

PEACEFORM LIMITED –V- CUSSENS- INVALID NOTICE

The Message: Great care must be taken to ensure that the contents of notices are correct as simple errors can render important notices ineffective.

The Case: The High Court has held that a tenant has lost the benefit of its option to purchase the freehold of its premises by a certain date as a result of the wrong date being inserted in the notice it was required to serve beforehand (Peaceform Limited-v-Cussens and Others (16/10/2006)).

In 1999, the Claimant tenant entered into a 25 year lease of premises known as Enfield House, Baker Street, Enfield, Middlesex. The Lease contained an option to buy the freehold if the tenant served not less than 3 months notice expiring no later than 6 February 2004.

By letter dated 27 August 2003, the tenant's solicitor served the required notice but, as a result of a clerical error, they stated that the 3 months notice was deemed to expire on 7 November 2003 which was, of course, less than the requisite 3 months. After the dispute had arisen, and at a time when it was too late to correct the error by serving a further notice, the tenant's solicitors made clear that they had intended to refer to 7 December 2003 and they claimed that this must have been readily apparent to the landlords.

Following the decision of the House of Lords in Mannai Investment-v-Eagle Star Life Assurance (1997) it was held that any defect in a notice, particularly as to the date of termination, was not fatal to the notice if there was no express requirement in the contract or Lease that it must contain specific information and it would have been clear to any reasonable recipient how and when the notice was intended to operate.

The tenant argued that the Mannai decision applied to its notice as the Lease did not expressly require any date for termination to be given in the notice and any reasonable recipient would have been in no doubt that there was an intention to give 3 months notice and the reference to 7 November 2003 was a mistake. It claimed that the landlords could have easily worked out for themselves that the intended date was 7 December 2003.

The landlords accepted that it would have been apparent that the wrong date had been given but they claimed the notice was still invalid because, unlike the Mannai case, the intended correct date would not have been clear. They relied on the fact that the correct date was important as it determined the amount to be paid and when completion was to take place. They pointed out that there was no particular reason why they should have known that the 7 December 2003 was intended and that, so far as they were aware, it could have been any date from the correct date of expiry, 28 November 2003, until the last possible date of 6 February 2004.

The Court considered all relevant previous authorities and noted that the relevant test was to consider whether a reasonable recipient of the notice with knowledge of the terms of the Lease would have been left in no doubt as to the terms of the notice. It held that the notice was not sufficiently clear as it was not evident that the expiry date should be read as 7 December 2003. In cases where the contract or Lease does not define the expiry date, but leaves it to the serving party to serve a notice on a date it can choose, then the serving party has to make it absolutely clear what that date is.

Presumably, the tenant has made a claim against its solicitors and so, once again, it is the legal profession and their insurers who will pay the penalty for an error that should have been avoided.