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CITATION

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LONG LEASEHOLDERS - YOU MAY NEED LANDLORD'S CONSENT FOR ALTERATIONS!

Many long leaseholders believe that their legal position is almost identical to that of a freeholder. However, in a case that showed how mistaken that view is, a maisonette dweller who failed to obtain her landlord's consent before making a hole in an exterior wall was found to have breached the terms of her lease.

The woman held a 999-year lease in respect of the upstairs flat in a Victorian house. Her landlord, who owned the property's freehold, occupied the flat beneath her. There was a history of disputes between them in respect of service charges and other matters. In particular, the landlord complained after a plumber knocked a hole in the wall in order to fit the tenant's toilet with a new waste pipe.

Following lengthy proceedings, the Upper Tribunal (UT) granted the landlord a declaration under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the tenant had breached a covenant in her lease. That covenant forbade her from altering, cutting or maiming any of the maisonette's exterior walls without first obtaining the landlord's written consent to the works.

That decision opened the way for the landlord to seek forfeiture of the tenant's lease under Section 146(1) of the Law of Property Act 1925. However, the UT noted that, if there were to be further proceedings, the nature and seriousness of the breach should be viewed in context. Had the tenant asked permission to make the hole, it was highly probable that the landlord could not reasonably have refused her request.

[GET IN TOUCH]

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[COMMERCIAL PROPERTY]

ENQUIRIES BEFORE CONTRACT - WHY YOUR ANSWERS MUST BE ACCURATE!

Every landlord or property vendor should be aware that the consequences of failing to accurately answer enquiries before contract can be severe. In a Court of Appeal case, (First Tower Trustees Limited & Intertrust Trustees Limited v CDS Superstores International Limited), a landlord who failed to disclose that commercial premises were contaminated by asbestos ended up with a seven-figure compensation bill.

The case concerned the lease of three warehouse units and an agreement to lease a fourth. In enquiries before contract, the tenant asked if the landlord was aware of any hazardous materials, including asbestos, affecting the premises. The latter replied with the all-too-familiar words, 'the buyer must satisfy itself.' It also replied that it had not received notice of any environmental problems affecting the premises, but reiterated that the tenant must satisfy itself.

Prior to making those replies, the landlord's agents had received an email from a health and safety firm that had been instructed to inspect the premises. The email reported that the units were so contaminated with asbestos that they were dangerous to enter. In ignorance of the email, the tenant entered into the relevant lease and agreement. After the tenant launched proceedings, a judge found the landlord liable to pay £1.4 million in damages under the Misrepresentation Act 1967.

In dismissing the landlord's challenge to that ruling, the Court agreed with the judge that the failure to disclose the asbestos contamination amounted to a clear misrepresentation and that the tenant was entitled to be compensated for the costs of remedial work and of arranging alternative premises during the period of almost nine months that it took to complete them.

The lease contained a clause by which the tenant acknowledged that it had not entered into the agreement in reliance on any statement or representation made by or on behalf of the landlord. However, the judge had rightly found that that provision amounted to an attempt to exclude liability for misrepresentation and was thus unreasonable, within the meaning of the Unfair Contract Terms Act 1977.

[GET IN TOUCH]

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OWENS V OWENS - THE IMPACT ON DIVORCE PROCEEDINGS AS WE KNOW THEM

On 6 May 2015 Mrs Owens filed a petition for divorce from her husband of 39 years citing his unreasonable behaviour as the reason for the irretrievable breakdown of the marriage.

Mr Owens opted to defend the divorce and claimed the examples of behaviour provided by Mrs Owens in her petition were not sufficient to enable the court to grant her a divorce decree. Mr Owens argued the examples were not sufficient proof that she could not reasonably be expected to live with him.

The Judge hearing the case agreed with Mr Owens. He stated the allegations of alleged unreasonable behaviour were at best "flimsy" and that Mrs Owens has "exaggerated the context and seriousness of the allegations". Indeed the Judge remarked that the examples of Mr Owens' behaviour were "minor altercations of a kind to be expected in a marriage". Mrs Owens had failed to convince the Court that test for unreasonable behaviour had been met.

Mrs Owens sought to challenge this decision and the case came before the Supreme Court earlier this year. Judgment was delivered on 25 July 2018 whereupon the Supreme Court found that they had no grounds to overturn the original decision in this case. Mrs Owens appeal was dismissed and she was denied the divorce decree she sought.

Impact of the decision

Going forwards it is likely that the Owens judgment will have an effect on the divorce process as we know it.

