

CONTENTS

CURRENT REVIEW

Covenants

No right to enforce 66

Leases

Invalid break notice 66

Landlord's right of entry 66

Professions

Solicitors' undertakings 67

Remedies

Limitations of planning 67

Rent Review

Artificial uplift 67

Residential

Valid notice 68

Services

What is "Promotion"? 68

Title

Adverse possession 68

ANSWERBACK

Excluded leases trap 69

TAX BULLETIN

Ensuring your company is resident
outside the United Kingdom 70

BULLETIN BOARD

72

MISHANDLING LANDLORD'S CONSENT

Contracts for the sale of leases are commonly conditional upon landlords' consent being available. If landlords act unreasonably, they can be liable for damages and the requirement for consent can be overridden. If consent is not available by the relevant deadline, both buyer and seller can terminate the contract. If the reason the landlords' consent was withheld was because the buyer refused to accept the landlords' proper conditions, the buyer may lose his deposit. If matters are not coordinated carefully, a seller may find himself having lost both his rights against the landlords and his rights against his purchaser.

New Guidance

The Court of Appeal reviewed certain aspects of these problems in *Landlord Protect Ltd v St Anselm Development Co Ltd* [2009] EWCA Civ 99; [2009] P.L.S.C.S. 62. A property was sold at auction for £1,050,000 and the buyer paid a deposit of £105,000. The property comprised a 99-year lease and landlord's consent was required for the sale. (It was a pre-1995 lease so the Landlord and Tenant (Covenants) Act 1995 did not apply.) The buyer was a new company without accounts or references. Its ultimate director was asked for a guarantee in order to secure landlord's consent. The director was only prepared to provide a guarantee for three years. The landlord rejected this and the seller applied to court for a declaration that landlord's consent had been unreasonably withheld.

H. H. Judge Cowell in the Central London County Court (in October 2006) found the landlord had not acted unreasonably. Further negotiations followed between the landlord and tenant culminating in a draft licence which provided for the guarantor to be released on a subsequent sale subject to a reasonable alternative guarantor being provided by a purchaser. The landlord was not prepared to concede any further; the buyer did not accept the qualification and served notice terminating the contract requiring the return of their deposit.

The seller rejected the buyer's claim that the contract had been validly terminated, served a notice to complete and when this was not complied with, terminated the contract and forfeited the deposit.

In the High Court, the seller's position was upheld. In the Court of Appeal, the finding was that the landlord's condition for the release of the guarantor (only if acceptable alternatives were provided) was an unreasonable imposition. As such, the buyer was entitled to terminate and reclaim his deposit.

Legal basis

The basis for the decision was that the landlord was asking for a collateral advantage greater than that which was provided for in the lease. As and when a further assignment of the lease came to be considered, the landlord was entitled to look to the kind of security it would be obtaining from its prospective assignee. It was entitled to full protection in relation to this. It was not, however, entitled to also ask to retain a previous

(continued on page 71)