

REAL ESTATE

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NEWS

Are “friends” electric?

Land Registry to accept electronic signatures

Although the Land Registration Act 2002 provided the framework for the introduction of e-conveyancing, an electronic system for creating and transferring interests in land remains a distant reality. Despite rapid advances in the development of e-commerce, the Land Registry has, until now, continued to insist on “wet ink” signature originals for deeds effecting registrable dispositions. The current lockdown has led to a significant softening of this position. First, the Land Registry agreed to accept *Mercury* compliant deeds, and now it has begun to accept deeds executed using electronic signatures. New guidance has been published allowing for the use of an online signature platform with a two-factor authentication process for the signatories and witnesses. The process must be controlled by a conveyancer who must certify that the Land Registry’s requirements have been complied with.

Although there are a few issues with the new guidance, the Land Registry has indicated that it will continue to work with conveyancers and platform providers to help facilitate property transactions while preserving the integrity of the register. The change marks a significant step for the Land Registry and is likely to accelerate the introduction of qualified electronic signatures followed by an e-conveyancing system.

We can work it out

New Code of Practice for commercial property relationships during the COVID-19 pandemic

The new Code was published on 19 June and seeks to provide business support in the commercial property sector in relation to rent, service charge and insurance rent liabilities. Although the focus remains on the hospitality, leisure and retail sectors, the Code applies to all commercial leases affected by the pandemic. The intention is that landlords and tenants should work together collaboratively to agree a shared recovery plan providing support to businesses in need through the recovery period. There is nothing new in the Code. It reflects what most landlords and tenants are already doing and many rent payment plans have already been agreed. The Code is voluntary and it does not change the underlying landlord and tenant relationship. A number of leading bodies in the industry, including the British Property Federation, the British Retail Consortium and the Royal Institution for Chartered Surveyors, have pledged their support until 24 June 2021. The Code sets out a number of principles to help landlords and tenants to work together and agree a reasonable way forward. It is clear that the pandemic is not an excuse for businesses not to pay rent, and tenants should pay what they can. Similarly, landlords are not obliged to accept concessions and should take into account their own financial obligations, for example payments due to funders. Landlords can also require something in return for a waiver, reduction or deferral, such as an extension in the term of the lease or the loss of a tenant break right.

The government has indicated that it is prepared to implement further measures as necessary. For example, Australia introduced a mandatory code of conduct providing for rent reductions reflecting the tenant's loss of turnover as a result of COVID-19. The UK government has already extended the measures protecting tenants from forfeiture, CRAR and winding up until 30 September, the day after the next quarter day. The September quarter day will be key in assessing whether the easing of lockdown is starting to help businesses and also as to whether further government intervention is required.

CASES ROUND UP

Radio gaga

Guarantor was liable under GAGA following assignment

EMI Group Limited v The Prudential Assurance Company Limited: [2020] EWHC 2061 (Ch)

This case concerned the enforceability of a sub-guarantee, or GAGA, given by EMI. EMI was the original guarantor of a lease of Oxford Street premises granted to HMV. HMV assigned the lease to Forever 21 with Forever 21's parent company acting as guarantor. HMV guaranteed Forever 21's obligations under an authorised guarantee agreement and EMI guaranteed HMV's obligations under that AGA by way of a GAGA. Both HMV and Forever 21 entered into administration and HMV was dissolved. Prudential sought to recover nearly £5 million in unpaid rent and other sums from EMI. EMI claimed that the GAGA was void under the anti-avoidance provisions of the Landlord and Tenant (Covenants) Act 1995 or, alternatively, that the GAGA had come to an end when HMV was dissolved. Prudential sought a declaration from the court that the GAGA was enforceable.

The court rejected EMI's arguments and held that it was liable for the sums claimed under the GAGA. The wording of the original guarantee and the

GAGA should not be construed as an embedded repeat guarantee that fell foul of the Act and the GAGA was valid. In addition, the dissolution of HMV did not affect the liabilities of EMI as guarantor. The decision follows the Court of Appeal ruling in *K/S Victoria St* and confirms that a guarantor can remain liable following an assignment by guaranteeing the obligations of the outgoing tenant under an AGA. It also indicates that a court is likely to prefer a more realistic construction when considering the effect of the words used.

