

# **Russell-Cooke**

## **Property Review of the Year**

### **2014**

19 November 2014

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# Where it is all happening - Midtown



# Prime office space



# Covenant strength of tenant and guarantor

## Landlord:

- Goes to value
- Affects funding
- Uncertainty about enforceability of covenants may affect sale or lease

## Tenant:

- Parent company may need to be released
- Tenant needs to manage ongoing liabilities following sale
- Guarantor may be critical on intra-group assignments

# Liability of guarantors on assignment

- A guarantor of a tenant cannot be required by its landlord to guarantee the obligations of an assignee of that tenant
- A guarantor can be required to guarantee the liability of a tenant's obligations under an AGA.

# Liability of guarantors on assignment

- Tindall Cobham Limited v Adda Hotels & Others
- Intra – group assignments by tenant without having obtained landlord's consent following Good Harvest principle
- Assignments were unlawful and the tenant and guarantor remained liable under the lease covenants

# **Liability of guarantors while tenant is in beneficial occupation**

- Xenakis and Corke v Birkett Long LLP
- Delay in lease completion and early occupation by tenant
- Director's personal guarantees started from completion of the lease, not from occupation
- Check timelines and ensure they work in practice

# Tenant's fitting out period

- Liability for business rates
- R3 Products Ltd v Salt
- Tenant had benefit of rent free period but was held liable to pay business rates
- Property may be capable of beneficial occupation even if it cannot be used for the use intended by the tenant



# Business rates – empty properties

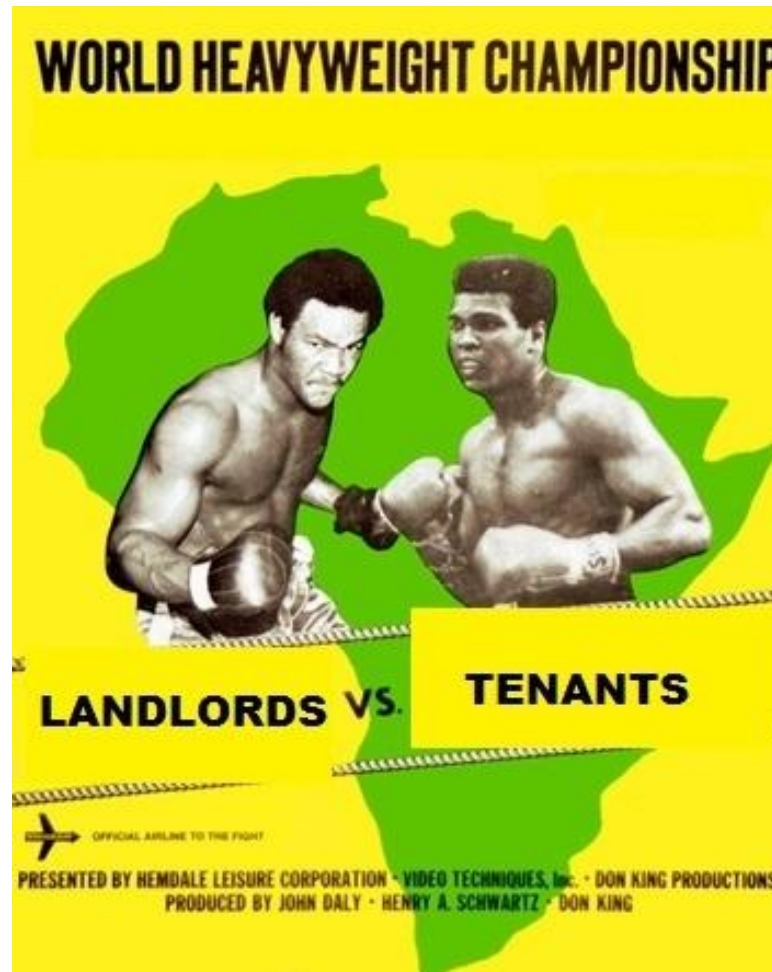
- Schroder Exempt Property Unit Trust & Others v Birmingham City Council
- Landlord is liable to pay empty rates when lease has been disclaimed by liquidator
- But - lease still deemed to subsist for purpose of liability under an AGA

# Minimum Energy Efficiency Standard

From April 2018 financial penalties for landlords who let commercial premises with an EPC rating of “F” or “G”



# Rumble in the Jungle Court of Appeal



# Round 1: Break clauses

Marks and Spencer v BNP  
Paribas

Siemens v Friends Life



# Round 1: Landlord wins!

Landlord 1 – 0 Tenant

# Round 2: rent payment in administration



Game Retail Ltd v Pillar  
Denton

## **Round 2: Draw!**

**Landlord 1 – 0 Tenant**

## Round 3: competition law



**Martin Retail Group v Crawley  
Borough Council**



# **Round 3: Tenant wins!**

## **Landlord 1 – 1 Tenant**

# Round 4: Commercial Rent Arrears Recovery

Tribunal Courts and  
Enforcement Act 2007

Taking Control of Goods  
Regulations 2013

**ROUND  
4**

# **Round 4: Tenant wins!**

## **Landlord 1 – 2 Tenant**

# Round 5: resi service charge consultation



Phillips v Francis

# **Round 5: Landlord wins!**

## **Landlord 2 – 2 Tenant**

## Final round: holding over



**Barclays Wealth Trustees v Erimus Housing**

## Final round: Landlord wins!



## Landlord 3 – 2 Tenant

## Planning Update

**Where are the opportunities and how to avoid the pitfalls**





# Permitted Development Rights

- Office to residential conversions
- Prior Approval – highways & transport, flooding and contamination risks
- Increasing use of Article 4 Directions
- Consultation to extend permitted development – **where do the opportunities lie?**



# Listed Buildings



- “.....shall have special regard to the desirability of preserving the building or its setting...”
- Barnwell Manor case
- If near a LB – work with LPA to ensure officer’s report robust
- Certificate of Lawfulness for Listed Building

# Green Belt

- Any development in green belt inappropriate save in the defined circumstances – Cemetery case
- No policy shift “...any other harm...” – aerodrome case
- New guidance could be licence for Councils to ignore housing need
- New GB development is very hard!



# Neighbourhood Plans

- Prematurity not dead?
- NPs outweighing lack of 5 yr housing supply – subject of current challenges
- Get involved in Neighborhood Plan process – get your site allocated

## Contact Details

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