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TOP 10 LEGAL CASES

EVERY PROPERTY MANAGER SHOULD KNOW

THE KNOWLEDGE WITHIN®

Author: Bukola Obadun-Craigs, Partner and Head of Practice Area

Bukola is Partner and Head of Practice Area for Residential Leasehold and Dispute Resolution Teams. She specialises in property management litigation, having practiced in the field for over 12 years and advises on all aspects of housing law including housing management and leasehold management.

Her customers are typically Social Landlords, Managing Agents, Leaseholders, Tenants and Private Landlords.

Bukola's experience includes:

- All aspects of residential landlord and tenant litigation
- Right of First Refusal Claims
- Possession proceedings and forfeiture proceedings
- Applications for breach of residential leases
- Service charge disputes
- Applications to appoint a manager
- Injunction applications for anti-social behaviour, tenancy fraud, subletting, rent arrears, access issues and disrepair
- Rights of Light

Her specialisms include litigation, as well as appearances before the First-tier Tribunal, non-contentious advice on housing policy and regulatory compliance. Bukola is mentioned in the Legal 500 2017, 2018 and 2019 in respect of the wide range of areas she practices, under the umbrella of housing leasehold management litigation.

> "Legal 500 2019 highlights Bukola Obadun-Craigs as a next generation lawyer."

Roger Hardwick, Partner

Roger has extensive knowledge of statutory lease extensions, collective enfranchisement claims and the enfranchisement of leasehold houses.

He is frequently involved in proceedings before the First-tier Tribunal (Property Chamber) and Upper Tribunal (Lands Chamber), acting primarily for landlords and managing agents in connection with service charge disputes, applications to vary leases and applications to appoint a manager. Roger was named ERMA's Solicitor of the Year in 2017 and 2018 and Regional Professional of the Year in 2016, 2017 and 2018.

Roger has attended five advisory groups with the Law Commission to discuss their proposals to reform leasehold enfranchisement and the right to manage, respectively, prior to the issue of their consultation papers on both topics. Roger is also listed in the enfranchisement consultation paper as a member of the advisory group.

He is also in discussions with HMRC, via ARMA, and a number of other interested parties, with respect to their recent guidance on the application of VAT to residential service charges, and also the ability of RMCs and RTM companies to claim the benefit of an Extra Statutory Concession, found in VAT Notice 48, at 3.18. A test case to challenge HMRCs stated position is looking possible.

THE KNOWLEDGE WITHIN®

"Sources highlight **Roger Hardwick** as *"one of the most knowledgeable professionals in residential leasehold law in England."* He is also held in high regard for his pragmatic approach: "*He fully understands not just the law and case law, but also the practical implications for landlords, tenants and their agents.*"

Chambers and Partners

About Brethertons

Brethertons LLP is a pioneering legal services provider practicing all areas of commercial and private client law.

With 14 partners and approximately 230 staff, working across four locations, the firm has been part of the community for over 200 years and is renowned not just for its legal expertise, but also for its caring attitude and dedication towards its customers.

Brethertons is part of a new breed of legal service providers who focus less on telling customers how complex the law is and more on making it work to their advantage. That means its people, technology, knowledge management and professional development sit at the heart of the business, not on the periphery - they are integral to its customer care.

The firms legal expertise and knowledge is accentuated through creating unique customer experiences and working together as a team to provide tangible competitive advantage for its customers, in every aspect of its service offering.

Having successfully embedded Lexcel and Investors in People Gold Standard principles within the firms operational framework, the firm strives to deliver an exceptional service for its customers, and a fantastic working environment for its staff.

Brethertons have curated a blend of expertise with the property sector in mind, providing a full legal service to the industry, all under one roof from residential leasehold law, property management and dispute resolution to company commercial and employment law.

The firm is committed to the industry and sharing the Knowledge Within, regularly writing blogs, legal updates, white papers and hosting a range of webinars and seminars to encourage information and best practice sharing.

Brethertons is proud to have been recognised in a number of awards and accreditations in 2018:

- Brethertons recommended in The Legal 500 UK 2018 and the Chambers and Partners UK 2019 Guide
- NOTB Property Management Awards (2018) – Legal Service Provider of the Year – Highly Recommended
- NOTB Hot 100 (2018) – 3 Brethertons employees were named
- ERMA – Regional professional of the year (2018) – Roger Hardwick – Winner
- ERMA – Solicitor of the year (2018) – Roger Hardwick – Winner

To subscribe to the Brethertons database to receive industry updates and forthcoming webinar details email: theknowledgehub@brethertons.co.uk

What our customers say about us

“We have been working closely with Brethertons’ property management team for 10 years. We have always been impressed by their ‘customer care’ ethos and appreciate their understanding of our needs. The team throughout this time has remained consistent. Their flexibility in handling our customers’ diverse demands in a friendly and professional manner has been invaluable. It means that we can concentrate on delivering our core services.”

