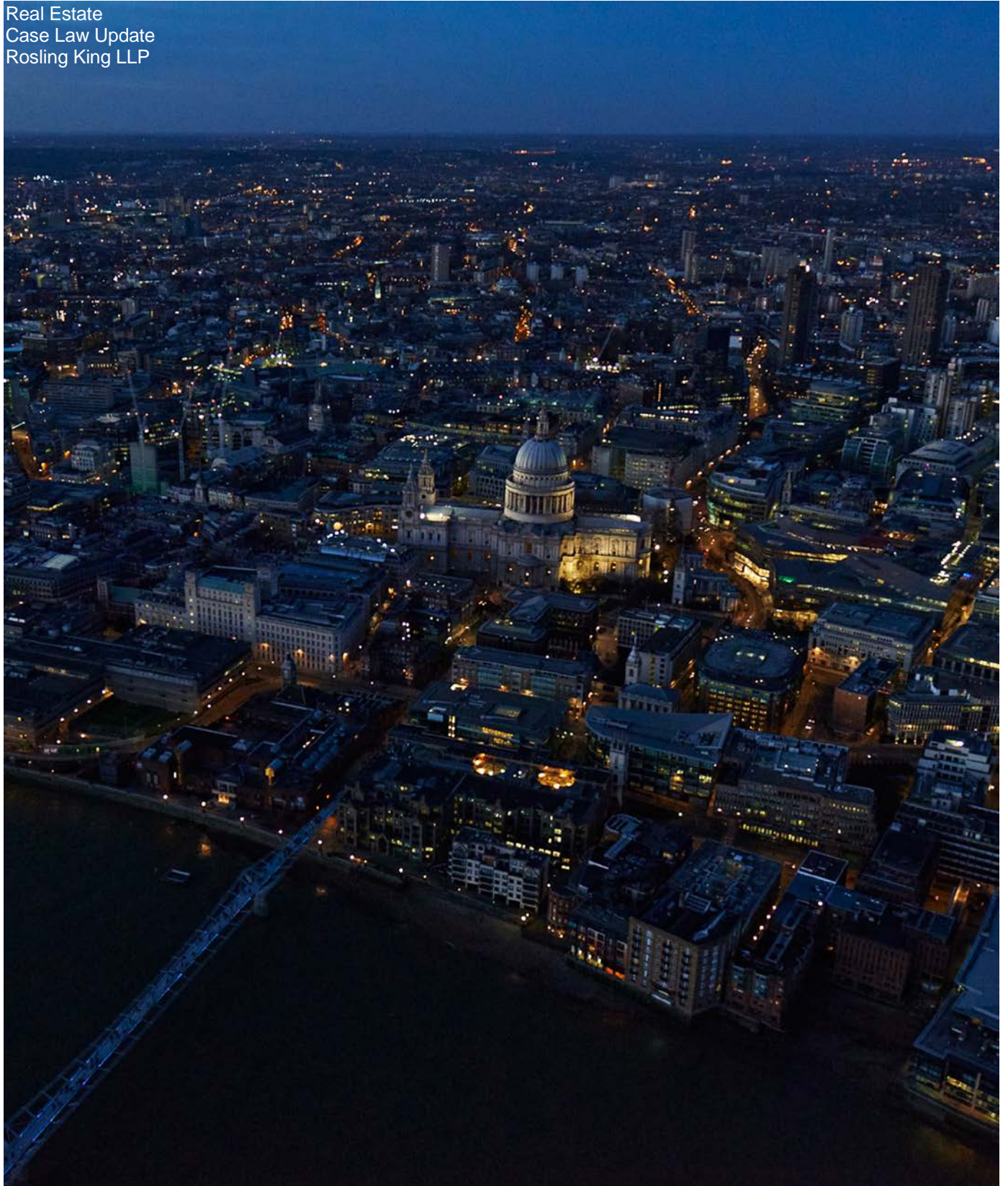


Real Estate
Case Law Update
Rosling King LLP



The High Court has considered whether the title to a freehold property could be re-vested in a company restored to the register of companies where the Crown had disclaimed its interest whilst the company was dissolved.

Background

Fivestar Properties Ltd (the “Company”) was a property development company. In August 2006, West Bromwich Commercial Ltd (the “Lender”) made available to the Company a loan facility secured by the Company by way of legal charge over a freehold commercial property in Croydon (the “Property”) and further by way of a floating charge over its assets and undertaking. The Company defaulted to the Lender and Law of Property Act 1925 receivers (the “Receivers”) were appointed on 9 July 2011. The Receivers discovered that part of the rent due from the tenant in occupation of the Property had been paid to another company. On the Receivers’ recommendation, the Lender appointed administrators pursuant to Schedule B1 to the Insolvency Act 1986 (the “Administrators”).

After realising certain sums in favour of the Company’s creditors, the Administrators concluded the administration and gave notice to dissolve the Company. Although the Company’s continued ownership of the Property was recognised by the Administrators, no steps were taken to sell the Property. On dissolution, the Property vested in the Crown, *bona vacantia*.

The tenant who remained in occupation of the Property served a statutory request on the Crown to renew its lease. In response, the Treasury Solicitor served notice on behalf of the Crown disclaiming the Property. The effect of the Crown’s disclaimer was that the Property was deemed not to have vested in the Crown. The Crown’s disclaimer did not, however, have the effect of extinguishing the Crown’s ultimate right to the Property, simply the Crown’s title to it.

The Application

The Lender applied for the Company to be restored to the register of companies and placed into liquidation immediately thereafter. Additionally, the Lender applied for an order vesting the Property with the restored Company, notwithstanding its earlier dissolution and the disclaimer of the Property by the Crown.

The Decision

The High Court recognised the general effect of restoration would be that the Company is retrospectively deemed to have continued in existence as if it had not been dissolved, meaning the Property would never have vested in the Crown *bona vacantia*. The High Court considered previous case law which had established that a disclaimer by the Crown did not constitute a disposition of a leasehold interest such that upon restoration of the tenant company, the leasehold interest would be revived (*Allied Dunbar Assurance plc v Fowle and others [1994] Bcc 422*). The High Court found there to be no reason to regard a disclaimer of a freehold interest as operating differently from that of a leasehold interest. Accordingly, it was held that the Crown’s disclaimer of the Property did not amount to a disposition and that the restoration of the Company meant that the Property was “*retrospectively re-created and re-vested in the Company in all respects as if it had never been dissolved and as if the*

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[Property] had never been disclaimed". It was considered just to arrive at this decision in circumstances where the disclaimer of the Property was the Crown's choice and the Crown had the option to dispose of the Property for value.

In reaching its decision, the High Court questioned why the Lender had made the application it had, noting that several alternatives would have been available. Amongst other possibilities, it was noted that the Administrators could have moved the Company into liquidation rather than directly into dissolution. Alternatively, the Lender could have exercised its power of sale (which would have survived the Crown's disclaimer) or made an application for a vesting order under section 1017 of the Companies Act 2006.

Commentary

The decision of the High Court serves as a useful reminder of the approach that the courts are likely to adopt where the ownership of disclaimed property is called into question following the restoration of a company. The decision helpfully also clarifies the alternatives to restoration which would be available to a lender looking to realise security from a borrower that has been dissolved and/or property which has been disclaimed.

For further information, please contact [Ann Ebberson](#) or the Partner with whom you usually deal.