



think harder

Welcome to Property Matters from the experts at Cobbetts. We hope you enjoy this edition and would welcome your feedback on any issues you would like to see covered in this regular publication.

IN THIS EDITION:

Rent as an administration expense

Fulfilment of completion conditions

If you have any queries, or require more detailed advice on any property matter please contact:



Michael Copestake  
0845 165 5497  
michael.copestake@cobbetts.com



Eleanor Deady  
Tel: 0845 404 2487  
eleanor.deady@cobbetts.com



Andrew Flounders  
0845 404 1511  
andrew.flounders@cobbetts.com

The content of this newsletter is merely informative and should not be relied upon as a substitute for legal advice. Copyright 2010 Cobbetts LLP - All Rights Reserved – January 2010

We hope you have enjoyed this copy of Property Matters. However, if you do not wish to continue receiving Property Matters, please email [news.property@cobbetts.com](mailto:news.property@cobbetts.com) marking the subject

## Rent as an administration expense

On 7 December 2009, His Honour Judge Purle QC sitting as a high court judge, decided that where administrators were using, for the benefit of the company in administration, part of a site held by that company under two leases, the quarter's rent due under those leases falling due on the 25 December 2009 was payable in full from that date as one of the costs and expenses of the administration. The judge also pointed out that as the rent falling due is a payment in advance and not subject to the Apportionment Act 1870 the amounts payable would not fall to be apportioned even if the administrators vacated the premises during the quarter. This decision was made in the case of *Goldacre (Offices) Limited v Nortel Network UK Limited (in administration)*.

This will be welcomed by landlords as clarification of their entitlement. It was made clear, however, that the administrators were not necessarily obliged to make the payment on the due date. If the sufficiency of realisable assets is in doubt the landlord may have to wait and see to what extent the assets will be enough to satisfy his claim as there may be other claims also having priority.

## Fulfilment of completion conditions

### Point to note

If a contract not only contains conditions, on the fulfilment of which completion is dependent, but also sets out a procedure for ascertaining that the conditions have been satisfied, then it may not be sufficient just to fulfil the conditions – it may also be essential to follow the procedure in order to verify that the conditions have been fulfilled.

### Background

Sometimes reported cases seem to change law, sometimes they simply explain what the law is – not necessarily how you thought it was! On other occasions, a reported case will simply illustrate how things can go wrong. The case of *HHR Pascal BV v 2005 Puppet II BV [2009] EWHC 2771* is an example of the latter.

### The problem

The case involves a dispute between the claimant, the seller of shares under a Share Sale Purchase Agreement (SPA) and the defendant, the buyer of such shares. Completion of the SPA was conditional, in essence, on the completion of refurbishment work to a number of hotels. As is common in conditional contracts there was a 'drop dead' date by which the conditions had to be fulfilled or the parties could withdraw from the contract. In this case, the defendant – possibly wishing to pull out of the contract for reasons not directly connected with the timing of the fulfilment of the conditions – maintained that the claimant had failed to fulfil the conditions so that the defendant was entitled to withdraw from the contract and reclaim his deposit.

# property matters

The claimant, of course, maintained that the conditions had been fulfilled and completion was due and the defendant's failure to complete entitled the claimant to rescind the contract and forfeit the deposit. The dispute revolved around the claimant's obligation to give notice of the likely completion date of the refurbishment works and the process which was to follow. The court was asked to decide whether the actual completion of the refurbishment works before the 'drop dead' date was sufficient or whether the claimant also had to follow the contractual notice procedures.

## The decision

Mr Justice Simon concluded that the claimant was required to follow the notice procedure and, having failed to do, it had failed to comply with the conditions of completion of the SPA and so the defendant was entitled to the return of his deposit - €25,000,000.

Mr Justice Simon said:

*"The parties proceeded on the basis that the completion of the building works was to be assessed by a carefully drafted code, which involved proper notice of Projected Substantial Completion [a term defined in the SPA to mean the date when the claimant expected the work to be finished] by the seller, a right to inspect by the buyer and a clearly prescribed method of dispute resolution if the buyer disputed that substantial completion had occurred.*

*The [claimant's] submission that there was an alternative means of demonstrating substantial completion which avoids this process is entirely uncommercial, in the overall context of this complex Share Purchase Agreement....*

*Although it contained a few minor typographical errors which even the most visually acute proof reader might have missed, the SPA was a carefully drafted document*

*in which both language and legal principles were deployed logically and with care. There is no proper basis for inviting the court to impose one party's conception of what is sensible and reasonable. In this agreement, the mandatory completion provisions were less concerned with the fact of completion, than with the process by which completion was deemed to occur."*

## Conclusion

While it may have been somewhat encouraging for the lawyers who drafted the SPA to be complemented by the judge on the drafting it was, in practice, probably of no real comfort at all either to the lawyers or the parties because litigation ensued. A number of lessons including these can be learned from the case:

- However carefully a contract is drafted there is always the possibility of litigation if a transaction does not go the way one party wanted.
- If a contract contains conditions then it may not be sufficient to fulfil them; it may be necessary to follow carefully the contractual procedures relating to verifying fulfilment.

The content of this newsletter is for information only and should not be relied upon as a substitute for legal advice. Copyright 2010 Cobbetts LLP - All Rights Reserved – January 2010.

We hope you have enjoyed this copy of Property Matters. However, if you do not wish to continue receiving Property Matters, please email [news.property@cobbetts.com](mailto:news.property@cobbetts.com) marking the subject as unsubscribe and providing your name, company name and company address

## E-mail Matters

To receive Property Matters by e-mail please send an e-mail to [mailings@cobbetts.com](mailto:mailings@cobbetts.com) marked Property Matters and leave your full name and e-mail address. Please also specify whether you can receive html or plain text version.