When a break clause could break the bank

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Three recent English law decisions give vital guidance as to the importance of clearly drafted and correctly served break notices to avoid unnecessary costs and expenditure. Whilst not binding on the Royal Court in Jersey, these decisions will be persuasive.

Riverside Park Ltd v NHS Property Services Ltd [2016] EWHC 1313 (Ch)

Upon commencement of the lease, the tenant installed partitioning within the previously open plan office space in order to create separate offices.

When the tenant terminated the lease by exercising the break clause, they left various items in the property including large amounts of partitioning, kitchen units and floor coverings. The break clause under the lease was conditional, providing that notice served on the landlord would only be effective "if the tenant gives *vacant possession* of the premises to the landlord", which the landlord consequently argued had not been given.

The High Court found that the partitioning and other remaining tenant items in the property were chattels and not fixtures. This was on the basis that they were not affixed to the structure of the property and could be removed without damage to either the partitions or the property. Furthermore, the Court found that the partitioning consequently interfered with the landlord's right of possession.

The tenant's break notice was found to be ineffective in terminating the lease and therefore the tenant was found liable to continue all payments under the lease, including rental, for an additional five years.

Tenants must take great care to ensure they seek advice at an early stage to ensure they understand what fixtures and fittings they are required to remove in order to serve a valid break notice, where there is any conditionality.

Vanquish Properties (UK) Limited Partnership v Brook Street (UK) Limited [2016] EWHC 1508 (Ch)

The premises were let to Brook Street by the City of London, with a break clause in September 2016 requiring six months' notice. In 2016, the City of London granted a developer, Vanquish Properties (UK) Limited Partnership an overriding lease whereby they would become Brook Street's direct landlord.

When Brook Street were given notice to terminate the lease under the break clause, they argued the notice was not valid as the paperwork said that it was served on behalf of "Vanquish Properties (UK) Limited Partnership, the landlord of the property". As the limited partnership had no separate legal personality and therefore could not hold a legal estate in land, Vanquish Properties (UK) Limited Partnership could not be the landlord.

The High Court found in favour of Brook Street, agreeing that the lease could not have vested in the limited partnership. As a result, the overriding lease had never been properly granted, so the limited partnership could not have given valid notice.

Vanquish argued that the defect in the notice could be cured as a "reasonable recipient" would have understood the intention. This argument was rejected by the High Court. Vanquish had consequently lost the right to break the lease and Brook Street were able to remain as tenant.

The case demonstrates the importance of taking care when using a limited partnership structure for a property investment vehicle. In Jersey most unincorporated limited partnerships do not have separate legal personality and consequently cannot hold legal estate in their own name.

Levett-Dunn v NHS Property Services Limited [2016] EWHC 943 (Ch)

The tenant served a notice to break its lease, giving the required six months' notice and ensuring the notice was sent by recorded delivery to the address stated for the landlord in the parties clause, which was signed for at that address. The lease stated that notices were to be served in accordance with section 196 of the Law of Property Act 1925 which is a standard boilerplate clause in English commercial leases providing that notices are validly served if they are left at 'the last-known place of abode or business' in the UK of the recipient party. Notices must also be served by registered post, which has now effectively been superseded by recorded delivery, to the recipient party to such address. Furthermore, despite the landlord comprising four separate parties (being three individuals and one company), the lease provided that service of a notice on any one party comprising the 'landlord' was sufficient to constitute notice on all of them.

The landlord disputed the validity of the notice, contesting that the address of service was not the 'place of abode or business' of the current landlord as, of the three individuals, two had not been to the address of service for over a decade. Whilst the third individual continued to use the property he had transferred his interest in the freehold and the company never conducted any

business from the address of service.

The High Court found in favour of the tenant for several reasons, finding that the address of service had been the last known place of business for the landlord because:-

The Court noted that any notification of a change in address for service would have to be clear and would not constitute simply correspondence from a different address. The landlord should have clearly notified the tenant of any alternative address and as had failed to do so. Accordingly it was for the landlord to bear the consequences.

The Court ruled that the tenant had validly served a break notice on the address which the landlord provided in the lease, despite a lack of current connection to that address.

Landlords and tenants should review address as cited in leases as, if specified it will be considered suitable for the receipt of notices and may be relied upon by others without any obligation on them to check that it is still valid at a later date. Failure to do so by a landlord will risk late notification of tenants exercising the break right, losing them potential valuable time to arrange the re-letting of the premises thus minimising lost rent.

Key Considerations for landlords and tenants:

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