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PROPERTY LAW BULLETIN

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CASE LAW UPDATE

BUSINESS TENANCIES

The claimant, Clear Channel UK Ltd, had 13 large advertising hoardings at various sites in Manchester owned by the defendant, Manchester City Council. The issue was whether the claimant had a tenancy or a licence of the sites of the hoardings. At trial it was held that the claimant had a licence. On appeal the claimant conceded that the area or areas of land over which a right is said to exist should be capable of precise identification at the date on which the right is said to have been created. The Court of Appeal upheld the decision of the trial judge. The sites mentioned in the agreement were not the concrete bases of the hoardings, but larger undefined areas of land in which the hoardings were to be placed. Plans attached to the planning application were for identification only and were drawn up before the concrete bases had been constructed and before their precise locations had been agreed. No rights of way had been agreed but would have been needed if the grant was only of the precise piece of land on which each base was placed. No such rights would be needed if the claimant had a licence over the whole of the sites. The Court of Appeal found it unifying that the claimant, having negotiated a contract which expressed in terms an intention not to create a tenancy, should now seek to argue that it had one. The contract had been negotiated between two substantial parties of equal bargaining power and with the benefit of full legal advice. Where a contract so negotiated contained not merely a label but a clause which set out in unequivocal terms the parties' intentions as to its legal effect, it would be difficult to persuade the court that the true effect of the agreement was directly contrary to that expressed intention. ***Clear Channel UK Ltd v Manchester City Council*** [2005] EWCA Civ 1304; [2006] 04 EG 168.

HOUSING

A recovering drug addict at risk of a relapse does not automatically fall into or outside of the category of those in priority need for housing for "other special reason" under s.189(1)(c) Housing Act 1996. In relation to such persons there is a grey area where decisions may

legitimately go either way. Decisions within the grey area, if they are not to be arbitrary, have to be made with especially careful regard for the statutory criteria and purposes and conscientious attention to the evidence. The Court of Appeal so held in dismissing the appeal of Westminster City Council against a county court judgment quashing the council's decision that Mr Crossley was not in priority need. Mr Crossley's application was remitted for reconsideration. The Court of Appeal also noted the fact that the council's decision letter had not once referred to the Code of Guidance which, by s.182 HA 1996, decision makers are to have regard. Mr Crossley was potentially also in priority need because he had been in care as a child (see the Homelessness (Priority Need for Accommodation) (England) Order 2002 SI 2051). The court commented that where two potential causes of vulnerability (here care and some other special reason) had produced a single set of effects, the effects should not be artificially distributed between the causes when arriving at a decision on vulnerability. **Crossley v City of Westminster** [2006] EWCA Civ 140; full transcript available on www.bailii.org

Where a suspended order for possession had been made and the terms of suspension subsequently breached, a tenant became a tolerated trespasser in accordance with the decision in **Burrows v Brent LBC** [1996] 1 WLR 1448. The original tenancy could potentially be revived by the court ordering or the landlord agreeing to an alteration in the date on which possession is to be given. However where a court had limited in time an order for possession, and the landlord sought to extend that time limit so as to issue a warrant on the basis of that order, the effect of the extension was not to revive the original tenancy. The judge had ordered that the suspended order for possession be extended for six months, and that the application for a warrant be adjourned. If the judge had intended to extend the date for possession in the **Burrows** sense this would have nullified the second half of the order as there would have been no basis for seeking a warrant at that stage. All that the extension did was to extend the period during which an obligation to give possession might arise. **Richmond v Royal Borough of Kensington and Chelsea** [2006] EWCA Civ 68; [2006] 08 EG 175 (CS); [27th February 2006] TLR; full transcript available on www.bailii.org

