



Property law update: commercial property - assignment of leases

29 June 2016

Update

The much publicised ruling that a tenant cannot assign its commercial lease to its guarantor looks set to be reviewed by the Court of Appeal next year. An appeal in the case of *EMI Group Ltd v O&H Q1 Ltd* has been scheduled to be heard by 8 May 2017.

Background

The High Court ruling in *EMI Group Limited v O & H Q1 Limited* in March earlier this year means that a tenant cannot assign a modern lease (entered into on or after 1 January 1996) to its guarantor. The court ruled on the correct interpretation of the Landlord and Tenants (Covenants) Act 1995 and whether a tenant can assign a tenancy to a person or body that has been its guarantor. The Court found that this could not happen "as it frustrates the purpose of the Act". It would fall foul of the anti-avoidance provisions. The Act was designed to ensure that guarantors are released from liability in due course following an assignment. As a result a tenant that assigns to a guarantor such as a parent or group company will remain as the tenant and the guarantor will continue to be liable.

Comment

The decision in *EMI Group Limited v O & H Q1 Limited* is an unwelcome development for both landlords and tenants. Many corporate occupiers need to carry out intergroup transfers for the purpose of restructuring businesses and many will be caught by this prohibition. Both Landlords and tenants need to be careful not to inadvertently assign or consent to an assignment which might turn out to be ineffective and void. Landlord investors need to carry out careful due diligence to check property management history to make sure there are no suspect leases (where there have been transfers to guarantors) that might be void and unenforceable. There may be problems encountered in dealing with the Land Registry. Most commentators agree that the law will need to be changed.

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