“Having worked within the Property Management industry for many years, I have been faced with many different, sensitive and challenging scenarios. I can honestly say that the ‘First Class’ advice and support the Brethertons Banbury team have always provided me with has been invaluable - They have literally been my savoir! The team has always provided fast, excellent advice which is explained in an understandable way! And furthermore, they genuinely care about providing the best service possible. Brethertons will continue to be our ‘Number One’ choice solicitors throughout many more years within the Property Management industry…”

“I have worked with Brethertons for over 10 years and have found their service to be extremely professional and all of their staff very competent. They have acted on some very difficult cases and have given clear and reasoned advice throughout and across their departments. Their staff are a pleasure to deal with and their fortnightly updates on cases are very helpful for both us and our Clients.”

“We have been using Brethertons solicitors to recover our clients Service Charge Arrears for several years now with great success. The instruction process for new cases is straight forward and during the cases the staff at Brethertons always keep us fully updated and informed of all action being taken. All their staff are always very friendly and helpful also providing assistance on other matters falling outside the cases. Recovery of arrears is quick and without stress to our clients.”

“Brethertons Solicitors are our first choice for all of our debt recovery matters. We have a very challenging portfolio where we regularly need to request an individual approach and Brethertons are always able to put together a workable solution at short notice. Their reporting is tailored to our company’s needs and where we need additional resources, these are always provided. They have regularly gone over and above to provide legal assistance and a fast, effective debt recovery process to Centrick. This is imperative to our business with the high levels of debt we need to recover all year round. Clients and customers are a huge focus for Brethertons and they do everything possible to resolve any complex matters we pass to them. We have also recently started to take advantage of the additional legal services Brethertons offer and find it refreshing that all our legal requirements can be met within one multi-disciplined organisation and via Lorna, our designated client contact.”

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Scoring methodology/data

The white paper is the product of a research project with leading Barristers and Queens Counsel from the property management industry. It has been created in response to help residential property managers gain a better understanding of the First Tier Tribunal cases they are faced with on a daily basis which theoretically impact what they do for a living.

The research project began by Roger Hardwick and Bukola Obadun-Craigs, Brethertons residential leasehold partners identifying the top 20 cases property managers should know as part of their job. Out of the cases, Barristers were invited to rank their top 10 in order of preference including honourable mentions of any cases they felt strongly about, which were not included in the original list.

A clear scoring matrix was adopted to rank the cases, which added the Barristers scores together for each case. The case with the lowest combined score reached the top position with the other cases following in succession. Barristers also provided comments on why they feel the cases are important to property managers.

Top 10 Cases Every Property Manager Should Know

Number 1 Daejan v Benson [2009] UKUT 233 (CC)

Can't be anything but Daejan at number 1 can it? - a ground breaking decision which astonished the industry as everyone was expecting Daejan to lose - they won 3-2, in dramatic fashion - the decision which rendered s.20 impotent, and ensured that a landlord will almost always get dispensation, unless the lessees can prove prejudice on balance of probabilities, and even then, conditional dispensation will probably be granted.

"A case to keep by your bedside, to hug close when waking from a nightmare that you forgot to add the second page of qualifying works to a major client's Notice of Intention. Revolutionary and ground breaking, the Supreme Court's 3-2 decision stopped in its tracks the mini-industry of section 20 nit-picking by leaseholders wanting a 'free ride' and attacking process – regardless of the fairness of the substantive outcome."

Ranjit Bhose QC

"Agreed, ticks a number of boxes, both of practical use to MA s in terms of application of S.20 and implications for failing to adhere to it. It is also useful in setting the steps for dispensation and the basis on which it will be given. A natural addition is the CoA in Reedbase v Fattal where consideration is given to when the consultation process may fall off the rails (as well as giving guidance on 'making good')."

Daniel Dovar

"A case which tells us that adherence to statutory requirements is not an end in itself. Contrast Arnold v Britton. These two cases when read together demonstrate the approach of the court: the law exists to serve a statutory purpose, whereas the contract exists to provide certainty to the parties. An important set of principles that pervades this area of law."

Elizabeth England

"Landlords across the country will find great comfort in this ruling – the ramifications are huge. I have to agree with Brethertons in respect of this ranking!"

Rayan Imam

"I was junior counsel for the tenants so this is obviously the biggest case! The decision sent shockwaves through the industry and has meant that tenants have far less protection than was previously the case. The consultation requirements are effectively toothless where the costs incurred are otherwise reasonable for the purposes of s.19."

Jonathan Upton

"Had to be top of the pile. A judgment that provided succour to landlords as it effectively made the grant of dispensation or conditional dispensation a foregone conclusion if, on balance, lessees could not prove prejudice."

