Hill & Redman's Law of Landlord and Tenant

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DIVISION A: GENERAL LAW

Construction of document could be determined on summary judgment

Kingerlee Holdings Ltd v Dunelm (*Soft Furnishings*) *Ltd* [2013] EWHC 47 (Ch) is an application for summary judgment on the meaning of an agreement for a lease which Mann J described as 'labyrinthine'. The point at issue was whether the construction of a retail unit had been practically completed, so that the defendant was bound to take a grant of a lease. The judge ruled in favour of the claimant, and thus granted a decree of specific performance. He also granted a declaration as to the date for the commencement of payment of rent. Of wider interest is the judge's approval and following of *BBC Worldwide Ltd v Bee Load Ltd* [2007] EWHC 134 (Comm), where Toulson LJ suggested that, where a case involved a pure point of construction, the court could and should determine it if necessary on an application for summary judgment, or a trial of a preliminary issue, as the outcome would not be affected by evidence. Mann J confirmed that this principle could be applied even where, as here, the document itself to be construed was of some complexity. The judge did, however, indicate (at [4]) that such cases should not be listed for hearing in the applications court, with its maximum hearing time of two hours, but should be listed as an application by order.

Notice to quit given by only one joint tenant – human rights considerations – whether could take effect as a release to the other tenant

Sims v Dacorum Borough Council [2013] EWCA Civ 12 is the first case since *Manchester CC v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8 to go to the CA on the effect on one joint tenant if the other joint tenant serves a notice to quit on the landlord. To give a brief summary, it will be recalled that the House of Lords in *Hammersmith & Fulham LBC v Monk* [1992] AC 478 confirmed that this had the effect of bringing the tenancy to an end for both joint tenants, even against the wishes of the joint tenant who wishes to remain. The House of Lords in *Qazi v Harrow LBC* [2003] UKHL 43 held that this was unaffected by the Human Rights Act 1998, though the European Court of Human Rights in *McCann v UK* (App No 19009/04) held that this was a breach of the remaining joint tenant's art 8 rights. Following this case the Supreme Court in *Pinnock* and *Powell* has recognised that art 8 considerations may prevent a possession order from being made even where a statute apparently gives a court no discretion but to grant one.

The facts of *Sims* are typical of this genre of cases: a joint tenancy was granted by the Council to both tenants. Mrs Sims made allegations of violence against Mr Sims. She moved out with the children, and sought rehousing from the Council. The Council suggested that she serve them with notice to quit, and she did so. The Council then took possession proceedings against Mr Sims, who was occupying a three-bedroom family house. The possession claim came before a deputy district judge (DDJ) in Watford County Court, who ordered possession. Mr Sims appealed to the circuit judge, but the appeal was removed into the CA. In view of the binding precedent of *Monk*, counsel for both the appellant and the respondent agreed that the appeal would have to be dismissed, but counsel for the appellant (Mr Andrew Arden QC) argued that the CA should grant leave for an appeal to the Supreme Court so that the *Monk* principle could be reconsidered in the light of *Pinnock* and *Powell*. The respondent Council opposed this. The appellant argued that to make the common law on notices to quit compliant with the HRA 1998, the notice to quit ought to take effect so as to release Mrs Sims from her rights and obligations under the tenancy, leaving Mr Sims as sole tenant.

The CA dismissed the appeal, and also refused permission to appeal to the Supreme Court. The reasoning of Mummery LJ – who sat with Etherton LJ and Sir Scott Baker, but delivered the only reasoned judgment – presents difficulties. He was evidently impatient with the appellant's arguments (see [23], [31], [37] and [38]). He concluded that it would be quite improper for Mr Sims to deprive the Council of the ability to reallocate a three-bedroom home from the appellant to a family whose need for it is greater ([34]).

But, with all due respect to his Lordship, his judgment tends to confusion. To suggest that a notice to quit needs to take effect as a release of the tenancy to the other joint tenant may well go beyond what is required to bring the

common law into compliance with art 8. The more basic issue here is surely whether, in hearing a possession claim in these circumstances, the judge is (a) bound to make a possession order, because there can be no defence to the action; or (b) whether the judge can examine the proportionality of making an order, i.e. consider an art 8 defence. Nowhere is this clear in the judgment. The DDJ appears to have examined the lawfulness of making an order for possession ([17] of the appeal judgment; [79] of hers) but then held that she was bound by authority to hold that the joint tenancy had been determined ([18] of the appeal judgment; [52] of hers). She was not, however, considering whether the matter was fit for the Supreme Court to reconsider. Although counsel for the appellant Council argued – accepting the thrust of *McCann* – that 'The rights of Mr Sims in relation to those [sc. possession] proceedings are adequately safeguarded by the court's assessment of the proportionality of possession orders and eviction', Mummery LJ approaches the case from the standpoint that Mr Sims lost his interest in his home purely as a result of the predetermined operation of the common law on joint tenancies ([35]–[36]). This approach surely cannot remain valid following *Pinnock* and *Powell*.

