SIMON BURN SOLICITORS

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Commercial Law UPDATE

Social Networking at Work

With increasing use of social networking sites such as Twitter and Facebook for both business and pleasure, it is advisable for all firms to have social networking policies that are clear and unequivocal and protect the business to the maximum extent possible from exposure to liability.

Use of social networking by employees has a number of implications for businesses, such as:

- the potential for damage to the reputation of the business;
- interference with effectiveness at work; and
- the potential that there may be breaches of the law (e.g. data protection law).

The first question to address is whether employees are to be allowed access to social networking sites at all during working hours. If the decision is made to allow such access, then there needs to be careful thought about forming the rules regarding social media use and comprehensive guidance on what is and what is not acceptable. This is especially true if social networking sites are to be used as part of the firm's promotional activities.

Where social networking is used for business purposes, there should also be a clear contractual agreement that the social networking output and accounts (and attendant goodwill) belong to the business, not the employee.

If you require assistance in creating an effective and enforceable policy for social networking use, contact us for advice.

Deadlock Forces Sale When Family Inherits Business

When a family business is handed down and ownership is split between two or more members of the next generation, the result can all too often be discord. Normally, this can be resolved by one party buying out the other, but when this does not occur, the result can be a disaster, as a recent case shows.

It involved a family company owned by a man who died in 2001, leaving a controlling interest in the company to his children by way of a trust. Gradually, one of the children took over running the business and brought in her husband (an accountant) to help, although all three children were directors.

Her two younger sisters became increasingly disaffected by the arrangement. Things deteriorated to the extent that the two factions held 'rival' board meetings and refused to recognise the legitimacy of the 'other side's' meetings.

Considering the impasse to be insoluble and the company no longer governable, the two sisters brought a petition seeking to have the company wound up. The court granted their application.

The succession arrangements for a family business often need to be approached with delicacy and a lot of forethought. If difficulties are anticipated, there are a number of means by which the need for long and expensive litigation can be avoided: for example, the creation of a shareholders' agreement with appropriate terms for dealing with shareholder deadlock.

If you are considering passing your business on to your family, we can advise you and help you avoid the potential pitfalls. In general, the earlier thought is given to the relevant issues, the better.

New Minimum Wage Rates

The Government has accepted the recommendations of the Low Pay Commission for the National Minimum Wage (NMW) rates for 2014/2015.

The following changes will come into effect on 1 October 2014:

- the adult NMW rate will increase from £6.31 to £6.50 per hour;
- the NMW rate for workers aged 18 to 20 will increase from £5.03 to £5.13 per hour;
- the NMW rate for 16- and 17-year-olds will increase from £3.72 to £3.79 per hour; and
- the apprentice rate of the NMW, which applies to apprentices under 19 or over 19 and in the first year of their apprenticeship, will increase from £2.68 to £2.73 per hour.

The accommodation offset will increase from £4.91 to £5.08 per day.

Vicarious Liability for Extreme Acts

Employers will be relieved to hear of a case dealing with the vicarious liability of employers in which an innocent customer who was savagely attacked by a petrol kiosk attendant on a supermarket forecourt received the Court of Appeal's 'natural sympathy' but was denied an award in compensation for his injuries.

The customer suffered serious head injuries, which caused him to develop epilepsy, following an unprovoked attack in which he was repeatedly kicked and punched by the attendant.

The injured man sued the supermarket chain for damages, but had his claim dismissed by a County Court judge. Dismissing his appeal against that decision, the Court of Appeal ruled that, whatever the moral rights or wrongs of the case, the law on vicarious liability 'is not yet at a stage where the mere fact of contact between a sales assistant and a customer…is of itself sufficient' to render the employer liable for the actions of its employee.

The attendant's inexplicable attack occurred 'purely for reasons of his own, beyond the scope of his employment'. Whilst, in such circumstances, it could be said that the employer could fairly be expected to bear the cost of compensation, rather than that the innocent victim of an attack should be left without any civil remedy other than against an attacker who was unlikely to be able to pay full compensation, the Court nevertheless ruled that to hold the employer liable for an apparently motiveless attack, carried out by an employee for reasons of his own and contrary to instructions, would be 'a step too far'.

Controversial Tenancy Decision to Go to Court of Appeal

A recent decision of the High Court, which held that a tenant's failure to comply strictly with its requirement under the lease to give notice of intention to terminate it was inconsequential, is to be appealed to the Court of Appeal.

The decision was regarded as something of a surprise as it went counter to accepted legal wisdom, so its reversal is regarded as a reasonable possibility.

Failing to give notice in the correct form and at the right time can be an expensive mistake. To avoid errors of this kind, contact us for advice as soon as possible after you decide to terminate your lease.

Potential Insolvency Brings Stay of Payment

Normally, when a building dispute arises that leads to an adjudicator making an award in favour of one party, the award is simply paid and that is that. However, sometimes things are more complicated.

Recently, a company went to the High Court arguing that it should not have to pay an adjudicator's award in favour of another company because it had counterclaims to pursue against that company and, critically, a winding up petition had been issued against the other company. It argued that it would be unfair for it to have to pay the sum decided by the adjudicator to a company which might be insolvent.

