured creditor threatened litigation over the termination of the facility. Fairfield wanted to retain the security against a contingent liability for its costs.

Issues

The principal issue concerned the interpretation of the costs liability in clause 14.5 of the Security Agreement with M submitting (amongst other things) either that there could be no contingent liability for any costs of future proceedings after the loan had been repaid, or that there could be no contingent liability for legal costs until proceedings have been issued. M also submitted that the retention of security amounted to a clog on the right of redemption.

Decision

Following a review of the authorities on what amounts to a contingent liability, including *Re Sutherland* [1963] AC 235*, Glenister v Rowe* [2000] Ch 76 *and Re Nortel* [2014] 1 AC 209 there was a real prospect that Fairfield would incur costs in defending litigation instituted by M and that those costs would fall within clause 14.5, being a liability under a contract which equated to a contingent liability per Lord Neuberger in *Nortel*. The court also rejected the argument that a mortgagee's legal costs cannot amount to a contingent liability of the mortgagor until proceedings have been issued. Since INW was not entitled to release of the security upon payment of the capital and interest if there were other outstanding secured liabilities (nor for partial release upon partial repayment) this is not repugnant to the right to redeem. Whilst a mortgagee cannot refuse redemption if the full amount owing is tendered, this must include adequate provision for contingent liabilities (Re Rudd (1986) 2 BCC 98955). It was not offensive against any equitable principle that a contingent liability remains secured for an indefinite period, nor was there anything unfair or unconscionable in the terms of the facility documents.

Accordingly, INW had a contingent liability for Fairfield's legal costs which were secured by the Security Agreement.

Abuse of process

Possession order - subsequent redemption claim by option holder

SLF Associates Inc v HSBC (UK) Bank Plc [2021] EWHC 5 (Ch)

Summary

Where the court had made an order for possession at a hearing attended by a party claiming an interest in the mortgaged property as an option holder, whose interest did not have priority over the mortgage, it was an abuse of process for that party subsequently to claim to be entitled to redeem the mortgage.

Facts

HSBC obtained an order for possession of mortgaged property over which SLF had registered a restriction to protect an option agreement entered into without HSBC's consent. SLF as option holder subsequently issued a Part 8 redemption claim which HSBC applied to strike out on various grounds including that it was an abuse of process as a collateral attack on the order for possession (per the *Aldi Guidelines* [2008] 1 WLR 748).

SLF had intervened in the possession proceedings and sought a stay of the warrant of possession. At the hearing it argued it could rely on s 36(2) Administration of Justice Act 1970. HSBC argued it was not bound by the option agreement and that SLF had no authority to make any mortgage payments for the purposes of s 36. The District Judge agreed. Permission to appeal was refused.

SLF's redemption claim was based on a claimed interest in the equity of redemption pursuant to s 91(2) Law of Property Act 1925 and/or s 50 Law of Property Act 1925.

Issues

Whether an option holder whose option did not give it priority over a mortgage had a sufficient interest to apply to redeem the mortgage, notwithstanding that the court had already made an order for possession in proceedings involving the option holder.

Mortgages (continued)

Decision
The possession judgment made clear findings about HSBC's priority interest and determined that SLF's interest could not defeat HSBC's claim or the pursuit of its possession order. Any attempt by SLF to use its redemption claim to thwart HSBC's right to enforce its possession order was a direct attack on the possession judgment. Furthermore, by failing to 'come clean' about the redemption claim during the possession proceedings, the court and the parties were denied the opportunity of having the parties' rights and obligations determined once and how those claims should be managed in a reasonable and proportionate manner in accordance with the overriding objective. There was a long list of other failings by SLF in the conduct of its claims. Overall, this was part of a concerted attempt to get round the possession judgment. They were an abuse of process and a collateral attack on the possession judgment. The Aldi Guidelines applied to all parties not just claimants and are about case management. A failure to comply with them may result in a second action being an abuse of process, as here.
The issues now raised in the redemption claim should have been raised at the possession hearing. As the Aldi Guidelines make clear and as reinforced by Briggs LJ in *Gladman Commercial Properties v Fisher Hargreaves Proctor* [2013] EWCA Civ 1466 there is a requirement for parties to refer a contemplated future claim to the judge in the earlier claim as a matter of case management. This is precisely the type of case in which the court would be likely to want to take on a robust case management role.
The redemption claim would accordingly be struck out as an abuse of process.

