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REAL ESTATE BULLETIN



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DECISION IN GOOD HARVEST IS UPHELD

A parent company which has guaranteed a lease to a subsidiary will not be able to stand as guarantor on an intra-group assignment.

In *Good Harvest Partnership LLP v Centaur Services Limited*, the High Court ruled that a guarantee of an assignee given by the outgoing tenant's guarantor was void. The issue has now come before the High Court again in *K/S Victoria Street v House of Fraser (Stores Management) Ltd*.

We believe that leave to appeal has been granted. A summary of the case is below;

The latest case: *K/S Victoria Street v House of Fraser (Stores Management) Ltd*

In January 2006, the parties entered into an agreement for the grant of a lease to House of Fraser (Stores Management) Ltd. The lease was guaranteed by the House of Fraser parent company. The agreement contained a provision which obliged the tenant to assign the lease to another company in the same group by April 2006, with the parent company acting as guarantor for the assignee.

The intra-group assignment did not happen and the landlord sought to enforce the provisions in the agreement for lease. The tenant argued a number of defences, one of which was that the clause was unenforceable because it contravened the anti-avoidance provisions of the Landlord & Tenant (Covenants) Act 1995.

The 1995 Act provides for tenants and guarantors of "new leases" (broadly, leases granted on or after 1 January 1996) to be released from liability on a lawful assignment of the lease by the tenant. The tenant in this case advocated that the agreement to assign was unenforceable because it required the parent company to guarantee the assignee, which would frustrate the statutory release of the parent company on assignment.

The High Court was unable to say the decision in *Good Harvest* was wrong, and accordingly ruled that it should be applied to the present case. The clause in the agreement for lease was therefore void to the extent that it purported to require the parent company to guarantee the assignee.

However, this part of the clause could be "severed", so that the obligation to assign the lease intra-group remained enforceable. The landlord would therefore need to decide whether it wanted to enforce the assignment at the expense of the parent company guarantee.

Factors to take into account

Landlords will be unwilling to permit intra-group assignments where there is a valuable guarantee, unless the assignee can offer a different guarantor, or some other form of adequate security. Where the original guarantor is the ultimate parent, this may prove impossible.



This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.

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Other News

Kathy Toon, Gerard Whitehouse, Terry Dickson, and Sara Johal have recently joined the Property Group.

Kathy Toon joins the Property Group as a Partner from Clarke Wilmott. Kathy has particular expertise in the retail sector and was previously Head of UK Retail Property at DLA. She also acts for investors and developers.

Gerard has joined as a Consultant and has many years experience of the commercial property market. He acts for a variety of residential and other developers, owner managed businesses, and high net worth individuals and has excellent contacts especially across Coventry and Warwickshire.

Terry joins as an Associate and brings with him vast amounts of experience in areas of asset management, landlord and tenant, sales and acquisitions. His clients include an international insurer, developers, investors, and a rugby club.

Sara Johal has joined our London Office as an Assistant Solicitor.



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