To say that Mr Sims should automatically become the sole tenant of the property is no doubt a 'step too far'. But sooner or later (save in the unlikely event that Parliament steps in first) the Supreme Court will need to address the issue of whether in a possession action in these circumstances the court can consider the proportionality of making an order against the (former) joint tenant. This would appear to have been carried out here by the DDJ, so as at least to form an alternative ratio for her decision, and there would appear to have been no appeal by the appellant against this part of her judgment. The facts here would clearly militate against allowing the (former) joint tenant to remain, and the proportionality of making a possession order was at least considered by the DDJ, so this may not be the most appropriate case to go to the Supreme Court. But occasionally in other cases – notably perhaps *Qazi*, where by the time of the possession proceedings Mr Qazi had acquired a new wife and dependants – the merits can be more evenly balanced. Quite what would then be the legal status of the ex-husband (for such is it usually) in such an exceptional case remains to be seen.

(Case noted at: Sol Jo, January 24, 2013 (online edition).)

Disclaimer of leases – whether surety still bound to take new leases – whether forfeiture – whether order for SP would be redundant – whether rent review applicable

RVB Investments Ltd v Bibby [2013] EWHC 65 (Ch) does not decide any novel point of law but does illustrate the application of several established principles. The tenant of two industrial units had gone into insolvent liquidation, and the leases had been disclaimed: one by the liquidator, the other by the Treasury Solicitor. The claim was an action by the landlord against the defendant, the surety under both leases, for specific performance of his alleged obligation to take new leases for the residue of each term. The defendant resisted the claims on the basis of the wording of the disclaimed

leases, which required the surety to take a new lease 'during the period from the date hereof until the expiry of the tenancy hereby created or (*if earlier*) *the date on which the Lessee ceases to be bound by the covenants in this lease*' (italics added by the judge). The defendant claimed that, on its literal interpretation, this would include the disclaimer of the leases. Sitting as a judge of the Chancery Division, HHJ Behrens disagreed: the italicised words referred to the discharge of original tenant liability under the Landlord and Tenant (Covenants) Act 1995, and so the position was governed by *Hindcastle Ltd v Barbara Attenborough Associates Ltd* [1997] AC 70 (HL). The defendant remained bound to take the new leases. The judge also rejected an argument that the 'fixed charge' provisions of s 17 of the L&T(C)A 1995 protected the defendant: these provisions applied only where there had been an assignment, and not where the landlord was imposing liability on a surety.

In the alternative, the defendant argued that the landlord had by its conduct either re-entered the properties and effected a forfeiture, or else accepted a surrender of the leases. Both of these arguments were rejected on the evidence, both parties accepting that the relevant law was contained in cases such as *Artworld v Safaryan* [2009] EWCA Civ 303, *Bellcourt Estates v Adesina* [2005] EWCA Civ 208 and *Relvok Properties v Dixon* [1972] P&CR 1.

The defendant argued against the grant of specific performance in respect of Unit 2 on the grounds that it would be redundant as the term had already expired. The judge accepted the argument that *Kingston-upon-Thames RLBC v Marlow* [1996] EGLR 1 might benefit the landlord here. In that case the Divisional Court had accepted that once a lease had been forfeited, the tenant was no longer entitled to possession, and so was no longer liable for the business rates. The landlord successfully argued here that an order for SP would render the defendant rather than itself liable for the rates, and that damages would not therefore be a sufficient remedy. (The defendant was himself insolvent, so unlikely to be able either to meet the rates or to indemnify the landlord if it were liable.)

The rent review clauses under the lease of Unit 2 provided for the landlord to be able to initiate a rent review on the third anniversary of the term, to either the original rent, uplifted in accordance with the RPI, or to the market rent. The lease which the defendant was being required to sign reserved a rent which the landlord had purported to increase in accordance with RPI. The defendant objected to this, and succeeded on this subsidiary point, the judge holding that the claimant had not taken the steps required by the lease to implement the review, and could not therefore claim a higher rent than that in the original lease.

Damages for wrongful eviction of business tenant – treatment of premium

Grange v Quinn [2013] EWCA Civ 24 well illustrates the point that a case where the amount at stake was comparatively small may still raise some particularly difficult legal issues. Indeed, the low amount at stake appears to

have contributed to the difficulties in that (a) an expert's report was admitted by both parties, even though it was subsequently found – by one of the panel in the CA – to contain errors; and (b) the price paid when the lease was granted (£9,950) was later argued to be an overvalue, so the court had to consider the possibility that the lease and business might have had a negative value. The CA allowed the appeal, but by a majority, with Arden LJ dissenting, and Jackson LJ and Gloster J (though united in their decision) differing as to their reasoning.

