LexisNexis

# The latest residential property cases (2020)

15 December 2020

Before viewing this webinar, please visit www.lexiswebinars.co.uk/test-your-system to ensure that your network and PC are configured correctly.

Tip: Press F11 on your keyboard to enlarge the webinar player.

1

## The latest residential property cases (2020)

The law as stated during this webinar is up to date as of **8 December 2020**

LexisNexis

2

## Michael Large

Senior Associate
Colman Coyle Solicitors

LexisNexis

3

2020, a most unusual year…!

 

4

## Summary: Residential Property Cases in 2020

Housing Act 1988:

- Section 21 Notices and gas certificates:
  **Trecarrell House v Bouncefield (2020) EWCA Civ 760**
- Section 8 Notices and typographical errorZ:
  **Pease v Carter (2020) L&T 18**
- Service of Notice after death:
  **Gateway Housing Association v (1) The Personal Representatives of Mohammed Nuruj Ali and (2) Delara Begum [2020] EWCA Civ 1339**
- Enforcement of Covenants:
  **Duval v 11-13 Randolph Crescent Limited (2020) AC 845**
- Forfeiture:
  **Marchitelli v 15 Westgate Terrace Limited (2020) UKUT 192 (LC)**
- Waiver of the right to forfeit:
  **Brar v Thirunavukkrasu (2020) L&TR 3**
- Nuisance:
  **Fearne v The Board of Trustees of The Tate Gallery [2020] EWCA Civ 104**

 

5

## Housing Act 1988: Section 21

- Section 21 Notices and Gas Certificates:
  - **Trecarrell House v Bouncefield (2020) EWCA Civ 760**
  - Decision of HH Jan Luba in *Caridon v Shooltz [2018]* considered and effectively reversed. Court of Appeal considered paragraph 6 or 7 of Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998. Landlord was seeking possession of property let on AST following service of a Section 21 Notice. Did Section 21A of the Housing Act 1988 require that (amongst sundry other requirements) a valid gas safety certificate must be served prior to the parties entering into the AST? If not, when?
  - Paragraph 6 provided for two alternatives:
  - Under 6(a), a copy of the certificate should be given to existing tenants within 28 days of the gas safety check. Alternatively, 6(b) applied where there were new tenants, and the certificate had to be given prior to them taking up occupation.
  - Here the landlord provided the certificate after the tenants occupied but before serving the Section 21 Notice. Court of Appeal held that the landlord could remedy the breach by serving the certificate after the new tenants went into occupation: see paragraphs 24 and 30 of the judgment.

 

6

## Housing Act 1988: Section 21: Analysis

- Section 21 Notices and Gas Certificates:
  - **Trecarrell House v Bouncefield (2020) EWCA Civ 760**
  - Court of Appeal held that the landlord could remedy the breach by serving the certificate after the new tenants went into occupation: see paragraphs 24, 30 and 40 of the judgment:
  - Paragraph 24: main sanctions for failure to comply with 1998 Regulations are criminal: prosecution under Section 33 of the Health & Safety at Work etc Act 1974, "*and a landlord whose breach of the regulations results in the death of a tenant may also have a potential criminal liability for manslaughter*". Imposition of a bar on serving a Section 21 notice "*therefore only collateral to these sanctions*." Exclusion of the 28 day requirement from para 6(a) confirmed Parliament did not intend these requirements to be "*applied with the same vigour*".
  - Paragraph 30 similarly found the bar on service "*an unlikely result for Parliament to have intended*."
  - Paragraph 40: a bar on service of a Section 21 Notice would in effect change the tenants assured shorthold tenancy into a "*fully assured tenancy with accompanying security of tenure*."

 7

7

## Housing Act 1988: Section 8 (Part 1)

- Section 8 Notices and typographical errorRs:
- Obvious typographical error did not render a Section 8 Notice invalid.
  - **Pease v Carter (2020) L&TR 18** Court of Appeal, Arnold LJ: Lead judgment considered the authorities on errors in notices, eg *Mannai v Eagle Star*:
  - (1) Statutory notices should be interpreted in accordance with *Mannai* eg as understood by a reasonable recipient reading it in context
  - (2) If a reasonable recipient would appreciate that the notice contained an error, for example as to date, and would appreciate what meaning the notice was intended to convey, that is how the notice is to be interpreted
  - (3) Then consider whether, so interpreted, the notice complies with the statutory requirements. This involves considering the purpose of these requirements
  - (4) Even if a notice, properly interpreted, does not comply with the statutory requirements, it may be possible to conclude it is "*substantially to the same effect*" as a prescribed form if it nevertheless fulfils the statutory purpose – even if the error relates to information inserted into or omitted from the form, and not to wording used instead of the prescribed language

