Leases – break clauses – part 1

Break clauses allowing early termination of fixed term leases by tenants are of particular interest to charities. They permit strategic planning and are particularly useful where the charity relies on revenue funding. Additionally they avoid the legal cost (including Charities Act valuations) associated with transfer or underletting their leasehold properties. The courts have always made it quite clear that in order to effectively serve a notice, even though some errors may be tolerated the effect of the notice must be obvious and any express conditions contained in the lease relating to service must be complied with.

In a House of Lords (Supreme Court) case in 1997 Lord Hoffman stated "If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease" (Mannai case 1997).

Therefore in a 2010 case (*Hotgroup plc v Royal Bank of Scotland*) the lease that made it clear that service of a notice was only valid if it was served on the property management company as well as the landlord which meant that a break notice served on the landlord only was invalid. That did make some practical sense, because many landlords operate through their property management companies and there is therefore some real administrative value in such a condition.

The case of *Siemens v Friends Life* last year might indicate to some that the courts will not necessarily always require exact compliance with terms of service. In that case, it was stated that a notice to exercise a break option must refer to section 24(2) of the Landlord and Tenant Act 1954, as required by the terms of the break clause. The court in fact held that failure to specify this clause did not invalidate the break notice, apparently on the basis that the lease did not expressly say that the notice would be invalid without that statement in it. However, the court may well have been influenced by the fact that the statement itself is now entirely legally redundant and of no effect, so that it would not help the landlord. It may well be the case that if the provision was actually material, the court would have decided that it was at least implied that the break notice would be invalid without the statement.

The greatest care must therefore be taken in exercising break rights. The principal terms in the lease governing service will be found in the break clause itself and also in the provision relating to service of notices. However, it is not safe to proceed without reading through the whole lease to check that there are no other provisions relating to validity of service. All in all, the issues relating to the exercise of break clauses can be highly technical, and in view of the consequences of invalidty of the content and method of service of a break notice it is sensible to take legal advice well in advance of the break date.

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Mannai Investment Co Ltd –v- Eagle Star Assurance Co Ltd [1997] AC 749

Hotgroup –v- Royal Bank of Scotland Plc [2010] EWHC 1241

Siemens Hearing Instruments –v- Friends Life Ltd [2013] EWHC (ch)

Click here to read part 2

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