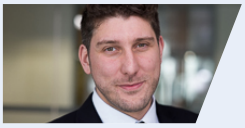
Case roundup



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Gilpin v Legg [2017] EWHC 3220 (Ch)

Status of occupation – lease or licence?

The High Court has ruled that five beach huts at Portland in Dorset were chattels and that their owners occupied the land on which they are situated as periodic tenants.

This case concerned a dispute between the claimant beach hut owners and the defendant landowner as to their respective rights. The landowner inherited the land from his parents. From 1958 onwards, the parents had allowed a number of people to build and occupy huts on the land in exchange for money. The land passed to the son and in 2013 he sought to remove the huts and their owners.

The landowner wrote to all hut owners explaining that he wished to formalise what he considered to be an existing licence to place the huts on his land and invited them to sign a written agreement to that effect. A number of hut owners did just that. Those hut owners were subsequently served with a notice terminating their licence and requesting they remove their huts from the landowner's fields.

The claimant hut owners did not sign the agreement but were also served with a notice requiring them to quit the land. The claimants sought a declaration from the court that the notice to quit was invalid. The hut owners argued that they held tenancies of the plots on which their huts stood and that those huts formed part of the land as a result of being fixed to the land. The landowner responded by serving a second notice on quit on the alternative basis that the claimants held yearly tenancies. The landowner argued in his defence that one of the two notices was valid.

The court concluded that the huts were chattels distinct from the land on which they stood. The court determined that the huts were capable of being moved without risk of substantial damage. On the question of occupation, the court noted that the language used was not determinative of the legal relationship between the parties. The court reasoned that (regardless of whether or not they were chattels) the huts physically inhabited the land in such a way that the land was not available for occupation or any other use by the landowner. Accordingly, on the evidence before the court, the fundamental features of a tenancy were present, namely the grant of exclusive possession of land for a term at a rent. As such, the landowner's second notice took effect.

The court dismissed the hut owners' claim for proprietary estoppel on the basis that there was insufficient evidence that any landowner had told any hut owner that they could remain on the land indefinitely, provided that they paid the rent due. The court thus concluded that the claimants had no right to keep their huts in the landowner's fields.

Mundy v Sloane Stanley Estate Trustees [2018] EWCA Civ 35

Leasehold valuation – cost of lease extension

The Court of Appeal dismissed a tenant's challenge to the method for calculating the cost of an extending the lease on a flat.

The case concerned a dispute about a small flat in Chelsea. The tenant had sought a statutory extension of the lease under the Leasehold Reform, Housing and Urban Development Act 1993. In addition to providing a statutory right to extend the lease, that legislation sets out a framework for calculating the premium to be paid to the owner of the freehold for the new lease.

A constituent element in determining the premium is a sum representing what is known as the marriage value. The marriage value represents the potential increase in market value of the flat as a consequence of the grant of the new lease.

In order to arrive at the marriage value, among other things, surveyors measure the relationship between the value of a lease with and without the benefit of the statutory lease extension rights. This measure is a valuation concept which is referred to as the 'relativity'. Calculating relativity is a complex task that includes comparative analysis of market sales for similar types of property and generally involves the use of graphs such as the widely-used Gerald Eve graph.

The tenant sought to challenge the use of the Gerald Eve graph in the Tribunal on the basis that it was outdated and that it overstated the value to the freeholder to the detriment of the tenant. Instead, the tenant proposed to rely on an alternative means of calculating the relativity, referred to as the Pathenia model, which uses a statistical modelling technique known as hedonic regression.

The Upper Tribunal concluded that while neither method was perfect, the Parthenia model was defective. The Court of Appeal upheld this decision and agreed that the Parthenia model should not be used in future cases.

The decision is good news for the owners of freehold land, for now at least. The court signalled its support for simplifying the valuation process and noted the government's request in December 2017 that the Law Commission consider the matter.

Haringey LBC v Ahmed [2017] EWCA Civ 1861

Joint tenancies – who can sign the agreements

The Court of Appeal held that a husband did not have authority to sign a secure tenancy agreement as an agent for his wife.

The factual background to this case involves a chain of tenancy agreements stretching back almost 30 years resulting in a local authority bringing possession proceeding against the wife.

In brief, the wife had occupied the property since 1988, when she had moved in with her then husband, his mother and her children. The husband had been granted a secure tenancy by the local authority. The tenancy agreement described itself as a joint tenancy and the wife was listed on the agreement as a joint tenant, but the agreement was signed by the husband alone. A second lease was signed later in the same year but in the names of the husband and his mother. In 2002 the husband moved out of the property. The mother signed a further tenancy agreement in 2006 in her name alone. The mother then moved out of the property in 2010. In 2012 the local authority served the wife a notice to quit the property and began proceedings against her.

The court at first instance had dismissed the local authority's claim for possession on the basis that there had been an implied relationship of agency between the husband and his wife at the point at which he signed the first agreement but not at the point of the surrender of that tenancy. As such the subsequent agreements were void and the wife remained a joint tenant.

The Court of Appeal reversed the decision of the lower court on the basis that there was insufficient evidence that the husband was authorised to act, and did act, as the wife's agent in entering into the first tenancy agreement. An agent must have relevant authority to contract on behalf of a principal and must exercise some control over the agent in respect of the matter in question.

On the facts, the husband did not have sufficient authority to commit the wife to the legal obligations contained within the purported joint tenancy of 1988. The wife had no involvement in looking for accommodation for the family and was unaware that the husband had made a homeless application to the authority. That application had been made in the husband's name alone. The wife was unaware the local authority had offered a tenancy agreement and was not aware of the appointment to sign that agreement. Consequently, the court allowed the local authority's appeal and granted an order for possession.