 8

8

## Housing: Service of a Notice after Death

- Service of a Notice after death:
  - **Gateway Housing Association v (1) The Personal Representatives of Mohammed Nuruj Ali and (2) Delara Begum [2020] EWCA Civ 1339** (Court of Appeal):
  - Service of notice to quit on the personal representatives at the property, and service of a copy of a notice to quit on the public trustee.
  - Tenant argued that there were two notices, and as they gave different expiry dates, the claim should be dismissed.
  - Court of Appeal found that if the notice to quit is served on the Public Trustee before the original notice to quit (served at the property) expires, it complies with Section 18 of the Law of Property (Miscellaneous Provisions) Act 1994 and the tenancy ends on the date specified in the notice to quit
  - The original notice served on the PRs of the deceased is the operative notice, and provided that the copy is served on the Public Trustee before the original notice expires the copy is validly served.
  - The landlord's appeal was allowed although a number of other issues raised by the tenant were sent back to the county court.

 9

9

## Enforcement of Covenants (1)

- **Duval v 11-13 Randolph Crescent Limited (2020) AC 845**
  - Supreme Court 6 May 2020
  - Houses converted into a block of flats
  - Demised in 1980s on 125 years leases
  - Absolute covenant by leaseholder not to "*cut, maim or injure*" any wall within or enclosing the demised premises
  - Separate covenant by landlord to enforce any covenant entered into by another tenant if that tenant requested it and provided security for costs
- Clash of covenants:
  - A leaseholder asked for permission to do works involving the aforesaid "*cut, maim, or injure*" of a structural wall
  - Claimant sought declaration opposing it
  - Deputy DJ granted declaration that landlord could not waive covenants without consent of the other tenants
  - Landlord successfully appealed to Circuit Judge
  - Claimant successfully appealed to Court of Appeal

 10

10

## Enforcement of Covenants (2)

- Court of Appeal held:
  - Claimant tenant had won
  - It was implicit in the covenant that the landlord would not grant the consent where, but for that consent, another tenant would effectively be able to enforce the covenant.
- Landlord's appeal to Supreme Court failed.
- Useful case for considering how to interpret interrelated or contradictory covenants in leases:
  - Paragraph 32 contrasts absolute and qualified covenants
  - Paragraph 33 deals with the covenant of quiet enjoyment
  - Paragraph 34 deals with derogation from grant
  - Paragraph 35 deals with nuisance
  - Paragraphs 36 and 41 deal with the enforcement covenant itself
  - Paragraph 47 considers the implication of an implied term that the landlord is not to act in a way that is inconsistent with the enforcement covenant

 11

11

## Forfeiture (1)

- **Marchitelli v 15 Westgate Terrace Limited (2020) UKUT 192 (LC)**
  - Decision of Martin Rodger QC, Deputy Chamber President of the Upper Tribunal
  - Long lease of a dwelling
  - Landlord may not serve forfeiture notice unless:
    (i) breach is admitted;
    (ii) final determination by appropriate Tribunal; or
    (iii) application under Section 168(4) Commonhold and Leasehold Reform Act 2002
- Leaseholder had finding against her in FTT that she was in breach of covenant by allowing the flat to be used as a brothel. Leaseholder appealed to UT.
- Upper Tribunal found that there was enough evidence to establish that the flat was being used as a brothel, BUT the FTT made no express finding that the leaseholder had permitted or suffered it to be used for that purpose.

 12

12

## Forfeiture (2)

- **Marchitelli v 15 Westgate Terrace Limited (2020) UKUT 192 (LC)** contd:
  - Decision of Martin Rodger QC, Deputy Chamber President of the Upper Tribunal: determination of breach under Section 168(4) needed the same degree of detail as the requirements for a valid notice pursuant to Section 146 of the Law of Property Act 1925.
  - Note the point taken by the UT that it was not sufficient to establish that the property had been used in breach of a provision on use; also necessary to show the tenants actions or omissions amount to permitting or suffering the particular use in question
  - Important judgment for guidance as to how these applications should be considered:
    - Requirements for a valid Section 146 Notice must be met so that no lessee could have any reasonable doubt as to what breaches are specified
    - Essential that the County Court is in a position, from the FTT decision, to assess the seriousness of the breach, the culpability of the tenant, and the appropriate response to an application for relief from forfeiture