Elizabeth Dwomoh

"Has to be in the Top Ten; but possibly too high even at 3. Why?

In fact, it is a very sensible decision; and, it also reflects what s.20ZA(1) says. Yes, undermines s.20; but woe-betide any property manager who does not follow s.20"

Desmond Kilcoyne

"Not only did this decision send shockwaves through the industry, it moved the factual burden of proof by placing it on the tenants – it was for them to show what prejudice they had suffered. With a 3:2 split, this may be returned to in the future."

Philip Rainey QC

The case that has saved the bacon of many an agent. I'm happy to rank this at the top, but hope that isn't seen as encouragement for not getting consultation right in the first place!

Simon Allison

Top 10 Cases Every Property Manager Should Know

Number 2 Arnold v Britton [2015] UKSC 36

Nothing ground breaking in that decision but nevertheless one of the most recent and important decisions from the Supreme Court on interpreting a contract (so if wider application) and, in particular, a residential lease; confirmed that there is no special rule that a residential lease should be construed restrictively and if the wording is clear and unambiguous, that wording should be applied, even if the outcome is commercially unfair or even disastrous.

"Your can't have an unimportant Supreme Court decision."

Justin Bates

"Always good to focus minds on lease terms."

Daniel Dovar

"Although this decision was not a surprise in principle, in practice it sent a few lease draftsmen straight to the nearest whiskey bar. This case must be in the mind of every property professional as they read and seek to understand their contractual obligations – particularly when contemplating litigation."

Elizabeth England

"Remains the leading case on contractual interpretation. The case I refer to most often."

Jonathan Upton

"The scope of this decision extends beyond the residential landlord and tenant sphere into wider contractual interpretation. It also highlighted that service charge clauses were not subject to any special rule of interpretation."

Elizabeth Dwomoh

"Arnold v Britton takes the no.1 spot: there is nothing more fundamental to leasehold disputes than the interpretation of lease wording – it all starts here. Arnold v Britton must also come first for sheer shock value: how the poor drafting of a lease can lead to a service charge turning from £90pa to over half a million pounds!"

Iris Ferber

"As stated in the Proposed Top Ten, nothing ground breaking; but, a dramatic reflection of the first commandment for all property managers: Know thy lease!

The paramount importance of the wording of the lease is also represented in the Top Ten by Oram (see no. 5)."

Desmond Kilcoyne

"Whilst this is not the most recent Supreme Court decision on the interpretation of contracts or the last, it is crucial to all parties (whether in the property management industry or not), especially when considering "commercial" interpretations."

Philip Rainey QC

"Agree that it is not ground breaking, but super useful for contractual interpretation."

Rayan Imam

"This case deserves to be near the top. My top tip to any property manager taking on a new development is to actually read and properly understand the lease. Some of the biggest difficulties come about where agents take over a site from others and assume that the way the service charge scheme has been operated is the way they should continue. They then end up as the party with the blame when a leaseholder takes them to the FtT and points out errors. This case is long, but you only need to read a short bit near the beginning to see almost all the key principles spelled out."

Simon Allison

Top 10 Cases Every Property Manager Should Know

Number 3 Freeholders of 69 Marina v Oram & Anor [2011] EWCA Civ 1258

Definitely one of the most quoted decisions, ensured that landlords will be able to recover costs under the terms of a lease in most cases.

"Critical for costs recovery and an example of the power imbalance in the leasehold relationship."

Justin Bates

"Instructive, but again, more one for the lawyers – although useful to know for MA – when costs are recoverable."

Daniel Dovar

"This is in every skeleton argument that I write. Definitely one to have in the arsenal. The case is usually quoted alongside Chaplair v Kumari and CPR 27.14 provides that costs on the small claims track do not apply where a contract provides for inter partes costs (see White Book 27.14.8)."

Elizabeth England

"A questionable decision but very welcome for landlords."

Jonathan Upton

"An important case. It effectively rendered the recoverability of legal costs under the lease a certainty in most cases. Surprisingly, less favourable, earlier decisions on this issue, such as Sella House v Mears, were not referred to in the judgment."

Elizabeth Dwomoh

"As a litigator, 69 Marina was my only other contender for no.1: if the CoA had held that costs "incidental to the preparation and service of a s146 notice" do not include the costs of obtaining a breach determination, the consequences for effective service charge recovery for leases dating from 1970 to 2000 would have been dire!"

Iris Ferber

"Not really a property manager day to day matter; but in here as an example of the importance of the wording of the lease in relation to the recovery of professional fees. A key area for any manager to think about."

Desmond Kilcoyne

"This decision, although still of fundamental importance to any landlord seeking to recover costs under the terms of the lease, has been somewhat tempered by the decision in Barrett v Robinson."

