

Briefing Note

Break options in leases



The Hotgroup PLC v The Royal Bank of Scotland PLC [28 May 2010]

This case highlights the importance of full compliance with the requirements of the terms of a lease when exercising a break clause.

Rights to Break a Lease

Due to the downturn in the market there has been an increase in the number of cases relating to the operation of break clauses. Landlords do not want their tenants to leave for fear that they will not be able to replace them and tenants need to leave owing to financial pressures. Inevitably break clauses are being exercised more frequently and landlords are scrutinising them more thoroughly.

The facts

The Defendant, RBS, was the owner of a property known as Beaumont House, held on trust for SEPUT (one of the largest unit trusts in the UK). Schroder Property Investment Management Limited ("SPRIM") is the property manager for SEPUT. The Claimant ("Hotgroup") took a lease from RBS for a term of ten years expiring on 4 July 2005.

The lease contained a break clause which gave Hotgroup the right to terminate on 3 July 2010 operable on not less than nine months' prior written notice to RBS. The lease also stated that no notice under the lease would be valid unless a copy was also served on SPRIM. Crucially the break clause and the notice clause were at different locations within the lease:

"Break Clause

(a) *The Tenant may terminate the lease on 3 July 2010 (the Termination Date) by giving to the Landlord not less than nine months' prior written notice subject to the Tenant:*

- (i) *substantially complying with all its obligations in this Lease down to the Termination Date;*
- (ii) *giving up vacant possession of the Property by the Termination Date; and*
- (iii) *payment of all rent and other sums due under this Lease on the Termination Date.*

In such case the Term will cease on the Termination Date and no party will have any further rights or obligations under this Lease, but this will not affect any rights or remedies which may have accrued at the Termination Date to any party against any other party in respect of any prior breach of any of the covenants and conditions contained in this lease.

...

14.2 SEPUT Trustee

During such period as the reversion to this Lease is vested in the trustee of Schroder Exempt Property Unit Trust no notice will be deemed to be validly served on the Landlord unless a copy of the notice is also served on Schroder Property Investment Management Ltd, 31 Gresham Street, London EC2V 7QA or such other address as the Landlord notifies to the Tenant."

Service of the notices

Hotgroup served notice on RBS on 14 September 2009, in time for the break to be effective. However, they failed to serve a copy on SPRIM until mid November, after the deadline for serving the break notice had passed. RBS challenged the validity of the notice.

Hotgroup submitted in subsequent legal proceedings that there was no time limit expressed in the lease for service of the copy of the notice on SPRIM and that provided notice was served within a reasonable time following service on RBS this should be sufficient. RBS submitted that service on it alone was not good service and that both RBS and SPRIM had to be served at least 9 months before the break date in order for the notice to be effective.

The judgment

The Judge held that time was of the essence for serving any notice under the break clause and, accordingly, the deadline for service had to be met in order for the notice to be effective.

The requirement for the additional service on SPRIM was to ensure that the notice was drawn to the attention of those who would deal with it and so that it would not '*gather dust in the landlord's offices*'. On construction of the terms of the break and notice clauses together, the Judge held that it was clear that no notice would be deemed served unless this additional requirement was complied with and this meant within the time period allowed for service of the notice on RBS.

Accordingly the notices given were ineffective for the purpose of bringing the lease to an end on the break date.

Conclusion

It is absolutely imperative that break clauses are operated in accordance with all of the terms of the lease so as to ensure that the lease comes to an end on the break date. Failure to do so can lead to years of additional rental and other liabilities accruing.

In this case, the break clause was undoubtedly an elephant trap in that it did not contain all of the terms relevant to its operation – it was also necessary to take into account the terms of the notice clause relating to SPRIM. The drafting of the lease in this way was unhelpful to Hotgroup. However, it remains the responsibility of the party operating a break clause to ensure that it is operated correctly.

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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 22nd November 2010.

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