

SEMINAR 18th May 2015

- ❖ LANDLORD & TENANT ACT 1954 QUESTIONS
- ❖ S.30 (f) GROUNDS OF OPPOSITION FOR V/P
- ❖ PROFESSIONAL ARBITRATION ON COURT TERMS (PACT)
- ❖ OPEN QUESTION TIME - 5 mins

- ❖ SEMINARS at CBRE 'C' Bar at 08:00hrs

- ❖ NEXT SEMINAR - 15th June 2015

- ❖ PREVIOUS SEMINARS - Notes posted www.douglasstevens.co.uk Seminars

SEMINAR BY DOUG STEVENS TO 1st & 2nd YEAR GRADUATES
DELIVERED AS A POWERPOINT PRESENTATION

LANDLORD & TENANT ACT 1954

- ❖ S.25 MINIMUM & MAXIMUM NOTICE?
 - ❖ 6 months 12 months
- ❖ S.26 MINIMUM & MAXIMUM NOTICE?
 - ❖ 6 months 12 months
- ❖ FRIENDLY or HOSTILE NOTICE (7 grounds)?
- ❖ UNDER-RENTED or OVER-RENTED?
- ❖ DEFINE STRATEGY - VALUATION ASSUMPTIONS
- ❖ WHEN TO SERVE ? S.40 NOTICE (for multi-let)?

Assume lease expiry date 24th JUNE 2016

❖ Over-rented T likely to stay

L/L does nothing. T serves S.26 to expire 24/6/2016

❖ Under-rented T likely to stay

L/L should serve 12 months notice w/e 24/6/2016

If L/L is late T serves S.26 12 months notice to extend lease

❖ Required for development

L/L if ready serves hostile S.25 or T serves S.26 (L/L 2 months to respond)

▶ Required for future development

L/L serves friendly S.25 BUT with a redevelopment break clause in. There will be a discount from open market rent.

S.30 (f) GROUND FOR POSSESSION

(f) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding

▶ TERMINATION DATES

- ▶ The first of the two relevant dates is the date of the hearing.
- ▶ A landlord who opposes the grant of a new tenancy under Ground (f) has to prove all the elements of his case as at the date of the trial of his grounds of opposition.

Betty's Cafés Ltd. v. Phillips Furnishing Stores Ltd

- ▶ The second date is the date on which the landlord's Ground (f) works of demolition and/or opposition are to be implemented, which is generally, three months and 21 days -plus an additional "reasonable time" - after the hearing at which the landlord's grounds of opposition are tried.

▶ INTENTION

- ▶ The test of intention is in two parts: does the landlord have the stated "intention" and does it have the means to make good that "intention"

Cunliffe v. Goodman

- ▶ Not merely is the "intention" unsatisfied if the person professing it has too many hurdles to overcome, or too little control of events; it is equally inappropriate if at the material date that person is in effect not deciding to proceed but feeling his way and reserving his decision until he shall be in possession of financial data sufficient to enable him to determine whether the payment will be commercially worthwhile. In the case of neither scheme did [the landlord] form a settled intention to proceed. Neither project moved out of the zone of contemplation - out of the sphere of the tentative, the provisional and the exploratory- into the valley of decision.

Plans Drawn Up

A Levy & Sons v. Martin Brent Developments Ltd. [1987] 2 EGLR 93.

Disclosure will have to be given of the full range of plans to demonstrate that the planning stage of the project is sufficiently advanced so that:

the subsequent evidence on the cost of the project has some basis in fact

it can be proved that, within a reasonable period of the current tenancy coming to an end that the landlord will be in a position to proceed. 3 - 12 MONTHS

Finance

Landlord must show, on the balance of probabilities they can afford to carry out the works of demolition and reconstruction and to prove that the works have been sufficiently costed to show that they can be financed. This can be done either by reference to contracts and/or tenders, or to the cost projections of the architects and quantity surveyors working on the proposed project.

If tenders have been obtained or requested, then these will provide the very best evidence the amount of finance available for the project;

where it will come from;

whether the finance is conditional in any way, such as lender approval or execution of a security;

and how soon the finance can be made available for use.

Planning Permission

- ▶ If the proposed building operations relied upon by the landlord would require planning permission, but he does not have permission, the landlord may still succeed in proving his claim. The test becomes, in such a case, “is there a reasonable prospect of obtaining planning permission?”
- ▶ This is a lower standard than establishing whether the landlord will obtain planning permission “on the balance of probabilities”.

▶ Substantial works must be to the Holding

- ▶ Marazzi v. Global Grange Ltd. and Ivorygate Ltd. v. Global Grange Ltd.
- ▶ The same landlord sought to get v/p of both buildings for a large hotel
- ▶ Won Ivorygate case because works were substantial in own right
- ▶ Lost Marazzi case because scope of works on this holding was limited

DEMOLISH RECONSTRUCT / SUBSTANTIAL WORK OF CONSTRUCTION

- ▶ The nature and scope of the proposed works is critical
- ▶ Demolition” is self-explanatory.
- ▶ “Construction” means the addition of new or additional structures or parts of structures. “Reconstruction” has been held to mean: “physical rebuilding following demolition or partial demolition of the holding” and/or “a substantial interference with the structure of the premises and then a rebuilding, probably in a different form, of such part of the premises as had been demolished by reason of the interference with the structure”.
- ▶ Ivorygrove Ltd. v. Global Grange Ltd.

Held that works ancillary to demolition and reconstruction may be considered when looking at the totality of the work, provided they were on the “holding”, and that there was nothing in Ground (f) which required the demolition or construction of structural or load-bearing features. Whether the relevant parts of the premises are load-bearing is simply one of the factors to be taken into account in determining whether there would be “demolition or reconstruction, or demolition or reconstruction of a substantial part, or substantial work of construction on the holding or part of it”.