Comment
This is a lengthy judgment (225 paragraphs). It contains quite a bit of analysis about redemption claims although at times it does go a bit astray and confuses redemption claims with foreclosure (para 81). The immediate problem that SLF had was that its option agreement, entered into without the bank's consent, never gave it priority over the mortgage, nor did it give it a sufficient interest as a mortgagor to seek a stay or suspension under s 36 Administration of Justice Act 1970. Although the bank accepted that if the option had been validly exercised (which was itself in issue) it would give SLF a sufficient interest in the equity of redemption to apply to redeem under s 91, the bank's case was that holding this claim back amounted to an abuse of process.
The main points are about abuse of process in the context of mortgage proceedings, in failing to bring forward all claims at once or at least to advise the court about the prospect of other claims to enable the court to case manage them properly.

Nuisance and trespass

The editor of this section is Samantha Jackson of Clerksroom, London and Taunton (Samantha.Jackson@Clerksroom.com)

No report this month.

Planning

The editor of this section is Jonathan Welch, planning caseworker and pupil at Francis Taylor Building. (jhrwelch@gmail.com)

Multiple permissions
Implementation

Hillside Parks Ltd v Snowdonia National Park Authority
[2020] EWCA Civ 1440

Summary
A planning permission granted in 1967 was no longer capable of further implementation because of subsequent piecemeal development which was at variance with the original permission.

Facts
This unusual case has a relatively complex history. The landowner sought a declaration that a planning permission granted in 1967 remained valid and capable of further implementation. The 1967 permission was for 401 dwellings in accordance with a masterplan. Some development (pursuant to 8 further grants of planning permission) had taken place since 1967, but not much of the overall site. In 1987 a dispute arose with the Local Planning Authority and the then landowner went to the High Court and sought a declaration that the 1967 permission had been validly implemented. The judge ruled in favour of the landowner.
From 1987 onwards, 8 further permissions were granted for departures from the initial (1967) masterplan (the Court of Appeal judgment doesn't record whether these permissions were variation applications under section 73 TCPA 1990, or full section 70 planning permission applications). These permissions were implemented.
Subsequently (more recently), the Local Planning Authority took the position that the 1967 permission could not be built out any further because of the principle found in the case of *Pilkington v SSE* [1973] 1 WLR 1527 – when there are two permissions covering the same land and the second one means the first one can no longer be developed in accordance with the terms, then the first one is no longer capable of being relied upon.
The landowner sought a declaration that the Local Planning Authority was not entitled to rely on the Pilkington principle in this way because of res judicata – (inability to re-litigate the point which had already been determined: the validity of future implementation of the 1967 permission – and that this point could have been taken by the predecessor Local Planning Authority in the High Court in 1987, but it wasn't, and couldn't be raised now.

Issues

1. Whether res judicata prevented the Local Planning Authority from raising the Pilkington argument that the 1967 permission was incapable of implementation because of development which had taken place subsequently, and
2. Whether in accordance with Pilkington the 1967 permission was no longer capable of implementation/

First instance
The High Court rejected the claim by the landowner – that although the 1987 judgment was not to be doubted, the development which had occurred subsequently rendered the development granted by the 1967 a physical impossibility and future development pursuant to that 1967 permission would therefore not be lawful.

Decision on appeal
The appeal was dismissed.
The Court of Appeal disagreed with the landowner, and held that res judicata was not absolute, and the public interest in not permitting development in the National Park outweighed the landowner's private interest.
As to the substance of the Pilkington argument relied on by the Local Planning Authority, the Court of Appeal agreed with the Local Planning Authority that, having regard to the evidence, the subsequent (post-1987) permissions which were at variance with the 1967 permission meant that that original permission could not be built out lawfully.