Firstly, divorce petitions and the drafting of the same will be subject to much greater scrutiny by the courts. Petitioners will be expected to draft fuller and more colourful petitions going forwards. Furthermore it will be expected that petitions will not be able to be as neutrally drafted as they once were. This is contrary to the Law Society's advice on the subject. The above is likely to cause further delay and run up further costs causing frustration on the part of couples who are both in agreement that their marriage has broken down.

Secondly, if no divorce is granted, financial remedy proceedings will be unable to commence. This means for parties less wealthy than Mr and Mrs Owens there could be far reaching and extremely adverse consequences such as being unable to sell the matrimonial home or obtain maintenance or pension sharing orders.

The Judgment in Owens has also highlighted the need for the current law to be reformed. Until such a time as this reform is agreed by Parliament, there is a worry among many within the legal profession that examples of behaviour and the impact of the same cited in petitions will have to be exaggerated or amplified to ensure they meet the court's standard. This could cause further animosity between spouses at an already stressful time. Furthermore if it is held that the spouse petitioning for divorce has failed to convince the court of their spouse's unreasonable behaviour, there is a real risk that the couple will be forced to remain married for a further five years, until one spouse can petition for divorce on the basis of 5 years separation.

[GET IN TOUCH]

For more information about divorce or any other issues relating to family law please contact

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[CORPORATE]

KEY CHANGES TO ENTREPRENEURS' RELIEF IN 2018 BUDGET

In October 2018's Budget, the Chancellor announced two key changes that will have a significant impact on the way that entrepreneurs' relief will benefit shareholders.

In very broad terms, entrepreneurs' relief can currently reduce the rate of capital gains tax from 20% to 10% on up to £10 million of capital gains arising on the sale of shares in a trading company where the seller:

- is a director or employee of a trading company; and
- has held at least 5% of the ordinary share capital and voting rights in the company for the period of 12 months before the shares are sold.

The first change, which was effective from 29 October 2018, is that the seller must also be entitled to at least 5% of the distributable profits and net assets of a company to claim entrepreneurs' relief. The aim of the change was to address a perceived abuse of the rules where a shareholder could meet the existing 5% holding requirements without being entitled to 5% of the value of the shares in the company on an exit event.

Whilst this change should not affect shareholders in companies with a single class of ordinary shares with straightforward articles of association, any shareholders in companies with anything but a such a simple share structure should seek advice on the effect of the changes to their right to claim what is and has been a very important relief.

The second change, which will become effective from 6 April 2019, is that the shares must be held by the shareholder for 24 months (rather than the current 12 month period) to qualify for the relief. This will affect existing shareholders but, presumably, it will also affect holders of EMI (Enterprise Management Incentive) options over shares who can also currently qualify for entrepreneurs' relief if they sell their shares at least one year after their option is granted.

[GET IN TOUCH]

If you have any queries on how these changes could affect you or shareholders of your company, please contact

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PARAMEDIC'S MISDIAGNOSIS RESULTS IN £3.5 MILLION SETTLEMENT

Ambulance personnel can make mistakes in emergency situations but it is only right that damages are paid if they are negligent. In one case a woman, who was left badly disabled after a life-threatening brain inflammation was misdiagnosed by a paramedic, won a seven-figure compensation package from the NHS.

The woman's family thought that she might be having a stroke when they called an ambulance. She was in fact suffering from encephalitis, which the paramedic wrongly diagnosed as a urinary tract infection. That lulled the woman and her family into a false sense of security and it was only four or five days later that a correct diagnosis was made and she received appropriate treatment. That came too late to save her from serious brain damage and she has since been wholly dependent on the care and supervision of others, particularly her husband. She is very restless and demanding, has no short-term memory and has a tendency to talk inappropriately to strangers, making her particularly vulnerable.

The ambulance trust that employed the paramedic admitted liability and, following negotiations with the woman's lawyers, agreed to a final settlement of her case. She will receive an £875,000 lump sum, plus index-linked and tax-free annual payments to cover the costs of her care for life. The total value of the settlement, which was approved by the High Court, was just short of £3.5 million.

[GET IN TOUCH]

For more information about medical negligence or any other type of legal dispute please contact

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[EMPLOYMENT]

PROTECT YOUR BUSINESS WITH RESTRICTIVE COVENANTS

Every sensible business owner is aware that today's trusted employee may become tomorrow's competitor. However, as a recent High Court ruling has shown, with the right legal advice and professionally drafted employment contracts, powerful steps can be taken to discourage disloyalty.

Team Tours Direct Limited specialised in providing sports-related tours and holidays. Following a breakdown in relations between its Managing Director and its Operations Manager, the latter was first suspended, then summarily dismissed, following an internal disciplinary investigation.

