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PROPERTY LAW BULLETIN

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CASE LAW UPDATE

ADVERSE POSSESSION

The respondent claimed title by way of adverse possession to a strip of land. All the relevant acts had occurred before the coming into force of the Land Registration Act 2002. For a few months during the 12 year period in which the respondent claimed to have acquired title, the respondent had voluntarily excluded itself from part of the strip of land by putting up a fence. The purpose of the fence was to exclude the respondent from any form of occupation of that part of the strip. It was held that the consequence of this conduct was that the respondent had not acquired title to the fenced off part of the strip. The fencing off had interrupted the 12 years required for adverse possession: see para 8(2) schedule 1 to the Limitation Act 1980. It was irrelevant that the respondent had sought to exclude itself in relation to a third party rather than in relation to the appellant. **Generay Ltd v The Containerised Storage Co Ltd** [2005] EWCA Civ 478; [2005] 32 EG 68.

HOUSING

The court had suspended possession orders or warrants for possession on terms that the appellant tenants paid the current rent and an amount towards the arrears. Those terms were breached. The appellants had remained in possession with the knowledge of the landlord and so became tolerated trespassers. They argued that the respondents had waived the breaches of the possession orders so that the original tenancies revived or alternatively that new tenancies had arisen by virtue of the issuing of new tenancy conditions. The Court of Appeal dismissed the appeals. It was not open to a landlord to waive breaches of an order so as to resuscitate an original tenancy. It was necessary to make an application to the court. The power to discharge or rescind an order for possession could be exercised only in the light of the circumstances prevailing at the time. A new tenancy would not normally arise from the mere fact that a tolerated trespasser remained in possession with the consent of the landlord. Special circumstances were needed and none were present here. **Lambeth London Borough Council v O'Kane; Helena Housing Ltd v Pinder and anor** [2005] EWCA Civ 1010; [2005] 32 EG 67 (CS).

Mr Banjo had lived at 26 Claremont Road, London W9, since the early 1970s. He first occupied as a subtenant of a housing association which itself held a long lease from the London Borough of Brent for a residue of a term of 96 years from 29th September 1884. In 1974 Mr Banjo acquired the long leasehold interest from his landlord and thereafter held directly from the London Borough of Brent. The annual rent was £6.50. The contractual term expired on 28th September 1980. Mr Banjo remained in occupation thereafter and paid no rent, though he made periodic attempts to do so by visiting Brent LBC's housing office, when he would be told to wait for a demand before paying. No such demand ever came. On 8th February 2002 Brent LBC finally wrote to Mr Banjo to give notice of its intention to take proceedings to recover possession. The Court of Appeal held that Brent LBC was entitled to its order. After the expiry of the contractual term Mr Banjo was a tenant at will. The tenancy at will was brought to an end by the letter of 8th February 2002. There was some doubt as to whether a tenancy at will could ever be a secure tenancy under Part IV of the Housing Act 1985. Parliament plainly intended to withhold security of tenure from tenancies which were long tenancies as defined in s.115(1) HA 1985. Until the enactment of the Housing Act 1980, local authority tenants did not enjoy security of tenure under statute. The facts of the present case were unusual in that it was unusual to find a dwelling house held on a long tenancy from a local authority landlord, and also to find a tenant holding over following termination of a long tenancy without rent being demanded or paid. However, the unusual facts did not point to a lacuna in the law which the courts must strive to fill. Parliament did not intend to provide security of tenure in cases of this nature. **Banjo v Brent London Borough Council** [2005] EWCA Civ 292; [2005] 1 WLR 2520.

HUMAN RIGHTS

The council sought to evict the Maloney family, who were a family of travellers, from council land onto which the Maloneys had moved without any licence or consent from the council. The only defence advanced was an assertion that eviction would infringe their rights under article 8 ECHR (right to respect for home). This defence was unsuccessful at first instance and the Maloneys appealed. The Court of Appeal considered earlier caselaw on this issue including **Harrow London BC v Qazi** [2003] UKHL 43; [2004] 1 AC 983; and **Connors v UK** [2004] 16 BHRC 639 (a decision of the ECHR). It held that the decision in **Connors** was incompatible with the proposition that the exercise by a public authority of an unqualified proprietary right under domestic law to repossess its land will *never* constitute an interference with the occupier's right to respect for his home, or will *always* be justified under article 8(2). The decision in **Connors** does not exclude the possibility that a particular statutory regime may itself achieve the balance required by article 8(2), so that if a judge complies with it this will satisfy the requirements of article 8(2). Nor does it exclude the possibility that if a statutory regime is to comply with the convention it must require a public authority to weigh in the balance the impact of its actions on the individual affected and permit the individual affected to challenge in the courts the conclusion reached by the public authority. Accordingly the application of the decision in **Connors** was not restricted to the treatment of gypsies and the decisions in **Qazi** and **Connors** were not compatible. However in the circumstances the only permissible course open to the court was to follow the decision in the House of Lords (**Qazi**) and so dismiss the appeal, but to give permission to appeal to the House of Lords. **Leeds City Council v Price and others** [2005] EWCA Civ 289; [2005] 3 All ER 573.