Comment
It is not clear that the treatment of the res judicata point in this case was correct since it appears to introduce merits-related planning considerations into the strictly legal question in play.
Furthermore, in dealing with the Pilkington issue, the Court of Appeal made certain comments noting that planning permissions should be interpreted as requiring to be built out as a whole, with reference to case law such as *Sage v SSETR* [2003] UKHL 22. The difficulty is that the reality of much modern (especially larger scale) development involves a main overarching permission, with subsequent smaller permissions which tweak the detail of individual parts of a site (and including s.73 applications to deal with any necessary variation or removal of conditions).
The possible implication from the judgment in this case is that those subsequent so-called 'drop-in' applications would mean that the parts of the main overarching permission unaffected in practical and

Planning (continued)

physical terms would nevertheless be rendered incapable of implementation. If this is the correct reading of the judgment, it would be contrary to current common practice and would create some serious challenges for developers of larger schemes, especially those which are multi-phase. It should be noted that the landowner has sought leave to appeal to the Supreme Court.

Property litigation

The editors of this section are Richard Alford, Katie Gray, Diane Doliveux, Will Beetson, James Castle, Chloe Sheridan, Richard Granby, Piers Harrison, Jonathan Upton, Edward Blakeney, Ceri Edmonds and Mitchell Hayden-Cook barristers of Tanfield Chambers, London (www.tanfieldchambers.co.uk)

No report this month.

Property transactions

The editor of this section is Peta Dollar, solicitor and freelance property law trainer (peta@petadollar.co.uk)

There are two cases this month:

- Whether a grant of planning permission for works to a roof was sufficient to allow an option holder to exercise that option?
- Whether a purchaser buying registered land need be concerned about potential limits on the registered owner's powers to make a disposition not reflected in an entry on the register?

Option agreement
Meaning of "planning permission"
Fishbourne Developments Ltd v Stephens
[2020] EWCA Civ 1704

Summary
An option agreement allowed the option holder to purchase farmland at less than 2/3 of market value if "Planning Permission" had been granted. The option holder obtained planning permission to re-roof one of the existing farm buildings. This was held not to constitute "Planning Permission", as the alternative would make no commercial sense and the option agreement had to be construed as a whole.

Facts
The defendant's late mother entered into an option agreement with the claimant developer in relation to farmland in Sussex. The agreement contained a definition of Planning Permission as *"a planning permission granted by the Local Planning Authority permitting any development of the Property".*
The claimant obtained planning permission in 2016 to affix a new roof to one of the agricultural buildings on the land. The claimant never had any intention of implementing that permission which later expired. However, the claimant argued that this permission constituted "Planning Permission" under the option and therefore entitled the claimant to acquire the whole of the farm at a 38.75% discount to market value.
The defendant argued that "development" in the definition meant development including new building, and in any event the permission must be for development "of" the Property, i.e., of the whole or substantially the whole of the land and not merely of one small building "on" the Property. Consequently, the defendant argued that the option had not become exercisable.
Rectification was not sought.

Issue
Did the planning permission that had been granted constitute "Planning Permission" for the purposes of the option?

First instance
HHJ David Cooke held that the permission was not Planning Permission as defined, on the following basis:

- There had been a series of option agreements and supplemental agreements, which were informal and not well-drafted, so the court was entitled to place greater weight on the surrounding facts known to the parties than might otherwise have been the case. From the start, the parties had pursued the object of obtaining planning permission for residential development. References to development should therefore be construed as referring to development by new non-agricultural building.
- Development of the Property meant the whole farm as operative provisions in the option agreement referred to the Property and not part of it.
- It did not make commercial sense for the owner to agree that she be required to sell her land at a discount in circumstances in which an application which might realistically improve its value might not even have been made.