The claimant/appellant, Mrs Grange, was granted a six-year lease of a sandwich bar previously run by the defendants/respondents, Mr and Mrs Quinn. The rent was £5,200 p.a., with the claimant paying for repairs and insurance. By an oral agreement the claimant paid a further £9,950 for the business. The particulars had stated that this was for 'business/lease/ fixtures and fittings …' but the recorder at first instance had found the payment to be one of goodwill. The respondents wrongfully evicted the appellant after six months, alleging breaches of covenant which would not have justified eviction; they had also failed to serve any s 146 notice, and, by accepting rent, had in any event waived any breach. The recorder rejected Mrs G's claim for repayment of the sum paid, on the basis that she had got what she had paid for, and her loss resulted from the fact that – as found by the agreed expert's report – her business was only barely breaking even and was in fact valueless. He awarded her £300, which was variously and somewhat inconsistently described as 'nominal damages' or 'to compensate her for distress and inconvenience'.

Jackson LJ allowed the appeal, relying largely on the earlier CA case of *Sampson v Floyd* [1989] 2 EGLR 49, and taking the broad-brush approach that it 'would be manifestly unjust if the Defendants could evict the claimant after only six months and still keep the purchase price' ([87]). He substituted for the award of £300 one of £9,079, reducing the claim for the full price of £9,950 by 1/12 on the basis that the claimant had enjoyed only six months of her six-year term. The fact that the recorder had found that the price paid was a payment for goodwill rather than a premium in the strict sense was glossed over.

Gloster J also allowed the appeal and concurred in Jackson LJ's order, but adopting a more closely reasoned argument; she also followed *Sampson v Floyd*, but argued that it was implicitly based on the principle that a claimant might claim not for a loss of bargain but 'on the alternate basis of a claim for out-of-pocket expenses expended in his part performance of the contract' ([97]). (On this point she was closer to the view of Arden LJ than that of Jackson LJ ([99]).) She reached a different conclusion overall from Arden LJ as she (i.e. Gloster J) was also prepared to allow the appellant to revise the figures and calculations that had been contained in the admitted expert's report on the value of the business.

Arden LJ's dissent would have upheld the decision of the recorder. She took the view that the premium could not be treated as a payment of rent in advance, either in principle, or, *a fortiori,* here, having been found by the

recorder to be a payment of goodwill; essentially therefore the appellant's claim was that she wished to be relieved of the consequences of having made a bad bargain. She expressed no view on the recorder's award of £300, as that was not subject to any cross-appeal.

This comparatively small claim generated a combined judgment of 131 paragraphs in the CA, and – in any future case involving unusual issues on the appropriate method of assessing damages – would warrant more detailed consideration than is appropriate in a note of this kind.

(It may be noted that, although both Jackson LJ and Gloster J followed *Sampson v Floyd*, the main part of this work (at HR A[2989], note 2) notes that the CA in *Branchett v Beaney* [1992] 3 All ER 910 described it as a decision *per incuriam*, at least on the point that damages for breach of a covenant for quiet enjoyment can include an element for mental distress.)

Tenant's break notice – whether rent had been fully paid when exercised

Canonical UK Ltd v TST Millbank LLC [2012] EWHC 3710 (Ch) is another case where a tenant's service of a break notice has been held to be unsuccessful, due to its failure to comply with the terms of the lease as to payment of rent. The lease in question (as amended) provided that the tenant might terminate a lease by giving six months' notice provided (inter alia) that it had paid the rent due up to the break date, plus a further month's rent. The tenant served notice on the landlord on 17 February 2012 to terminate the lease on 22 August 2012. The landlord invoiced the tenant for a quarter's rent on 7 June, which was paid, slightly late, on 29 June. By 22 August the tenant had vacated the premises.

The landlord refused to accept that the tenant had validly determined the lease, on the basis that a quarter's rent had fallen due on 24 June, and the tenant had paid only this, and not the extra month's rent. The tenant argued that the reddendum of the lease had reserved the rent '… yearly and proportionately for any part of a year …by equal quarterly payments', and that this should apply on the exercise of the break clause. The landlord's counter-argument was that *Capital and City Holdings Ltd v Dean Warburg Ltd* [1989] EGLR 90 (CA) had held – in respect of a forfeiture – that a reddendum in similar form applied only at the end of a term, and did not affect a termination within a quarter; this had been applied then in the High Court, where a break clause was involved, in *QuirkCo Invmts Ltd v Aspray-Transport Ltd* [2011] EWHC 3060 (Ch). The case also has similarities with the case of *PCE Investors Ltd v Cancer Research UK* [2012] EWHC 884 (Ch) (see Bulletin No 93), though in that case the break clause required that 'the tenant must have paid the rents reserved and demanded by this lease up to the termination date' but the reddendum had no reference to payment 'proportionately'.

