

Briefing Note

Abandoned Property



Robot Arenas Limited v Waterfield and Others

The recent case of *Robot Arenas Limited v Waterfield and Others* [2010] EWHC 115 (QB) has highlighted the issues that arise when a landlord wishes to dispose of goods that a former tenant or occupier has left behind.

The situation is not uncommon following the end of a lease, particularly where the tenant has become insolvent or in the case of warehouse or industrial units. In these cases, the tenant, or the liquidator or administrator of an insolvent tenant, may not have the inclination or funds available to remove goods immediately following the end of the lease. This may be because the goods are bulky or because they require specialist equipment to dismantle them before removal. However, the goods may retain considerable value.

This will naturally be of concern to landlords who require the property to be cleared so that they can re-let the property to another tenant.

The basic rule

If a landlord is left in possession of goods belonging to a former tenant that remain on premises following the end of the tenant's lease and the landlord disposes of or destroys those goods without the tenant's permission, the landlord may be liable to the tenant for damages.

The landlord may have a defence where there is evidence of that the tenant has abandoned the goods.

Recent guidance

The judgment of the High Court in *Robot Arenas Limited v Waterfield and Others* provides some guidance for landlords as to how to deal with these situations.

Mr Waterfield's company bought RAF Newton. On inspecting the site a large arena was found in an unsecured building. This arena was the property of a former licensee of the site, Robot Arenas Limited. Robot Arenas had purchased the arena following the end of the television series "Robot Wars". It was their intention to use the arena for a world championship 'Robot Wars' event to take place at RAF Newton. However the event never happened and the arena was stored on the site. Later Robot Arenas' licence to use the site expired but the arena was not moved.

Mr Waterfield was unaware of this so he notified the sellers' agent of his discovery but heard nothing from them in reply. A number of weeks later, he decided to dispose of the arena. It was scrapped at a cost of £250.

However the sellers' agent had in fact informed Robot Arenas. When Robot Arenas discovered their arena had been scrapped they made a claim for substantial damages in the amount of £344,650.

The judgment

The Court re-examined the law concerning the abandonment and disposal of a third parties' goods and considered when a landlord becomes either an 'unconscious bailee' or 'involuntary bailee' and the consequences of each. In summary:

Unconscious bailee

- When a person discovers goods on their premises without knowing that they belong to another they become an unconscious bailee from the date of the discovery until such time as they have made reasonable enquiries as to the ownership of the goods;
- Such a situation might arise where a purchaser of land discovers goods on the purchased land and is unsure whether the goods form part of or came with the land they purchased or have been abandoned;
- An unconscious bailee remains liable to the true owner of the goods until such a time as they have made reasonable enquiries as to ownership and, having failed to resolve that question, can reasonably think that the goods have been abandoned;

Involuntary bailee

- A person becomes an involuntary bailee if he is in possession of another's goods, knowing the goods belong to another, but without having consented to possession;
- This situation is more common and will typically occur at the end of a lease when the former tenant fails to remove goods and the landlord is aware that the goods belong to the former tenant;
- An involuntary bailee will be liable for the value of the goods where he deliberately disposes of or destroys them, save in exceptional circumstances.

The obligation upon all bailees is to establish whether the goods have been abandoned by the true owner. The required amount of enquiry will depend on the condition of the goods and the circumstances of finding the goods. Goods which are in a dilapidated condition found in circumstances which suggest abandonment will demand fewer enquiries than goods in good condition and which are obviously valuable.

In order to establish abandonment the bailee must show an intention on the part of the owner to abandon the goods together with a physical act of relinquishment.

In the case of Mr Waterfield, the Court concluded that in all the circumstances Mr Waterfield was reasonably entitled to conclude that no one was interested in the goods. He had purchased the site on the understanding that the building where the arena was located came with vacant possession.

He had notified the sellers' agent and had not received a response and had had waited for five weeks before disposing of the goods.

The situation will however be different in cases where the landowner knows the true owner of the goods. In these cases, the landlord cannot simply dispose of the goods. Instead, the landlord should notify the owner of the goods of his intention to claim damages for the use and occupation of the land where the goods remain. At such point as the landlord judges that his claim for use and occupation of the land where the goods are sited exceeds the value of the goods he might safely notify the owner of the goods of his intention to sell the goods in satisfaction of his claim for use and occupation and then proceed to sell them.

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This note does not constitute legal advice but is intended as general guidance only. It is based on the law in force on 28 September 2010.

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