

Question of identity

The Message:

It is crucial to ensure notices exercising a lease break right are given to the correct person.

The Case:

Standard Life Investments Property Holdings Limited v W & J Linney Limited [25 February 2010, but reported in July] is the latest in a series of cases highlighting failures to properly exercise rights to terminate leases. The often dire consequences of getting it wrong emphasise the need to ensure that lease requirements are carefully complied with when exercising break rights.

This case considered whether the tenant had given notice to the correct landlord where an overriding lease had been granted over the lease at issue. W&J Linney Limited had a lease of a property granted on 4 February 2004 for 10 years. The lease contained a tenant's right to break the lease on the fifth anniversary of the date of the lease by giving to the landlord not less than six months' prior written notice. To break the lease, Linney had to give notice to the landlord no later than 3 August 2008.

In November 2004 Linney's landlord, Capita, granted an overriding lease of Linney's property to Standard Life ("SL"). That lease was for a considerably longer period than Linney's lease and the effect of the overriding lease was SL became Linney's landlord. Linney paid rent to SL.

In 2008 Linney decided that it wanted to exercise its break right, for which it needed to give notice to the landlord by 3 August 2008. On 23 July Linney's solicitors wrote to Capita (the landlord named on Linney's lease) enclosing Linney's break notice. SL was not mentioned. On the same day, Linney's solicitors wrote to Jones Lang LaSalle ("JLL"), SL's agent, copying to them the break notice, but erroneously stating that JLL was Capita's agent.

After the latest date for exercising the break, Linney's solicitors wrote to SL enclosing a copy of the break notice served on "our client's landlord". SL's solicitors took the view that SL was the landlord and notice should have been served on them. Linney's solicitors considered that the proper recipient of the notice was Capita. If that view was incorrect, Linney had lost its right to break and was bound by the lease for another five years (until 2014).

The High Court held that Linney had not validly exercised its break. Linney argued that Capita were defined in the lease as "landlord", which definition continued to apply even after Capita ceased to be Linney's immediate landlord. The question was what a reasonable person, having all the background knowledge available to the parties and using the language of the lease, would have understood the definition to mean.

The common law provides that a "notice to quit" must be given to the immediate landlord and that where the original landlord grants an overriding lease, the immediate landlord is the tenant under the overriding lease. Therefore, any break notice had to be served on SL rather than Capita. The lease provided that the definition of "landlord" applied, unless the context required otherwise and that was the case here.

Lease wording that flouts business common sense must yield to common sense. For example, vacant possession was a condition of Linney breaking the lease and vacant possession could only be given to the current landlord SL, not Capita. The Court also rejected the argument that service on JLL was good service on SL.

In view of the unambiguous wording of the break notice and the letter sent to JLL, the Court could not conclude that the reasonable recipient would have understood that it was meant to be addressed to SL. The exercise of a break has important consequences for both landlord and tenant and there are powerful policy considerations for certainty in the law, namely that Linney complied with the lease requirements for exercising its break.