Philip Rainey QC

"From a commercial perspective, this case is definitely a top contender. Must always remember that a s.146 clause does not rubber stamp a landlords' ability to recover costs, which is often overlooked. Barrett v Robinson [2014] and Willens v Influential Consultants Ltd [2015] make it clear that a landlord has to be able to evidence that they contemplated forfeiture proceedings/service of a s.146 notice."

Rayan Imam

"This case isn't just important from a costs recovery perspective (indeed, its effect is slowly being watered down now via para 5A applications). It's also important because (wrongly in my view) it means that a s.146 notice must be served before seeking to forfeit a residential lease, even where the service charges are reserved as rent. So yet another hurdle to jump before the banks will clear the outstanding service charges, adding to delay and costs for all."

Simon Allison

Number 4 The London Borough of Hounslow v Waaler [2017] EWCA Civ 45

Different test for reasonableness where improvements, and also a very important commentary on the meaning and application of s.19 of the LTA 1985.

"An important case as this touches on a variety of issues and concentrates attention to the role of s.19."
Daniel Dovar

"This case deserves credit for expanding the law.
The challenge started with Waaler's challenge to the Wednesbury reasonableness of Hounslow's decision to replace wooden framed windows with metal framed windows, which necessitated replacement of external cladding and removal of asbestos. Waaler argued that the costs were not reasonably incurred because no reasonable authority would carry out this work. A detour into the rationality of Hounslow's decision-making process ensued. The decision reflects a quasi-public law element to the decision-making process, meaning that landlords cannot just make improvements on a whim. They must consider the interest of lessees (by reference to the remaining term), the views of lessees, and the means of the lessees."
Elizabeth England

"A questionable decision but very welcome for landlords."
Jonathan Upton

"An objective standard for reasonableness in respect of whether the cost of improvement works were "reasonably incurred" for the purposes of s.19 of the LTA 1985."
Elizabeth Dwomoh

"I bow – eventually – to Daejan v Benson's importance, and give it 3rd place, but surely Hounslow v Waaler deserves 4th?
Hounslow v Waaler is such a useful, clear, compendious statement of the law on repairs and improvements: an absolutely invaluable tool for the lawyer's kitbag – and for the busy property manager!"
Iris Ferber

"Waaler is in this list at No.2 as a recent high profile illustration of the distinction between repairs and improvements (although a number of other cases might serve this function – and there is no room in the Top ten for the critical decision of Credit Suisse v Beegas on covenants to keep in good condition)
Also, Waaler is really instructive on the correct approach to s.19 (and otherwise usurps the strong claims of Forcelux v Sweetman to a place in the Top Ten)
And, to boot, identifies the different test for reasonableness where improvements are concerned.
A top quality all-rounder!"
Desmond Kilcoyne

"A useful review of the authorities regarding the application of the reasonableness test, as well as the distinction between repairs and improvements. These are matters that are encountered by the majority of property managers."
Philip Rainey QC

"From a commercial perspective, this case is definitely a top contender. Must always remember that a s.146 clause does not rubber stamp a landlords' ability to recover costs, which is often overlooked. Barrett v Robinson [2014] and Willens v Influential Consultants Ltd [2015] make it clear that a landlord has to be able to evidence that they contemplated forfeiture proceedings/service of a s.146 notice."
Ranjit Bhose QC

"A different test for reasonableness in respect of repairs vs improvements is a sensible. Reminder that landlords and MAs do need to consider carefully whether the works fall into the former or latter but also that any such decision must be rational in the public law sense (see Braganza v BP Shipping in SC 2015)."
Rayan Imam

"It is a rare case where the Tribunal doesn't have reference to Waaler these days. Lots of important stuff in there for property managers to be aware of, and not just where carrying out improvements. There is a lesson around the importance of leaseholder engagement at the heart of this case"
Simon Allison

Number 5 Gala Unity v Ariadne Road RTM Company [2011] UKUT 425 (CC)

The first CoA decision on the right to manage and a massive deal for three reasons: confirmed that the RTM company would acquire the right to manage all property over which lessees have rights; that it would acquire the right to manage all appurtenant property automatically, even on large estates, without the need to even mention it in the claim notice; and that where this created competing obligations to manage the same area of land the parties would just need to work it out between themselves, and enter into an agreement outside the 2002 Act

"Decisions so bad that the Law Com wants to overturn them!"

Justin Bates

"Part of a suite of RTM decisions with 90 Broomfield – albeit this one explains why MA may scratch their heads over shared management."

Daniel Dovar

"Where Daejan v Benson said: the law is not the end in of itself, and Arnold v Britton said: the contract is king, would it naturally follow that Gala Unity says: where the obligations double up you have to work it out yourselves? I am not sure it should, but it has never been successfully challenged. An extremely interesting and important case."

Elizabeth England

"A seminal decision. It encouraged pragmatism in the management of common parts where competing obligations arose between parties due to a RTM company acquiring the right to manage appurtenant property."