The applicant challenged the legality of Enfield LBC's out-of-area policy for housing the homeless, and in particular a decision to offer him and his family accommodation in Birmingham when they had been found to be homeless and in priority need. The duty to provide accommodation arises under s.193 Housing Act 1996. By s.206 the accommodation must be suitable, and by s.208, so far as reasonably practicable a local housing authority is to secure accommodation within its own district. The location of accommodation is relevant to the question of whether it is suitable. Enfield LBC had an out-of-area housing policy because of the acute shortage of affordable housing within its own area. The policy referred, among other things, to the comparative cost of housing in Enfield and that available outside London. Elias J held that the question of cost and available resources was a legitimate factor in the discharge of the duty under s.208. There is a minimum standard below which a council cannot fall, and lack of resources will not justify going below that standard, but it is a matter of judgment for the local authority to decide what accommodation is suitable within the spectrum of possibilities. It could not be said that a decision to use out-of-area accommodation for a relatively small proportion of those seeking accommodation was **Wednesbury** unreasonable. The wording of the policy could be improved but it was not unlawful. It was not necessary to amend the homelessness strategy document (made under

the Housing Act 2002) to make specific reference to the out-of-area policy. The accommodation in Birmingham was suitable and the decision and review had been carried out correctly. ***R (on the application of Calgin) v Enfield London Borough Council*** [2005] EWHC 1716 (Admin); [2006] 1 All ER 112.

LANDLORD AND TENANT (COVENANTS) ACT 1995

London Diocesan Fund and another v Phithwa and others (Avonridge Property Co Ltd, Pt 20 defendant) [2005] UKHL 70, summarised in the December 2005 bulletin, has now been reported at [2006] 1 All ER 127 and [2006] 01 EG 100.

LEASEHOLD ENFRANCHISEMENT

A tenant withdrew a notice of claim made under s.42 LRHUDA 1993 for an extended lease and the landlord applied to the LVT for a determination under s.91(2)(d) of that Act of the costs payable by the tenant on the withdrawal. The counter-notice had stated that the landlord did not admit that the tenant had a right to an extended lease. The LVT disallowed the landlord's costs of obtaining a valuation, and the landlord appealed this issue. Permission to appeal was refused. HHJ Rich QC agreed with the LVT that as the counter-notice only has to set out counter-proposals as to terms if it admits the entitlement, the landlord should not reasonably expect to incur any valuation costs at counter-notice stage where the counter-notice is given under s.45(2)(b) not admitting the right to extend. ***Sinclair Gardens Investments (Kensington) Limited*** [2006] EWLands LRX/8/2006; full transcript available on www.bailii.org

RENT

Edlington Properties Ltd v JH Fenner and Co Ltd [2005] EWHC 2158 (QB), summarised in the November 2005 bulletin, has now been reported at [2006] 1 All ER 98.

RIGHTS OF WAY

R (on the application of Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs; R (on the application of Drain) v Secretary of State for Environment, Food and Rural Affairs [2005] EWCA Civ 1597, summarised in the December 2005 bulletin, has now been reported at [2006] 01 EG 98 (CS).

RIGHT TO BUY

Copping and another v Surrey County Council [2005] EWCA Civ 1604, summarised in the December 2005 bulletin, has now been reported at [2006] 02 EG 111 (CS).

RIGHT TO MANAGE

Gaingold Ltd & anor v WHRA RTM Co Ltd [2005] EWLands LRX/19/2005, summarised in the October 2005 bulletin, has now been reported at [2006] 03 EG 1222.

