

BREAK CLAUSES – WHERE ARE WE NOW?

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10 OCTOBER 2017

Breaks – why does this matter?



- Breaks are more common
- More disputes
- Clients care

What are the cases telling us?



- Strict compliance with conditions?
- Notice requirements
- VP
- Payment obligations

Notices

- Getting the form of notice right ...the first banana skin...
- Lease says break notice must be expressed to be given under S.24(2) LTA 1954.
- T serves break - doesn't say it's under S.24(2)
- Clear to recipient what it means...
- OK?



Notices



- Break fails.
- *Friends Life Ltd v Siemens Hearing Instruments [2014]*
- Moral – do what it says on the tin.
- Reasonable recipient test won't cure failure to comply with preconditions.....*Mannai*.



- Break condition – T must give vacant possession.
- T moves out but a few workmen and some equipment still on the property.
- T tells L he can pick up the keys and have access at any time.
- Q: OK?



- Answer – No - VP had not been given
- Case : *NYK Logistics Ltd v Ibrend [2011]*
- L must be able to enjoy immediate and exclusive possession, occupation and control.



- *Riverside Park Ltd V NHS Property Services Ltd [2016]*
- Partitioning...
- Don't take a relaxed approach
- Drafting....VP should not be a precondition

Payments

- Q: Break precondition: T to pay “All rents due”.
- T breaks, pays all rent but forgets unpaid interest (£130) ...but there is a £20k deposit to cover it.
- Is that OK?



Payments



- Answer: Break fails – no materiality threshold.
- *Avocet Industrial Estates v Merol [2011]*

Rent

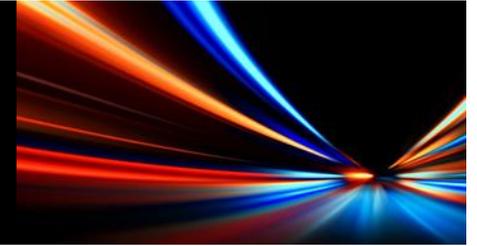


- T has successfully operated his break & paid a premium to do so.
- Break date part way through a quarter – T says “can I have the overpaid rent back, please”?
- Do you pay him?

Rent

- No – quarters rent is not apportionable AND you can't imply a term to repay.
- *Marks and Spencer PLC v BNP Paribas Securities [2015]*
- Moral (1) – no one has any morals...
- Moral (2) – pay the full rent (*PCE Investors v Cancer Research [2012]*).
- Moral (3) – Draft a repayment obligation.

Drafting...



- Lease Code and MCL – ONLY conditions:
- **Principal** rent paid;
- T give up **occupation**;
- No continuing sub leases.

Conclusions...

- Get your drafting right – code compliant.
- Read the lease and comply strictly – however daft.
- Courts take a hard line.



Contact



- Any Questions?

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