

Real Estate
Case Law Update
Rosling King LLP



Background

Sackville UK Property Select II (the “**Landlord**”) had granted a 10 year commercial Lease to Robertson Taylor Insurance Brokers Ltd (“**Robertson**”) at an annual rent of £219,575.03. The break option allowed the tenant to terminate the Lease on 14 March 2018 by giving the Landlord not less than nine months prior written notice.

Following an acquisition of Robertson’s business by Integro Insurance Brokers (“**Integro**”), Robertson applied for and was granted a Licence to Assign the Lease by the Landlord to Integro. The Licence to Assign contained a covenant for Integro to register the assignment at the Land Registry within 10 working days of the completion of the assignment. Robertson assigned the Lease to Integro on 29 March 2017.

On 2 May 2017, Integro served formal notice on the Landlord purporting to exercise the break option as tenants under the Lease. Integro did not comply with its obligation to register the assignment with the Land Registry within 10 working days becoming registered with effect from 7 July 2017. The Landlord claimed that the break notice was invalid because it had been served by someone who at the time was not a tenant. The Lease would therefore continue to its contractual expiry.

Who should serve the break notice?

Landlord and Tenant Act (1954) (“**LTA**”) & Land Registration Act 2002 (“**LRA**”)

The Landlord said that had to be Robertson because a disposition of a registered estate does not operate at law until the disposition is completed by registration, section 27(1) LRA. The Lease was held on trust for Integro.

Integro argued under the LTA the definition of a ‘tenant’ includes equitable assignees, hence they will have the benefit and burden of covenants within the Lease. Consequently they were entitled to exercise the notice under the Lease, irrespective of a lack of registration.

The judge agreed with Integro in that they had the benefit and burden of covenants within the Lease on formal assignment as an equitable assignee. However this did not vary the definitions within the Lease. A tenant was only defined to include “successors in title” however at the point service of the Licence to Assign, Integro was not this. The lease remained vested in Robertson, who held the lease on trust for Integro.

Under the LRA a person who is entitled to be a registered proprietor is entitled to make a disposition of any kind. Integro argued that the serving of the notice was a disposition under the LRA. The judge was not convinced that this was a disposition permitted by the act and rejected this argument.

Accordingly the judge ruled that the break notice should have been served by Robertson

Who served the break notice?

This was a matter of fact. EC3 Legal, solicitors for Robertson and Integro, said the Landlord was aware they acted for both parties and therefore had authority to serve the notice on behalf of whichever party was suitable. In effect, Integro argued that Robertson was an unidentified principal of EC3 Legal or an undisclosed principal of Integro. For this to be possible the judge concluded that there must have been actual intention to serve on behalf of Robertson and, on the facts, EC3 Legal didn't have this intention.

Furthermore even if the actual intention was to serve on behalf of Robertson, it would only be valid if a reasonable person understood, on receipt of the notice, that when the notice said Integro, it in fact, meant to say Robertson. In the circumstances, the judge found it most unlikely that the Landlord would know that.

Comment

The gap between the date of the transfer and date of registration can cause problems especially when notices have been to be served by Landlord or Tenant. Up until the date of registration, although the equitable assignee will have the benefit and burden of the covenants within the lease, it is the legal tenant who has the power under the Lease. They will hold this on trust for an equitable assignee who will only have a beneficial interest.

The case is a reminder of some important practical points to ensure that the problems seen in this instance can be easily avoided. When dealing with a lease assignment, careful consideration is required to identify the correct parties to serve and receive notices and appropriate drafting is required to mitigate the difficulties arising from delayed registration. Applications to register should be submitted as soon as possible after completion and the progress of the application monitored. When serving a notice, check the definitions within the lease to confirm the correct parties are listed.

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