Property transactions (continued)

Decision on appeal
The Court of Appeal (Asplin LJ giving the leading judgment) dismissed the appeal.
The High Court judge was correct that "development" had more than one possible meaning. The court's role was to weight up the implications of rival constructions, considering the relevant background available to the parties, and decide which construction was more consistent with business common sense.
Considering the whole agreement, the claimant's interpretation of "development" made little commercial sense. It would allow them to rely on an inconsequential planning permission to trigger an option to purchase at a 30% discount. This discount (and the absence of clawback or overage provisions) indicated that the grantor expected the claimant to take steps to enhance the land's value to exercise the option. "Development" therefore meant a development that included new building(s) and involved a change of use.
The Court of Appeal also agreed that, to trigger the option, a planning permission must relate to the whole or substantially the whole of the Property. The definition of "Planning Permission" did not refer to the Property "or any part thereof", but the definition of "Planning Application" did. However, this distinction made sense; the claimant could make multiple planning applications relating to different parts that together enabled a development of the whole. It was clear that the draftsman distinguished, throughout the option, between the property as a whole and part of it.

Comment
This case illustrates clearly the different approach which a court will take when construing a badly drafted document contrasted with their approach when construing a document which has been competently drafted but nonetheless is unfair to one party.

Land Registration

Purchaser's ability to rely on register as conclusive

Ghai v Maymask (228) Ltd
[2020] UKUT 293 (LC)

Summary
A purchaser buying registered land need not be concerned about potential limits on the registered owner's powers to make a disposition that are not reflected in an entry on the register.

Facts
A building in a city centre ("the Property") was owned by BHL with the benefit of a loan from Auction Finance Ltd ("the Lender"). The loan was secured by a first legal charge over the Property. BHL was unable to keep up its loan repayments and in November 2017 the Lender appointed receivers over the property.
The sole director of BHL completed the sale of the Property to the Respondent in June 2018. The sale was not by the receivers, whose appointment was terminated on the same day. After the discharge of the loan the director apparently appropriated most of the net sale proceeds.
The appellants, shareholders in BHL, were informed of the sale by one of the receivers on the day it completed. They argued that the receivership was only terminated as a result of the redemption of the charge and therefore after completion of the sale, and that the director had not had the power to sell the Property.
There was no entry in the register referring to an appointment of receivers or to any limit on the registered owner's powers to make dispositions of the Property.
The appellants' solicitors wrote to the Land Registry, lodging an objection to the registration of the Respondent as proprietor of the Property on the basis that the director must have acted without authority in effecting the sale. As the Respondent was aware of the appointment of the receivers the sale to it was said consequently to be void. The Land Registry referred the objection to the First-Tier Tribunal.

First instance
The FTT dismissed the objection on the following basis:

> "A disposition of the legal interest in property is effected by the registration of a duly completed and executed transfer in form TR1.
> At the time the subject transfer was presented to HM Land Registry for registration the appointment of the receivers had been discharged. The sole director had authority to execute the form TR1. Insofar as may be necessary he did so with the consent and authority of the receivers. In any event, if there was at any relevant stage a want of authority due to the appointment of receivers, that is a matter for the receivers and not the respondents as shareholders.
> The respondents as shareholders have no proprietary interest in the property. Any dispute there may be between the respondent as shareholders and [the director], whether as shareholder or as the sole director, does not

Property transactions (continued)

give the respondents a proprietary interest in the property, such that they can prevent registration of the transfer."

Decision on appeal
On appeal to the Upper Tribunal (Lands Chamber), Martin Rodger QC held that a buyer of registered land could rely on a transfer executed by the sole director of a company in receivership where there was no limitation on the title register. S26 Land Registration Act 2002 made it unnecessary for the buyer to be concerned about potential limits on the registered owner's powers to make a disposition that were not reflected in an entry on the register. If a limitation was reflected by an entry on the register, then the buyer could ensure that limitation was addressed. If there was no entry, a buyer was protected. In this case there was no entry in the register referring to an appointment of receivers or to any limit on the registered owner's powers to make dispositions of the property. It followed that s26 provided a complete answer to the issue of whether the disposition was valid. The buyer was entitled to proceed on the assumption that the registered owner's right to exercise owner's powers was free of limitation, whatever the buyer knew of the true facts.

Comment
When registering a charge, some lenders also require a restriction to be entered in a property's proprietorship register that any disposition requires their consent. On accepting an appointment, receivers should look for such a restriction as this should indirectly provide that protection.