Pumpninks of Piccadilly Ltd v. Land Securities plc,

Egg-shell lease - no structural element in demise. 2 shop units into one

Ground (f) was satisfied by demolishing as much as could be demolished of the eggshell, and incorporating it into a wider scheme of redevelopment, which changed the nature of the holding

IMPLEMENTATION

- ▶ Edwards v. Thompson
- ▶ a Ground (f) case where the landlord had a detailed specification, proof of funding and a builder ready to commence the works, but the landlord could only practically implement the scheme if a neighbour developed their land by putting in an estate road. As there was no evidence that this would happen “within a matter of months”, the landlord failed in her opposition to the new grant.
- ▶ **IS POSSESSION OF WHOLE REQUIRED IF NOT S.31A ALLOWS T TO STAY**
 - ❖ the Court shall not hold that the landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding if - (a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or
- ▶ the holding (the premises demised by the lease and the ancillary rights enjoyed with it) will no longer physically exist and be capable of occupation; and before the tenant can occupy the holding under the new tenancy it seeks- some of the works carried out by the landlord will have to be undone and additional work will have to be carried out

PACT - PROFESSIONAL ARBITRATION ON COURT TERMS

- ▶ In 1997 The Law Society and the Royal Institution of Chartered Surveyors (RICS) have recently launched the PACT (professional arbitration on court terms) scheme as an alternative to courts determining lease renewal terms and rent for commercial properties.
- ▶ It is a form of alternative dispute resolution (ADR) whereby the determination of all or some terms of a lease renewal are delegated to an independent third party, who may act either as an “arbitrator” or as an “independent expert”*
- ▶ The PACT scheme enables landlords and tenants jointly to elect to have the rent and the terms of their new lease determined by either a solicitor or surveyor acting as either an arbitrator or an independent expert.
- ▶ The appointments will be made by the Law Society or the RICS in the same way as arbitrators or independent experts are currently appointed by the two organisations. Private appointments more common. Arbitration more common.
- ▶ The PACT scheme preserves the landlord and tenant's existing rights under part II of the Landlord and Tenant Act 1954. It will still be necessary for an application to be made to the court, but the parties will then agree to use the PACT scheme.
- ▶ It may still be appropriate for the courts to deal with some complex legal issues and prospective participants should consider whether the PACT scheme is suitable for their particular dispute.
- ▶ The scheme is in line with the Woolf proposals as set out in Access to Justice in that court litigation should be regarded as the last resort.

PACT

- ▶ In *PGF II SA v OIMFS Company 1 Limited*,(2013) the Court of Appeal held that it was unreasonable, except in limited circumstances, for a litigant to fail to respond to a proposal to mediate a dispute.
- ▶ **What are the principal benefits of P.A.C.T?**
- ▶ **EXPERTISE** Decision maker has relevant experience and knowledge in the subject matter
- ▶ **FLEXIBLE** Procedure is flexible and parties have control
- ▶ **QUICKER** Proceeds quickly or at a pace agreed by the parties
- ▶ **CHEAPER** Greater certainty in terms of costs which will be < Court costs
- ▶ **When can P.A.C.T. be used?**
- ▶ Tenant wishes to take up new tenancy and landlord does not oppose
- ▶ One party has made application to the court to fix the terms of the new tenancy (parties can agree to withhold making an application)
- ▶ Both parties agree to refer issues which are not agreed to an arbitrator or independent expert

Issues that can be determined using P.A.C.T.

- ▶ Lease terms - e.g. repair, alienation, service charge, decoration.
- ▶ BUT it is more common for the issues for an Arbitrator/Expert to decide are
- ▶ Rent
- ▶ Duration of new lease
- ▶ Break clause - rent penalty for operation of break clause
- ▶ Interim rent

- ▶ **In court procedure**
- ▶ starts with consent order signed by both parties which includes details of:
- ▶ Agreed issues - Issues not agreed
- ▶ Whether to use arbitration or expert determination to determine issues not agreed

Out of Court PACT

- ▶ Available at any time up to the point where either party makes an originating application to the court
- ▶ Each party must agree to withhold making such an application
- ▶ VITAL, that the tenant does not lose its right to make an originating application until the new lease is completed,
- ▶ The tenant therefore needs to be aware of time limits
- ▶ **Model consent orders**
 - ▶ Model order 1 - for referring everything to arbitration
 - ▶ Model order 2 - for referring initial rent to arbitration
 - ▶ or expert determination
 - ▶ Model order 3 - for referring issues other than rent
 - ▶ Model order 4 - drafting

CONSENT ORDERS

- ▶ Issued by County Court on application of parties using Model Forms
- ▶ Lists parties. Names Arbitrator or Expert (if agreed)
- ▶ Confirms if lease is in agreed form (save for rent and/or lease term, etc)
- ▶ EITHER states the valuation date (expiry date or date agreed by parties)
- ▶ OR valuation date is date on PACT Award (Expert Determination)
- ▶ States if Interim Rent is also to be decided and from what date

ARBITRATORS AWARD or EXPERT DETERMINATION

Follows normal procedures, ie SOAF, Expert Reports, Expert Replies

If Arbitration the Arbitration Act 1996 applies

- ▶ Valuation basis is S.34 L & T Act 1954 - ie, (1) such rent as may be agreed between the landlord and the tenant or may be determined by the court to be that at which,
- ▶ “ Having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor “
- ▶ there being disregarded—
- ▶ (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in **occupation** of the holding,
- ▶ (b) any **goodwill** attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business),
- ▶ (c) any effect on rent of an **improvement** - completed not more than twenty-one years before the application for the new tenancy was made to which this paragraph applies