Property Litigation Update

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Speakers and topics

Eimhear Collins
Partner, Dispute Resolution
Topic – Sshhh!! - Bang Bang

Peter Johnston
Partner, Dispute Resolution
Topic – Tenant’s Entitlement to a new Tenancy

Chaired by Michael Doran
Sshhh!! – Bang Bang!!

Eimear Collins
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Landlord and Tenant

Competing Rights
Landlord’s right to build / develop vs tenant’s right to quiet enjoyment
Why of interest?

Recovering economy.

Increasing number of cases being taken by tenants to have works stopped in both UK and in Ireland. Starting to see a shift away from recession property litigation back to mainstream property litigation.

3 recent UK decisions.
Always review express lease terms.

Most commercial leases will expressly grant quiet enjoyment to the tenant whilst also reserving the right to the landlord to carry out repairs / works to leased premises or adjoining premises. Considered in Timothy Taylor case.
To imply or not to imply

What if there is no express provision prohibiting building works by landlord – will the court imply a “no build” term?

Considered in *Iceland Foods vs Aldi* [2016].
To imply or not to imply

Iceland Foods case - Didn't imply such a term. The High Court held it was not the act of building per se which was actionable. Rather it was the specific act complained of by the tenant which may be actionable.
Express conflicting rights

Considered in detail by UK High Court in recent decision of *Timothy Taylor vs Mayfair* [2016].

Full right and liberty at any time to alter the height of the building, rebuild, erect new buildings in such manner as the landlord sees fit even if doing so may obstruct, affect or interfere with the amenity of or access to the Premises… and even if it materially affects the Premises or its use or enjoyment.

Right to temporarily erect scaffolding for any purpose connected to the Buildings/Premises provided it does not materially adversely restrict access to or the use and enjoyment of the Premises. And the Landlord agrees to use all reasonable endeavours to minimise the time the scaffolding is erected.
Express conflicting rights

Landlord had covenanted to:

“permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord….”
Where a lease contains both a covenant for quiet enjoyment and an obligation or a right on the landlord to carry out the works/repairs, neither provision trumps the other – on the contrary they have to be made fit together.
Practical considerations

Make tenant’s aware of potential works at time of entering into lease.

Incorporate a widely drafted right to carry out works / repairs / build / develop.

Consult with tenant at earliest opportunity in respect of specific works. Plans at tender.

Timetable works – have quiet times and noisy times.

Schedule frequent meetings with tenant.
Expressly instruct contractors to have regard to tenant’s use and enjoyment of the leased premises.

Consider scaffolding options.

Consider offering compensation for the period of the works / development.

Keep record of noise levels / disruption to tenant.
Residential context

Another recent decision in UK county court *Francia Properties vs Aristou* [2016 – appeal] considered if the transfer of the management functions displaced the landlord’s right to build.
Takeaways

Tenant’s right to quiet enjoyment can prevent landlord being able to carry out any works.

Even if landlord has expressly reserved rights to build / develop / repair steps must be taken to minimise disruption to the tenant.

Ignore the tenant at your peril!

MHC is always just a phone call away!!
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Tenant’s Entitlement to a New Tenancy

Peter Johnston
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Tenant’s Entitlement to a New Tenancy

- 5 factors that must be present for the right to arise
- Procedure for claiming a new tenancy
- Terms of new tenancy
- Residential tenancies
5 Factors

1. Property must be a “tenement”
2. Tenant must occupy under a tenancy
3. One of the 3 equities must be present
4. Property must be not be an excluded property
5. None of restrictions set out in section 17 of the Act are present.
Factor 1 - Tenement

….land covered wholly or partly by buildings or a defined portion of a building…..

… if the land is only partly covered by a building, the portion not covered is subsidiary and ancillary to the buildings….
Factors 2 & 3

- In occupation under a valid lease

- One of three “equities” must be present
  - Long Occupation Equity
  - Improvement Equity
  - Business Equity
“….the tenement was, during the whole of the period of 5 years ending at that time, continuously in the occupation of the person who was the tenant immediately before the time or his predecessors in title and bona fide used wholly or partly for the purpose of carrying on a business…..”
Factor 4 - Excluded Property

- Local Authority Premises
- Where the State is the landlord
- Custom House Dock Area
**Factor 5 - Restrictions**

- By ejectment for non payment of rent
- By the landlord for breach of covenant by the tenant
- By the tenant by surrender or otherwise
- By Notice to Quit for “*good and sufficient reason*”
- Otherwise and by Notice to Quit and the landlord refused for “*good and sufficient reason*”
- Where the tenant has signed a valid renunciation of his rights to claim a new tenancy
Factor 5 – Restrictions (conti)

• The landlord intends or has agreed to pull down and reconstruct the building or part of the building including the tenement

• The landlord requires vacant possession to carry out a scheme of development and has planning permission to carry it out

• The landlord is a Planning Authority and the area is an “obsolete area”

• If the landlord is a Planning Authority and will require possession within 5 years under compulsory purchase

• If, for any reason, the new tenancy would be inconsistent with good estate management

• The landlord, being the National Asset Management Agency, will require possession, within 5 years of the termination of the existing tenancy for any purpose specified under the National Assets Management Agency Act 2009
Next Steps

- Claim entitlement
- New tenancy – on what terms?
- Rent & Non rent terms
Residential Tenancies

- Part 4 Rights
- Fixed Term Tenancies
- Active Steps
Takeaways

- Take active steps to deal with non-performing tenants
- Contracting Out
- Can’t contract out of Part 4 Rights
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Q&A
Thank you

For any queries on upcoming events, please contact events@mhc.ie

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