In the light of these precedents Vos J not surprisingly came down in favour of the landlord, holding that the reference to proportionate payments applied only when the lease came to an end by effluxion of time, and also rejecting an

argument that the final payment of three months' rent could be appropriated as preferred by the tenant so that it would have complied with the condition precedent to the exercise of the break clause. The tenant had not indicated in any way that its final payment was intended to include the extra month's rent, and although it hoped that its break clause would be effective, it could not know until the break date that it was entitled to terminate the lease.

NOTE: Leave to appeal was granted, both on the point relying on the wording of the lease, and the appropriation point. It was suggested that it might be possible for the appeal in the instant case to be listed after the pending appeal in *PCE Investors Ltd v Cancer Research UK*; when the instant case was heard (December 2012) this was listed for February 2013. Although the *PCE Investors* case would clearly be persuasive, and it was desirable that there should be consistency, the points in the present case had not arisen in *PCE Investors*.

(Case noted at: [2013] Comm Leases 1895–1896.)

Service charge – obligation to produce accounts – whether 'full accounts' had to be provided or whether a 'list of expenses' would suffice

Morshead Mansions is surely a name familiar to practitioners in the residential leasehold field, and no doubt it strikes terror in the hearts of judges and tribunal chairs who are faced with its name in their lists. *Morshead Mansions Ltd v Mactra Properties Ltd* [2013] EWHC 224 (Ch) is no exception to this. The case involves the obligation of a landlord to provide accounts in respect of service charges, and Warren J describes it as a remarkable one, in that the landlord was asserting a more onerous obligation than the tenant, in order to resist the latter's application for an order for specific performance of the requirement on the landlord to produce accounts.

The historical background is that MML (the defendant/appellant) was incorporated to acquire, and did acquire, the freehold of a block of 104 flats. As a result of previous dissension, from 2000 until 2003 a manager was appointed under Part II of the LTA 1987, but his appointment was suspended because of alleged inadequacies in his management and accounting techniques. Management of the block thereupon reverted to MML. MML claimed that it had considerable difficulty in producing service charge accounts for the calendar years 2003 to 2007 inclusive because of the previous manager's failings, and his failure to hand over all the records to MML when his appointment ceased. In 2008 Mactra Properties Ltd (the claimant/respondent, and owner of 19 leasehold flats in the block, held on substantially identical leases) issued a Claim Form for an order that MML perform its obligations under the lease to provide accounts. MML defended the claim on the basis that it was required to produce them 'as soon as practicable' and its inability to produce the accounts was due to the failings of the previous appointed manager. In 2011 MPL issued an application for summary judgment for an order. The application before the judge in the Central London County Court, and the appeal before Warren J, revealed a

dispute on the construction of the lease. MML argued that it was required to produce 'Full Accounts' (with an Income and Expenditure Account, and Balance Sheet) – MPL argued that an 'Expenses List' would suffice. A Schedule of Expenses prepared by MML for 2009 was taken as an example of the latter.

The lengthy judgment is essentially based on the judge's construction of the particular lease, and thus is of limited relevance. It does, however, contain much useful discussion of the various forms which service charge accounts may take. There is much insight and discussion there which would be relevant to any dispute over the technical aspects of producing service charge accounts. The judge in the Central London County Court had, on the application for summary judgment, ordered MML to produce annual 'Expenses Lists'. MML had argued that the requirement of the lease was that 'Full Accounts' should be produced, to which the problems encountered when it took back the management of the property would arguably amount to a defence. In the end Warren J in the Chancery Division decided that 'Full Accounts' were not required, but that what was envisaged by the lease meant that the 'Lists of Expenses' would need to be expanded to include matters such as accruals and pre-payments, so that they would give a fuller picture of the service charge account. He therefore ordered that these be provided for the years 2004–2006, recognising that the 'Lists of Expenses' already provided might require expansion. In respect of the 2003 accounts he declined to make an order on summary judgment, as he thought there might be an arguable defence, due to the problems resulting from the handover. He also declined to make an order in respect of the 2007 accounts, because of an arguable defence based on the point that the claim might have been issued prematurely in respect of that year.

Whether reimbursement of insurance premiums formed part of a service charge – whether term to this effect should be implied in a lease

Sadd v Brown [2012] UKUT 438 (LC) is yet another case (four examples were noted in Bulletin No 96) of an LVT adjudicating of its own motion on an issue which had not been raised before it by the parties. The applicant leaseholder had challenged the reasonableness of insurance premiums, and the LVT had determined that the lease did not entitle the lessor to recover them. The appellant lessor then obtained permission to appeal; before the matter was heard the original applicant had sold the flat, and her successor indicated that she did not wish to oppose or participate in the appeal. HHJ Alice Robinson, sitting in the Upper Chamber, decided that, as the issue of the construction of the lease had been raised, and the lessor had now had an opportunity to be heard on it, she ought to proceed to determine it. On the construction point she decided that the lease did not make provision for the lessor to recover the insurance premiums. Although the scope of the decision is of course limited to what was clearly a defectively-drawn lease, some points may be of broader relevance. She held that a covenant for the lessee to reimburse any 'rate, duty, charge, assessment or imposition' levied on the

property was not apposite to cover an insurance premium. She further held – following cases such as *Rapid Results College v Angell* [1986] 1 EGLR 53 – that it was not possible to imply a term that the lessee reimburse insurance premiums, as it did not pass the test of being necessary to give business efficacy to the contract. The lessor's remedy would lie in rectification or in the variation of the lease under the LTA 1987.