Elizabeth Dwomoh

"Particularly important in light of *Ninety Broomfield Road v Triplerose*."

Philip Rainey QC

The case the CoA got wrong. Firstly, wrong on the law (in my humble opinion), in that the RTM scheme was never designed to allow leaseholders of one block on an estate to also acquire the right to manage the whole estate. But secondly, in whatever thought process led to the conclusion that this mess might be resolved by cooperation between the RTM Co and the freeholder. Yes, sometimes it can. But other times, it can't. Then what? Overturning this decision is long overdue… Watch this space!

Simon Allison

Number 6 Ninety Broomfield Road v Triplerose [2015] EWCA Civ 282

The decision which broke the right to manage - overturning the UT decision, and popular belief, the CoA unanimously held that a single RTM Co can only acquire the right to manage one self-contained building or part of a building.

"More one for the lawyers ."

Daniel Dovar

"This case is important as a point of principle (i.e. that a RTM company can only acquire the right to manage one self-contained building) but more than that, the way it was decided is legally interesting. The use of the singular words "a" (in s.72) and "the building" (in ss.70, 78 and 80), and reference to tenants in the same single building (ss.72 and 74) all pointed to this decision, but the badly drawn statute was sufficiently ambiguous that it warranted a look though Hansard, which revealed that Parliament had actually debated the prospect of multiple buildings and rejected it. A decision which reminds us to look at what the statute intends to do, as much as reading the words employed in the drafting."

Elizabeth England

"Clearly the right decision and may have an affect on the proper interpretation of "building" under the 1993 Act and the 1987 Act."

Jonathan Upton

"Underscored monogamy in respect of acquiring the right to manage. The Court of Appeal in holding that a RTM company could only acquire the right to manage one self-contained building restored some order to the RTM regime in relation to multiple blocks."

Elizabeth Dwomoh

"Has led to a great deal of subsequent litigation as to what is a "self-contained building" and whether parts are "structurally detached" – for example CQN RTM Co Ltd v Broad Quay North Block Freehold & Another."

Philip Rainey QC

"A very important case on construction of the 2002 Act. The CA's ruling also rightly recognises the practical problems that would arise if the RTM could be exercised over a number of separate buildings within the same estate."

Rayan Imam

"In contrast to Gala Unity, this is the one where the CoA properly worked its way through the (defective) legislation. Essential reading for anyone involved in the acquisition of RTM."

Simon Allison

Number 7 OM Property Management Ltd v Burr [2013] EWCA Civ

Landmark decision on s.20B and the only s.20B decision in the Court of Appeal - cost is "incurred" when invoice or payment made.

"How s20B works is critical."

Justin Bates

"Important to try and understand how s.20B works, but still awaiting a more definitive explanation."

Daniel Dovar

"The case of the unknown gas supplier; OM raised SC demands on the misapprehension that the gas supplier to the swimming pool was EDF, but after some several years, discovered it was a different supplier. A flurry of refunds and a fresh demands followed. Cue disgruntled tenant. The court was forced to consider the purpose of s.20B – to protect the tenant from stale claims. The extent of that protection lay in the definition of what "costs incurred" actually means. Going beyond the obvious importance of this case, it has further practical importance for conveyancers who may wish to make provision in the sales contract for services provided to a property against which no invoice has been raised – potentially for up to 6 years."

Elizabeth England

"Infuriating that the court of appeal didn't decide whether incurred means when liability to pay or when payment is made."

Jonathan Upton

"A pivotal decision in relation to the meaning of "costs incurred" under s.20B of the LTA 1985. The Court of Appeal stressed that a liability had to "crystallise" before it became a cost."

Elizabeth Dwomoh

"Obvious, but helpful to have the obvious confirmed by three people in wigs."

Ranjit Bhose QC

"A sensible decision by the UT, upheld by the CA – a cost is not incurred on the provision of the service but rather until it is quantified."

Rayan Imam

"See comments on Brent. Important to be able to calculate what you are too late to validly demand!"

Simon Allison

Number 8 Brent LBC v Shulem B Association [2011] EWHC 1663 (ch)

The first reported decision on s.20B(2) notices, we believe, and full of critical points which practitioners refer to again and again - a demand which does not comply with the terms of the lease is not a valid demand for the purpose of s.20B, and a s.20B(2) notice must include an actual figure for the costs incurred at the date of the notice.

"Part of the s.20B suite of cases – with some useful guidance for MA."

Daniel Dovar

"This case must be seen through the prism of OM v Burr and Jean-Paul v Southwark, and frankly, it might be said that the judgment in this case is unhelpful to both parties for the landlord to try and make a best guess where a s.20B(2) notice is required in the absence of fixed figures. However, I agree that the value of this case for it's top 10 standing is in the useful guidance given to the validity of a demand which, again, finds its way readily into skeleton arguments and judgments time and again."