Public access

The editor of this section is William Batstone of Guildhall Chambers, Bristol (*www.guildhallchambers.co.uk*)

No report this month.

Residential tenancies

The editors of this section are Richard Alford, Katie Gray, Diane Doliveux, Will Beetson, James Castle, Chloe Sheridan, Richard Granby, Piers Harrison, Jonathan Upton, Edward Blakeney, Ceri Edmonds and Mitchell Hayden-Cook barristers of Tanfield Chambers, London (www.tanfieldchambers.co.uk)

There are two cases this month:

- The Court interpreted s18 of the Law of Property (Miscellaneous Provisions) Act 1994
- Whether a notice served under s8 of the Housing Act 1988 had to include a landlord's name and address where it was signed by the landlord's agent.

Succession – periodic tenancy
Validity of Notices to Quit
Gateway Housing Association v Ali (Deceased)
[2020] EWCA Civ 1339

Summary
The Court interpreted s18 of the Law of Property (Miscellaneous Provisions) Act 1994, which sets out a procedure for termination of a periodic tenancy following the death of a tenant and before probate or letters of administration have been granted.
The operative document was the original Notice to Quit served under s18(1)(a), the expiry of which was calculated by the reference to that notice (and not the copy served on the Public Trustee). So long as the copy was served on the Public Trustee before the date when the original expired, the original was valid to determine the tenancy.

Facts
On 4 May 1998 Gateway Housing Association (then called by a different name), a registered provider of social housing, granted Mr Ali and his wife a joint assured tenancy of a property in London. Following the death of Mr Ali's wife on 15 March 2014, Mr Ali became the sole tenant of that property. Mr Ali himself subsequently died on 10 August 2018.
The property remained occupied by, among others, Ms Begum (the second respondent) who claimed to have married Mr Ali in Bangladesh in 1990.
Gateway therefore served a Notice to Quit by first class post on the property on 15 October 2018. It was addressed to "The Personal Representatives of Mr Nuruj Ali". Deemed service was therefore on 17 October 2018, and the notice expired on 18

Residential tenancies (continued)

November 2018.
Gateway also sent a copy of the Notice to Quit on the Public Trustee on 18 October 2018 by first class post. However, the Public Trustee stated that the application to register the notice was received on 30 October 2018. In those circumstances, that copy notice was to expire on 2 December 2018.
Proceedings for possession of the property were issued on 21 January 2019. Ms Begum raised several defences including that the notice to quit was invalid for lack of clarity, there being different dates on which the Notice to Quit and the copy served on the Public Trustee were to expire.

Issues
The case turned on the proper construction of s18 of the Law of Property (Miscellaneous Provisions) Act 1994, and the correct procedure for terminating a periodic tenancy following the death of the tenant but before probate or letters of administration have been granted.
There was another issue as to the effect of a clause in Mr Ali's tenancy permitting notices to be served on Mr Ali at the property, and it was submitted that that still had effect notwithstanding death. However, it fell away on appeal as it was accepted Mr Ali died intestate and therefore the Notice to Quit was not properly addressed to the tenant (there being no personal representatives appointed and no one in whom the tenancy had vested).

***Business Premises: Possession and Lease Renewal, 6th edition.* Gary Webber and Daniel Dovar. Sweet and Maxwell, 2018**
This publication gives clear explanation and detailed commentary on how a landlord or lessor can obtain possession of business premises, and how a tenant can oppose such action or renew the lease. Written from the litigator's point of view, this guide covers a range of areas including termination, non-payment of rent, licenses, forfeiture, proceedings for possession and applications for new tenancies.
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First instance
The Deputy District Judge Smith dismissed the possession claim. He relied on a decision of HHJ Luba QC in *Pavey v London Borough of Hackney* (unreported) 21 November 2017 and found that, as the Notice to Quit and the copy expired at different times, they were invalid for uncertainty and could not terminate the tenancy. There must be certainty for both the tenant and the Public Trustee as to when the notices expired, but it was not ascertainable from either as to when the notice served on the other expired. This was notwithstanding certain county court decisions that had refused to follow the reasoning of HHJ Luba QC.

