


Reiner and another v Triplark Ltd [2018] EWCA Civ 2151

A tenant breached a covenant against parting with possession by transferring a lease without consent even though the transfer was not registered at the Land Registry.

 09 January 2019

A tenant breached a covenant against parting with possession by transferring a lease without consent even though the transfer was not registered at the Land Registry.

Facts

A tenant (R) had a long lease of a flat with a covenant not to assign, sublet or part with possession without the landlord's consent. R completed a sale of the flat to W, the sole director of a right to manage (RTM) company that had taken over the management of the block.

Before exchanging contracts, R had applied to the RTM company for consent to the assignment. Under section 98(4) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act), the RTM company should have given notice to the landlord (L) of R's application. However, W (on behalf of the RTM company) failed to do so (he was concerned that L would object). By the time of completion, the RTM company had neither consented nor objected to the assignment (under the 2002 Act, although the right to consent is vested in a RTM company, it cannot give approval without first having given the landlord 30 days' notice of the tenant's application).

Subsequently, L objected to the sale of the flat to W and applied to the Land Registry to register a restriction preventing registration of the transfer to W.

Issue

Had R parted with possession of the flat by completing a sale to W (the parties both accepted that there was no 'assignment' for the purposes of the alienation covenant until the transfer to W was registered at the Land Registry)?

Decision

R had parted with possession even though she remained legally the tenant of the flat pending registration, since legal possession means the right to enter and occupy the land to the exclusion of others.

In this case, R had given up physical possession and control of the flat. She had removed all of her belongings and given W the keys with vacant possession. In addition, the assignment to W was complete in equity and, as bare trustee for W, R was required to exercise her legal rights as tenant under the lease only in accordance with W's instructions.

Points to note/consider

This case is a reminder that a covenant against assignment is only broken by a legal assignment (where a lease is of registered land, legal title of course does not pass until the assignment is registered at the Land Registry). It is important therefore for landlords to ensure that an alienation covenant in a lease covers both assignment and parting with possession (as they are potentially different concepts). In addition, where a landlord becomes aware of a transaction in breach of the lease, this case would suggest that it is a good idea to allege breach of both the assignment and parting with possession covenants (especially if registration of the transaction is pending at the Land Registry).

R also argued that the RTM company had unreasonably withheld consent to the assignment by not responding to her application. This was rejected by the court because of the statutory bar on giving consent without first giving L 30 days' notice of R's application (the RTM company's obligations under the Landlord and Tenant Act 1988 were therefore not engaged until notice had been given).

Contact

David Harris



Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

Related expertise

Government

Local government