Elizabeth England

"A very useful decision from the High Court in respect of what constitutes a valid demand for the purposes of s.20B(1) of the LTA 1985. It also served as a reminder that a notification under s.20B(2) had to state a figure for costs incurred."

Elizabeth Dwomoh

"S20B is today the key pitfall where demands (for some reason are legally invalid). The antidote to, or safety net beneath, s.20B (choose your own mixed metaphor) is s.20B(2); and Shulem is the critical authority on s.20B(2). It is so easy to get a s.20B(2) notification wrong by referring to an 'estimated charge."

Desmond Kilcoyne

"An important case concerning this area of law, in particular for those seeking to establish that earlier correspondence has satisfied the statutory requirements."

Philip Rainey QC

"The short and opaquely worded section 20B can cause havoc for property managers, and potential catastrophe for landlords if it's non-extendable 18 month time limit is not complied with. Mr Justice Morgan's judgment is a valuable explanation of its provisions, including helpful pointers to the approach to be taken under section 20B(2) where costs have been incurred but you're not sure quite how much."

Ranjit Bhose QC

"I field endless queries on s20B(2) notices – usually in the context of something having gone wrong in the operation of the service charge mechanism e.g. sending out contractually invalid demands and the need to retrospectively properly demand sums incurred many years prior. There is a lot of misunderstanding in the industry around what will suffice – some people still think that just because they sent some kind of demand years ago (with no reference to total sums spent) that might do; it won't."

Simon Allison

Top 10 Cases Every Property Manager Should Know

Number 9 Francis v Phillips [2015] 1WLR 741

The HC decision was, in many ways, more shocking, but nevertheless an essential decision on the application of s.20 to qualifying works and what counts as one "set" of qualifying works.

"More a relief and confirmation of what everyone understood than particularly ground breaking in itself."

Daniel Dovar

"This decision was such a relief to managing agents and surveyors who felt that the decision at first instance had an unworkable and unhelpful outcome. In the CofA, Lord Dyson MR gave guidance on how to distinguish one set from another at [36], guiding a multi-factorial approach, determined in a common sense way, taking into account all relevant circumstances, before listing all of the factors to take into account. The CofA's approach emphasises the factual nature of the exercise – it moved the exercise away from a legal straight jacket to reflect the reality of property management."

Elizabeth England

"A massive case at the time but now it feels a bit like the GDPR."

Jonathan Upton

"A rollercoaster of a case! The final decision brought welcome clarification on the meaning of "qualifying works" under s.20 of the LTA 1985. It also underlined the primacy of the "sets approach" over the "aggregating approach" to qualifying works."

Elizabeth Dwomoh

"Secondly, a key decision on the practical issue of how to define a set of 'qualifying works."

Desmond Kilcoyne

"The Court of Appeal's decision was entirely as expected, confirming what everyone had ever thought about 'sets' of works that required to be consulted on. Sanity restored."

Ranjit Bhose QC

"Not convinced it is essential or useful enough to merit a top 10 ranking… defining sets of qualifying works doesn't in reality cause a problem in the vast majority of instances."

Simon Allison

Number 10 Long Acre Securities v Karet [2004] EWHC 442

One of the most important right of first refusal cases - confirmed that it is possible to serve one set of s.5 notices for multiple buildings where those buildings share the same appurtenant property and the lessees all contribute towards the same service charge.

"More a case for the conveyancers."

Daniel Dovar

"An important case which reminds us that definitions in property law can change according to a statutory purpose. For the purpose of enfranchisement, a building is not confined to one structure."

Elizabeth England

"Frequently cited when advising developers but almost certainly wrongly decided. The Act is very poorly drafted but, even making allowances for this, "building" does not mean "4 detached buildings."

Jonathan Upton

"A victory for common sense practicality. A landlord of an estate comprising of multiple buildings was only required to serve a single set of notices pursuant to s.5 of the LTA 1987 where the buildings used the same appurtenant premises."

Elizabeth Dwomoh

"Another decision on the definition of "building", albeit in the context of rights of first refusal, this case remains one of significant importance."

Philip Rainey QC

"Common sense decision. Section 5 is not to be feared, just understood."

Simon Allison

Honourable Mentions

11. Corvan v Abdul-Mahmoud - The only CoA decision on QLTAs I believe, huge implications for management agreements, many of which have similar provisions, and resolved the long-standing tension between Pounders Court and Paddington Walk.

"Only CA case on QLTAs and so important"
Justin Bates

"As many contracts for the provision of services followed similar wording to that found in Corvan, and as the decision is relatively recent, this case will remain highly significant for some time."
Philip Rainey QC

"A case every managing agent business should be aware of. QLTAs catch property managers out all the time. They can be avoided in most instances without a significant impact on cost."
Simon Allison

12. Irvine v Moran - "structure and exterior" includes windows - a superficially understated decision but one which we refer to all the time.

