ISSUE 5
AUTUMN 2016

TWO SIDES,
ALL THE STORIES

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PROPERTY DISPUTES QUARTERLY UPDATE 10 16

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YOU CAN RUN BUT YOU CAN'T HIDE

A case which shows the importance of providing your tenants with an up to date address for service of notices.

In the case of *Levett-Dunn v NHS*, the court was asked to determine whether break notices served by a tenant had been validly served where they were served at an address at which none of the landlords resided. The notices had not therefore come to the attention of the landlords. The landlords argued that they had not therefore been validly served.

The tenant in this case, the NHS, served break notices on its landlords to exercise a break clause in its lease. The lease incorporated the usual statutory provision that the service of notices would be effective if served at "*the last known place of abode or business in the United Kingdom*".

The lease in this case had been granted by four landlords and all were stated in the lease to be "*of 75 Tyburn Road, Erdington, Birmingham*". The NHS tenant therefore served the break notices at that address. But in fact, none of the landlords resided there and none of the current landlords had a business connection with that address.

The issue for the court to decide was whether the address named in the lease (75 Tyburn Road) could be treated as "the last known place of abode or business in the United Kingdom" given that none of the landlords resided at that address or had any business connection with that address.

The court held that service of the notices on the landlords at 75 Tyburn Road was indeed sufficient. The court ruled that where an address for a landlord is given in a lease, a reasonable person will understand that address to be a place of abode or business, even if in fact the address is not the landlord's place of abode or business. The address stated in the lease remains an effective address for the purpose of service of notices until either the landlord nominates some other address for service or the tenant acquires actual knowledge that the stated address is not one at which the landlords can be reached.

The case illustrates the importance of both landlords and tenants providing clear addresses for the service of notices and ensuring that those designated addresses can only be replaced by other addresses notified to the other party in writing. The danger here is that if you as a landlord do not notify your tenant of your change of address, there is a risk of important notices being deemed to have been served on you even if you have not in fact seen or received those notices.

The lesson from this NHS case is that the onus is on landlords to update tenants and not for tenants to check whether an address is current. That being said, a well advised tenant should continue to take reasonable steps to establish the landlord's current address to minimise the risk of disputed service.

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INTERNATIONAL PERSPECTIVE: TRUMP LAYING A BRICK OR TWO

We have all heard about Donald Trump's bold promise. He wants to build a great wall on the U.S. border with Mexico. And nobody builds a wall better than Donald Trump does. Not only that, but he is going to get Mexico to pay for that wall. Far be it for me to cast doubt on these plans or indeed the motivations for such plans but where on earth did this madness come from? There is not enough space to speculate on this page but I can't help wondering what President George Bush was thinking when he signed the Secure Fence Act of 2006. Yes, you read that right. The Secure Fence Act. When this law was signed in, President Bush proudly stated *"This will help protect the American people. This will make our borders more secure."*

The Secure Fence Act resulted in an additional 700 miles of fencing being erected along the Mexican border. It also authorised more vehicle check points and the use of additional surveillance cameras and aerial drones. Lo and behold, a research report subsequently found that rather than decreasing the number of illegal crossings, there was strong evidence to suggest that illegal border crossers had simply found new routes into the U.S. And now we have Donald Trump proudly proclaiming that he wants to add another obstacle to this Mexican obstacle course by building a wall of precast concrete rising to 50 feet or higher. The border runs for approximately 2,000 miles and the wall will cost, it has been estimated, up to 25 billion U.S Dollars. Whatever your views on controlling immigration in that part of the world, I think many people would agree that building a wall to keep out your neighbours, and then expecting the neighbours to pay for that wall, is the political version of going *loco* in Acapulco.

SILENCE IS GOLDEN

High Court rules that trying to drown out neighbouring noise nuisance by creating your own noise is unreasonable.

In the case of *Waltham Forest LBC v Mitoo*, the High Court ruled that playing loud music to drown out the noise from local building works was not a reasonable excuse for failing to comply with a noise abatement notice issued by the local authority.