LEASEHOLD ENFRANCHISEMENT

Tenants were excluded from the right to collective enfranchisement under section 5(2)(b) Chapter I Part I Leasehold Reform Housing and Urban Development Act 1993 if their immediate landlord under the lease was a charitable housing trust and the flat formed part of the housing accommodation provided by the CHT as part of its charitable purposes. However, tenants were entitled to exercise their right to collective enfranchisement where their immediate landlord was a CHT but the leases were long leases which were not provided as social housing pursuant to the charitable purposes of the CHT. **Richmond Housing Partnership Ltd v Brick Farm Management Ltd** [28th July 2005] TLR QBD.

RIGHT TO BUY

In 1991 the respondent tenants served on the appellant landlords a notice under s.122(1) HA 1985 claiming to exercise the right to buy. The appellants served notice under s.124(1)(b) denying the right to buy on the basis that the respondents did not have a secure tenancy because one of the tenants, Mr Copping, was required to occupy the house as their employee. No further action taken by the respondents at that time. A further notice in 2001 was denied by the appellants on the same grounds. The respondents brought part 8 proceedings seeking a declaration that they were entitled to acquire the freehold. They were successful, and then sought to buy at a price based on the 1991 notice. Nelson J held that they could not. The respondents had abandoned or impliedly withdrawn their 1991 claim to the right to buy. They did not respond to the appellants' denial of their right; they did not challenge it; they did not bring proceedings in the county court. The 2001 proceedings were based on the 2001 notice. It was not necessary for the appellants to prove prejudice because the intention to abandon or withdraw was so clear. In any event prejudice to the appellants was clear because of the increase in the value of the property. It would be unconscionable to allow a tenant to issue more than one notice and then await events and choose the most advantageous time at which to rely upon one of them. **Copping and another v Surrey County Council** [2005] EWHC 754 (QB); [2005] 34 EG 110.

VALUATIONS

A valuer considering an earlier valuation should put himself, as far as possible, in the position of the earlier valuer at the time of the valuation. Hindsight should not be used to fix value as at an earlier date by devaluing from a later valuation. The later valuer was not entitled to verify a retrospective valuation by reference to prices obtained for similar properties after the date of the original valuation. In addition the property was unusual with no direct comparables. The bracket of acceptable valuations was wide and a margin of 15% was justified. The defendant surveyor's valuation (the earlier valuation) had not been negligent. **Preferred Mortgages Ltd v Countrywide Surveyors Ltd** [25th July 2005]; [2005] 31 EG 81 (CS).

LEGISLATION UPDATE

ELECTRONIC POSSESSION PROCEEDINGS

The Civil Procedure (Amendment No.3) Rules 2005 SI 2292 contain at s.44 a provision adding rule 55.10A. This rule enables a practice direction to make provision for a claimant to start certain types of possession claim in certain courts by requesting the issue of a claim form electronically. The practice direction may also enable the parties to make certain applications or take further steps in relation to the claim electronically, and enable the parties to correspond electronically with the court about the claim. This provision (the enabling provision) comes into force on 1st October 2005 and presumably a practice direction will follow in due course.

HOMELESSNESS REVIEW

On 15th September 200 the Office of the Deputy Prime Minister (www.odpm.gov.uk) published a summary of an ODPM commissioned review of accommodation for former rough sleepers living in London. The review recommends a number of improvements to the existing system.

LICENSING IN THE PRIVATE RENTED SECTOR

A summary of responses to the two consultation papers on licensing in the private rented sector: Implementation of HMO Licensing (July 2004), and Implementation of Selective Licensing (July 2004), can be found on the website for the Office of the Deputy Prime Minister (www.odpm.gov.uk) together with the Government's responses. They appear in the What's New section at 7th September 2005.

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