

## **Mistaken Identity**

### **The Message:**

Ensure that the right party gives a notice to terminate a lease.

### **The Case:**

Hexstone Holdings Limited v AHC Westlink Limited [11 June 2010] is yet another decision concerning the perennial problem of how to effectively exercise break rights in leases. Pregnant with importance and financial pain if improperly exercised, rights to break leases remain a fertile source of case law in the landlord and tenant arena and all involved in the property industry should learn lessons from cases such as this.

AHC Westlink Limited had a lease of premises for a term of just under eight years, expiring in 2015, with an annual rent close to £200,000. Hexstone Holdings Limited ("Hexstone") was the landlord. The lease contained a tenant's right to break on 31 October 2009 by giving six months' prior written notice.

In 2008 Hexstone received an "announcement" on the notepaper of Eddie Stobart Limited (and containing the latter's company registration number) that, following a merger with the Stobart group, AHC Westlink Limited ("AHC") had changed its name to be known as Eddie Stobart Limited, to whom all future invoices should be sent.

However, the change of name did not in fact occur. AHC and Eddie Stobart Limited remained entirely separate companies bearing their own original names. Hexstone was not informed that there had been no change of name.

In April 2009, notice to break the lease was sent to Hexstone. The notice was written on the notepaper of Eddie Stobart Limited (with their company registration number) and was signed for and on behalf of Eddie Stobart Limited. AHC subsequently confirmed to Hexstone that the lease had not been assigned to Eddie Stobart Limited and remained with AHC.

Hexstone's solicitors challenged the validity of the break notice on the basis that the notice had not been given by the tenant, AHC. Hexstone brought proceedings claiming that AHC's lease had not ended since the break notice was defective and, consequently, claiming further rent from the purported termination date onwards. AHC counterclaimed that the lease had come to an end.

The High Court found for Hexstone and the lease, therefore, continued for the remainder of its term. The Court stated that the evidence failed to establish any authority from AHC for Eddie Stobart Limited (a separate company) to act as they did in serving the break notice. Not merely was the notice given on the notepaper of Eddie Stobart Limited, but the notice was intended to be given for and on behalf of that company. On a proper analysis of the evidence, the notice was given by Eddie Stobart Limited as "principal" and no question whatsoever arose of it having been given by Eddie Stobart Limited as agent for AHC. The notice was not given by the tenant, AHC, at all.

The Court made it clear that where the break clause contained a formal requirement (here, the obvious one of the tenant having to give the notice), that requirement had to be complied with. It

was irrelevant whether the notice was effective to convey the information required by the break clause (that the tenant wished to terminate the lease) to a reasonable recipient of the notice. In any event, the Court found that the notice was misleading to a reasonable recipient in that it was quite unclear in what capacity Eddie Stobart Limited was acting. There had been the announcement that AHC had merely changed its name to Eddie Stobart Limited, yet the break notice clearly indicated that Eddie Stobart Limited was a different company.