

ST MARTINS PROPERTY-v-CABLE & WIRELESS (4 April 2007)

-RENT REVIEW ON HYPOTHETICAL BASIS

The Message: Substantial disputes can arise on rent reviews if the rent of the premises is to be reviewed on an artificial basis.

The Case: The High Court has found in favour of the Landlord in determining that a computer centre is to be valued as a completely different building used as high class offices (St Martins Property Investments Limited-v-Cable & Wireless UK PLC) (4/4/2007).

Cable & Wireless ("C&W") is the tenant of premises that were constructed as a specialist computer centre between 1987 and 1989 on the Windmill Hill Business Park near Swindon. The Lease is for 25 years from 1987 with rent reviews every 5 years.

Because of a lack of computer centre comparables at the time, the Lease originally provided that the rent was to be reviewed as if the premises comprised high class offices with a net internal area of 124,019 square feet. The Lease was then varied in 2002 so that the rent on review was to be the higher of 90% of the rent if the premises were assumed to comprise offices or 100% of the rent as a computer centre. In either case, the premises were assumed to comprise 124,019 square feet.

Presumably, the valuation on the hypothetical basis of office use is likely to produce the higher rent as the case centred on what premises would actually fall to be valued on this assumption.

The Landlord argued that the premises should be deemed to comprise an assumed building comprising high class offices which was built to a specification in line with the other office buildings on the Business Park. C&W contended that the actual computer centre buildings had to be valued as if they had been converted for high class office use.

The Judge held that the clear intention was to value the premises without regard to the actual buildings or use. The wording of the Lease made it clear that the premises are to be deemed to comprise offices and not just to be available for such use. The assumption was intended to provide for the valuation of something completely different for which there would be readily available comparables.

The Judge said C&W's construction would cause substantial difficulties in determining what alterations were required to the actual buildings to convert them to office use and the parties could not have intended this. The Judge said the parties must have intended that the other office buildings on the Business park would provide the benchmark for the specification of the assumed office building. They were all built to institutional requirements and commanded similar rents. They were obvious comparables that the parties must have had in mind.

Accordingly, the Judge held that the premises were to be valued as if they are hypothetical premises comprising high class professional or commercial offices on the Business Park and by reference to the rents payable for the other high class office premises on the Park. This construction clearly made commercial sense and allowed for the rent payable on this basis to be relatively easily established.

Clearly, Leases should make it absolutely clear what the specification of hypothetical premises is to be assumed to be so as to avoid disputes of this nature.