ISSUE 7
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TWO SIDES,
ALL THE STORIES

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PROPERTY DISPUTES
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QUARTERLY UPDATE

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WHEN DOES "OR" NOT MEAN "OR"?

A landlord's notice was ruled not to have been validly served despite the lease apparently giving the landlord two alternative addresses for service.

The case of *Grimes v The Trustees of the Essex Farmers & Union Hunt* is a case that has driven many people to despair. It concerns the service of a notice on Mr Grimes who was an agricultural tenant of farmland owned by the Trustees of the Essex Farmers & Union Hunt.

The lease stated that any notices served by either the landlord or the tenant should be served *"at the address given in the Particulars* ***or*** *such other address as has previously been notified in writing".*

The address for Mr Grimes stated in the Lease Particulars was "Glebe Way". However, he subsequently moved to "Maple Way" and he wrote to the Trustees notifying them of his new Maple Way address.

When it came to terminating the tenancy agreement, the Trustees served the notice to quit at the Glebe Way address, being the address stated in the Lease Particulars.

Mr Grimes was not happy about that and challenged the validity of the notice and argued that because he had told the Trustees of his new Maple Way address, the notice should have been served at that new address.

The Trustees, quite understandably, pointed to the fact that the lease stated that notices could be served at either the address given in the Lease Particulars or at such other address as notified by the other party. This, the Trustees said, gave them the option.

The court disagreed and ruled that the "or" should be regarded as substitutive in effect. That is to say, once Mr Grimes had notified the Trustees of his new address, that new address took the place of the previous address and the Trustees could only serve at that new address.

Many regard this as a particularly harsh decision. The word "or" surely means "or"?

But no, the court ruled that to leave the Trustees with an option to serve at an old address, when they had been told that the tenant had moved away from that address, would lead to a commercial absurdity. It would mean that a party could be validly served throughout the duration of the lease at an address which had been obsolete for many years.

The court considered that this was a matter of commercial common sense. It emphasised the need to consider the literal meaning of words alongside the context in which those words are used.

Needless to say the Trustees would not have gone wrong in this case if they had simply served the notice at both addresses as a precaution.

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INTERNATIONAL PERSPECTIVE: BROOKLYN WINS FIGHT TO PRESERVE NOTORIOUS B.I.G MURAL

A huge mural of The Notorious B.I.G on the side of a house in Brooklyn was set to be destroyed due to the owner's plans to renovate the building. The owner, Samuel Berkowitz, had originally demanded $1,250 a month to keep the mural in place but fans had not been able to come up with the money. When asked about the mural, Mr Berkowitz had stated: *"why should I keep it? I don't even see the point of the discussion. I could demolish the building if I wanted to"*. Fans had been up in arms and, as a result of a petition signed by thousands (and some negative media attention), the mural has now been officially landmarked which means that the landlord is unable to make any changes to the facade of the building without permission from the New York Landmarks Preservation Commission. It has been 20 years since his untimely death but Biggie Smalls is still causing a stir.

1954 ACT COMES UNDER ATTACK

The High Court has ruled that a landlord's development scheme, contrived for the sole purpose of defeating a tenant's security of tenure, allowed the landlord to successfully oppose the tenant's right to renew its lease.

The case of *S Franses Limited v The Cavendish Hotel (London) Limited* was decided earlier this month and has divided opinion. It is a case that dealt with the Landlord and Tenant Act 1954 and a tenant's attempt to exercise its statutory right to renew its lease.

Some have said that this case has exposed a serious flaw in the 1954 Act. Others say that what occurred in this case was perfectly above board and that the Act is alive and well.

In a nutshell, the business tenant, S Franses Limited, occupied a unit in a prestigious location in London. Its lease expired in January 2016 and it therefore served notice seeking a new lease, as it was entitled to do under the 1954 Act.

The Act allows a landlord to oppose the grant of a new tenancy if it intends to demolish or reconstruct the tenanted premises. In this case, the landlord did oppose the tenant's request for a new tenancy and provided the court with evidence that it intended to carry out substantial works to the property and that it would be impossible to do so without obtaining vacant possession.

The County Court accepted the landlord's intentions and refused the tenant's request for a new lease. The tenant appealed on the basis that the works that the landlord was proposing to carry out were of no practical or commercial use to the landlord and were simply works that the landlord had designed for the sole purpose of evicting the tenant. In other words, this was a completely contrived scheme of works that had no purpose other than to enable the landlord to satisfy the court that it needed vacant possession of the property.

The tenant argued that the 1954 Act should not be construed in such a way as to allow wealthy landlords to subvert the protection which the Act conferred on business tenants.

The High Court disagreed and dismissed the tenants appeal. The court held that the landlord's motive for carrying out the works is irrelevant. All the court is required to look at is the landlord's intention to carry out the works. If the landlord intends to carry out the works, irrespective of the reason for carrying out those works, then the provisions of the Act are satisfied.

Is this decision going to encourage wealthy landlords to come up with unrealistic and commercially unworkable development schemes so that they can get rid of unwanted tenants? Possibly. The case confirms that there is nothing to prevent a landlord from carrying out the works and then immediately reversing those works.