DIVISION C: PRIVATE SECTOR RESIDENTIAL TENANCIES

Tenancy deposit – s 213, Housing Act 2004 – whether prescribed information had been provided

Ayannuga v Swindells [2012] EWCA Civ 1789 is a decision on the scope of s 213 of the Housing Act 2004, in its original form prior to the amendments introduced by s 184 of the Localism Act 2011. A tenancy deposit had been paid to the administrator of an authorised custodial scheme, the Deposit Protection Service, based in Bristol. The tenant, when faced with an action for possession on the basis of arrears of rent, counterclaimed for a refund of the deposit of £950 and a penalty of three times the deposit, pursuant to s 214(3) and (4) of the HA 2004. Although the deposit had been paid to the DPS, the landlord had failed to comply with para 2(1)(c)-(f) of the Housing (Tenancy Deposit) (Prescribed Information) Order 2007, SI 2007/797 ('the Housing Order') in that the relevant information regarding the recovery of the deposit and the resolution of any disputes had not been supplied to the tenant. The DDJ, when hearing the claim, had held, relying on *Ravenseft Properties Ltd v Hall* [2001] EWCA Civ 2034, that, as the deposit had been held by an authorised custodial scheme, and the basic details of the scheme (though not such as would comply with para 2(1)(c)-(f) of the Housing Order) had been supplied to him during the course of the hearing, there had been substantial compliance with s 213, and the omissions were merely procedural.

In the CA, Etherton and Lewison LJJ disagreed. There had not been compliance with para 2(1)(c)-(f) of the Housing Order. The fact that the tenant would have had sufficient information to contact the DPS by telephone, or to find out more via the internet, did not satisfy the compliance requirement. As Lewison LJ pointed out (at [36]), the purpose of the provisions was not only the safeguarding of tenancy deposits. They were also intended to facilitate the resolution of disputes.

(Case noted at: J.H.L. 2013, 16(1), D15; and E.G. 2013, 1307, 97.)

DIVISION E: LONG LEASES

Professional negligence – Part 1, Chapter 2, LRHUDA 1993 – failure to carry 'indemnity provisions' into extended leases – limitation period

St Anselm Development Company Ltd v Slaughter and May [2013] EWHC 125 (Ch) is essentially a professional negligence claim: an appeal by the claimant

company against the summary dismissal of a claim in negligence against a firm of solicitors on the grounds that the claim was time-barred. The case is, however, briefly noted as the claim arises out of the extension of two leases under Part 1 of Chapter 2 of the LRHUDA 1993, and it may serve as a warning that there is a potential liability trap here.

The defendant solicitors had acted for the claimant underlessors in claims by the underlessee in 1997 and 1998, respectively, for statutory extensions of two underleases (two flats had been combined into a single unit, though still held under separate leases). Although the claimant was the underlessee's immediate landlord, there was insufficient length left on its term to enable it to grant the extensions, so the freeholder had to act as the 'landlord' for the purposes of the Act. The claimant nevertheless had to join in the extensions, and the premium paid for the extension would include an element to compensate the claimant for the loss of its interest. The substance of the claimant's allegation was that, under the original leases, the claimant could include in the service charge payable by the underlessees the ground rent which it had to pay to the freeholder (after deducting the original ground rent) ("the indemnity provisions"); but that the defendant had neither ensured that these indemnity provisions were carried into the new leases, nor ensured that compensation was paid by the underlessee to the claimant as he would no longer have to pay the reviewed ground rent as part of the service charge. As the ground rent for the block had been reviewed from £4,000 in 1964 to £18,250 in 1978 and to £161,000 in 2006, this represented a significant amount. The result of the appeal was that it was allowed in respect of the primary limitation period applicable to one of the flats, but dismissed in so far as it related to the application of the extended limitation period under s 14A of the Limitation Act 1980 in respect of the other flat.

(Noted in Sol Jo, 12 February 2013 (online edition).)

