

PMA Update - 2020

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Electronic signatures and the Land Registry



Electronic signatures and the Land Registry

- Land Registry requirements set out in HMLR Practice Guide 8
- Requirements include:
 - all the parties agree to use a particular signing platform
 - all the parties have conveyancers acting for them (with limited exceptions)
 - conveyancer sets up and controls signing process through the platform
 - conveyancer dates the document within the platform
 - conveyancer certifies that HMLR requirements complied with when applying
for registration

Electronic signatures and the Land Registry

- Problems with witnesses:
 - need to be physically present
 - platform has to send a one-time password by SMS to a witness
 - confidentiality concerns
 - better to use two directors (or director and company secretary)
- The Land Registry's future plans

EMI Group Ltd v The Prudential Assurance Company Ltd

- Reminder of current law on liability of guarantors
- L sought to recover nearly £5m of rent and service charge under GAGA given by EMI
- EMI tried to argue that its guarantee fell foul of Landlord and Tenant (Covenants) Act 1995

EMI Group Ltd v The Prudential Assurance Company Ltd

EMI's guarantee applied:

“while the Principal is bound by the tenant covenants of this lease”

“Principal” was defined as:

“the person who is or is to become the Tenant and whose obligations under this lease and any authorised guarantee agreement the Guarantor has been required by the Landlord to guarantee but shall not include any successor in title”.

Dreams Ltd v Pavilion Property Trustees Ltd



Dreams Ltd v Pavilion Property Trustees Ltd

- L and T entered into an agreement to surrender with vacant possession
- Completion conditional on T paying ‘any money due on completion’
- Could L refuse to complete:
 - until T had paid just over £100K in dilapidations
 - because a mezzanine floor and lift installed by T had not been removed
- Implications of decision for both landlords and tenants

Code for Leasing Business Premises 2020

- Came into force on 1 September 2020
- Published for first time as an RICS professional statement
- Mandatory requirements - e.g.
 - lease negotiations approached in a constructive and collaborative manner
 - minimum content for HoTs
- Areas of good practice - this includes matters of best practice in negotiations leading to HoTs and also when preparing and negotiating leases

Code for Leasing Business Premises 2020

Mandatory requirement - HoTs must include:

- identity and extent of the premises
- special rights to be granted
- length of term and whether 1954 Act will apply
- options for renewal or break rights
- requirements for guarantor and/or rent deposit
- amount of rent, frequency, VAT position, any rent-frees and rates liability

Code for Leasing Business Premises 2020

HoTs must include:

- basis of rent review
- liability to pay service charge
- alienation rights
- repairing obligations
- initial permitted use and right to change use
- right to make alterations and initial alterations
- any conditions of the letting

Code for Leasing Business Premises 2020

Examples of best practice:

- tenant's break clauses
- service charge
- assignment
- reinstatement of alterations
- uninsured risks
- EPCs

Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd

- Developer gave exclusivity covenant to anchor tenant in long lease in 1980
- Current L sought declaration that covenant unenforceable as restraint of trade
- Supreme Court applied ‘trading society’ test to uphold covenant
- A rare piece of good news
- But beware of competition law

Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd



Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd

- T covenanted to pay a fair and reasonable proportion of the total service cost
- L's certificate conclusive unless manifest or mathematical error or fraud
- In last year of lease T's bill eight times the previous year
- T claimed that some of L's expenditure was not within the scope of the service charge
- Did the certification clause preclude T from challenging L's service charge bill?
- Significance of case

Arqiva Services Ltd v AP Wireless II (UK) Ltd

- Operator (A) had a telecoms lease which expired in October 2016
- Lease contracted out of 1954 Act
- A remained in occupation as tenant at will
- Could A renew its code rights under Part 5 of the ECC 2017?
- Could A obtain new code rights under Part 4 of the ECC 2017?
- Implications for negotiations with operators

Arqiva Services Ltd v AP Wireless II (UK) Ltd



Trecarrell House Ltd v Rouncefield



Trecarrell House Ltd v Rouncefield

- AST granted to T for six months from February 2017
- Gas safety certificate for property dated January 2017
- However, L did not provide T with a copy until November 2017
- In May 2018, L served section 21 notice on T to terminate AST
- Was L precluded from serving a section 21 notice?
- What if no check carried out before AST granted?

Capitol Park Leeds Plc v Global Radio Services Ltd

- T's break option conditional on delivering vacant possession
- T stripped out significant elements of the base build and landlord's fixtures in the property and handed back to L an empty shell of a building
- Had T delivered vacant possession?
- Lessons from case
 - for new tenants
 - for existing tenants

Cardtronics UK Ltd v Sykes (Valuation Officers)



Cardtronics UK Ltd v Sykes (Valuation Officers)

Treatment of ATMs for rating purposes of:

- external ATMs in supermarkets
- internal ATMs in supermarkets
- convenience store ATMs
- movable ATMs

Cardtronics UK Ltd v Sykes (Valuation Officers)

- Were the sites of the ATMs separate hereditaments?
- Who was in rateable occupation of the sites of the ATMs?
- Significance of decision for:
 - retailers
 - consumers

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