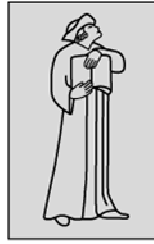


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PROPERTY LAW BULLETIN

SEPTEMBER 2006

CASE LAW UPDATE

COMPENSATION

Under s.584A Housing Act 1985 a compensating authority is required to pay compensation to every owner of the premises in respect of which a demolition order has been made. By s.602 "owner" includes a person holding the premises or part of the premises under a lease with an unexpired term in excess of three years. The compensating authority were mistaken in thinking that because a demolition order cannot be made in respect of part only of a building, a person who is the owner of part only of a building cannot be entitled to compensation. ***Hussain v Salford City Council*** [2006] EWLands LCA/7/2006.

LEASEHOLD ENFRANCHISEMENT

The Lands Tribunal has given important guidance on deferment rates for assessing the value of vacant possession at the end of the term in ***Cadogan & anor v Sportelli & anor*** [2006] EWLands LRA/50/2005 (decided on 15th September 2006). Bearing in mind that the function of the Lands Tribunal is to make decisions on point of law and principles of practice to which regard should be had by first-tier tribunals and by practitioners, the guidance given should be followed unless compelling evidence to the contrary is adduced. It is obviously undesirable and would be impossible for detailed financial and valuation evidence (as was heard in this case) to be called and considered in every enfranchisement case. The deferment rate is unlikely to vary according to factors particular to the individual case. Factors which will vary, such as location and obsolescence, will already be reflected in the vacant possession value. Hope value would be a factor that could lead to different deferment rates for different lengths of terms but hope value is excluded from valuations under the Leasehold Reform, Housing and Urban Development Act 1993 as a matter of law; although it is included under s.9(1A) of the Leasehold Reform Act 1967. The appropriate deferment rate will generally be 5% for flats and 4.75% for houses in the prime central London area, rather than the historic 6% or the 4.5% for houses and 4.75% for flats suggested in ***Arbib v Earl Cadogan*** [2005] 3 EGLR 139.

A 1965 lease contained an obligation to convert two semi-detached cottages into a single modernised dwelling-house. The conversion was carried out in 1966. Until 6th August 1967, each of the cottages was rated as a separate dwelling house, each with a rateable value of £21 pa. On 6th August 1967 the premises were entered into the valuation list with a rateable value of £158 pa. The respondent did not satisfy the low rent test in s.4A(1) Leasehold Reform Act 1967, and so was not entitled to enfranchise. By s.4A(2)(b) of the 1967 Act, the rateable value is that of “the property”, not of “the house”. At the commencement of the tenancy, the property consisted of two hereditaments with rateable values totalling £42. As the rent was more than two-thirds of this figure it was not a low rent for the purposes of the 1967 Act. Had the rateable value of £158 been applicable, the respondent would have qualified for enfranchisement. **Neville v The Cowdray Trust & anor** [2006] EWCA Civ 709; [2006] 35 EG 144.

The landlord resisted a claim for a new lease of a flat on the basis that he intended to develop the premises in which the flat was contained. In fact he intended to develop only that flat and the flat below. However on appeal this was held to fall within s.47 Leasehold Reform, Housing and Urban Development Act 1993. The word “premises” is used in different senses in different parts of the 1993 Act. Its meaning in any particular part depends to a large extent on its context. In s.47(2)(b), “*any premises in which the flat is contained*” has a very wide meaning. It refers to the building as a whole or any part of it which includes the tenant’s flat. The expression is not restricted to a recognisable unit such as a floor of the building. For example, a flat could be contained in “premises” which only additionally included a boxroom. However the word “premises” must include some additional space and would not include merely the outer walls to the flat in question. **Majorstake Ltd v Curtis** [2006] EWCA Civ 1171; [2006] 37 EG 194.

LIABILITY FOR REPAIRS

A right of way existed over a road and the owners of the dominant tenement were liable to contribute 50% of the cost of repair and maintenance. The terms of the particular covenant presupposed that repair and maintenance costs had actually been incurred. The owner of the servient tenement decided to upgrade the road and carried out very substantial works to it. It was held that the servient owner was only able to charge for those elements of work actually undertaken which would have been incurred if the road had merely been repaired in accordance with the covenant. It was not able to charge for work which would have been done if the road had simply been repaired in accordance with the covenant but had in fact been avoided by the upgrading. In determining what amounts to repair and maintenance, regard must be had to the condition of the road and its anticipated use at the time when the covenant was entered into. If an amount is fairly and reasonably spent on repairing the road at a particular time in the light of its then condition, there is no basis for reducing this because of any omission by the landowner to repair previously. **Crane Road Properties LLP v Hundalani & anor; Hundalani & anor v Slough Industrial Estates Ltd & ors** [2006] EWHC 2066 (Ch).

