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PROPERTY LAW BULLETIN

AUGUST 2005

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CASE LAW UPDATE

ADVERSE POSSESSION

The claimants claimed title to land by way of adverse possession. Their case was that they commenced adverse possession of the land in November 1985, when the Greater London Council held the legal title. In April 1986 the Crown succeeded to the legal title. On 3rd July 2000 legal title transferred to Transport for London. The claim was dismissed. The Crown could have brought an action within 30 years from the date upon which the cause of action originally accrued, whether that right accrued to the Crown or to a predecessor. Para 12 of Part II of Schedule 1 to the Limitation Act 1980 confers a right on the Crown's successor in title to rely on the limitation period enjoyed by the Crown or a twelve year period from the date on which title was acquired from the Crown, whichever expires sooner. The claim also failed on the facts, it being found that the claimants had only established adverse possession from 1987 onwards. **Hill & another v Transport for London** [2005] EWHC 856 (Ch); [2005] 30 EG 90.

ARBITRATION

The powers of an arbitrator are to be found in the arbitration agreement, read with the Arbitration Act 1996. The 1996 Act should not be interpreted in the light of pre-existing case-law. When the court is considering whether arbitrators have exceeded their powers within the meaning of s.68(2)(b), it should ask whether they had purported to exercise a power which they did not have, or whether they had merely exercised erroneously a power which they did have. Only in the former case could an excess of power be made out under s.68(2)(b). **Lesotho Highlands Development Authority v Impregilo SpA and others** [2005] UKHL 43; [2005] 27 EG 220 (CS).

HOUSING

The appellants argued that they were entitled to a secure tenancy as successors to their mother and grandmother Mrs Hawkins, pursuant to s.87 Housing Act 1985. The late Mrs Hawkins had succeeded to her husband's tenancy on his death in 1987. She fell into arrears with her rent and in 1991 a suspended order for possession was made, the terms of which she subsequently breached. This made her a tolerated trespasser as a matter of law following the expiry of 28 days from the breach of the order. However the rent account was later cleared and Mrs Hawkins was then treated as if she was still a tenant. The appellants could only succeed if they could show that Mrs Hawkins had been granted a new tenancy as s.87 only allows for one succession and Mrs Hawkins was herself her husband's successor. The appeal was dismissed. It was held that a new secure tenancy will not generally arise from the fact that a tolerated trespasser remains in possession with the landlord's consent. Rather more is required to take such a case out of the everyday situation where landlords simply allow former tenants to remain in occupation if they make satisfactory payments and their occupation is otherwise satisfactory. Here there was no offer of new terms or a demand for increased rent that might have shown that the intention of the parties was to create a new tenancy. **Newham London Borough Council v Hawkins and others** [2005] EWCA Civ 451; [2005] 29 EG 100.

Ss. 183(1) and 184(1) Housing Act 1996 provide that where there is a genuine application for assistance and the local authority are satisfied that the applicant is or might be homeless or threatened with homelessness, the authority are obliged to make inquiries as to whether the applicant is eligible and what if any duty is owed to him. There is no basis in principle to imply a further requirement such as the establishment of a material change of circumstances after a refusal of an offer of accommodation made following an earlier application. S.193(9) provides an unqualified right to make a fresh application. A new application can be made for the purposes of s.183 unless it is based on precisely the same facts as an earlier application which has been finally disposed of. Per curiam, it was said that it is for an applicant to identify in a fresh application which facts are said to render that application different from an earlier application. If no new facts are revealed the authority may and normally should reject it as incompetent. **Rikha Begum v Tower Hamlets LBC** [2005] EWCA Civ 340; [2005] 1 WLR 2103.

The Housing Corporation has powers pursuant to paragraph 27 schedule 1 Housing Act 1996 to order a transfer of land owned by a registered social landlord to another registered social landlord in the event of mismanagement. Such a transfer is not a naked deprivation of property. The statutory regulator having unobjectionably decided upon a transfer has to choose between alternative courses of action and reach a decision which is justified on the basis of a compelling case in the public interest and is reasonably necessary to accomplish the objective. There was a test of proportionality but this did not necessarily oblige the Housing Corporation to choose the course of action which involved the least interference with the claimant transferor's rights under article 1 of the First Protocol to the European Convention on Human Rights. **Regina (Clays Land Housing Co-operative Ltd) v The Housing Corporation** [2004] EWCA Civ 1658; [2005] 1 WLR 2229.

LEASEHOLD ENFRANCHISEMENT

The claimant landlords were the freeholders of a block of 28 flats. The defendant tenant held a lease of the block which had been granted in 1937 for a term of 80 years. The defendant served notices under the Leasehold Reform, Housing and Urban Development Act 1993 requiring the grant of new long leases in respect of each of the 28 flats. It was held that the defendant was a qualifying tenant for the purposes of the 1993 Act. There was no difficulty in interpreting s.56(1)(a) as providing that any new lease/s would be in substitution for the existing lease to the extent of the premises covered by the new lease/s. Existing common law principles of apportionment would operate to apportion the rent previously paid under the existing lease as between the residual existing lease and the new leases. **Maurice & others v Hollow-Ware Products Ltd** [2005] EWHC 815 (Ch); [2005] 26 EG 132.

