



Case Law and Legislative Update

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Discussion

- Renewal of business tenancies
- RTM applications
- Express declarations of trust
- Overview of the Renters' Rights Bill



Case Law Update

- *Gill v. Lees News Ltd*
[2023] EWCA Civ 1178
- *McDonald's Restaurants v. Shirayama Shokusan Company Ltd*
[2024] EWHC 1133 (Ch)
- *Nilsson v. Cynberg*
[2024] EWHC 2164 (Ch)
- *A1 Properties (Sunderland) Ltd v. Tudor Studios RTM Company Ltd* [2024] UKSC 27



Gill v. Lees News Ltd

s.30(1)(a): *“where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant’s failure to comply with the said obligations”*

(1) When is the state of repair to be judged?

(2) What is to be considered when deciding whether the tenant “ought not to be granted a new tenancy”?



Gill v. Lees News Ltd

First Question

CA rejected T's submission that state of repair judged at the time of the hearing.

Contrast with s.30(1)(f) (redevelopment) (*Betty's Cafes*)

“it would be too prescriptive to say that breaches of the repairing covenant at the date of the notice must be ignored if they have been remedied by the date of the hearing. If the tenant has a lamentable record of performance and only puts things right at the last minute that is, in my judgment, something that the court legitimately take into account” [39]

Accordingly, the Court can consider state of repair throughout period from service of L's notice until trial.

Gill v. Lees News Ltd

Second Question

Rejected L's submission that question of whether new tenancy ought to be granted should be considered solely from the perspective of the landlord.

Also rejected L's submission that consideration confined to the relevant ground (disapproving *Youssefi v. Mussellwhite*)

It was “*an overall question*” which entitled the Judge to take into account matters relating to this landlord and this tenant, including the potential loss of T's livelihood if no new tenancy was granted [67]

Rare that litigation conduct would amount to a reason to deny T a new tenancy [72]



McDonald's Restaurants v. Shirayama Shokusan Company Ltd

Three claims:

1. Under s.37A(1): a right to damages where no new tenancy granted and “*it subsequently made to appear to the court, that the order was obtained, or the court was induced to refuse the grant, by misrepresentation or the concealment of material facts”*”
2. On the undertaking in support of L's evidence
3. Claim for deceit

McDonald's Restaurants v. Shirayama Shokusan Company Ltd

When opposing the grant of a new tenancy under section 30(1)(g), had L misrepresented his intentions to open a new business on the premises and obtained the termination of T's tenancy thereby?

Judge held:

Crucial question was what intention did L have at the date of trial? Therefore, L can honestly change its mind after trial and T would be left with no remedy.

L could present a case on its intention in open terms.



McDonald's Restaurants v. Shirayama Shokusan Company Ltd

But:

L's case was specific: that it was going to open a restaurant business on the premises to be called *Zen Bento*. Also identified contractor to carry out re-fit.

Undermined by emails sent within days of the trial showing that L was considering other ideas for businesses on the premises

Judge held that L pursued application “*to take back the space, so that ... could then decide what to do with it*”. L did not have a firm intention to open *Zen Bento* when giving evidence at trial [208]

McDonald's Restaurants v. Shirayama Shokusan Company Ltd

It made no difference that L might have been able to succeed had it asserted an intention in less specific terms.

Judge refused to consider counter-factual of what L would have obtained order if L had stated true intention at trial. Held that, on L's evidence, the trial judge had found that L genuinely intended to establish *Zen Bento* and, therefore, L's misrepresentation had had the required causative effect under s.37A.

L was also guilty of misrepresenting that he intended to establish *Zen Bento* when giving undertakings to that effect.

But claim for deceit dismissed.



Nilsson v. Cynberg

An express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel (*Stack v. Dowden* at [49]).

What are the requirements of a later agreement that can override an express declaration of trust?

More specifically, does that agreement have to comply with s.2 of the 1989 Act (*Re Iqbal*) or will an informal agreement suffice (*Clarke v Meadus*)?



Nilsson v. Cynberg

Judge decided that:

An express declaration of trust is not capable of being overridden by agreement made prior to, or at the same time as, the express declaration of trust

The circumstances in which an express declaration of trust is capable of being overridden by a subsequent agreement is not limited to an agreement satisfying s.2. It may also include a common intention constructive trust.