Somebody's watching me

Law of nuisance does not protect privacy

Fearn and others v The Board of Trustees of the Tate Gallery: [2020] EWCA Civ 104

The Court of Appeal has dismissed appeals by tenants of the Neo Bankside development whose flats are overlooked by the new public viewing gallery at Tate Modern. The panoramic views from the platform included the interiors of a number of flats in the block. The tenants argued that the use of the viewing platform unreasonably interfered with the amenity of their flats and constituted an actionable nuisance. Although the judge at first instance dismissed the claims on the grounds that urban living required an element of give and take, he left the door open for the law of nuisance to protect privacy. The Court of Appeal disagreed, the law of private nuisance did not extend to an invasion of privacy by overlooking.

Say no go

Landlord was in breach by granting consent

Duval v 11-13 Randolph Crescent Ltd: [2020] UKSC 18

The landlord of a block of flats had given consent to one of the tenants to carry out structural works, notwithstanding that the leases of the flats contained an absolute prohibition against such works. Each lease also contained an obligation on

the landlord to enforce the tenant covenants in the other leases. Another tenant in the building objected to the works and sought a declaration that the landlord was in breach of covenant by consenting to the works.

The Supreme Court found in favour of the tenant. The landlord did not have the right to consent to the works without the consent of the other tenants. To do so would prevent it from complying with its covenants with the other tenants to enforce the covenant against structural alterations. The case serves as a reminder that landlords must check carefully the provisions of other leases in a block or on an estate when dealing with management issues.

Money, money, money

ATMs located at supermarkets are not separate rateable hereditaments

Cardtronics UK Ltd and others v Sykes and others (Valuation Officers): [2020] UKSC 21

The Supreme Court has confirmed that ATMs located at supermarket premises should not be assessed separately for business rates. The ruling applies to both machines located outside and forming part of a building and also to those inside the stores. An ATM located at supermarket premises was for the benefit of the retailer as well as the machine operator. Accordingly, the supermarkets had retained occupation of the ATM sites and there was no separate rateable hereditament.

This decision is expected to lead to the repayment of around £430 million in overpaid business rates and has been welcomed by the operators of both supermarkets and convenience stores. As the number of bank branches continues to fall, the decision should also help ensure members of the public can continue to access their cash.

Blinded by the light

Injunction granted for interference with right of light

Beaumont Business Centres Ltd v Florala Properties Ltd: [2020] EWHC 550 (Ch)

The High Court has awarded an injunction requiring the demolition of part of an extension of hotel premises built by the defendant. The claimant operated high class serviced offices and business services from its adjacent premises. Part of its office premises suffered a reduction in light as a result of the extension. Although the adversely affected part was already poorly lit and dependent on artificial lighting, the court granted an injunction. The claimant had shown that its premises had become substantially less comfortable and the reduction in light would result in a reduction in rental income. The claimant was entitled to an injunction or damages of £350,000. The defendant argued unsuccessfully that the claimant was not seeking to protect its proprietary rights and was merely seeking to extract a ransom payment. The court took into account the behaviour of the parties, and although the defendant had considered offering to make a payment of £155,000 to the claimant, that had been withdrawn and the development works were carried out notwithstanding the claimant's objections.

This case marks the first time an injunction has been awarded since *Coventry v Lawrence* and the first in the City of London for 30 years. Because the hotel was let, the tenant would need to be joined in to the proceedings seeking an injunction. It serves as a warning to developers proposing to carry out works without first resolving rights of light issues.

OUR RECENT TRANSACTIONS

We advised Derwent London on the sale of 2 & 4 Soho Place, part of its Soho Place development above the Tottenham Court Road Elizabeth line and Underground station.

We are advising Baker McKenzie on its new London headquarters at 280 Bishopsgate.

We helped The Clothworkers' Company secure planning approval for the redevelopment of 50 Fenchurch Street following the City of London Corporation's first ever virtual planning committee meeting.

We advised NTT Urban Development Corporation on the acquisition of 130 Wood Street.

We are advising Linklaters on its new London headquarters at 20 Ropemaker Street.

AND FINALLY

The robot

Japanese baseball team Fukuoka SoftBank Hawks have employed 20 dancing robots to perform at their empty Stadium during lockdown.

Snakes alive

A 6ft boa constrictor, believed to be an escaped pet, has been found at an allotment in South Wales.

Long hop

Also in Wales, a frog discovered in an Asda supermarket in Llanelli is believed to have travelled 5,000 miles from Colombia with a cargo of bananas.

Purrfect

MP John Nicolson suffered the fate of many during lockdown when his cat, Rojo, made an appearance at a virtual meeting of the Digital, Culture, Media and Sport Committee.



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