13. Post Office v Aquarius Properties Ltd - One of the most quoted decisions on one of the most important cases on disrepair - in order for a party's obligation to repair to be engaged the property must be in disrepair, i.e. it must have deteriorated from a previous physical condition.

14. Southwark v Woelke - Not particularly ground breaking, but a huge surprise to managing agents and a case that is referred to a lot for that reason - if the lease doesn't include a right to demand a surcharge, or something similar, part way through the year, all estimated costs have to be demanded as an interim charge (yearly, bi annual or quarterly) along with all other routine expenditure, with a balancing charge at the end of the year and if you don't have enough money to carry out the major work, you will either have to forward fund it or wait.

"Not important for lawyers, but you're looking at property managers and it clearly shows them that they can't do the "ad hoc" demands that many like to do"
Justin Bates

"This is a well-known and often cited case which explains in very clear terms that a service charge is not payable unless it is demanded in accordance with the terms of the lease. The first thing any property manager should do is read the lease."
Jonathan Upton

"This is a Top Ten case because of its illustrative qualities. How many times do we come across major works charged as ad hoc charges during the year where the service charge machinery does not permit such a charge?"
Desmond Kilcoyne

"Although a case on lease interpretation, and arguably confined to its facts, Woelke is a salutary reminder: recovery of service charges is governed, first and foremost, by the Lease. You MUST demand costs on account in accordance with the Lease provisions (dates, times, amounts etc). You MUST demand balancing charges in accordance with the Lease (prior certification? supply of certificates or accounts in advance?). If you do not, then nothing is payable. And then, as weeks pass to months, and time slips further by, your old friend section 20B tips by for a chat. And the game is up."
Ranjit Bhose QC

"Emphasises the importance of complying with the terms of the lease and reinforces that one must look closely at what the lease provides."
Rayan Imam

15. Morshead Mansions v Di Marco - Confirmed that it is possible for an RMC to recover payments from its members under the company's articles, if the articles allow it, and those payments will not be protected by the landlord and tenant legislation.

16. Elim Court RTM Co Ltd v Avon Freeholds Ltd - trivial errors in notices can be overlooked.

"Natt v Osman arguable more important as Elim Court purports to follow it. Property managers, however, properly aren't too concerned with validity of notices"
Jonathan Upton

Honourable Mentions

"A critique of the "trench warfare" that has ensued over RTM proceedings, this decision not only rebuked obstructive landlords but reinforced the validity of notices where errors were only trivial. Arguments over what is "trivial" are inevitable."

Philip Rainey QC

"Really important case on compliance with prescribed wording in my view. Also useful for general application whenever a statutory procedural provision must be complied with."

Rayan Imam

"Can I rank this 11th? Can see it may merit a top 10 placement…"

Simon Allison

17. COS Services Ltd v Nicholson – The Upper Tribunal gave guidance as to how an assessment of reasonableness of insurance premiums under s.19 of the Landlord and Tenant Act 1985 should be approached. "Good practical guidance on day to day issues, importantly on the application of s.19: and see FORCELUX V SWEETMAN (Lands Tribunal) as well."

Daniel Dovar

"Valuable reading for any landlord who insures their portfolio under 'block' or 'blanket' policies. Leaseholders do not understand them, FTTs do not like them, and unless the landlord can demonstrate how premiums are calculated and apportioned property by property, and what the 'benefits of scale' these forms of policy bring, it can come a cropper in demonstrating reasonableness. As this UT decision shows."

Ranjit Bhose QC

18. Elysian Fields Management Company Ltd v John and Patricia Nixon – The main point in this case is whether service charges are payable when the landlord or management company has failed to provide the audited accounts.

19. Chaplair Limited v Kumari - When a lease has a costs recovery clause, the court can and should permit recovery of costs in a small claim, including those incurred in tribunal proceedings, notwithstanding the small claim costs rules.

"Really hammering home how bad litigation on costs is for leaseholders."

Justin Bates

"Chaplair v Kumari is my no. 10 (though if I had put these cases in the order of "most often used", this would be at the top). Now that the small claims limit is £10k, many important service charge disputes end up as small claims. I do enjoy the look on a DJ's face when I tell them about Chaplair, and they discover that they do have costs powers after all. Contrary to popular belief, judges love making costs orders, and this lovely case gives them the power to do so!"

Iris Ferber

"Another one that is good to know, but more important for your solicitor to be aware of than you. Bear in mind that the effect of para 5A of Sch 11 to the 2002 Act means that costs recovery clauses are no guarantee of recovery any more…"

Simon Allison

20. Canary Wharf (BP4) T1 Ltd v European Medicines Agency – The case has potentially wide implications as it gives an indication of how the Courts may deal with the question of whether BREXIT can frustrate other types of contract.

