



SUMMER 2009

IN BRIEF

SDLT – LEST WE FORGET

Tenants who undertook leases after 1 December 2003 which have a 'turnover rent' clause or which have had a rent review are reminded that it may be necessary for them to submit a new Stamp Duty Land Tax return and the result may be additional tax to pay or a refund of tax.

COMMUNAL AND INACCESSIBLE AREAS NOT DWELLINGS

HM Revenue and Customs have now issued guidance to developers of multiple-occupancy dwellings such as halls of residence. Whilst they now accept that these constitute 'dwelling houses', any areas to which the residents do not have access and communal areas (such as shared kitchens, bathrooms and stairwells) do not qualify, which has adverse tax implications for such developments

A guide to commercial property law from



WHISKERS LLP
SOLICITORS & NOTARIES

SERVICE CHARGES – WORDING CRITICAL

Disputes between landlords and tenants over what is and what is not proper to include in the service charges paid by the tenants are commonplace. As in all instances, the wording of the tenancy agreement is crucial, as a recent case illustrates.

It involved leading high street retailer Boots and the charges made by the landlord of Manchester's Trafford Centre.

The landlord had laid on various entertainments and attractions in the Centre and sought to recoup the cost of these from its tenants. In addition, the landlord provided a 'Sky Wall', which gave information about the Centre and on which the tenants could advertise directly for a fee. The advertising revenue from the Sky

Wall was set against the service charge levied on the tenants generally.

Boots argued that these expenses constituted 'promotion'. This was significant because under the service charge agreement, half of the expense of promotion was to be borne by the landlord and the charge for promotion was also limited to 10 per cent of the total service charge.

The definition of promotion included the phrase '...advertising and other forms of

promotion...intended to bring additional custom to the Centre...' The court ruled that this meant that promotion had to be intended to be a form of promotion for the Centre and in addition had to be intended to bring additional custom to it. Merely being a benefit or service to the Centre was not enough to qualify.



In the court's view, the attractions were not a promotion of the Centre and therefore their entire cost was properly part of the service charge to tenants. The Sky Wall, however, was in part a form of promotion that was intended to bring additional business to the Centre. So, to that extent, its use constituted promotion and the cost was in part to be borne by the landlord.

We can help you negotiate all aspects of service charge agreements.

Commercial Property **ACT NOW**

WHAT YOU DO MATTERS

In contract law, if you behave in accordance with a contract, the court may conclude that a contract exists, even if it has not been signed. In a recent case, a subcontractor was sued for causing delay to a building project where the (unsigned) contract had a clause requiring that the contractor be compensated should this occur.

The subcontractor argued that there was no contract even though there had been exchanges of correspondence setting out terms etc. The court ruled, however, that the correspondence showed that contractual relations had been

created between the contractor and subcontractor and the fact that the subcontractor had commenced work was further support of that conclusion.

If you need to start work on a contract before it is finalised, contact us: we can help you to protect your position while negotiations are ongoing and to ensure that your legal risks are controlled.



FAILURE TO RESERVE RIGHTS MEANS LANDLORD'S PLANS STYMIED

A landlord, who wished to add an extra floor to maisonettes it owned, recently came unstuck because the drafting of the leases for the maisonettes was insufficiently precise.

The landlord's attempt to develop the property was opposed by the top-floor tenant. He argued that the roof space above his flat (to which he had no access) was part of the premises demised to him under the lease. The court agreed, despite the fact that there was a landlord's obligation to repair the roof in the terms of the lease. The lease referred to the roof and walls of the premises and, furthermore, skylights in the roof were clearly integral to the design of the tenant's flat.

When negotiating leases or contracts it is important to think ahead to make sure that any future rights required are preserved as well as those needed presently.

Contact us for assistance in the negotiation of legal agreements and the preparation of all necessary documents.

IN BRIEF



OPTIONS – CAREFUL WITH YOUR DRAFTING

Failure to put a 'long stop' clause in a six-month option agreement proved unfortunate for a landowner recently. The option holder put its planning application (on which the option depended) in abeyance for more than a year before exercising the option. The court ruled that the option was still valid.



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