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Commercial Law UPDATE

Nil Rateable Value for Stripped-Out Office Premises – Guideline Ruling

An important decision that will be of interest to commercial landlords was issued by the Upper Tribunal (UT) recently.

The UT ruled that prestige office premises that had been stripped bare in preparation for the arrival of a new tenant had a nil rateable value.

The case centred on two floors of an iconic 50-storey office block in Canary Wharf. In accordance with the landlord's regular practice, the floors were stripped to shell condition upon the departure of the previous tenant.

A valuation officer (VO) from the local authority was of the opinion that the premises had a rateable value in excess of £1.8 million but, following an appeal by the landlord, the value was set at nil by the Valuation Tribunal for England.

The VO then challenged this decision before the Upper Tribunal (UT), pointing to the requirement of the Local Government Finance Act 1988 that commercial premises are to be valued on the

assumption that, immediately before a tenancy begins, they are in a state of reasonable repair.

The UT rejected the appeal. It noted that the statutory assumption did not entirely supersede the common law reality principle that a property is to be valued as it in fact exists on the day of valuation. Once the premises in question had been stripped out, they ceased to be capable of beneficial occupation and, as a result, were not a unit of property – or hereditament – at all.

The UT's ruling means that, as a matter of administrative convenience, the stripped-out premises will stay on the local authority's rating list at a nominal value of £1.

Copycat Design Proves Expensive for Retailer

There is almost nothing more frustrating for businesses than to see their successful products imitated by rivals. However, as a High Court case showed, expert lawyers are more than capable of putting a stop to such conduct if it amounts to a breach of copyright.

The case concerned a palette of two makeup powders which was sold for about £49 and had achieved sales of £12.9 million. The product's packaging and the powders themselves were embossed with starburst motifs. Its manufacturer launched proceedings against a supermarket chain after it began to market a similar product, in store and online, at a price of £6.99.

In upholding the manufacturer's claim, the Court found that the product's distinctive appearance was created by one of its employees in concert with a design agency. The latter had assigned any rights it had in the design to the manufacturer. Copyright subsisted in the starburst motifs in that they were artistic works and the fruits of original thought.

Given the substantial similarities between the product and that sold by the chain, the Court found that the latter bore the burden of proving that those similarities did not arise from copying. The chain having no real prospect of discharging that burden, summary judgment was entered in the manufacturer's favour. A final injunction was granted, restraining further sales of the chain's infringing product.

If your designs have been copied by another business, contact us for advice.

A Contract Is What it Says

When you enter into a contract, you are agreeing to be bound by what it says, not by what you think it means. Only rarely, such as when the meaning would make no commercial sense, will the court substitute its own view of the meaning of the contract if the meaning can be divined from the contract itself.

It is therefore important to make sure the wording of the contract's terms is tightly drafted so that arguments over the meaning of clauses do not arise.

Recently, a dispute arose over a contract as to the meaning of the word

'default' with regard to the payment of compensation. Did it mean any failure to fulfil the terms of the contract, or did it mean any wilful or deliberate failure to fulfil the terms of the contract? The answer was easy: the generally accepted meaning of the word applied, not the narrower interpretation that included only wilful or deliberate failure. If that was the meaning one party wished to include, they should have negotiated to put that in the document.

If you are negotiating a contract, it is important to give careful consideration to the meaning of the clauses in it. Contact us for advice.

Not Complying With Data Protection Law? The ICO Is After You

The massive fine of nearly £184 million to be levied on British Airways (BA) after hackers used malware to redirect customers attempting to use its payments system to a different website should serve as a warning for any business that data protection failures will be harshly dealt with by the Information Commissioner's Office (ICO).