Collective enfranchisement under LRHUDA 1993 – estate management scheme – whether transfer of freehold should also include restrictive covenant

Kutchukian v Governors of Free Grammar School of John Lyon [2012] UKUT 53 (LC) is an appeal to the Lands Chamber against a decision of the LVT on the terms to be included in a collective enfranchisement under the LRHUDA 1993, and a cross-appeal on the issue of the price to be paid. The property in question was originally constructed as one house, but had been converted into four self-contained flats. The headlease was vested in the appellants and the leases of the individual flats in their associated companies. The property was situated in an area which was subject to an estate management scheme. The main point in dispute was whether a restrictive covenant in the headlease – to the effect that the property was to be occupied only as four flats – should be included in the transfer of the freehold. It was agreed that the unencumbered freehold interest in the building was worth (in 2008) £5.5M if it remained divided into flats but £8.5M if it were to be converted back into a single dwelling. Including the restrictive covenant in the transfer of the freehold would therefore have the effect of delivering a 'ransom clause' for

the future into the hands of the respondents. The decision of the Upper Tribunal (Mr Rose, FRICS and HHJ Huskinson) was that the estate management scheme sufficiently protected the respondents' interests, and the restrictive covenant should not therefore be included ([39]–[49]); and that, even if it were argued that restrictive covenants offered stronger protection than the (fully qualified) covenants included in the estate management scheme, any restrictions should be confined to residential use, and not to use as four flats. The respondents appeared to be encouraging the conversion of properties in the area back to single dwellings, so including the clause could not be seen as protecting their interests.

There was also a dispute as to the approach that the tribunal should adopt when there were disputed points of law under s 61 and Sch 14. The tribunal decided ([70]) that it should not decide all the disputed points and then assess the price payable under Sch 6 on the basis that the position was certain, having been so decided by the tribunal. Rather it should assess the price by analysing what the hypothetical purchaser's bid would be, taking account potential legal and planning difficulties. This would, however, have to take into account the strength of the various arguments of law and practice ([71]). The tribunal went on to proceed with a detailed valuation.

DIVISION I: PROCEDURE

Appeal – whether should be by way of review or by way of rehearing

Camden LBC v Tonello [2013] All ER (D) 72 (Jan) is an extempore judgment of Henderson J in the Chancery Division hearing an appeal from the county court. The local authority had granted the first defendant (D1) a joint tenancy of a property with her partner. In 2003, upon the breakdown of the relationship, D1 left the property. The partner and their daughter, the second defendant (D2), remained living in the property. The partner subsequently died. D1 had no contact with D2 and did not return to the property. In 2010 the appellant local authority served a notice to quit on D1. In September 2010 D1's solicitor wrote a letter ("the letter") to the local authority expressing D1's wish to return to the property; the following month D1 met a housing manager and reiterated this wish. Later that month the district judge, hearing the possession claim, found that D1 was not occupying the property as her home and that there was insufficient evidence to show she had an intention to return, and granted the authority possession. Later D1 found the letter and sought to appeal the district judge's decision, requesting that the appeal be by rehearing rather than review. The circuit judge granted permission to appeal, directing that the appeal be by way of rehearing rather than by review.

The local authority successfully appealed against the ruling that the appeal be by way of rehearing. Henderson J held that, under CPR 52.11, an appeal by way of review was the norm, and D1 had failed to establish sufficient grounds to justify an appeal by way of rehearing. The circuit judge appeared to have taken the view that the letter would almost certainly have been

excluded if the appeal were by review; further, she had exaggerated its importance, as it was merely evidence of what D1 had instructed her solicitors to say. In view of these errors of law, the Chancery Division had to consider the matter afresh, and the circuit judge's order allowing an appeal was varied so that the appeal would be by way of review and not rehearing.

(Case noted at: 162 NLJ 1524.)

PERMISSION TO APPEAL

Permission to appeal has been refused in *R v Sumal & Sons* (*Properties*) *Ltd* [2012] EWCA Crim 1840 (noted in Bulletin No 95), but the CA (Criminal Division) has certified that a point of law of general public importance arises (per Davis LJ, 18 December 2012).

NOTES ON CASES

Ansa Logistics Ltd v Towerbeg Ltd [2012] EWHC 3651 (Ch): [2013] Comm Leases 1901–1905; and E.G. 2013, 1308, 105 (noted in Bulletin No 97)

A/Wear UK Ltd (*In Administration*)*, Re* [2012] EWHC 2050 (Ch): [2013] Comm Leases 1898–1899

Birmingham CC v Keddie [2012] UKUT 323 (LC): J.H.L. 2013, 16(1), D11-D12; [2013] L. & T. Review, 17(1), D5-D6; and E.G. 2013, 1306, 99 (noted in Bulletin No 96)

Capita Alternative Fund Services (*Guernsey Ltd*) (*formerly Royal & Sun Alliance Trust* (*Channel Islands*) *Ltd*) *v Drivers Jonas* (*A Firm*) [2012] EWCA Civ 1417: [2013] Comm Leases 1905–1906

Carey-Morgan and another v Sloane Stanley Estate [2012] EWCA Civ 1181: E.G. 2013, 1301, 44 (noted in Bulletin No 96)

Crosspite Ltd v Sachdev [2012] UKUT 321 (LC): J.H.L. 2013, 16(1), D10 (noted in Bulletin No 96)