NORTHERN CYPRUS

Mr and Mrs Orams had purchased and built on land in Northern Cyprus. Title to the land was held by a Greek Cypriot, Mr Apostolides, who had had to abandon the land following

the Turkish invasion of Northern Cyprus in July 1974. The Turkish Republic of Northern Cyprus (TRNC) had subsequently declared that abandoned land would become the property of the TRNC. Accordingly an alternative title to the land was created, which was the title eventually acquired by Mr and Mrs Orams. Mr Apostolides obtained a judgment against Mr and Mrs Orams, based on his own title, for demolition of their house, delivery up of the land, and damages for trespass. However when he sought to enforce the judgment in the English courts under Council Regulation (EC) No 44/2001 (jurisdiction and the recognition and enforcements of judgments in civil and commercial matters) it was held that he could not do so. When the Republic of Cyprus joined the EU, Protocol No. 10 to the Treaty of Accession provided that the *acquis* (the entire body of legislation of the EU) was suspended in northern Cyprus. It followed that Regulation 44/2001, on which Mr Apostolides sought to rely, was of no effect in relation to land in Northern Cyprus. Mr Apostolides had an alternative remedy against the State of Turkey in the European Court of Human Rights, for breaches of Article 8 and Article 1 of Protocol 1. In addition, the judgment was not recognised because it was a judgment in default and Mr and Mrs Orams had not had sufficient time to arrange for their defence: see Article 34.2 of Regulation 44/2001. Mr and Mrs Orams' appeal against the registration of the judgment in the English courts was allowed. ***Orams & Orams v Apostolides*** [2006] EWHC 2226 (QB).

RESTRICTIVE COVENANTS

The owner of a teashop with a residential flat above it sought to discharge a restrictive covenant which prevented him from selling or letting the property other than as a whole. In particular he wanted to sell the residential flat as a separate unit. The application was refused. The covenant provided a practical benefit of substantial value or advantage to the Isle of Wight council (who had the benefit of the covenant) within the meaning of s.84(1A) Law of Property Act 1925, in that it protected the council's planning policies. Allowing the unrestricted occupation of a residential unit of accommodation in the countryside would clearly contravene those policies and would set a precedent for other applications. The fact that planning permission had been granted (possibly by mistake) was a relevant circumstance but it was ultimately for the Tribunal to decide whether the requirements of s.84 LPA 1925 were satisfied. ***Dart*** [2006] EWLands LP/68/2005.

The Lands Tribunal refused to modify a restrictive covenant to allow the building of a bungalow and private garage within a small building scheme consisting of only five plots. Planning permission had been granted and the proposed user was reasonable. However, the restriction secured practical benefits to the objectors. The building scheme came into effect in the early 1960s and had retained its integrity ever since. It had created a pleasant, quiet, cul-de-sac with low-density residential development. If the application was allowed, density would rise by 20% within the building scheme. The application land was just over two-thirds of the average plot size, and the location of the proposed bungalow would give the land a cramped and over-developed appearance. The existence of a building scheme increases the presumption that the restriction will be maintained: see ***Re Bromor Properties Ltd's Application*** [1995] 70 P&CR 569. The applicant had failed to fulfil ss.84(1)(aa) and (c) LPA 1925. ***Dobbin*** [2006] EWLands LP/59/2004.

SERVICE CHARGES

Following the decision in *Mauder Taylor v Blaquiére* [2002] EWCA Civ 1533, HHJ Huskinson held that when a manager is appointed under s.24 Landlord and Tenant Act 1987 the recoverability of fees and costs depends on the terms of appointment and on s.24, not on the terms of the lease. The charges have to be justified under the terms of appointment and s.24. They do not have to be justified as being charges which the landlord could herself have charged through the service charge provisions in the lease. *Taylor v Joshi* [2006] EWLands LRX/107/2005.

OTHER DEVELOPMENTS

COMMONS

The Commons Act 2006 (Commencement No. 1, Transitional Provisions and Savings) (England) Order 2006 SI 2504 will bring into force from 1st October 2006 a number of sections of the Commons Act 2006, namely s. 45 (powers of local authorities over unclaimed land); s. 47 (improvement); s. 49 (notice of inclosure); s. 51 (vehicular access); and para 9 of Schedule 3 (vesting of unclaimed land). The Commons Act creates a number of rules with respect to the registration of common land and town or village greens, works and fencing on common land, and the agricultural use and management of common land. It also makes more limited changes to the law with regard to town or village greens, principally in relation to the registration of greens, and the criteria for registering new greens.

MOBILE HOMES

The Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 SI 1755 comes into force on 1st October 2006. It amends schedule 1 of the 1983 Act in various ways, including the following:

- The court must now be satisfied that it is reasonable for an order to be made under paragraph 5 terminating the agreement on the basis that the occupier is not occupying the mobile home as his only or main residence.
- Owners can apply to the court to terminate an agreement forthwith if the mobile home is having a detrimental effect on the amenity of the site.
- When an occupier wishes to sell their mobile home the owner may not impose conditions when giving their approval.
- The owner may not require any payment on the gift of a mobile home.
- There is a new paragraph 10 which deals with re-siting of mobile homes.
- New paragraph 11 provides that the occupier is entitled to quiet enjoyment.
- New paragraphs 12 to 15 deal with the owner's rights to enter the pitch.
- New paragraphs 16 to 20 deal with the procedure to be followed when reviewing the pitch fee.

RACE RELATIONS HOUSING CODE OF PRACTICE

The revised Code of Practice on Racial Equality in Housing comes into effect on 1st October 2006, by the Race Relations Code of Practice (Housing) (Appointed Day) Order 2006 SI 2239. It applies to England, Scotland and Wales. It replaces the two previous Codes of Practice relating to housing, namely the Code of Practice in Rented Housing (in force since 1st May 1991) and the Code of Practice in Non-Rented (Owner Occupied) Housing (in force since 18th June 1992). The Code can be downloaded from the Commission for Racial Equality website at www.cre.gov.uk

Note: Where cases are given a universal reference but no other reported reference a transcript can be found in full at www.bailii.org

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