For many, this decision leaves a bitter taste in the mouth. The 1954 Act is all about providing business tenants with protection. Does this decision not sit a little uneasily with the purpose of the Act?

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YOUR QUESTIONS ANSWERED

Q I am about to issue a claim against someone and I do not want that person to know my home address. Am I able to give my address as "care of" my solicitors?

A The general rule is that a claimant must state on the Claim Form an address at which he resides or carries on business. The court can refuse to return papers for service unless an address is supplied. There is however a process for applying to the court for a dispensation enabling the party to use their solicitor's address as the "care of" address. Dispensations will not be granted lightly as they amount to a departure from the general principle of open justice. If a claimant's address can be ascertained by other means such as from public records, internet searches, or through the use of investigative services, seeking a dispensation is unlikely to be worthwhile. There will need to be a compelling need for a dispensation before the court will be willing to consider granting one.

Q I am a tenant of commercial premises under a full repairing lease. The landlord is saying that I am liable to rectify defects which were present before the commencement of the lease. That can't be right surely?

A The exact wording of the repairing covenants in your lease need to be looked at carefully. But generally, if the repair clause obliges you to *"keep the property in repair"*, this includes an obligation to put the property into repair even if it is in disrepair at the start of the lease. So that is your starting point and your landlord may well have a valid argument.

However, look carefully at the wording of your repairing covenants. Subtle differences in wording can significantly affect the extent of a tenant's repairing liability. Have a think about the nature of the disrepair as well. Is what you are being asked to do an improvement rather than a repair? Does the work necessitate rebuilding? If so, does the wording of the repair clause extend to that rebuilding work? Also, consider the age and nature of the property at the date of the grant of the lease. This can have a limiting effect on a tenant's repairing obligations. Bear in mind too that there can be a distinction between a defect and disrepair. If a defect has not caused an issue of disrepair, then a tenant's repairing obligation will not be triggered as there is nothing to repair.

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PROFESSIONAL IN THE HOT SEAT

In this issue, Andrew Turner caught up with Lee Hibbert, Chairman of ER Systems Global. ER Systems Global is an established and accredited organisation with a proven track record in Ambulance Service provision, Vocational Education and Training, Organisational, Quality and Resilience Management Solutions.

Tell me, in a nutshell, about the key services provided by ER Systems Global.

We have 4 key services:

***Solve** - we co-create solutions for our clients' needs in quality and risk management, measuring an organisation against international standards.*

***Educate** - we create accredited blending learning programs for all levels involved in the changes our clients' solutions create.*

***Resource** - we work with our clients to develop their own capability and fill any knowledge gap.*

***Support** - we look to create a long term relationship through our trust and excellence program*

When and how did the business first get off the ground?

ER Systems Global has evolved from a private ambulance provider operating with the public and events. It is made up of 5 companies through a number of acquisitions and start ups to give our clients end to end quality and risk management solutions. We created the ACE model to measure and enhance our clients' resilience. The companies included within ER Systems are:

***TTC Ltd** are an accredited education and training company*

***ER Systems Ltd** is a CQC accredited private ambulance company*

***Chloe Care Ltd** is a care in the community company*

***Well Trained Staff (WTS) Ltd** is a recruitment company*

***NORMS** is a software platform company*

What particular parts of the business are undergoing healthy growth at the moment?

Compliance and ISO certification.

Since the change in legislation on Directors' legal responsibility and increase in convictions, sentencing and fines on all sizes of business, organisational risk management is now critical, not desirable. Poor strategic risk perception at Directors level continues to be the challenge, in understanding that prevention is a lot cheaper than a cure. We see this in SMEs in every sector at every level, which provides us with many opportunities.

Our job is to change the perception and reduce the impact of any change that could impact on an organisation's objectives.

I have great respect for companies that actively support former armed forces personnel. How is your company involved with that commitment?

All 3 Directors served together in the Armed Forces, myself and John Butterfield actually joined up together on 27th July 1982. All the people in the core team (22) are part of the Armed Forces Family, aged from 16 to 65. Each have their own story and challenges in life. We pride ourselves on giving people a hand up, investing time and our experience to rebuild their confidence and future. Some of these are very touching - loss of child, flash backs of loss of friends, loss of confidence but, with a bit of direction, a bit of TLC and a couple of beers, we create a vision and set some objectives, do some mentoring and gain immense satisfaction watching people grow.

We have created specific business models and training, such as the Military Medics, Combat chefs, and Troop 4 teachers where we are the transition of military talent into the commercial arena.

Finally, I have to ask, if you were to invite three celebrity guests, past or current, fictional or real, to accompany you on an all-night pub lock-in with a free bar, who would you invite?

Oliver Reed - he would be the only one that would last the night and make themes of the free bar and naked wrestling!

WO Steve Collins - who was a celebrity (Forces Rugby legend) in his own right, who we sadly lost to cancer at 44. Only because I think Oliver Reed would need a singing and drinking partner and Stevie is your man! It would also mean that I wouldn't get dragged into the naked wrestling as Steve would be straight in!

Raquel Welch - she is my mum's favourite actress, the others would have someone to show off to and I would have somebody to dance with!

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