



In this Issue

- Ensure sales by Charities comply with formalities
- The Fragrance Shop fails in its claim for security of tenure
- What did "detailed planning permission" mean in an Overage Agreement?
- Had the developer used "reasonable endeavours"?

Ensure sales by Charities comply with formalities



Sunita Punj
Senior Solicitor

If a charity is selling a property there are various legal formalities that it must comply with in order that that sale cannot be challenged. The sale contract needs to confirm that it has complied with the provisions of the Charities Act 2011 and the trustees of the charity must have advertised the property (or obtained advice that this is not needed) and obtained a valuation to show that the terms of the disposition were the best reasonably obtainable.

In a recent case, a charity contracted to sell a property, then rescinded the contract when the buyer failed to complete and sought a judgment that the contract had been validly rescinded and for the balance of the deposit. The buyer argued that as the Charity had not complied with the Charities Act formalities, the contract was unenforceable.

The court held that as the necessary Charities Act declaration was contained in the draft transfer (which was annexed to the contract) this was sufficient to satisfy the requirement. However, although failure to advertise in itself would not necessarily mean the trustees had not complied with the requirements of the Act the trustees did need to demonstrate how and why they were satisfied that the terms

of the sale were the best that could be reasonably obtained and they had not done so in this case. Accordingly, the application was refused.

This case demonstrates the need for Charities to comply with the requirements of the Charities Act when disposing of property.

For further information please contact Sunita Punj on 01908 247010 or [click here](#) to email Sunita.

The Fragrance Shop fails in its claim for security of tenure



Ceri Riddell
Senior Associate

The Fragrance Shop entered into a number of leases which purported to be outside of the security of tenure provisions of the Landlord and Tenant Act 1954 ("the 1954 Act"). At the expiry of those leases the various landlords sought to recover possession of the premises in order to let them to a competitor. The Fragrance Shop claimed that the contracting out procedure required by the 1954 Act had not been correctly followed and accordingly they were entitled to security of tenure.

The statutory contracting out procedure requires that, before completion of a lease, a landlord must serve a warning notice on a tenant explaining the rights they are giving up and for a tenant to acknowledge (usually by way of swearing a statutory declaration) that notice and state that they are aware of the consequences of contracting out. The tenant's declaration also requires the term commencement date of the lease to be inserted.

The tenant claimed that the warning notices and declarations were invalid as the landlord had served the warning notices on the tenant's solicitors (not the tenant themselves), as the statutory declarations had been made by a senior employee (not a company director) and finally as the statutory declarations did not state a fixed date for commencement of the lease.

The Court took a robust approach to all of the tenant's arguments and held that all the leases were validly contracted out. The case will be a relief to many landlords who have for many years routinely adopted similar procedures when contracting out leases.

For further information contact Ceri Riddell on 01223 532753 or [click here](#) to email Ceri.

What did "detailed planning permission" mean in an Overage Agreement?



Stuart Simoes
Partner

An overage agreement provided that overage would be paid on the grant of "Planning Permission". Planning Permission was in turn defined as "any detailed planning permission which grants planning permission for the construction of Units". Outline planning permission was granted with various matters reserved, when those reserved matters were approved the landowner argued that the trigger condition had been satisfied and the overage was payable. The developer argued that the overage agreement required detailed planning permission; there was no detailed planning permission and therefore no trigger event had taken place.

"Outline planning permission" is defined under the legislation but "detailed planning permission" is not. The judge held that the approval of the reserved matters pursuant to the outline permission did satisfy the condition and accordingly overage was payable.

This case illustrates how precise parties need to be to ensure absolute clarity in overage clauses and other legal agreements. For further advice and assistance please contact Stuart Simoes on 0207 400 6574 or [click here](#) to email Stuart.

Had the developer used "reasonable endeavours"?



Amanda O'Mahony
Senior Solicitor

The Court of Appeal recently reviewed an agreement where the developer was obliged to use "reasonable endeavours" to resolve matters with third parties prior to the longstop date. Matters had not been resolved within the 10 year period, so an "Acceptable Planning Permission" had not been obtained and therefore the developer argued that an overage payment of £1.4 million was not triggered. The Court of Appeal considered whether the developer had used "reasonable endeavours" to resolve matters.

The developer argued that in using "reasonable endeavours" it was entitled to have regard to its own profitability and its ability to procure funding.

The Court held that the structure of the interplay of the contracts, including the conditionality that one contract had on another had created the difficulty in procuring funding. This structure was of the developers own making and therefore, the constraints it had created on obtaining funding was self-imposed. The developer was in breach of its obligation to use "reasonable endeavours" and was ordered to pay a sum equivalent to the overage amount plus interest.

When satisfaction of a condition is within the control of one party, in the event of a dispute, the Court will look closely at how parties perform in order to satisfy the obligation to use "reasonable endeavours" or to comply "as soon as reasonably practicable".

For further information contact Amanda O'Mahony on 01604 463115 or [click here](#) to email Amanda.



This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a solicitor in the Real Estate Team at Hewitsons in respect of any information contained in this bulletin that affects any matter with which you may be concerned.

Hewitsons offers a full real estate service which includes expertise in property acquisition and disposal, planning, construction, environmental issues, development and property management. This Bulletin will help to keep those involved in property up to date with the latest developments.

Hewitsons LLP is authorised and regulated by the Solicitors Regulation Authority. While the articles and opinions expressed in this publication are summations of current general legal matters the firm can take no responsibility for their application to specific situations in which specialist advice is required.

Hewitsons LLP is a limited liability partnership. Hewitsons LLP Reg Office: Shakespeare House, 42 Newmarket Rd, Cambridge, CB5 8EP.
Reg No: OC334689
