

## **No escape**

### **The Message:**

Parties seeking to exercise a right to break a lease must ensure they comply with the lease requirements for where the break notice is to be served.

### **The Case:**

The Hotgroup PLC v. The Royal Bank of Scotland PLC [28 May 2010] highlights the criticality of ensuring any notices to terminate a lease are served in accordance with the provisions of the lease. Failure to do so may lead to an inability to end the lease early and continued lease obligations for an extended period of time, which may have a serious impact on the financial position of the party which served the notice.

Royal Bank of Scotland PLC ("RBS") let some commercial premises in Kensington Village to The Hotgroup PLC ("Hotgroup") for 10 years from 4 July 2005, but with a right for Hotgroup to end the lease on 3 July 2010 on giving not less than nine months' prior notice. Legal title to the superior interest was held by RBS as trustee of the Schroder Exempt Property Unit Trust ("SEPUT"), which was the beneficial owner of the interest. Schroder Property Investment Management Limited ("SPRIM") was the property manager of SEPUT and had responsibility for the management of the property.

The lease provided that during such period as the superior interest was held by the trustee of SEPUT, no notice would be deemed to be validly served on the landlord (RBS), unless a copy of the notice was also served on SPRIM.

When Hotgroup came to exercise its break right, notice was served on RBS on 14 September 2009 (more than nine months' notice), but no service took place on SPRIM. The last day for exercise of the break was 3 October 2009, but Hotgroup did not send a copy of the notice to SPRIM until 19 November 2009 at the earliest.

RBS argued that as a copy of the notice had not been served on SPRIM by 3 October 2009, a lease requirement for proper service of the break notice had not been complied with and, therefore, Hotgroup's purported exercise of the break was ineffective.

Hotgroup, however, sought a declaration to the effect that the break notice was effective. Hotgroup contended that no time was specified in the lease for service on SPRIM and that so long as the notice was timeously served on RBS and subsequently served on SPRIM, the notice was effectively served, subject to service on SPRIM being effected within a reasonable time, so that it could be aware in good time that the tenant was moving out. Hotgroup argued that service was effected within a reasonable time. RBS responded that, unless SPRIM was served by 3 October 2009, there was never timeous service on RBS.

The High Court decided in RBS's favour, holding that the break right had not validly been exercised by Hotgroup. "Time was of the essence" for compliance with the break clause, so that the break could not be exercised, unless notice was properly served no later than 3 October 2009. The commercial purpose of the notice provision at issue was to ensure that a notice did not

gather dust in RBS's offices, but came to the attention of the person with the actual responsibility for managing the property (SPRIM).

The provision made it clear that the requirement to serve on SPRIM had to be complied with for the notice to be effective. While it did not have to be served on SPRIM simultaneously, the question was whether it had been validly served on the last date for service (3 October). It had not been, because no notice had been served on SPRIM as at that date.

The Court considered that there was nothing to support implying a term about service on SPRIM being effected within a reasonable time. The provision worked perfectly well without it – the parties had specified a time limit for service of the break notice and the effect of implying some other limit would be to impose something different from what the parties agreed.

The Court, therefore, decided that RBS was entitled to a declaration that Hotgroup had not complied with the break option.