The claimant had served notice under the Leasehold Reform Act 1967 indicating its desire to acquire the freehold. The property was a lock-up shop at ground-floor level with a self-contained and purpose-built maisonette arranged on the first and second floors above the shop. The defendants had not served any notice in reply and contended that the property was not a “house” within the meaning of the Act. The court applied the decision of the House of Lords in **Tandon v Trustees of Spurgeon Homes** [1982] AC 755. **Tandon** held that as long as a building of mixed use could reasonably be called a house, it was within the meaning of a “house” for the purposes of the 1967 Act, even though it might also reasonably be called something else. The history of the premises, the terms of the lease, the proportion of the premises used for residential and non-residential purposes and the physical appearance of the premises were all relevant considerations. In removing the residence condition (by the Commonhold and Leasehold Reform Act 2002), Parliament plainly intended that a tenant of premises such as those in the present case should have the benefit of the 1967 Act, whether or not he occupied such premises as his residence, if the premises could reasonably be called “a house”. The premises were a house and the claimant was entitled to enfranchise. **Hareford Ltd v Barnet London Borough Council** [17th May 2005] Central London County Court; [2005] 28 EG 122.

MORTGAGES

The claimant building society was attempting to recover the shortfall of around £24,000 between the sale price of the defendants’ house and monies due under a mortgage provided by the claimant. The house was sold in 1990 following default on payments in 1988/1989. Proceedings were issued in November 2002, almost twelve years after the sale of the property. It was held that the 12 year limitation period set by s.20(1) Limitation Act 1980 ran from when the defendants defaulted on instalment payments under their mortgage in 1988/1989, when the building society had first been entitled to take steps to recover the loan. S.20 did not cease to apply when the security was realised by a sale of the property in 1990. Mortgage deeds were not subject to artificial rules of construction and on the true construction of the mortgage deed the principal money outstanding had become repayable when the power of sale became exercisable. Accordingly the cause of action had arisen more than 12 years before the action had been brought and was statute-barred. **West Bromwich Building Society v Wilkinson & anor** [2005] UKHL 44; [2005] 1 WLR 2303; [2005] 27 EG 221 (CS); [4th July 2005] TLR.

RESTRICTIVE COVENANTS

There is no extinguishment of restrictive covenants when the dominant and servient properties are held by the same trustee on distinct trusts. The same principle applies when both properties are held by a public authority for different statutory purposes. Where a local authority holds for one purpose the dominant land and for another the servient, a blanket rule requiring such common ownership to extinguish all restrictive covenants would prejudice the performance by the local authority of its statutory duties and fulfil no useful purpose. For restrictive covenants to be extinguished merely because fortuitously the same public body held for different statutory purposes the dominant and servient properties would be calculated to defeat the objects of the restrictive covenants for no good or sufficient reason. **University of East London Higher Education Corp v Barking and Dagenham London Borough Council and others** [2005] EWHC 2710 (Ch); [2005] 3 All ER 398.

SALE OF LAND

Equity imposes duties on the vendor to protect, pending completion, the interest which the purchaser has acquired under the contract. The most relevant obligations which equity imposes on the vendor are to take reasonable care to preserve the property in question, not to damage the property, and not to prejudice the purchaser's interest in the property pending completion. The obligations do not extend to a lessor's duty to impose covenants on purchasers of adjoining properties unless that duty is imposed by the contract of sale of the property in question. **Englewood Properties Ltd v Patel & anor** [2005] EWHC 188 (Ch); [2005] 3 All ER 307.

SERVICE OF NOTICES

The concept of service requires a formal and specific step that would alert the reasonably informed tenant of its significance. It was not intended to refer to documents emanating from the world at large. The document had to come from one of the opposing parties. A question had arisen whether lessees had been served with notice for the purposes of the Landlord and Tenant Act 1987 (right of first refusal). The Court of Appeal held that it was not sufficient that they had been made aware by letters from their own solicitors or by the Land Registry sending office copy entries of the freehold title. The court referred to the fact that s.3 LTA 1987 specifically required the service of a notice to be in writing, and said that if the draftsmen of the 1987 Act had intended "service" to be interpreted as "received by any means" a clear contrast in the language would have been expected. **Savva and others v Galway-Cooper** [6th July 2005] [2005] 28 EG 120 (CS).

TRESPASS

The respondents owned a takeaway shop adjacent to the appellant's property and had installed an extractor fan which protruded through the boundary wall so that it was partly above the appellant's back yard. The fan was 4m above the ground. It was held that this amounted to a trespass. Interference with airspace would amount to a trespass except where the interference was at such a great height (for instance high-flying aircraft) that it did

not interfere. Adjoining owners had no right to erect structures that overhung or passed over their neighbour's land. The case was remitted to the county court to decide whether injunctive relief should be granted or whether damages would be an adequate remedy. *Laiqat v Majid & others* [2005] EWHC 1305 (QB); [2005] 26 EG 130 (CS).

LEGISLATION

RIGHT TO BUY

The Housing (Right to Buy) (Information to Secure Tenants) (England) Order 2005 SI 1735 came into force on 26th July 2005. The Order is made in relation to the new duties in s.121AA and s.121B Housing Act 1985 of landlords to supply information relating to the right to buy (replacing the previous duty under s.104(1)(b)). The Order sets out the information which must be provided and the circumstances in which the document providing the information must be supplied to tenants or published.

The Housing (Right to Buy) (Prescribed Forms) (Amendment) (England) (No.2) Regulations 2005 SI 1736 came into force on 4th July 2005. Regulation 2 substitutes the form of notice to be used by a landlord in admitting or denying a tenant's claim under s.124(1) Housing Act 1985 to buy the freehold or purchase a lease or leasehold interest of their property.

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