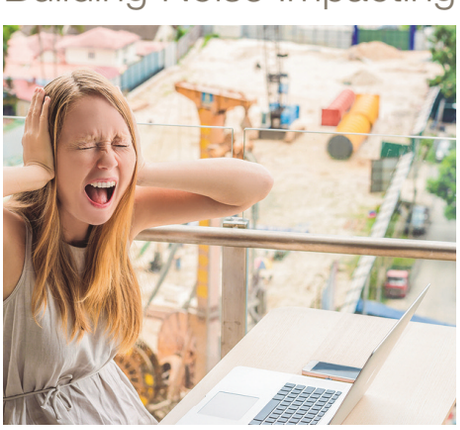
The fine takes into account the fact that no fraudulent activity on the customer accounts was detected and that BA cooperated fully with the investigation.

Elsewhere, hotel group Marriott are being fined £99 million after hackers accessed the details of 30 million of its EU customers in 2018. Marriott also cooperated fully with the ICO. Both companies have appealed against the size of the fines, which can be as high as 4 per cent of the company's global turnover.

If you are not complying with the General Data Protection Regulation and do not have adequate systems for protecting private data, you should take advice and give immediate attention to these issues. If you fail to do so, you are taking a significant risk.

For advice on how data protection law affects your business, contact us.

Building Noise Impacting Your Business? You May Be Due a Rates Cut



Inner-city businesses are frequently assailed by noise and dust generated by nearby development projects. However, as one case showed, in such circumstances the right legal advice can yield a substantial reduction in non-domestic rates.

The case concerned a company that leased four floors of an office block in a busy urban area. It specialises in renting desk space to start-up and fledgling businesses. The area had been the subject of numerous large-scale demolition and building schemes, including the construction of a new hotel and residential units on a site immediately across the road from the company's premises.

The company argued that its business had suffered badly due to the racket and dust arising from constant development of the area, which was so intrusive as to amount to a form of torture. However, its application for a reduction in its business rates was rejected by a local authority valuation officer and that decision was subsequently confirmed by the Valuation Tribunal for England.

In upholding the company's challenge to the latter ruling, the Upper Tribunal (UT) noted that a video clip revealed the extent of highly noticeable noise from demolition and construction work in the area. At the time of the company's application, demolition works were in progress across the road and the sound of jackhammers and machines drilling through concrete floors was clearly audible.

The UT found that the approach taken by the valuation officer was prescriptively formulaic. Had the company entered into a hypothetical year-on-year lease on the date of its application, it would have expected a substantial discount on its rent to take account of the noise and dust. The rateable value of the company's premises was cut by about 25 per cent – from £52,827 to £39,500 – with the result that its future non-domestic rates bills will be greatly reduced.

Contact us for advice on the conduct of any dispute with governmental bodies.

Ripped Off By a Crooked Employee? You May Be Entitled to Tax Relief

Losing money at the hands of a crooked employee is a sadly familiar experience for many businesses, but what are the tax consequences of such deceit? The First-tier Tribunal (FTT) tackled that issue in the case of a catering supplies company whose manager diverted customers' payments into his personal bank account.

When the company's clients made payments over the phone by credit or debit card, the manager gave them his own bank details. After this was discovered, the company sought bad debt relief in respect of its VAT bill for the relevant quarter. HM Revenue and Customs (HMRC), however, took a restrictive view and refused to grant the relief sought.

In upholding the company's challenge to that decision, the FTT rejected HMRC's argument that, due to the seniority of the manager's role, he had at all times been acting for and on behalf of the company. The reality was that he had done the opposite of representing the company's legitimate interests and had self-evidently been acting dishonestly for his own benefit.

The stolen money had been diverted from customers at source, never reaching the company's account. It could not be said that the manager had stolen money that was in the company's possession. Never having received any payment for the goods, the company was entitled to bad debt relief.

For advice on what to do if you know or suspect that an employee has been acting dishonestly, contact us.

Entering Into a Credit Agreement? Always Seek Professional Advice

A great many businesses achieve useful cashflow advantages by entering into credit agreements that enable them to pay large bills by instalments. A High Court ruling, however, underlined the risks of embarking on such arrangements without expert legal advice.

