SLAUGHTER AND MAY

REAL ESTATE

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CASES ROUND UP

Park life

Rights to use sports and leisure facilities were easements

Regency Villas Title Ltd and others v Diamond Resorts (Europe) Ltd and another: [2017] EWCA Civ 238

The Court of Appeal has confirmed that a right to use sports facilities, including a golf course, swimming pool and tennis court, could exist as an easement, the benefit of which ran with the dominant land. The case related to rights granted to the transferee of land to be used as timeshares. In addition to rights in respect of access and services, the transfer granted the right for the transferee, its successors and those deriving title or occupying the land, to use various sports and leisure facilities on the retained estate. The right was not subject to the payment of any amount in respect of the use or maintenance of the facilities. The High Court decided that all the sporting and recreational rights took effect as easements. The parties to the transfer had intended to grant legal rights and not just a temporary personal right.

The Court of Appeal felt that the High Court should have considered the validity of each individual right rather than considering all the rights as a bundle. However, on a true construction of the transfer, subsequent owners of the timeshare land were entitled to use the sporting and recreational facilities that existed on the estate land at the date of the transfer. The right extended to any new, improved or replacement facilities of the same kind and on the same areas of land, including any minor extensions. However, the rights would not extend to any substantial extensions, such as facilities on additional areas of land. The Court of Appeal decided that the rights to use the gardens, golf course, tennis courts, croquet lawn, putting green and an outdoor swimming pool (that existed at the date of the transfer) operated as easements. However, the rights to use the indoor facilities, such as the restaurant, billiard room, television room and reception, were personal to the original transferee and did not amount to easements. Such rights were not sporting or recreational facilities and could not benefit the timeshare land. There was also no right to use the new indoor swimming pool that had replaced the original outside pool. The issue whether the replacement of the outside pool amounted to an unlawful interference with the easement granted in the transfer was not raised and, therefore, not considered by the court.

Say what you mean

Landlord's redevelopment works designed to obtain vacant possession

S Franses Ltd v The Cavendish Hotel (London) Ltd: [2017] EWHC 1670 (QB)

This case considered the landlord's opposition to a lease renewal under the Landlord and Tenant Act 1954 on the ground that it intended to redevelop, as provided for in S30(1)(f). A landlord can oppose renewal under ground (f) if it intends to carry out development works on the termination of the tenancy and requires possession of the premises in order to do so. The landlord must prove its intention to carry out the works at the date of the hearing. In this case, the tenant occupied business premises in Jermyn Street. The premises comprised the ground floor and basement under one lease and a storage area under a supplemental lease. The remainder of the building was operated as a luxury hotel by the landlord. The tenant served S26 notices indicating that it wished to renew both leases and the landlord served counter-notices opposing renewal on the basis of ground (f). A number of revisions to the landlord's proposed scheme of works followed and it became apparent that the landlord's main purpose was to obtain vacant possession under ground (f). If the tenant left voluntarily, not all the works would be

undertaken. The tenant argued that because the landlord's intention to carry out the works was conditional on those works being necessary to satisfy ground (f), this was not a sufficient intention for the purposes of the Act.

The High Court held that the landlord had established a sufficient intention to carry out the works for the purposes of ground (f). It was clear that the tenant did not intend to leave voluntarily and the landlord's intention was tailored accordingly. The landlord had decided by the relevant date that it was essential to carry out the final scheme of works to obtain vacant possession. The judge acknowledged that the landlord had put together the scheme of works to establish ground (f). Ground (f) required an examination of what the landlord intended to do and whether he intended to do it, but not why the landlord intended to do it. Accordingly, the landlord's underlying motive was irrelevant and it could intend to carry out a scheme of works designed solely to satisfy ground (f).

Take the long way home

Court confirms that an easement extended to an adjoining garage

Gore v Naheed and another: [2017] EWCA Civ 369

As a general rule, a right of way granted for the benefit of the dominant land cannot also be used for access to adjoining or neighbouring land. In this case, the claimant owned a property known as the "Granary" that enjoyed the benefit of a right of way created by a 1921 conveyance over a driveway. Following the conveyance, the owner of the Granary built a garage for parking cars in connection with the use and occupation of the Granary. Part of the driveway was owned by the defendants who were the owners of an adjacent wine shop and used the driveway for deliveries. The deliveries caused some obstruction to the driveway restricting the claimant from gaining access to the garage. The claimant sought an injunction preventing the defendants from obstructing the driveway, and damages. The defendants contended that the easement did not entitle the claimant to use the driveway to gain access to the garage, on the basis that the easement was only for the benefit of the Granary. The County Court held that the easement included the right to pass over the driveway to park in the garage and granted an injunction limiting the time the defendants could use the driveway for loading and unloading.

The Court of Appeal confirmed that the right of way extended to the use of the driveway for access to and from the garage for parking, provided that the parking was ancillary to the use and occupation of the Granary. The Court of Appeal considered the terms of the express grant. The 1921 conveyance granted a right of way "for all purposes connected with the use and occupation" of the Granary. Use of the garage for parking was ancillary to the use and enjoyment of the dominant land and the driveway could continue to be used for access to the garage.

