REAL ESTATE

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CASES ROUND UP

Down Down

Relegation did not affect rating valuation

Wigan Football Co Ltd v Cox (Valuation Officer): [2019] UKUT 389 (LC)

The Upper Tribunal: Lands Chamber has dismissed Wigan Athletic's appeal in respect of its rating valuation. The stadium was given a valuation of £1,500,000 in the 2010 rating list based on a valuation date of 1 April 2008. The valuation was reduced to £1,100,000 by agreement following an appeal. At this point, Wigan were in the Premier League. They were relegated to the Championship in 2015 and then to League One. Wigan made proposals for the valuation to be reduced to reflect the effect of two relegations. The issue was whether relegation amounted to a material change of circumstances for the purposes of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. The Valuation Tribunal decided that it did not. The Tribunal found that the link between league status and the ability to pay was not as direct as Wigan claimed. Ground attendance varied considerably between clubs in the same league.

Under the Local Government Finance Act 1988, the rateable value of a hereditament should be an amount equal to the rent at which it was estimated that the hereditament might reasonably be expected to be let. The relevant date for the 2010 rating list was 1 April 2008. The 2015 revaluation was deferred until 2017. The rating list could be altered where the rateable value was inaccurate by reason of a material change of circumstances. A material change of circumstances includes: matters affecting the physical state or physical enjoyment of the hereditament; the mode or category of occupation; and matters affecting the physical state of the locality of the hereditament. The football club was the only potential tenant of the stadium. Accordingly, there was no market and football stadia were valued on the basis of a scheme, largely agreed between the VOA and football clubs, and adjusted for the club's ability to pay. Although it was accepted that the ability of a Premier League club to pay rent exceeded that of a League One club, that did not mean that the rating list should be altered. The policy was for there to be a new rating list every few years, usually five. The fact that the revaluation date had changed was not relevant to the issue as to whether there had been a material change for the purposes of the Regulations. Valuation methods did not differ between stadia in different leagues. There had been no material change of circumstances for rating purposes.

Let 'em in

Multi-skilled visit was a Code right

University of London v Cornerstone Telecommunications Infrastructure Ltd: [2019] EWCA Civ 2075

The Court of Appeal has confirmed that a right for a telecommunications operator to carry out a survey inspection and investigation, known as a multi-skilled visit (MSV), was a Code right under the Electronic Communications Code. The telecoms operator wished to gain access to premises at Paddington to assess the site's suitability for the installation of telecommunications apparatus. The operator gave notice under paragraph 26 of the Code seeking

interim Code rights. The landowner refused access and the operator applied to the Upper Tribunal for an order granting access for the MSV. At that stage, the operator had not sought permanent Code rights under paragraph 20. The Tribunal held that it had the power to impose an access agreement for the purposes of an MSV. The right sought was an interim Code right that could be applied for without a linked application for a permanent Code right.

The Court of Appeal has dismissed the landowner's appeal. The landowner argued that the meaning of 'install' did not include a right of access to determine whether a site was suitable for the installation of electronic telecommunications equipment. It was not necessary for the works to amount to installation. It was enough that the proposed works were "in connection" with the installation of equipment. The court was entitled to place strong reliance on the legislative purpose of the Code. That purpose was to facilitate the improvement of electronic communications throughout the UK. This could not be sensibly achieved if operators did not have the right to access premises to assess their suitability as potential sites. An MSV could be connected with the installation of telecoms equipment even if that installation was not certain to happen. Accordingly, in seeking a right to carry out an MSV, the operator was seeking a Code right. Because the right to carry out an MSV was a Code right it could be applied for on a freestanding basis. There did not have to be a related application for a permanent Code right under paragraph 20.

I'm still standing

Exercise of CRAR waived right to forfeit

Thirunavukkrasu v Brar and another: [2019] EWCA Civ 2032

The Court of Appeal has confirmed that, by choosing to exercise commercial rent arrears recovery (CRAR), the landlord had waived its right to forfeit the lease for non-payment of rent. The tenant held a lease of commercial premises and fell into arrears. The landlord instructed an enforcement agency to effect CRAR. The landlord then sought to forfeit the lease by re-entry. The tenant sought a declaration that the re-entry was unlawful and claimed damages for trespass and conversion of goods. The tenant claimed that by exercising CRAR, the landlord had acknowledged the continued existence of the lease and waived its right to forfeit.

The Court of Appeal has confirmed that a landlord's exercise of CRAR waived the landlord's right to forfeit for the arrears of rent then outstanding. CRAR could never be exercised when a lease had been brought to an end by forfeiture. The exercise of CRAR before the lease had purportedly been terminated by forfeiture acknowledged the continued existence of the lease and amounted to a waiver of the right to forfeit. The exercise of CRAR had the same effect as its predecessor remedy of levying distress.