The circumstances of this case were that Mr Mitoo had been served with a noise abatement notice by the local authority for playing music at a level that caused a nuisance under the Environmental Protection Act 1990. Having been served with that notice, he continued to play loud music and, by all accounts, to make his neighbours' lives a misery.

Mr Mitoo's conduct was investigated by the local authority and the authority concluded that he had failed to comply with the noise abatement notice. He was therefore prosecuted in the Magistrates Court. Mr Mitoo pleaded not guilty and argued that he had a "reasonable excuse" because he was attempting to drown out the noise of building works being carried out in the local area. He argued that he was suffering from post-traumatic stress as the result of an accident. His carer provided evidence that supported his argument about the noise from the local building works.

The Magistrates decided that, once the issue of "reasonable excuse" had been raised by Mr Mitoo, the onus was then on the local authority to prove that, contrary to Mr Mitoo's argument, his excuse was not a reasonable excuse. Surprisingly, the local authority were unable to construct an argument to satisfy the Magistrates that blasting out loud music and creating a noisy hell on earth for neighbouring occupiers, just so that Mr Mitoo did not have to listen to the sound of local building works, was not a reasonable excuse for ignoring a noise abatement notice. Mr Mitoo was therefore found not guilty. And presumably continued to inflict his noise-induced mayhem on his neighbours.

Smarting from that defeat, and no doubt with half an eye on Mr Mitoo's sleep-starved neighbours, the local authority appealed to the High Court.

A refreshingly pragmatic approach was adopted by the High Court. The Court held that the whole purpose of statutory nuisance abatement notices is to curb nuisances. A person on whom a notice has been served is under a duty to comply with that notice. The existence of another noise is not a good reason to make more noise and therefore to cause neighbours to suffer two types of noise. The whole purpose of this statutory scheme would be perverse if it led to the multiplication of noise.

Failing to comply with an abatement notice is a criminal offence so it remains to be seen what will happen to Mr Mitoo at the end of this process. Whatever the outcome, Mr Mitoo's neighbours can now rest in peace.

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YOUR QUESTIONS ANSWERED

Q I have a tenant with a lease that has been contracted out of the Landlord & Tenant Act 1954. He has been holding over (and paying rent) for about six months now whilst discussions for a new lease have been taking place. Those discussions have now broken down and I want the tenant out of the premises. What sort of notice do I need to give?

A The tenant will be occupying the premises as a tenant at will. A tenancy at will is a tenancy that can be terminated 'at the will of the landlord', that is to say immediately and without there having to be any particular period of notice. Termination can be by written demand or it can be more informal by the landlord simply demanding the keys. Where a landlord brings a tenancy at will to an end, the tenant at will has a reasonable time to enter the property after the termination to remove his goods. In your case, you are at liberty to either demand the premises back immediately or to provide the tenant at will with a short period of notice to allow the tenant to get to grips with the logistics of moving out of the premises. In my experience, it is often better to provide a short period of notice to avoid difficulties that can arise if a tenant is hit with a demand for immediate possession.

Q I own warehouse premises which until last year had been let to a tenant on a long lease. Last year, my tenant fell into arrears and I decided to forfeit the lease by changing the locks. This happened over a year ago and I have since been carrying out repairs to the premises and I am now in a position to re-let them. I am now being told by my solicitor that there is a risk of the tenant being allowed back into the premises. What is this all about?

A Where a lease has been forfeited, the tenant is entitled to apply to the court for what is called 'relief from forfeiture'. If that relief is granted, the lease will be reinstated. It is often (mistakenly) assumed that if a Landlord gets to six months after the date of forfeiture and the tenant has not made an application for relief, the landlord is home and dry and is safe from any application for relief from forfeiture. That is not the case. The court has a very wide discretion to grant relief from forfeiture and can do so long after the forfeiture has taken place. In your case, it is certainly true to say that the tenant will have to have a fairly compelling argument for having waited twelve months to make his application for forfeiture (and the onus will certainly be on the tenant to provide some justification for such a long delay) but the reality is that there is nothing to stop your tenant from making an application for relief and, although it might be an uphill battle for the tenant, the tenant will certainly be in with a chance. One of the questions that I would be considering in your case is why the tenant has not yet made such an application and whether we have any information that might explain why, for example, the tenant has not been able to make such an application (hospitalisation, detention, some form of incapacity, etc). If there is anything particular that you know about the tenant's circumstances, you should be considering those circumstances with care before re-letting the premises.