Daejan Properties Ltd v Campbell [2012] EWCA Civ 1503: [2012/13] Comm Leases 1889–1891; and [2013] L. & T. Review, 17(1), D4 (noted in Bulletin No 97)

Dixon v Wellington Close Management Ltd [2012] UKUT 95 (LC): [2013] L. & T. Review, 17(1), D6 (noted in Bulletin No 93)

Eaton Mansions (*Westminster*) *Ltd v Stinger Compania de Inversion SA* [2012] EWHC 3354 (Ch): [2013] L. & T. Review, 17(1), D2-D3; and [2013] Comm Leases 1900

Day v Hosebay Ltd [2012] UKSC 41: J.H.L. 2013, 16(1), D9-D10; 163 N.L.J. 14; and [2013] L. & T. Review, 4–8 (noted in Bulletin No 96)

Fairhold Mercury Ltd v Merryfield RTM Company Ltd [2012] UKUT 311 (LC): J.H.L. 2013, 16(1), D11; and E.G. 2013, 1306, 99 (noted in Bulletin No 96)

Gala Unity Ltd v Ariadne Road RTM Company Ltd [2012] EWCA Civ 1372: J.H.L. 2013, 16(1), D12; and [2013] L. & T. Review, 20–22 (noted in Bulletin No 96)

Lane v Kensington & Chelsea RLBC (unreported, November 5, 2012), QBD: [2012/13] Comm Leases 1886–1887

Lazari GP Ltd v Jervis [2012] EWHC 1466 (Ch): [2013] L. & T. Review, 17(1), D1 (noted in Bulletin No 96)

Paratus AMC Ltd v Persons Unknown [2012] EWHC 3791 (Ch): J.H.L. 2013, 16(1), D13

Phillips v Francis [2012] EWHC 3650 (Ch): 163 N.L.J. 133; and E.G. 2013, 1304, 105 (noted in Bulletin No 97)

R v Sumal & Sons (*Properties*) *Ltd* [2012] EWCA Crim 1840: [2013] L. & T. Review 17–18 (noted in Bulletin No 95)

R (*on the application of Southern Landlords Association*) *v Thanet District Council* [2012] EWHC 3187 (Admin): J.H.L. 2013, 16(1), D14-D15 (noted in Bulletin No 97)

Souglides v Tweedie [2012] EWCA Civ 1546: E.G. 2013, 1303, 85; [2013] L. & T. Review, 17(1), D5; and [2013] Comm Leases 1896–1898 (noted in Bulletins No 97 and 93)

Southend on Sea BC v Armour [2012] EWHC 3361 (QB): J.H.L. 2013, 16(1), D6-D7 (noted in Bulletin No 97)

Spencer v Secretary of State for Defence [2012] EWCA Civ 1368: [2012/13] Comm Leases 1887–1889; E.G. 2013, 1303, 85; and [2013] L. & T. Review, 17(1), D3-D4 (noted in Bulletin No 96)

Re Teathers Ltd [2012] EWHC 2886 (Ch): [2012/13] Comm Leases 1883–1885; and [2013] L. & T. Review, 18–20 (noted in Bulletin No 96)

Thirlaway v Masculet [2012] UKUT 302 (LC): [2013] L. & T. Review, 17(1), D6-D7 (noted in Bulletin No 97)

Thurrock BC v West [2012] EWCA Civ 1435: J.H.L. 2013, 16(1), D7; and [2013] L. & T. Review, 17(1), D8-D9 (noted in Bulletin No 97)

Wales & West Housing Association Ltd v Paine [2012] UKUT 372 (LC): E.G. 2013, 1306, 99 (noted in Bulletin No 96)

Wildsmith v Arrowgame Ltd [2012] EWHC 3315 (Ch): E.G. 2013, 1302, 65; and [2013] L. & T. Review, 17(1), D2 (noted in Bulletin No 97)

ARTICLES OF INTEREST

Wear and Tear (explains 10% wear and tear allowance in residential lettings) Taxation, 24 January 2013, 8

Landowner and Landlord Liability for the Nuisance-Causing Actions of Third Parties on the Landowner/Landlord's Land: An Analysis of Brumby v Octavia Housing [2013] J.P.L. 5–18

ARTICLES OF INTEREST

Gremlins in the closet (late triggering of rent reviews) 163 N.L.J. 163

Broken Promises (drafting and exercise of break clauses) P.I.P. 2012, 41(Dec), 25–27

Figuring out the future (open market rent reviews and indexation) E.G. 2013, 1301, 46

Who guards the guardians? (operation of 'property guardian' agencies) J.H.L. 2013, 16(1), 13–17

The top 10 rules of break clauses E.G. 2013, 1302, 58–60

Recent developments in housing law Legal Action 2013, Jan, 37–43

Keeping farming in the family (overview of agricultural succession rights) E.G. 2013, 1304, 102–103

