Machins SOLICITORS

PROPERTY LITIGATION NEWS

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BINDING ARBITRATION PROCESS FOR COVID-19 RELATED RENT ARREARS BECOMES LAW

On 24th March 2022 the moratorium on commercial evictions and forfeiture of commercial leases, which offered business tenants struggling to pay rent breathing space, ended. Instead, new legislation has been brought in which introduces a binding arbitration process to resolve disputes between commercial landlords and tenants in relation to Covid-19 related rent arrears. In particular, the law applies to any businesses such as non-essential retail, pubs, gyms and restaurants that were forced to close during government mandated lockdowns. The new arbitration process applies only to rent arrears which arose during the period when the business was required to close (known as "the protected period").

Arrears outside of the "protected period" are not protected rent and these arrears can now be enforced by landlords, but landlords should be careful not to include a "protected rent" debt within the sum to be enforced should there be a mixture of protected and non-protected rent debt.

Whilst many landlords and tenants have reached their own commercial arrangements for dealing with rent arrears between themselves, there are a large number of instances where this has not happened, for a wide range of reasons. The Commercial Rent (Coronavirus) Act 2022 ('the Act') received Royal Assent, and became law, on 24th March 2022. The Act is designed to intervene and assist in this area where disputes remain unresolved.

Statutory guidance has just been published (on 7th April 2022) to guide arbitrators in exercising their functions under the Act. This replaces the draft guidance that was published earlier this year.

Whilst the intentions of the legislation are clear, the operation of the new arbitration process is uncharted territory for landlords and tenants alike. We will wait and see as to how the arbitration process will work in practice, and what sorts of decisions it will produce.

Machins' Property Litigation team can advise in more detail on these issues.

NEW CODE OF PRACTICE INTRODUCED FOR COMMERCIAL LANDLORDS AND TENANTS

Since the outbreak of the Covid-19 pandemic and the introduction of government mandated lockdowns that we have never before seen, many UK businesses have struggled, particularly those that were forced to close in line with government regulations.

Over the course of the pandemic, the government has sought to introduce legislation providing protection to, amongst others, business tenants that were left struggling due to forced closures.

Amongst other measures introduced, the Government brought in measures restricting the actions that commercial landlords could take in circumstances where their tenants were in rent arrears. The Government also introduced a Code of Practice in order to guide landlords and tenants when approaching disputes about rent arrears, and to encourage landlords and tenants to work collaboratively to find a resolution.

On 7th April 2022, the government published a new 'Commercial Rent Code of Practice following the Covid-19 Pandemic' ('the Code') which aims to update the Code of Practice previously introduced. These updates have been brought in to reflect the changes introduced by the Commercial Rent (Coronavirus) Act 2022 ('the Act'), and aims to provide clarity on what the arbitration process introduced by the Act will look like, what evidence will be considered, and the principles on which awards are made.

The Code, like the previous Code of Practice, seeks to balance the rights of commercial landlords and tenants when attempting negotiations regarding unpaid rent. The Code also makes clear that a business tenant should continue to pay rent where they are able to do so, and therefore discourages the practice of deliberately choosing not to pay rent, even where tenants can afford to do so, which has arisen during Covid-19 in order to take advantage of the protections in place for business tenants during the pandemic.

ELECTRIC VEHICLES – A CHALLENGE OR OPPORTUNITY FOR COMMERCIAL LANDLORDS?

In 2021, the Government published its strategy to achieve net zero on carbon emissions by 2050, and electric vehicles ('EVs') formed an important part of this plan.

The Government's forthcoming Electric Vehicle Infrastructure Strategy is intended to set out the vision for rolling out charging points across the country, which will in turn impact commercial property developers and landlords alike. This will include the requirement that new commercial buildings, and existing commercial buildings which are undergoing major renovation, that have more than 10 parking spaces within the site boundary must have at least one EV charging point and cable routes for one in five of the total number of spaces so additional EV charging points can be installed at a future date. These mandated charging points must have a minimum charging rate of 7Kw, which represents a significant boost from existing slower chargers.

There are, however, exemptions in certain circumstances, for example where the infrastructure costs exceed 7% of the total cost of the renovations for existing commercial buildings, it will not be mandatory to install the EV charging points.

Commercial landowners and landlords that are considering installing EV charging points should consider, amongst other things, whether amendments are needed to their existing leases and agreements, access to the chargers, maintenance and repair issues, and cost.

The introduction of charging points may be beneficial to landlords and developers in that it could be an attractive feature for potential tenants, and may result in high rents and increased land value.

AUCTION SALES – IS 'BUYER BEWARE' ENOUGH TO AVOID A CLAIM FOR NON-DISCLOSURE?

The principle of 'Buyer Beware' (or Caveat Emptor as it is known in Latin) describes the principle that generally applies in property transactions, meaning that the buyer assumes the risk and burden of due diligence when purchasing a property.

This principle was put to the test in the recent case of SPS Groundworks & Building Ltd v Mahil [2022] EWHC 371 (QB).

In this case, a plot of land was sold at auction which was subject to an overage obligation. The overage required payment of 50% of the uplift in value of the property if planning permission was obtained. The auction legal pack included a copy of a deed containing the obligation and it was also referred to in the title to the property, but there was no specific reference to the overage in the auction brochure and no reference was made by the auctioneer.

The buyer, who won at auction, visited the plot of land but did not look at the auctioneer's website and did not read the terms and conditions in the auction catalogue. She paid the deposit and the sale was subject to the Common Auction Conditions (3rd Edition) which stated that the land was sold subject to all matters referred to in the auction pack. When she discovered the overage obligation that effected the land, she refused to complete on the purchase. She alleged that the references in the title and deed which were supplied as part of the auction pack were insufficient to relieve the seller of liability.

The Court held that the seller had not complied with its duty of disclosure. References in the auction brochure and by the auctioneer to needing to read the legal pack were insufficient. The Court held that instead, full and frank disclosure of a defect in title such as this was necessary which would require specifically bringing the overage obligation to the buyer's attention.

This case produced an interesting result which seemingly goes against the overarching principle of Buyer Beware, particularly where most legal commentators would have expected that disclosure of the title and relevant deed, both of which referred to the overage, would have been sufficient.

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Property Litigation Team on 01582 514 000.

Machins offer a full range of commercial services and our Property Litigation team are able to advise on any disputed landlord and tenant or property issue.

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Machins Solicitors LLP have offices in Berkhamsted and Luton. We are one of the leading law firms in Hertfordshire and Bedfordshire and recognise the need to establish a proper relationship with our clients which allows us to understand individual requirements and to give effective practical advice in a pragmatic, cost effective way. We provide specialist advice and assistance both for businesses and individuals.