Decision on appeal
The appeal was made directly to the Court Appeal, who unanimously allowed the appeal.
The operative document was the Notice to Quit, and it was important to note that the document served on the Public Trustee was only a copy. HHJ Luba QC was therefore incorrect in *Pavey* implicitly to recognise that the copy had the same contractual effect as the original notice. Only limited information was required to be recorded on the register maintained by the Public Trustee, which undermined the importance placed on the copy by both HHJ Luba QC and the Deputy District Judge. It was sufficient for anyone looking at the register to know that such a notice had been served, and it was not necessary for the date on which it expired to be ascertainable. This could be discovered by separate further enquiries.
This was the more workable interpretation of s18 of the of the Law of Property (Miscellaneous Provisions) Act 1994, as the Judge's analysis in *Pavey* lead to unnecessary difficulties and risk placed on the landlord in what was meant to be a provision to enable a landlord to recover possession in difficult circumstances.
So long as the notice served on the Public Trustee was served before the expiration of the original Notice to Quit, then it was valid. It was not correct that the copy notice could be served at any time after the original and thereby retrospectively validate a notice that could have expired. As the copy notice in this case had been received prior to the expiration of the original, then the Defence that the notices were valid for lack of clarity failed.
The matter was however remitted back to the Deputy District Judge to determine the other defences that had been raised by Ms Begum.

Comment
This decision is notable for two main reasons. First, the Court of Appeal have taken the chance to explain the mechanics of a specific statutory

Residential tenancies (continued)

provision and in the process overturned a decision of HHJ Luba QC (one of the most respected housing lawyers in the country). This provides welcome clarity for practitioners, landlords and tenants alike.
The decision is also important beyond the realms of housing law, as the effect of s18 of the Law of Property (Miscellaneous Provisions) Act 1994 is not limited to Notices to Quit. This was recognised by the Court of Appeal at paragraph 52 of its decision (although argument was not heard on the point), who reiterated that the section applies to any notice affecting land. This is particularly relevant where the service of certain notices set down specific time limits for the recipient to respond, such as in business lease renewals, enfranchisement, rent reviews and under compulsory purchase legislation.

Section 8 notices
Addresses - agents
Prempeh v Lakhany
[2020] EWCA Civ 1422

Summary
A notice served under s8 of the Housing Act 1988 did not have to include a landlord's name and address in a case where it was signed by the landlord's agent. It was sufficient to give the name and address of the agent.
Further, a s.8 notice served in relation to a ground for possession involving rent arrears was not a *"demand for rent"* within the meaning of the Landlord and Tenant Act 1987 s.47 and was therefore not subject to the requirement of s.47 for the inclusion of a landlord's name and address.

Facts
By a tenancy agreement dated 16 December 2016 Mrs Lakhany let a flat in London NW9 ("the flat") to two tenants, Ms Rita Appiah-Baker and Ms Prempeh. The letting was on an assured shorthold tenancy for a term of one year from 17 December 2016 to 16 December 2017, and thereafter on a monthly periodic basis, at a rent of £1500 per calendar month. The tenancy agreement gave the name of the landlord as Mrs Lakhany and her contact address as "C/O O'Sullivan Property Consultants Ltd".
Ms Prempeh's also produced a copy of a further tenancy agreement dated 17 December 2017 and maintained that contract governed the relationship between the parties. That again was expressed to create an assured shorthold tenancy of the flat at a rent of £1500 per month but with several differences, including that it let the flat to Ms Prempeh alone and the landlord was not expressed to be Mrs Lakhany but "O'Sullivan Property Consultants". Mrs Lakhany's case was that no such 2017 tenancy agreement was ever entered into. This was therefore crucial as to who was the correct party to bring proceedings.
Rent was duly paid down to the end of 2017 but thereafter the rent fell into arrears. By October 2018 these amounted to over £11,000. On 23 April 2019 Mrs Lakhany's solicitors served a s. 8 notice addressed to Ms Appiah-Baker and Ms Prempeh at the flat, which warned that the landlord intended to apply to court for an order for possession on Grounds 8, 10 and 11 in Schedule 2 to the Housing Act 1988, giving details of the arrears of rent (amounting to £11,238.44 as at 18 April 2019) and stating that proceedings would not be brought until after 10 May 2019. It was signed by the Solicitors as the landlord's agent and it gave their name, address and telephone number. Nowhere in the s. 8 notice did it refer to Mrs Lakhany by name or give her address; the solicitors covering letter did say that they acted for "your Landlord, Mrs F Lakhany", but that did not give her address either.

