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TWO SIDES,
ALL THE STORIES

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SWEET RELIEF

The court grants relief from forfeiture in a case involving a basic licence.

The case of *General Motors UK Ltd v The Manchester Ship Canal Company Ltd* concerned a licence agreement which allowed General Motors to discharge surface water into the canal for a modest annual fee of £50.

In 2013, due to what appears to have been a simple administrative error, General Motors failed to pay the licence fee. The Canal Company therefore terminated the licence.

General Motors quickly offered to pay the outstanding fee of £50 and requested reinstatement of the licence but the Canal Company played hardball and refused to reinstate the licence.

Instead, the Canal Company stated that they were prepared to negotiate the terms of a new licence. But there was a catch. The Canal Company now wanted an annual licence fee of £500,000. That sum, in their view, was the correct market rate.

Faced with an increase from £50 per annum to £500,000 per annum, General Motors applied to the Court seeking an order reinstating the licence (relief from forfeiture).

The Court has a wide discretion to grant relief from forfeiture in cases involving leases, but this has not normally extended to cases involving simple licences. Licences have typically been treated as being capable of termination in a quick and easy fashion with none of the baggage associated with leases.

However, in this case, the Court was presented with a case where a simple administrative oversight in relation to an absurdly small amount of money had potentially put the Canal Company in a position of gaining a huge financial windfall. Was it fair and proper for the Canal Company to profit so massively from a failure to pay a £50 fee?

The answer to this, in the Court's view, was *"no"*, this was not an acceptable outcome. It could not be right for a party to profit so excessively from a minor contractual transgression. Accordingly, relief was granted and the original licence was reinstated.

This, and other recent cases, demonstrates the court's increasing willingness to exercise its wide discretion to grant relief from forfeiture where it believes that it is fair to do so, and particularly where a landlord or licensor stands to receive a disproportionate windfall if relief is not granted.

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INTERNATIONAL PERSPECTIVE: COSTLY INTERFERENCE

It sounds like the start of a bad joke: a story involving two nuns, Katy Perry, and a convent. But it was no laughing matter when a Los Angeles Court last month ordered a local business woman, Mrs Hollister, to cough up compensation to Katy Perry to the tune of $5 million.

Katy Perry had been negotiating with the Catholic Church for the purchase of a former convent located in a central Los Angeles neighbourhood. Mrs Hollister got wind of this and tried to do a private deal on the side with two nuns who had, until recently, lived in the convent. The nuns had been outraged at the prospect of the convent being sold to, shock horror, Katy Perry, and Mrs Hollister was able to profit from this outrage and to convince them that they had legal title to the convent and were therefore able to sell the property to her and to ignore the true owners, the Catholic Church. Katy Perry found out about this, and the Court subsequently declared that Mrs Hollister's actions were manipulative and deceitful and that she had deliberately interfered with contractual relations between Katy Perry and the Catholic Church. A bad day for the nuns. And an even worse day for Mrs Hollister.

SHOP OR DROP

The Upper Tribunal has ruled that a landlord's failure to shop around and obtain a competitive insurance quote meant that the premium was not "reasonably incurred" and therefore not payable by the tenants.

In the case of *Cos Services Ltd v Nicholson & Willans*, a landlord was responsible for the insurance of a block of flats. The tenants were obliged to contribute to the insurance premium via the service charge.

The premium incurred by the landlord and which it sought to recover from the tenants was in excess of £12,000 per year. Meanwhile, the tenants had quietly obtained their own quotations indicating that similar insurance cover was available for 75% less than the premium charged by the landlord.

Under the Landlord & Tenant Act 1985, insurance charges may only be recovered to the extent that they are reasonably incurred by the landlord.

The tenants therefore challenged the landlord's charge.

The Tribunal ruled that, in light of other available insurance options, the landlord had failed to demonstrate that the cost of the insurance was *"reasonably incurred"* and that the tenants were not therefore liable to pay the premium charged by the landlord.

The Tribunal made it clear that when assessing reasonableness it will look at the landlord's explanation as to why it has selected a particular policy and what steps it has taken to assess the current market and the availability of other genuinely comparable cheaper options.

This case puts increasing pressure on landlords to shop around to ensure that they test the market and are able to demonstrate, if faced with a challenge by tenants, that they have acted reasonably, even if the policy ultimately obtained is not the cheapest option.

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YOUR QUESTIONS ANSWERED

Q I am involved with court proceedings and the trial is due to take place next week. I have recently come across a number of documents that are relevant to the claim, but they are damaging to my case. Do I really have to disclose these documents to the other side? It seems illogical to have to harm my own case in this way.

A The Court Rules provide that a party's duty to disclose relevant documents is an ongoing duty and the rules specifically state that if relevant documents come to a party's attention at any time during the proceedings, he must immediately notify every other party. In your case, therefore, notwithstanding the damaging nature of these documents, you are required to disclose them to the other side. Completely counterintuitive but necessary.

Q My residential property has been the subject of a number of break-ins recently. I am mightily fed up with the situation and I am therefore planning to tighten up the security around my property. My plan is to glue some broken glass to the top of the fence that surrounds my rear garden and to install some high voltage electrified wire at the front of the property which I will only turn on at night. As far as I am concerned, I am allowed to do what I like when it comes to securing my property and keeping intruders out. Is that right?

A The answer to your question is "no". The Occupiers Liability Act 1984 imposes a duty on occupiers such as yourself to take reasonable care to ensure the safety of visitors to the occupier's property. As absurd as it may sound, this duty extends not only to people who you have invited on to your property, but also to trespassers who have made their way on to your property without your permission. You have a specific duty to ensure that a trespasser does not suffer an injury by reason of any danger caused by the state of the property. In your case, if the trespasser ended up being injured on the glass or the electrified wire, you would be liable to that trespasser. You therefore need to consider other security measures that do not pose such a serious risk to the physical safety of the trespasser.

Q I am the owner of a freehold residential block which is let to an institutional social housing provider. That housing provider has granted individual sub- tenancies of the various flats within the block. No part of the block is occupied by the housing provider; the block is occupied by the sub-tenants alone. I have been told that social provider might have some protection under the Landlord and Tenant Act 1954. Is that correct?

A The Landlord and Tenant Act 1954 applies to business tenancies and provides tenants with security of tenure, that is to say the right to renew their lease at the end of their term. In your case, the tenant is operating a business and could therefore have protection under the 1954 Act because the tenancy is associated with a business purpose (the business of providing social housing). However, the 1954 Act will not apply if the tenant does not physically occupy the premises (or a part of the premises). In your case it seems that no part of the premises is occupied by the housing provider. If the block is occupied solely by the sub-tenants, the 1954 Act will not apply and the housing provider will not have security of tenure. Just check very carefully that the housing provider does not have, for example, a care taker or housing manager in occupation of the block. If that is the case, that limited occupation may suffice to bring the tenancy within the Act.

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