Can't take that away from me

Licencee entitled to relief from forfeiture

Manchester Ship Canal Co. Ltd v Vauxhall Motors Ltd: [2019] UKSC 46

The Supreme Court has dismissed the Manchester Ship Canal Company's appeal from the Court of Appeal decision that Vauxhall was entitled to relief from forfeiture as a result of the termination of a right to discharge water for the non-payment of the licence fee. Vauxhall had been granted the right to discharge surface water from its Ellesmere Port plant into the canal. The right was granted in perpetuity and was described as a licence. It was also subject to payment of an annual sum of £50. The Canal Company could terminate the right if the £50 was not paid. Vauxhall missed a payment and the Company purported to terminate the licence. The Company refused to accept late payment and negotiations were entered into for the grant of a new right. The Company was looking for a substantial increase in the consideration. Vauxhall refused to agree and issued proceedings claiming relief from forfeiture. The Company

argued that there was no right to claim relief from forfeiture in respect of the licence and, even if there was, Vauxhall was estopped from claiming relief because of the negotiations for a new agreement. Relief was granted subject to Vauxhall paying the outstanding £50 and certain costs. The Company claimed that the court did not have jurisdiction to grant relief. The right to relief only applied to proprietary rights and did not apply to Vauxhall's contractual rights under the licence.

The Supreme Court found in favour of Vauxhall. Equitable relief was available for the forfeiture of both proprietary and possessory rights. It was settled law that equitable relief might apply to the forfeiture of a wide range of chattels and other personalty and there were good reasons for it to apply to land. Relief from forfeiture could be granted where rights in land were possessory only. It was the nature of the right rather than the identity of the property that mattered. The licence granted virtually exclusive possession over the spillway and a high degree of control to Vauxhall in perpetuity. Vauxhall had carried out the necessary works to the spillway and the spillway formed an integral part of the infrastructure for the transmission of surface water from Vauxhall's plant. Accordingly, the licence conferred possessory rights on Vauxhall. Vauxhall had been entitled to apply to the court for relief from forfeiture and the court had been entitled to grant it.

Say No Go

Risk of enfranchisement justified refusal of consent

Sequent Nominees Ltd (formerly Rotrust Nominees Ltd) v Hautford Ltd: [2019] UKSC 47

A majority of the Supreme Court has overturned the Court of Appeal decision and ruled that the landlord had acted reasonably in refusing to consent to the tenant's application for planning permission for change of use. The tenant held a long lease of a mixed use building. The building was part of a terrace of buildings which were also owned by the landlord. The lease allowed the tenant to use the building for retail, office and residential purposes. A covenant prevented the tenant from applying for planning permission without the consent of the landlord, such consent not to be unreasonably withheld. The tenant wanted to change the use of the office floors to residential. This would increase the amount of residential space and improve the tenant's chances of enfranchisement under the Leasehold Reform Act 1967. The landlord refused consent on the basis of the increased risk of enfranchisement. Enfranchisement would also adversely affect the estate management of the landlord's adjoining premises. The County Court held that the landlord's consent had been unreasonably withheld and this was upheld by the Court of Appeal. The purpose of the planning covenant was not to restrict the tenant's ability to use the building for an authorised use.

The Supreme Court allowed the landlord's appeal by a majority. A landlord was not entitled to refuse consent on grounds which had nothing to do with the relationship of landlord and tenant or the subject matter of the lease. The landlord had to show that its decision was reasonable, not that it was justifiable. It was a question of fact and degree in each case whether the refusal of consent was reasonable. Reasonableness was determined as at the date on which the consent was sought. The only issue was whether the authorities that suggested that a landlord could refuse consent under a fully qualified covenant to the doing of something by a tenant which increased the risk of enfranchisement were limited to leases granted before the 1967 Act came into force. Although residential use was a permitted use under the lease, the lease as a whole did not confer an unqualified right to use the whole or any part of the building for residential purposes. The tenant's use for residential purposes was subject to compliance with the planning regime. Planning permission was required to use the office floors for residential purposes. Damage to the landlord's reversion was the quintessential type of

consideration rendering a refusal of consent reasonable. The increased risk of enfranchisement was a legitimate reason for withholding consent and the landlord was acting reasonably in seeking to protect the value of its property.

OUR RECENT TRANSACTIONS

We advised ITV plc on the sale of the London Television Centre, London SE1 to Mitsubishi Estate London for a purchase price of £145.6 million.

We advised Derwent London on the pre-let of a further three floors of 1 Soho Place W1 to Apollo Management International. Apollo will take the second, third and fourth floors on a 15-year lease. Soho Place is a significant office, retail and theatre development over the Tottenham Court Road Elizabeth line and Underground station. The office space is now 96% pre-let.

We are advising Ocado in connection with its first mini Customer Fulfilment Centre (CFC). The mini-CFC will be located in Avonmouth, Bristol and is being delivered by St. Modwen.

We advised Cemex on the sale of certain UK assets to Breedon Group. The assets include 49 ready-mix plants, 28 aggregate quarries, 4 depots, 1 cement terminal, 14 asphalt plants and 4 concrete products operations.

AND FINALLY

Skeleton crew

US Police stopped a driver in a high occupancy vehicle lane in Arizona after spotting that his passenger was a plastic skeleton.

Deleterious materials

A town in Canada called Asbestos is proposing to change its name to avoid connotations with the carcinogenic building material.

Bananas

A $120,000 art installation featuring a banana taped to a wall has been sabotaged after a performance artist filmed himself eating the banana.

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