Issues
At first instance, the issues were:

(1) whether the 2016 or 2017 tenancy agreement was operative.
(2) whether the s8 notice was a "demand for rent" within the meaning of s47 of the Landlord and Tenant Act 1987 and was invalid by reason of not containing the landlord's name and address, and
(3) whether there was a counterclaim for a failure to protect the deposit.

On the first appeal, to those issues was added the question of whether the first hearing before the District Judge had represented a fair trial.
The second appeal to the Court of Appeal was however concerned solely with the questions of whether the s8 notice was a "demand for rent", and in any event whether such a notice had to contain the name and address of the landlord to be in the prescribed form.

First instance
The first hearing of the claim took place on 25 July 2019 before DDJ Goodman sitting in the County Court at Barnet. This was a short hearing at the end of the day in the possession list.
The Judge rejected all three issues that had been raised (see above). She found (having heard evidence from Mr Hamza Lakhany, Mrs Lakhany's brother-in-law and an employee of O'Sullivan Property Consultants Ltd, but not from Ms Prempeh, although she was willing to give evidence) that the

Residential tenancies (continued)

tenancy agreement in force was the 2016 tenancy agreement not the 2017 tenancy agreement; she did not think there was anything in the point about the validity of the s. 8 notice; and she said that Ms Prempeh could pursue her claim in relation to the deposit separately. She therefore gave judgment in favour of Mrs Lakhany and by her Order dated 25 July 2019 ordered that possession of the flat be given and that judgment be entered in the sum of £11,173.54 for rent arrears.

The appeal was heard by HHJ Lethem sitting in the County Court at Central London on 10 December 2019. He gave judgment on 16 December 2019. In a careful and thorough judgment, he first discussed the question whether the s8 notice was a demand for rent. He was invited to follow the decision of HHJ Saunders, also sitting in the County Court at Central London, in *CY Property Management Ltd v Babalola (25 Jan 2019)* in which HHJ Saunders had been persuaded to hold that a s. 8 notice was a demand for rent, but HHJ Lethem, recognising that that judgment was persuasive but not binding, declined to follow it, and concluded that the s. 8 notice was not a demand for rent. He then considered the hearing before DDJ Goodman, and although expressing considerable sympathy for her, concluded that her decision could not stand and did not represent a fair trial. He therefore allowed the appeal.

He then dealt with the claim in relation to the deposit and concluded that it was wrong in principle that that claim should be dealt with separately as it amounted to a set-off and hence a partial defence.

Decision on appeal

The appeal concerned the sole ground on which HHJ Lethem rejected the first appeal – this was relevant as, if successful, it would deprive Mrs Lakhany of the only mandatory ground for possession and require her to satisfy the discretionary grounds so as to make out the claim for possession (Grounds 10 and 11 could still be relied on if the Court were minded to dispense with the need for a new notice, but such a power is not available where the grounds relied upon is Ground 8).

As to the first question, the Court of Appeal unanimously held that the s8 notice was not a demand for rent. There were many grounds in Sch.2 to the 1988 Act which had nothing to do with the non-payment of rent. If the s.8 notice in the instant case was a demand for rent within the meaning of s.47(4), that had the curious result that certain s.8 notices were subject to the requirements of s.47(1) but others were not. Conversely, if the 1987 Act did apply to those s.8 notices that relied on non-payment of rent, that was unlikely to be a consequence deliberately intended by Parliament. Furthermore, there was no definition of the phrase "demand for rent" in the 1988 Act, and accordingly the word "demand" should be given its ordinary meaning. There had to be some communication from the landlord to the tenant requiring payment before it could be said that the landlord had made a demand for rent. On its face, the s.8 notice did not say anything about requiring payment. Although Ms Prempeh submitted that there was an implicit request, backed by the threat of proceedings, that confused what the notice actually did and what the practical consequences might be for the tenant. The notice gave information to the tenant. Nothing in the prescribed form demanded, requested or even invited the tenant to do anything. It was therefore not a "demand for rent" within the meaning of s.47.