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PROFESSIONAL IN THE HOT SEAT

In this issue, Andrew Turner caught up with Denise Ford, Managing Director of Michael Parkes Surveyors.

What sets Michael Parkes Surveyors apart from other firms in the south east, and Kent in particular?

We've been based in Kent for over 30 years now so we know the market inside and out, and we offer a range of services that can help from conception of an idea to receipt of funds in relation to all types of property... I'm not sure I'm aware of any other firms who are run by a woman, either...nor one that is run by the woman who started out as the boss's secretary. That'll teach me to tell him one day my name would be on the brass plaque on the door instead of his.

What services do Michael Parkes Surveyors offer?

We are not just surveyors, we offer town planning and Law of Property Act Receiver services (on a national basis) as well as Landlord and Tenant, Commercial Sales and Lettings, Residential Management and Letting, Block Management and Valuation services for the South East of England.

You are an experienced LPA Receiver - what does that entail?

Law of Property Act Receivers act for banks and private lenders who have secured their loans by a Legal Charge (mortgage) on a property. Under the terms of the Legal Charge the lender can appoint a Receiver to deal with a property when the terms of the mortgage are not being met - usually when repayments and interest are not being paid. Lenders can face a number of circumstances in which they do not have the capacity, legal or physical, to deal with properties. Lenders may not wish to expose themselves to the liabilities that attend a corporate body taking possession of a property directly. LPA Receivers are experts who can manage the property, deal directly with occupants, outstanding problems, insurance and repairs. Receivers collect in money to repay the debt, from rents or by selling the property. The role of the LPA Receiver is to focus on recovering the debt owed to the lender. This involves taking control of the property and, effectively, standing in the shoes of the owner. In most cases the task is then to arrange an early sale of the property in order to repay as much of the loan as possible.

Receiverships - they can't all be plain sailing. What has been your most difficult experience?

I once turned up at a property behind a bailiff, who was carrying out an eviction for me. He suddenly marched me off the property, explaining once we'd gone that the occupier had simply asked him when he answered the door "what he would like him to do with his guns". I spent 7 hours in a cold car park that day, waiting for an armed police officer. Other than that, I've had aggrieved owners turn up on my home doorstep, and I've had threats to kill. My saddest time was visiting an illegal tenant who claimed she was 16 yrs old (she was far younger). After a short while in her flat I started getting light headed and realised that the cigarette the child was smoking wasn't Silk Cut but slightly more illegal. I asked her if her family knew where she was and if she was safe, and she responded that it was her mother who had made a quick escape from the flat as I arrived, also with a "cigarette" in her hand. When she eventually vacated the flat, she left behind an awful lot of her own handwritten fiction on scraps of paper - that was mainly graphic pornography and not the kind of writing that you would want your child to see, let alone have such detailed knowledge of that she would be writing it herself, underage. It's awful to know that not everyone has the home life you would wish them to experience.

Away from the world of property, how do you switch off and unwind?

I own two Tibetan Terrier show dogs, soon to be joined by a Xoloitzuintle (Mexican Hairless) dog, and we travel all round the country most weekends competing. And yes, we show at Crufts every year.

I have to ask: Brexit - disaster or opportunity?

Gosh, that's a question. I've always considered that it's an opportunity. Even in the darkest days of the recessions, I've never felt that the United Kingdom has had an attitude of giving up and letting disaster strike. Having only recently come out of the worst recession so far, I think the mentality of not stopping still and carrying on regardless still resonates with a lot of people. So far, Brexit hasn't affected the property markets that I work in and I see no sign of it doing so.

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