The case concerned three GP surgeries that engaged a recruitment agency to source locum doctors. The agency charged an up-front annual fee for its services, but the practices entered into agreements with a credit provider that enabled them to pay monthly by instalments.

After the agency entered administration, the surgeries cancelled the direct debits by which they paid those instalments. The credit provider responded by launching proceedings against them to recover the balance of sums due under the credit agreements. The Court observed that the surgeries and the credit provider were all innocent parties and that the underlying issue was whether the former or the latter should bear the burden of the agency's financial failure.

Granting summary judgment against the surgeries for the full amounts claimed, the Court noted that the terms of the credit agreements made it abundantly clear that the primary liability to make payments under them fell upon the surgeries. They argued that the agency had induced them to enter into the agreements by misrepresenting to them that, in the event of any non-payments by the surgeries, the credit provider would have no recourse against them.

However, the Court found that, whether or not that was the case, the agency had not acted as the credit provider's agent in relation to the agreements and the surgeries' defence stood no real prospect of success.

For advice on dealing with insolvent businesses, contact us.

Packaging Patents Not Inventive Enough to Be Valid, High Court Rules

Patent protection is only afforded to genuinely novel and inventive ideas and products. Illustrating this, the High Court recently declared invalid two plastic food packaging patents on the basis that the central feature said to set them apart from others was not novel.

Both patents were for containers of the lidded transparent type commonly used in supermarkets. The patent holders argued that they met a long-felt desire within the plastics industry for packaging that was more reliably sealed, less expensive and more recyclable than existing models. Both patented containers featured what was referred to as a peripheral flange, said to represent a novel development on previous packaging designs.

However, in upholding a third packaging manufacturer's challenge to the patents, the Court found that both designs lacked inventive steps when compared with an Australian patent that pre-dated both of them. That patent proposed the use of a flange located around the periphery of a package's lid as a platform for adhesive. A skilled engineer would not view the patents in issue as representing a novel advance on the prior art represented by the Australian patent.

For expert advice on intellectual property rights, contact us.

Don't Confuse Companies With Their Trading Styles! High Court Ruling

Companies are often far less well known than the brands under which they trade. A recent High Court case illustrated that failing to make a distinction between formal corporate entities and their trading styles can cause problems when it comes to dispute resolution.

The case concerned a scaffolding business that contracted to provide its services to a property company. Much of the pre-contract correspondence was conducted by the company under the heading of its trading style. However, the final purchase order was in the company's name and the scaffolder was instructed to submit its invoices to the company.

After a dispute arose in respect of sums due under the contract, the matter was referred to an adjudicator by the scaffolder – who made the mistake of addressing the notice of adjudication not to the company but to its trading name. The company's argument that that amounted to a fundamental flaw in the proceedings was rejected by the adjudicator, who awarded the scaffolder £57,473 plus VAT.

After the scaffolder launched proceedings to enforce this, the company pointed out that its trading style has no legal substance and is shared by a multitude of other companies that trade from the same address. The notice having been misaddressed, it failed to identify the correct contracting party and the adjudicator thus had no jurisdiction to consider the matter.

In rejecting those arguments, however, the Court noted that a misdescription of a party in a notice of adjudication does not of itself render the notice invalid. The only confusion was on the scaffolder's part and the company was at all times aware both that it was a party to the contract and that it was the intended respondent to the adjudication.

The notice named the specific property and project concerned in the contract and, taken in context, there was no room for doubt that, of all those to whom the trading name might have referred, it was the company against which the notice was targeted. There being no real ambiguity or lack of clarity in the notice, it was sufficient to effectively commence a valid adjudication. The Court entered summary judgment against the company in the full amount of the adjudicator's award.

This type of mistake is easy to make for anyone who is not an experienced litigator. Using us to guide you through the process will ensure all matters are dealt with properly at each stage of the proceedings.

Contact us if you would like advice on any of the issues raised in this bulletin or on any other commercial law matter.

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