



**Mann Aviation Group (Engineering) Limited-v-Longmint Aviation Limited
(19/08/2011)**

The Message: Intra-Group dealings can bind the parties and cause complications.

The Case: The High Court has decided whether informal dealings between Group companies created a business tenancy in favour of a subsidiary company (.).

In May 2011 the claimants, MAGE, went into Administration and their holding company, Longmint, sought to recover possession of the aircraft hangars and storage buildings, workshops and offices that MAGE occupy at Fairoaks Airport, Cobham, Surrey.

Longmint claimed that MAGE had occupied the premises as part and parcel of the overall aircraft and engineering business carried out by the Group and it was never intended that any landlord and tenant relationship would be created and MAGE had simply occupied the premises as a licensee or tenant at will of the Group Company that held the Lease. Accordingly, it claimed it could terminate the Licence or tenancy at will straight away and recover possession of the premises immediately.

MAGE claimed that it was a sub-tenant protected by the Landlord and Tenant Act 1954 as it had paid rent and had had exclusive possession of the property and an oral periodic tenancy had been created which could only be terminated on considerable notice. Furthermore, MAGE claimed that possession could only then be recovered if Longmint could establish one of the limited grounds under the 1954 Act on which renewal could be successfully opposed.

The Court noted that the various operating subsidiaries who used the airport were charged for rent, service charges and rates by the Group company that held the Lease. MAGE had occupied the premises in question since 1 November 2000 and the rent had increased to £240,000 per annum and it was vital to its business that it could claim to have established rights of occupation as it would have been in difficulty in obtaining the relevant approvals from the Civil Aviation Authority or credit from suppliers otherwise.

Other factors in favour of there being a landlord and tenant relationship included MAGE being referred to as a tenant in accounts and other documents and the Court had no difficulty in finding that such a relationship would have been created if MAGE had physical control of the premises for its own benefit.

Longmint claimed that MAGE had never had the right to exclusive possession of the premises so it could not have become a tenant. It relied on the fact that other companies within the Group occupied parts of the premises from time to time but the Court disagreed as it noted that they usually paid MAGE rent for such occupation or they provided services that helped MAGE's business. The fact that MAGE may have permitted

other companies to use spare space without charge from time to time did not mean it did not have control of the premises.

Where a relationship of landlord and tenant is established and periodic payments have been made, a periodic tenancy will be found to have been created and this will be protected by the 1954 Act. The period of the tenancy will depend on the period by which the rent payable was calculated and, in this case, a yearly rent was payable so MAGE had an annual periodic tenancy from 1 November 2000.

An annual tenancy can only be terminated by 6 months notice ending at the end of the yearly period so MAGE's tenancy was not terminable until 31 October 2012 at the earliest. MAGE would then have the right to renew so, absent any genuine intention to redevelop or the ability to otherwise oppose renewal, Longmint would not even then be able to recover possession.

Accordingly, MAGE not only has the right to continue in business occupation of the premises but has acquired a valuable tenancy even though nothing was ever agreed formally or documented. Even if Longmint can successfully oppose renewal in late 2012, MAGE would be entitled to statutory compensation on vacating.

Clearly, the lesson to be learned by Group companies wishing to avoid this scenario is for them to formally document the basis upon which subsidiaries who pay rent occupy premises so that there is only a personal licence and no landlord and tenant relationship. This would then ensure that possession can be readily obtained from any subsidiary that becomes insolvent and is no longer a valuable member of the Group.