This avoids arbitrary distinction between claim framed in terms of proprietary estoppel and common intention constructive trust.

Nilsson v. Cynberg

When H and W split and H left property in 2009, there was an oral express common intention when H told W that the house “*is yours*”.

W acted to her detriment in –

- carrying out home improvements (although Judge said that they alone would have been insufficient)
- foregoing ancillary relief proceedings
- making all mortgage payments on the joint mortgage



A1 Properties (Sunderland) Ltd v. Tudor Studios RTM Company Ltd

Did failure of RTM company to serve the claim notice on a landlord of the premises, as it was required to do by s.79(6) of CLRA 2002, invalidate the acquisition by the company of the right to manage?

s.79(6): “*The claim notice must be given to each person who on the relevant date is – (a) landlord under a lease of the whole or any part of the premises; (b) party to such a lease otherwise than as landlord or tenant, (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 ...*”



A1 Properties (Sunderland) Ltd v. Tudor Studios RTM Company Ltd

Where a statute confers a property or similar right on a person, does non-compliance with the statutory procedure preclude the person from acquiring the right in question?

Held that this was a question of statutory construction which involves focusing on consequences of non-compliance and asking whether Parliament can fairly have intended total invalidity to follow from non-compliance [59]

In *Elim Court*, CA had previously decided that failure to serve notice of claim did not prevent right to manage passing to RTM. Approach disapproved by SC.



A1 Properties (Sunderland) Ltd v. Tudor Studios RTM Company Ltd

SC held that Parliament's intention could be taken from distinction made in the scheme between invisible and visible landlords.

Notice is not required to be served on a person "*who cannot be found or whose identity cannot be ascertained*" (s.79(7)). This was construed as including the invisible landlord (i.e. a landlord whose very existence the RTM cannot discover).

This led to a distinction between a visible landlord (who had to be served) and an invisible landlord (who did not). The invisible landlord was deprived of its right to object, which was "*the statutory price of invisibility*" [80].



A1 Properties (Sunderland) Ltd v. Tudor Studios RTM Company Ltd

For a visible landlord who was not served, it was held that the failure to serve the notice of claim made the transfer of the right to manage voidable at the instance of that landlord, rather than void [87]. As a result, the unserved landlord will have to give notice of its intention to avoid the transfer and either:

- seek declaratory relief that the right to manage has not transferred; or
- if there has been an objection and determination by the FTT, by judicial review

This has the important effect that other persons unaffected by a procedural omission will not be able to rely upon that omission as an objection to the transfer [92]. The decision in *Elim Court* was held to be correct for this (different) reason.



Renters' Rights Bill

An overview

Renters' Rights Bill

[AS INTRODUCED]

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Background

- Originated in the last Parliament
- Resurrected on 11th September 2024 in the House of Commons
- Change of name, but the substance is the same
- Sets out a wide-ranging overhaul of the law relating to rented homes
- Long title: *“A Bill to make provision changing the law about rented homes, including provision abolishing fixed term assured tenancies and assured shorthold tenancies; imposing obligations on landlords and others in relation to rented homes and temporary and supported accommodation; and for connected purposes.”*

Reform through four key measures

(1) Periodic tenancies only

- Fixed term contracts abolished
- Tenants can stay and serve two months' notice

(2) Abolish s.21 evictions

- Only the s.8 procedure will remain

(3) Reformed grounds for possession

- Litigation expected. Expansion of grounds for a landlord but tenant rights also developed

(4) Rent increases

- Once per year. New s.13 notice to serve. Challenges to the FTT
- Backdating increases and 'rent review' clauses banned



Further measures

- Extension of ‘Awaab’s law’
- Extension of a Decent Homes Standard
- Banning rental bidding wars
- Abolishing blanket bans
- New Private Rented Sector Database

Planned implementation

- New tenancies introduced. On this date, new system applies to all private tenancies
- Existing tenancies will convert to the new system. Existing fixed term tenancies converted to periodic tenancies
- Landlords unable to serve s.21 notices or ‘old-style’ s.8 notices
- Reaction to the Bill to date. Attempts to reassure landlords



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