SERVICE CHARGES

If a landlord could have had works carried out under guarantee at no charge, to carry out those works at a cost was to incur the cost other than reasonably. The cost so incurred could not be recovered from the tenants (s.19(1)(a) Landlord and Tenant Act 1985). If the landlord had delayed in carrying out works and so increased their cost, this did not mean that the additional cost was unreasonably incurred for the purposes of s.19. The reasonableness of incurring costs for repairs cannot depend on how the need for repair arose. However, breach of a landlord's covenant to repair will give rise to a claim in damages, and if the breach results in further liability on the lessee to pay a service charge, that is part of what may be claimed by way of damages. This would give rise to an equitable set-off which could be relied on as a defence to a claim for service charges. The LVT has jurisdiction to determine claims for damages for breach of covenant only insofar as they constitute a defence to a service charge in respect of which the LVT's jurisdiction under s.27A LTA 1985 has been invoked. HHJ Rich QC observed that although the LVT potentially has a wide jurisdiction under s.27A, there are some matters which are better determined by court procedures. **Continental Property Ventures Inc v White and White** [2006] EW Lands LRX/60/2005; full transcript available on www.bailii.org

A freeholder sought to argue that a subtenant was not able directly to challenge its service charges where there was an intermediate landlord. The LVT disagreed. On the freeholder's appeal the Lands Tribunal agreed with the LVT that the amounts which were the subject of the application were service charges within the meaning of s.18 of the LTA 1985. Following the reasoning of HHJ Roger Cooke in **Heron Maple House Ltd v Central Estates Ltd** [2002] 1 EGLR 35, the lease to the intermediate landlord, Publicshield, was of the subtenant's flat as well as 23 other flats and the common parts. Accordingly it was a lease of a dwelling within the meaning of s.18 of the 1985 Act as well as a lease of other dwellings and premises. The intermediate landlord merely passed on the liability to the superior landlord to be paid by the tenant. It had no interest and no knowledge save what came from the superior landlord to dispute the unreasonableness of the costs incurred. The superior landlord was clearly the appropriate respondent to the application though it might have been prudent to have joined the intermediate landlord so that the determination would also be binding on them. There was nothing in the wording of s.27A LTA 1985 which precluded an application by the person ultimately liable to pay the costs from seeking a determination as to their reasonableness against the person who incurred them. **Oakfern Properties Ltd v Ruddy** [2006] EWLands LRX/93/2005; full transcript available on www.bailii.org

OTHER DEVELOPMENTS

LICENSING & MANAGEMENT OF HOUSES IN MULTIPLE OCCUPATION

A major set of new regulations relating to houses in multiple occupation come into force on 6th April 2006. They are SI numbers 369, 370, 371, 372 and 373 of 2006, and can be found at www.opsi.gov.uk. The primary legislation is contained in Part 2 of the Housing Act 2004. HMOs are often of poor quality and badly managed, and the intention behind the legislation is to secure larger, better quality and better managed private rented accommodation. Mandatory licensing will apply only to the highest risk HMOs, that is, those with three storeys or more and over five occupiers in two or more households (see the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 SI 371). The Management of Houses in Multiple Occupation (England) Regulations 2006 SI 372 imposes duties on managers of HMOs and on occupants. Failure to comply with a duty imposed by the regulations is an offence (see s.234 HA 2004). Local authorities have power to introduce selective licensing under Part 3 HA 2004, but this is regulated by The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006 SI 370, the stated intention of which is to prevent excessive, unnecessary or conflicting regulation. HMOs can be temporarily exempted from the licensing requirement or can alternatively be managed by a local authority under a management order.

HOUSING BENEFIT: NEW CONSOLIDATING REGULATIONS

Since the Housing Benefit (General) Regulations 1987 were made on 20th November 1987 they have been amended by over 200 statutory instruments. In an explanatory note to a new set of consolidating regulations, in something of an understatement, it is said that “*Over time this has made the Regulations difficult to follow.*” In order to rectify this, the new regulations consolidate the original regulations and all subsequent amending regulations. The new regulations are the Housing Benefit Regulations 2006 SI 213, the Housing Benefit (Persons Who Have Attained the Qualifying Age for State Pension Credit) Regulations 2006 SI 214, and the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 SI 217 (SI numbers 215 and 216 relate to council tax benefit, in relation to which a similar exercise has been undertaken). The new regulations come into force on 6th March 2006 and are available on www.opsi.gov.uk

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