The Operations Manager's employment contract contained various restrictive covenants which, amongst other things, prohibited him from disclosing Team Tours' trade secrets or other confidential information. During the six months following termination of his employment, he was also banned from enticing, inducing or encouraging any of Team Tours' clients or suppliers to shift allegiance.

A new company, Aspire Sports Tours Limited, was incorporated three days after his suspension, and the Operations Manager became its sole director and shareholder shortly after he was sacked. His company had then operated in direct competition with Team Tours. After seeking legal advice, Team Tours launched proceedings against the Operations Manager, alleging breach of the restrictive covenants and misuse of its confidential information.

In ruling on the matter, the Court noted that Team Tours, like any other business, must compete in the free market. However, the Operations Manager had held a senior position and Team Tours clearly had a legitimate interest in protecting its trade secrets and, in particular, its lists of customers and suppliers. The Operations Manager was entitled to use his experience and know-how in order to compete with the company, but the six-month period of restraint on his freedom to do so was, in the circumstances, found to be very modest and reasonable.

The Court found that the Operations Manager had breached the terms of the restrictive covenants in several respects. When helping to set up Aspire Sports Tours, he had also gained a competitive springboard by the wrongful use of Team Tours' confidential information. He was ordered to pay Team Tours £12,929 as compensation, the majority of which represented the sum that the Court felt the Operations Manager would have been required to pay in order to achieve release of the restrictive covenants. Having procured the Operations Manager's breaches of contract, Aspire Sports Tours was made jointly and severally liable for £10,000 of that compensatory award.

This case of Team Tours Direct Limited v Aspire Sports Tours Limited & Anr (Case Number: D40CF007) shows the importance of having well drafted restrictive covenants within the employment contracts of key employees to help protect your business when those key employees move on.

[GET IN TOUCH]

For more information about post-termination restrictions or any other issues relating to employment law please contact

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YOUR WILL DOES NOT HAVE TO BE FAIR

When making a Will, the law does not require you to act fairly and the general rule is that everyone is permitted to leave their worldly assets to whomever they wish. In a recent case, Nutt & Anr v Nutt [2018] EWHC 851 (Ch) the High Court honoured a Mother's bequest of by far her largest asset - her £350,000 home - to only one of her three children.

The Mother, Mrs Nutt was a widow, with three adult children. The claimants are her two older children, the defendant is her youngest child.

Mrs Nutt had made a previous Will, by which she gave her home equally between her children. After she died, aged 88, her youngest child produced a later Will, by which he alone inherited her property. Mrs Nutt had handed him the Will in a sealed envelope and instructed him not to open it before her death.

The older siblings claimed:-

1) The later Will was not valid
2) Mrs Nutt did not have testamentary capacity when executing the Will
3) Mrs Nutt did not know and approve the contents of the later Will
4) The latter Will was procured by undue influence on the part of the youngest child

Points 1,2 and 3 were rejected by the Court who noted that it was no part of its role to decide whether the disputed Will was justified, or fair, "I am only required to decide if it is valid".

Even so the two older children could not believe that she would have wished to deprive them of their share in the house and, in a case that engendered much bad feeling, mounted a comprehensive attack on their younger brother's character to demonstrate point 4. The Court felt the crux of the case was "whether in making his dispositions, the testator has acted as a free agent".

In ruling on the dispute, the Court acknowledged that all three children had given much support to their frail mother during her final years and that she had spoken well of all of them. In upholding the final Will, however, the Court noted that the older siblings were significantly better off than their brother and, unlike him, had homes of their own. The younger child had also lived the closest to his mother and, when she needed help, he had been her first port of call. Far from being aggressive or dominating, the evidence indicated that the younger child had been affectionate and attentive towards his mother, the Court found that the fiercely independent woman's Will was rationally explicable.

[GET IN TOUCH]

For more information on Wills, Inheritance Tax or Estate Disputes please contact

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SAVE THE DATE - WEALTH MANAGEMENT SEMINAR

Date: Thursday, 21 March 2019
Place: Wokingham
Time: 2.00-5.00pm

Our next Wealth Management Seminar, which provides attendees with a practical overview of the legal and financial issues relating to later life including Inheritance Tax Planning, Lasting Power of Attorney, Trusts and Care Home Funding, will be on 21 March 2019.

Feedback from attendees at this event is always very positive, "Thank you and your colleagues for organising yesterday's seminar. We do like to keep abreast of changes which could affect our situation and the events you arrange are a really excellent way of providing the updates we need".

This free event is always oversubscribed so if you would like to be on the invitation list please contact Melissa Baxter on e:melissabaxter@cliftoningram.co.uk or t: 0118 912 0210 and we will be in touch with more details closer to the event.

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