Turning Japanese

Network Rail liable for presence of knotweed

Williams v Network Rail Infrastructure and Waistell v Network Rail Infrastructure: [2017]

The claimants owned residential properties that backed on to a railway embankment owned by Network Rail. The Network Rail land was subject to an infestation of Japanese knotweed. The claimants brought a claim in private nuisance alleging that the presence of the invasive species had an adverse effect on their properties. The claimants argued that the knotweed had encroached on to their properties and that this was sufficient to establish liability without proving damage. They further claimed that the mere presence of the weed on the Network Rail land interfered with the quiet enjoyment and amenity of their properties and adversely affected value and marketability.

The court found in favour of the claimants. On the evidence, there had been an encroachment of knotweed on to the claimants' properties but there was no evidence of physical damage to the

buildings. However, the court found that there had been an unlawful interference with the claimants' quiet enjoyment and the amenity value of their properties, including the ability to dispose of the land at a proper value. Network Rail ought to have known of the risk of damage and loss of amenity caused by the presence of knotweed on its land and had failed to take reasonable steps to eliminate and prevent the interference with the claimants' rights.

Free fallin'

Freeholder was not liable under Defective Premises Act 1972

Dodd v Raebarn Estates Ltd and others: [2017] EWCA Civ 439

Under the Defective Premises Act 1972, a landlord owes a duty of care to persons who might reasonably be expected to be affected by defects in the state of the premises. The duty applies where the landlord has the right to enter the premises to carry out maintenance or repairs or if the landlord has an obligation to maintain or repair the premises. In this case, the claimant and his wife were staying in a friend's flat. The claimant fell down the stairs and suffered serious injuries from which he subsequently died. His widow claimed against the freehold owner of the block, the head tenant of part of the block under a 125-year lease and the friend who held an underlease of the flat. The stairs in question had been constructed by the head tenant but failed to comply with planning legislation or building regulations. In particular, they were too steep and there was no handrail. The headlease required the head tenant to maintain and repair the premises while the landlord reserved the right to enter to carry out repairs. The tenant also had to comply with planning and to execute all works required by statute. There was also a prohibition on the tenant carrying out structural works without consent.

The Court of Appeal upheld the High Court decision that the freeholder was not liable for the claimant's injuries. The deemed obligation on a landlord under the Act is limited to the description of the repair or maintenance for which the landlord had the right to enter. The steepness of the stairs and the lack of a handrail did not amount to disrepair. The freeholder's right to enter was limited to rectifying breaches of the head tenant's repairing covenant and the duty did not extend to defects in a general sense. In addition, a duty to repair did not equate to a duty to make safe. The carrying out of the alterations by the head tenant did not give rise to a right for the freeholder to enter to carry out repairs and the statutory duty of care did not arise.

Take me to the river

Mooring had not resulted in adverse possession of the riverbed

Port of London Authority v Mendonza: [2017] UKUT 146 (TCC)

The Upper Tribunal has considered whether the mooring of a houseboat demonstrated a sufficient intention to possess in order to claim adverse possession of the underlying riverbed. The Port of London Authority had applied to register its title to part of the riverbed and foreshore of a tidal stretch of the river Thames. The respondent objected and claimed that he had acquired adverse possession of part of the riverbed by mooring his houseboat in the same location since 1997. The First-tier Tribunal found that the respondent had acquired title through adverse possession of the relevant part of the riverbed beneath the boat.

The Upper Tribunal allowed the Port of London Authority's appeal. Although there was factual possession, the issue was whether the respondent had demonstrated the necessary intention to possess the riverbed. Although the mooring of a boat could be sufficient to establish a claim for adverse possession, the act of mooring by itself gave no insight as to a boat owner's intentions. Although it had become apparent that the respondent intended to stay, this had not been clear in the early years. The Upper Tribunal further considered whether adverse possession could be acquired where the river was subject to public rights of navigation. There was no absolute rule that adverse possession was impossible where public rights of navigation applied.

OUR RECENT TRANSACTIONS

We advised Aquis Exchange, an independent pan-European equities trading exchange, on its new lease of offices at 75/77 Cornhill, London EC3.

We advised Tottenham Hotspur on the financing of its new stadium, known as the Northumberland development project. We are advising Tottenham on all aspects relating to the construction process, as well as the agreement for the use of Wembley Stadium for the 2017/18 season.

We advised international law firm Withers LLP on its new UK headquarters at 20 Old Bailey, London EC4. Withers LLP has agreed to take 60,000 sq.ft. in the building, which is undergoing a major renovation by Blackstone.

We advised Bupa on its new London headquarters at 1 Angel Court, London EC2. The property had been developed by Mitsui Fudosan and Stanhope. Bupa has taken a 15-year lease.

We advised the seller of the London Metropole and Birmingham Metropole hotels in one of the largest portfolio deals in the UK market this year. Funds managed by Henderson Park Capital will pay more than £500m for the hotels. The London Metropole is the largest Hilton-managed hotel in Europe.

We advised Derwent London on the major pre-let at The White Chapel Building, 10 Whitechapel High Street, London E1 to Fotografiska.

AND FINALLY

Overdue

A book has been returned to a library in Connecticut more than 50 years after it was due to be returned. The library does not propose to levy the 15 cents per day fine.

Lemmy

A species of Jurassic crocodile has been named after Motörhead frontman, Lemmy. The Lemmysuchus was a twenty-foot long crocodile that roamed the coastline over 165 million years ago.

Feeling blue

Stray dogs in India have been turned blue by a contaminated river. Dogs foraging by the Kasadi river near Mumbai have been affected by pollutants from untreated industrial waste dumped in the river.

Born slippy

A lorry carrying 12 containers of eels overturned in Oregon leaving eels and their slime on the highway.

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