Building confidence in PRS (private rented sector) E.G. 2013, 1305, 74–75

'Distressing' changes for landlords E.G. 2013, 1305, 91

Allaying the fears of lease re-gears (deeds of variation and reversionary leases) E.G. 2013, 1305, 92–93

Economic woes for experts? [2013] L. & T. Review, 1–3

Break notices after Avocet – a landlord's duty to speak? [2013] L. & T. Review, 9–11

Going round the houses: common sense and the enfranchisement of commercial properties [2013] L. & T. Review, 4–8

Questions and answers: residential tenant changing locks — landlord's right to retain keys to the demised premises [2013] L. & T. Review, 23–25

Questions and answers: business premises – tenancy by estoppel – protection under Part II of the Landlord and Tenant Act 1954 [2013] L. & T. Review, 26–27

Practitioner page: squatting and commercial leasehold property [2013] L. & T. Review, 28–31

Jackson LJ condemns "massive" fees in eviction ruling (*Grange v Quinn* [2013] EWCA Civ 24) S.J. 2013, 157(5)), 3 (case noted above)

Don't leave your endeavours to chance ("Best endeavours") E.G. 2013, 1306, 100–101

Tackling the rule in Hammersmith v Monk: in theory and in practice: Part 2 [2013] E.H.R.L.R. 28–37

An end to the LVT lottery S.J. 2013, 157(6), 28–29

Bridging the lease-end gap E.G. 2013, 1307, 93

Office to residential: the facts E.G. 2013, 1307, 94

Recent developments in housing law Legal Action 2013, Feb, 33–36

Don't mix up mixed use charges (service charges and mixed use properties) E.G. 2013, 1308, 102–103

NEWS AND CONSULTATIONS

The Law Society has published a new practice guide, "Instructing a barrister: new standard contractual terms": www.lawsociety.org.uk/advice/practice-notes/instructing-a-barrister/

The Bar Standards Board has issued an update explaining the current position on the implementation of the Quality Assurance Scheme for Advocates (QASA): https://www.barstandardsboard.org.uk/media-centre/latest-news/qasa-statement-from-jag/ (It was not implemented in January 2013 as originally planned.)

The Law Society and **Land Registry** have issued a joint practice note on the recording of joint purchasers' beneficial interests (published 15 January 2013): http://www.lawsociety.org.uk/advice/practice-notes/joint-ownership/#jo1

The Law Commission has issued a **Consultation Paper** (**CP210**) on rights to light: http://lawcommission.justice.gov.uk/docs/cp210_rights_to_light_version-web.pdf. Comments are invited by 13 May 2013.

REPORT

Private sector letting and managing agents: should they be regulated? – Commons Library Standard Note (published 3 January 2013): http://www.parliament.uk/briefing-papers/SN06000.pdf

The Office of Fair Trading has issued a report on contract terms when **owner-occupied retirement homes** are purchased, including the levying of 'exit fees' when such homes are sold: http://www.oft.gov.uk/shared_oft/consumer-enforcement/retirement-homes/oft1476.pdf

The Office of Fair Trading has issued a report on the operation of the **residential lettings market** in the UK: http://www.oft.gov.uk/shared_oft/markets-work/lettings/oft1479.pdf

PRESS RELEASE

The **Land Registry's pilot scheme** offering a free restriction (RQ) to protect the rights of non-resident property owners is to be continued: http://www.landregistry.gov.uk/announcements/2012/free-restriction-proves-a-success

A letter from **HM Courts and Tribunals Service** suggests that date for establishment of the new **First-Tier Property Chamber** has been postponed from 1 May 2013 to 1 July 2013: http://www.chba.org.uk/for-members/library/practice-directions-court-notices/establishment-of-the-property-chamber-delay.

STATUTES, ETC

The **Prevention of Social Housing Fraud Act 2013** received Royal Assent on 31 January 2013. The act addresses the subletting, etc, of social housing: http://www.legislation.gov.uk/ukpga/2013/3/pdfs/ukpga_20130003_en.pdf

STATUTORY INSTRUMENTS

The draft *Amendments to Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 Order 2013* proposes to add the rent assessment committees, the Agricultural Land Tribunal and the Agricultural Land Tribunal for Wales to Sch 6 to the principal act. This would have the effect of empowering the Lord Chancellor to transfer the functions of those bodies into the unified tribunal structure, and to make provision for appeals from them to lie to the Upper Tribunal. The draft *Transfer of Tribunal Functions Order 2013* would then effect the transfer the functions of those bodies (and those of the Adjudicator to HM Land Registry) to the First-Tier Tribunal, and abolish those bodies, and the office of the Adjudicator. The proposed rules for the new First-Tier Property Chamber are issued as: *Tribunal Procedure* (*First-tier Tribunal*) (*Property Chamber*) *Rules 2013* (*Draft*).

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