13

## Nuisance and Overlooking: Fearne v Tate, the Facts

- **Fearne v The Board of Trustees of the Tate Gallery [2020] EWCA Civ 104**
  - Case involved the world famous Tate Modern art gallery on the South Bank, London
  - Tate Modern redevelopment included an extension called the Blavatnik Building, the tenth floor of which has a walkway open to the public and with a panoramic view of London. Opposite the Blavatnik Building is a development of flats called Neo bankside which have floor to ceiling windows. Both were developed around the same time.
  - Members of the public in the Blavatnik Building could see directly into a number of the flats in Neo Bankside, unless blinds were installed, or other screening measures were taken.
  - Owners of four flats at Neo Bankside complained that visitors to the Tate would wave, make gestures, or take pictures. Tate put up notices asking visitors not to do this and instructed security guards to stop visitors taking photographs of the flats. The Claimants said this was not sufficient and sought an injunction to have the walkway closed.
  - Claimants argued the walkway was a nuisance, either under existing law or the Human Rights Act 1988, arguing that Tate was a body against whom the Act can be enforced.




14

## Nuisance and Overlooking: Fearne v Tate: First Instance

- **Fearne v The Board of Trustees of the Tate Gallery [2020] EWCA Civ 104**
  - First Instance: privacy (Section 6 HAR and Article 8 of the Convention) dismissed on the basis Tate not exercising public function.
  - Nuisance: if there was a nuisance claim it was within Lord Lloyd's third category in Hunter v Canary Wharf [1997] AC 655, nuisance by interference with a neighbour's quiet enjoyment of land. This was also dismissed, however:
  - Mann J considered that in principle such a claim could succeed because (i) the tort of nuisance, absent statute, would probably have been capable in principle of protecting domestic privacy rights; and (ii) the HRA and Article 8 contain a right to respect for an individuals private and family life.
  - In this case the claim did not succeed because:

    (i) the Claimants occupied a particularly sensitive property, but
    (ii) the problem arose because of the glass walls in their flats.




15

## Nuisance and Overlooking: Fearne v Tate: Court of Appeal

- **Fearne v The Board of Trustees of the Tate Gallery [2020] EWCA Civ 104**
  - Court of Appeal upheld the decision but for very different reasons:
  - CA considered the relevant principles of private nuisance starting with Williams v Network Rail Infrastructure Limited [2018] EWCA Civ 1514
  - "Unifying principle" of reasonableness between neighbours drawn from the common law
  - CA disagreed that the law of nuisance could protect privacy rights, there having been no reported case to that effect in hundreds of years: mere overlooking was not capable of giving rise to a cause of action in private nuisance
  - Whether as a matter of policy the tort should be extended was considered. Against this was (i) the difficulty in formulating an objective test to determine whether the amenity value of the land was affected (ii) the existence of other means of protection such as planning law.
  - Really what we were looking at here was an invasion of privacy rather than property damage. As such it was essentially up to Parliament to pass laws to regulate that area.
  - CA also disagreed that HRA or Article 8 had been breached.



16

## Speaker Profile

- Any questions? Please contact Michael Large on:

E: Michael.large@colmancoyle.com
T: +44(0)20 7704 3425
W: www.colmancoyle.com

Colman Coyle
Wells House
80 Upper Street
Islington N1 0NU
DX: 147080 Islington 5



17

## Residential Property webinars Q4 2020

- Changes in process at the Land Registry (2020)
- Conveyancing in 2020
- Changes in residential tenancy law (2020)
- Residential property law - end of year round-up 2020
- Advising buyers of new builds (2020)



18

## Thank you and reminders

- This webinar is designed to help solicitors meet requirements A2 (Maintain competence and legal knowledge) and A4 (Draw on detailed knowledge/understanding) of the SRA's Statement of solicitor competence. You may also use the quiz, which can be accessed via the "Take a quiz" link on the webinar details page, to reinforce your understanding of the webinar content. You should answer 7 out of 10 questions correctly and will have two attempts at the quiz.
- Please submit feedback via the survey screen.
- This webinar will be archived immediately, and will be available to view on-demand for 24 months.
- A transcript of the webinar can be made available on request within 48 hours.
- You can use the training and evaluation record form which is included in the supporting materials for this webinar to log this training activity and how it relates to the continuing competences that the SRA requires from all solicitors.

If you have any queries, please contact us:
webinars@lexisnexis.co.uk
+44 (0) 330 161 2401
@LexisUKWebinars
lexisnexis-webinars



LexisNexis

19

**Thank you for attending.**
**We hope you've enjoyed this session.**

**Bespoke in-house training solutions**

- Tailored for your business
- Extensive portfolio of expert presenters
- All areas of legal practice covered
- Location of your choice

**Find out more - http://www.lexiswebinars.co.uk/in-house-training**

LexisNexis

20