The Court of Appeal also rejected the appeal on the second ground. The prescribed form in question was 'Form 3', but that did not require the landlord's own name and address to be provided. It was sufficient that the name and address of the person signing be provided, which might be the landlord's agent. The instructions for filling in para.6 were: "To be signed and dated by the landlord or licensor or the landlord's or licensor's agent (someone acting for the landlord or licensor)". That was followed by dotted lines for the signature, and dotted lines for name, address and telephone. Whilst Ms Prempeh accepted that where the form was signed by the agent, the name, address and telephone number should be those of the agent, she argued that where an agent signed the form, he should not only give his name and address, but should also give the landlord's name and address. No such requirement could be found in the form. It was also potentially significant that the form was evidently designed to be capable of being used by ordinary citizens without the benefit of professional advice. If the form was read as requiring the landlord's own name and address to be given, even where an agent had signed for the landlord, those who were not professionally advised might lose perfectly sound possession claims because of a purely technical defect that had not caused the tenant any prejudice.

The appeal was therefore dismissed, with the directions of HHJ Lethem standing in respect of the future trial.

Comment

This decision will no doubt be welcomed by landlords and removes potential pitfalls for unsuspecting landlords and their agents when seeking possession of a property.

The comment from the Court of Appeal that prescribed forms are to be used by ordinary citizens and their claims should not be defeated by purely

Residential tenancies (continued)

technical defects can also been seen as significant. Whilst of course decisions are always made on their own facts, and therefore one must be careful when extending general sentiments beyond their intended boundaries, this could be seen as a willingness of the Court of Appeal to ensure that form does not trump substance.

Restrictive covenants

The editors of this section are Emma Humphreys, solicitor, partner in Charles Russell Speechlys LLP and Georgina Redsell Senior Associate at Charles Russell Speechlys (www.charlesrussellspeechlys.com)

No report this month

Solicitors Practice Points

The editor of this section is David Keighley, solicitor, writer and freelance residential property law trainer

There are three points this month

- Update to Land Registry Practice Guide 12
- Amended timescale for reply to Land Registry Requisitions
- Updated Anti Money Laundering Guidance

Land Registry Practice Guide 12

The Land Registry has updated paragraphs 5.2.1 and 5.2.2 of Land Registry *Practice Guide 12: Official searches* to include information on selecting a suitable search from date for when submitting OS1 or OS2. The Land Registry has clarified that the search from date must be taken from an official copy of the register.

Land Registry Requisitions

The Land Registry has extended the period for replying to requisitions for most applications. Following this change 40 days will be allowed to respond to a requisition after which HMLR will issue a reminder for cancellation allowing a further 20 days to respond.

Anti-Money Laundering Guidance

The Legal Sector Affinity Group (LSAG) has published a draft of a revised Anti-Money Laundering Guidance.
The guidance has undergone an extensive revision and redraft and replaces previous versions following the introduction of the fifth AML directive. The guidance includes revised and expanded guidance on risk assessments, expanded guidance on source of funds and source of wealth, an updated training section and a new section on how to effectively use AML-related technology to mitigate risk.
The Law Society has recommended that in the light of these changes the legal profession should review their current AML governance, policies and procedures and update where appropriate.
Formal approval from the Treasury is awaited but it is anticipated that changes will be minimal.

Property Law UK updates are edited by Gary Webber. The deputy editor is David Keighley davidktraining@outlook.com

This update with links to cases and other material is also to be found on the site. If you have any information that you think would be useful to other users please send it to gw@propertylawuk.net.