21. Woolway v Mazars – The case reversed previous precedent in finding that each floor must be a separate hereditament. Implications of the decision, floor by floor assessment of multi occupied office blocks, increasing separation which revisits functional unity cases, raises issues as to what constitutes access between floors which is needed to seek to establish an hereditament, increase take by billing authority.

Brethertons and Barristers' Rankings

Number 1 Daejan v Benson

Brethertons	1		
Daniel Dovar	1	Elizabeth England	1
Jonathan Upton	1	Elizabeth Dwomoh	1
Iris Ferber	3	Andrew Dymond	1
Desmond Kilcoyne	3	Philip Rainey QC	1
Ranjit Bhose QC	1	Rayan Imam	1
Justin Bates	1	Simon Allison	1

Number 2 Arnold v Britton

Brethertons	5		
Daniel Dovar	4	Elizabeth England	2
Jonathan Upton	2	Elizabeth Dwomoh	6
Iris Ferber	1	Andrew Dymond	5
Desmond Kilcoyne	1	Philip Rainey QC	3
Ranjit Bhose QC	6	Rayan Imam	3
Justin Bates	2	Simon Allison	2

Number 3 Freeholders of 69 Marina v Oram

Brethertons	3		
Daniel Dovar	7	Elizabth England	4
Jonathan Upton	5	Elizabeth Dwomoh	2
Iris Ferber	2	Andrew Dymond	2
Desmond Kilcoyne	5	Philip Rainey QC	5
Ranjit Bhose QC	8	Rayan Imam	2
Justin Bates	3	Simon Allison	7

Number 4 Hounslow v Waaler

Brethertons	10		
Daniel Dovar	3	Elizabeth England	6
Jonathan Upton	3	Elizabeth Dwomoh	10
Iris Ferber	4	Andrew Dymond	4
Desmond Kilcoyne	2	Philip Rainey QC	8
Ranjit Bhose QC	2	Rayan Imam	4
Justin Bates	6	Simon Allison	9

Number 5 Gala Unity v Ariadne Road RTM Company

Brethertons	4		
Daniel Dovar	8	Elizabeth England	3
Jonathan Upton	6	Elizabeth Dwomoh	4
Iris Ferber	6	Andrew Dymond	3
Desmond Kilcoyne		Philip Rainey QC	4
Ranjit Bhose QC	9	Rayan Imam	10
Justin Bates	4	Simon Allison	3

Number 6 Ninety Broomfield Road v Triplerose

Brethertons	2		
Daniel Dovar	8	Elizabeth England	5
Jonathan Upton	4	Elizabeth Dwomoh	3
Iris Ferber	5	Andrew Dymond	9
Desmond Kilcoyne		Philip Rainey QC	2
Ranjit Bhose QC		Rayan Imam	5
Justin Bates		Simon Allison	4

Number 7 OM v Burr

Brethertons	6		
Daniel Dovar	2	Elizabeth England	7
Jonathan Upton	7	Elizabeth Dwomoh	5
Iris Ferber	7	Andrew Dymond	7
Desmond Kilcoyne		Philip Rainey QC	12
Ranjit Bhose QC	7	Rayan Imam	8
Justin Bates	5	Simon Allison	4

Number 8 Brent v Shulem B

Brethertons	8		
Daniel Dovar	2	Elizabth England	9
Jonathan Upton		Elizabeth Dwomoh	8
Iris Ferber	9	Andrew Dymond	8
Desmond Kilcoyne	4	Philip Rainey QC	7
Ranjit Bhose QC	3	Rayan Imam	
Justin Bates		Simon Allison	3

Number 9 Francis v Phillips

Brethertons	7		
Daniel Dovar	5	Elizabeth England	8
Jonathan Upton		Elizabeth Dwomoh	7
Iris Ferber	8	Andrew Dymond	6
Desmond Kilcoyne	7	Philip Rainey QC	13
Ranjit Bhose QC	4	Rayan Imam	
Justin Bates		Simon Allison	

Number 10 Long Acre Securities v Karet

Brethertons	9		
Daniel Dovar		Elizabeth England	10
Jonathan Upton	8	Elizabeth Dwomoh	9
Iris Ferber		Andrew Dymond	10
Desmond Kilcoyne		Philip Rainey QC	9
Ranjit Bhose QC		Rayan Imam	
Justin Bates		Simon Allison	10

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Disclaimer

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The authors cannot accept responsibility for any errors or inaccuracies, loss or damage unless we have given you, personally, specific advice relating to a matter about which you have given us full background details.

You must also bear in mind that the contents of this white paper are based on English Law, and because it contains archival material, that material is bound to go out of date (so please bear in mind the date this white paper was produced.)

Next step

If any of the cases have raised any questions or issues and you need legal advice, Brethertons can assist.

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