



“Holding Over” Commercial tenants should be concerned

Tenants ‘holding over’ after the expiry of a lease is not an unusual scenario. Often the negotiations for a new lease have commenced but may not have concluded prior to the end of the term.

In many instances the landlord, being aware of the risk of the creation of a protected periodic tenancy, will ask the tenant to enter into a licence to occupy. But what happens if the parties have not formalised their position? In a recent case, Barclays Wealth Trustees (Jersey) Ltd v Erimus Housing Ltd, the landlord and the tenant started negotiating terms for a new lease, prior to the expiry of the contractual term of the lease. Unfortunately, as is often the case, negotiations were not concluded by the time the lease expired. Negotiations continued for some two years, albeit sporadically, but no further documentation formalising the tenant’s occupation was entered into.

The tenant eventually decided to move into alternative, larger premises and indicated that it would be move out after six months or so. Nearly nine months later, during which period the tenant had continued paying rent on a quarterly basis, it gave three months’ notice to the landlord of its intention to vacate the premises.

The landlord argued that three months’ notice was insufficient as a yearly periodic tenancy had arisen. On the facts, as the tenant was paying rent on an annual basis, it was held that a yearly periodic tenancy existed and therefore a full year’s notice had to be given, to expire on the last day of the periodic term. Whilst landlords are usually aware of the risks involved in such a case, tenants tend not to be as concerned. ***This case illustrates the risks for tenants and the need to give careful consideration to the terms on which the tenant continues to occupy and how the occupation can be brought to an end.***



Have you signed a Directors’ Guarantee?

Be aware....

‘business lending by high street banks rose in September at its strongest pace in four years...’ (FT.com).

This is obviously great news for businesses which need to secure finance.

But Company directors should beware. Loans to companies are nearly always secured by personal guarantees from the directors, usually in addition to other forms of security. Whilst the economy is growing, everyone is full of confidence and optimism and the terms of the guarantee are often either overlooked or their significance is not given sufficient importance.

An illustration of this is a recent case in which a director of a company was found liable for company debts which had accrued since his resignation nearly seven years earlier.

The Court of Appeal held that, under the terms of the guarantee, the director had guaranteed ‘all sums that are now or may hereafter become owing’. As no limits had been placed on the guarantee, the director remained liable even though £300,000 had accrued after his resignation.

It is important for directors to take legal advice before entering into any guarantees.



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What happens to your business if a key employee leaves – Restrictive Covenants in employment contracts

How can they be used in employment contracts to protect a business's interests?

If the business has a legitimate business interest to protect, the restriction will be enforceable, provided it is no wider than is necessary to protect that interest.

What is a restrictive covenant and when will it be enforceable? A business can use restrictive covenants to protect its interests by restricting an employee's activities for a period of time after their employment has ended. A restrictive covenant will only be enforceable if it protects a legitimate business interest, otherwise it will be regarded as an unlawful restraint of trade. The only recognised business interests are: trade connections (including the relationship between the business's customers and its workforce); and trade secrets and confidential information.

The covenant must be limited in terms of the restricted activities themselves; apply for a limited time and within a limited geographical area (if appropriate). Ensure restrictive covenants are drafted carefully as they must accurately reflect each employee's role and reflect the circumstances of the business. Go no further than is necessary.

Businesses should regularly review employment contracts that include restrictive covenants to check whether they need to be updated (for example, if the employee's role has changed). Ask your solicitors to do this for you to ensure that they are still valid as the law on these issues changes all the time.

Terms and Conditions – Are yours up to scratch? Issues to be considered

Do you use terms and conditions which you bought off the shelf or downloaded from a website? Do they actually reflect your business? If they don't, they probably won't help you when things go wrong.

What is the nature of the goods or services that you sell? Are they, for example, high value items sold in small numbers, or low value items sold in high volumes? Will they be re-sold by the buyer in their original form or are they, for example, components or raw materials which will be used in a manufacturing process? What is the profile of your customers? Are they other businesses or consumers or a mixture of both? Are the goods being sold overseas as well as in the UK? If so, in which countries? Are you likely to be affected by industrial disputes or are there other practical problems which might affect the supply of your goods? To what extent are you insured against claims arising from what you are selling? Do you belong to a trade association? If so, does the association specify standard terms on which their members trade, or recommend minimum standards? **We will carry out a free general review of your contracting procedures including your terms and conditions and let you know if changes need to be made.**

About us

Our Marsons Solicitors have been described as "a cracking team, who provide a "professional and good value service" and "excellent at picking up the finer detail without failing to see the bigger picture" by the Chambers Guide to the Legal Profession.

Our clients say they think our staff are "approachable, well-informed and with a good understanding of our business." and "professional, knowledgeable, efficient, friendly and reliable." We have worked in the commercial and property for the last 20 years and our team and the firm has consistently been ranked in independent industry guides for its expertise. We provide specialist services for businesses small or large as well as individuals. Find out more about us and our services at www.marsons.co.uk. Join the conversation with us on social media

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The information contained in this newsletter is intended for general guidance only. It provides useful information but it is not a substitute for obtaining legal advice as the articles do not take into account specific circumstances. If you need assistance with any of the issues raised please do contact us for further advice.



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