The Court refused to pre-judge the fate of the winding up petition but, given the particular circumstances, ordered that the payment should be 'stayed' until the outcome of the insolvency proceedings was known.

If you are owed money or are in dispute with a company that is threatened with insolvency, contact us for advice on how to protect your position.

Tenant's Fixtures Must Remain Until Lease Ends

Often, it takes a dispute over something that is worth a lot of money to produce a judgment that clarifies the law. A recent case, involving a disagreement over a lease that required the tenant to build and maintain a steel-making plant and rolling mill, was one such.

There was no dispute between the landlord and the tenant that the steel-making plant was a 'tenant's fixture'.

At issue was the tenant's wish to remove the steel-making facilities before the expiry of the lease, where the removal was not for the purpose of the replacement of or alteration to the plant.

The High Court ruled that in order to prevent the removal of the tenant's fixtures, the lease needed to have 'clear words' to that effect, and that whilst the lease required the installation of fixtures, it did not prevent their removal. The landlord appealed.

In the Court of Appeal, the decision was reversed. The Court ruled that a tenant's right to remove fixtures depends on the language of the lease. In the absence of clear words to the contrary, the tenant will normally retain the right. However, in this case, the reference to the premises in the lease clearly included the steel mill. The lease did not permit the premises to be used 'other than for the purposes of steel making, steel rolling and operations ancillary thereto' and removal of the plant would breach that obligation.

Accordingly, the steel-making plant must stay on site and be maintained until the end of the lease.

For advice on your rights and obligations as a landlord or tenant, contact us.

When is Ideal Not Ideal?

When the publisher of Ideal Home (IH) magazine brought a legal action for infringement of its trade mark against the Ideal Home Show (IHS), the response was a counterclaim by IHS that IH's trade mark was invalid. Both brands had successfully traded alongside one another for many years.

The case arose because IH was concerned that Internet shoppers could confuse the two brands. The court threw out both claims, deciding that the confusion caused to online shoppers would be no more than could reasonably be expected in the circumstances.

E-commerce can create difficulties when websites with similar names are trading. It is important to develop an intellectual property strategy which protects your commercial interests both online and off.

Principle, Not Technicalities, Crucial in Landlord's Notice

Professional landlords are well aware of the complexities they can face when giving notice to tenants that they require possession of the let premises.

Because of the rather tortuous provisions of the Housing Act 1988 with regard to the giving of notice, numerous court rulings have been made that a landlord's notice to a tenant was invalid because an incorrect or indefinite termination date was specified in the notice.

Landlords will therefore welcome a recent decision of the Court of Appeal, which ruled that a tenancy which commenced as a fixed-term tenancy could properly be terminated by a notice given after the expiry of the fixed term.

The notice terminating the lease did not comply with the lease provisions. It was not issued at the right time and, as filled in, it was unclear which of two possible operative dates for being granted possession would apply.

It had previously been widely considered that in such circumstances the notice would be invalid. The Court ruled, however, that where such a notice has been given after the expiry of the tenancy and the result is that the termination date is technically indeterminate because it can be either of two different dates (a side effect of the legislation if one is not very careful), then a 'reasonable person' would understand that a notice to vacate the premises had been given.

Obtaining possession of premises from a tenant can be fraught with difficulties. If you are likely to want to do so, contact us for expert advice.

Court Underlines Duty of Candour in Contract Negotiations

A lack of candour in contractual negotiations can lead to grave financial consequences, as was shown when an event management company that lost its only customer four months after signing a new five-year deal won the right to substantial damages.

Company A had for 30 years provided management services to company B in respect of an annual trade show. Company B was company A's sole client and the latter had sought to protect its position by signing a fresh five-year contract.

However, four months after the agreement was signed, company B sold its right to hold the show and sought to terminate the contract. That triggered a breach of contract claim by company A in which it sought more than £1 million in damages.

Company B pointed to a clause which had been inserted in the contract. This stated that the agreement would become unenforceable if 'some unforeseen circumstance' resulted in cancellation of the trade show. However, the High Court found that a possible sale of the company had been in prospect when the new contract was signed and that was the reason for the clause's insertion. In those circumstances, it was 'very clear' that the sale and the cancellation of the trade show were not 'unforeseen'.

The Court rejected company B's arguments that the clause did not accurately reflect the oral agreement that had been reached, and that a term should be implied into the contract enabling it to terminate the contract on reasonable notice in the event of a sale of its business.

Had company B been 'straightforward in its business dealings', it would have proposed that such a provision be explicitly included in the contract. Such a proposal would have been 'rejected out of hand' by company A and it was therefore 'absurd' to suggest that such a clause should be implied into the contract. The argument was, in truth, 'an attempt to truncate a fixed-term contract'.

Although company A's alternative claim under the Misrepresentation Act 1967 was rejected, the Court emphasised the fundamental principle that 'the reasonable expectations of honest men must be protected'. Company A was entitled to expect candour in the negotiations and company B was under a duty to disclose the truth: that it wanted to avoid compensating company A in the event of a sale.

We can help you conduct your contractual negotiations in a way that protects your business interests and reduces the risk of legal challenge.

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