DLA PIPER

REAL NEWS

WINTER EDITION 2015/16

REAL NEWS – WINTER EDITION 2015/16

Welcome to the winter 2015/16 edition of Real News; DLA Piper's quarterly guide to key developments in English and Welsh real estate law.

IN THIS EDITION:

- **Ben Barrison** reports on the long awaited Supreme Court's decision in the case of *Marks & Spencer plc* v *BNP Paribas Securities Services Trust Company (Jersey) Limited* (pg 03);
- We dedicate two articles to the law surrounding the recovery of arrears from former tenants and guarantors. **Lucy Hopson** considers the case of *K/S Hasbro-Gatwick* v *Scottish & Newcastle Limited* and provides useful pointers to landlords pursuing arrears (pg 04). **Petra Billing** and **Sam Millington** then consider the case of Lee v Sommer and how a landlord can, in the absence of serving a section 17 notice, still recover arrears from former tenants and guarantors (pg 06);
- **Earle Brady** and **Laura Moorcroft** look at the increase in construction costs and provide thoughts on how to mitigate the effects of rising costs (pg 07);
- **Alasdair Thomas** writes about the law surrounding penalty clauses and looks at the recent decision in the joined appeal to the Supreme Court of *Cavendish Square Holding CV v Makdessi* and *ParkingEye Ltd v Beavis* (pg 09); and
- Lastly, we re-run an article first published in the 22nd edition of DLA Piper's Real Estate Gazette. **Nicholas Redman** looks at how the installation of art in urban spaces can pose difficult legal questions (pg 11).

Please do get in contact with suggestions for future content.

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MONEY BACK – GUARANTEED?
NO IMPLIED TERM IN TENANT BREAK OPTION

The Supreme Court has unanimously dismissed an appeal by a tenant who contended that a term should be implied into its lease by which the tenant would be entitled to recoup "overpaid" sums after exercising its break option.

EFFECT OF THE DECISION

The Supreme Court's decision reinforces best practice:

(1) If parties want to be able to claim back "overpaid sums", then they should ensure the lease includes apportionment or recoup provisions that entitle them to do so.

(2) Parties exercising break options should follow the terms of the break option to the letter.

(3) If you are in any doubt as to what is required to exercise a break option and/or your rights after the break date, seek specialist legal advice.

KEY FACTS

- The tenant ("T") had a break option conditional upon there being no arrears of rent as at the break date and payment of a sum equivalent to one year's rent.
- The break date was in the middle of a quarter.
- T paid the full quarter's rent as it fell due and the break payment in time to operate the break option.
- T sought repayment of the "overpayment" element of the quarter's rent for the period after the break date.

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THE SUPREME COURT'S DECISION

The Supreme Court decided that a term entitling T to recoup the "overpayment" should not be implied into the lease:

- The judicial approach to the implication of contractual terms may be summarised as follows:
  - A term will only be implied if it satisfies the test of business necessity or it is so obvious it goes without saying. It would be unusual for only one of these requirements to be met.
  - The actual intention of the parties is not critical to the determination of whether a term should be implied. The key question is what would reasonable people in the position of the parties have agreed at the time they were contracting.
  - The term to be implied should either be fair or a term that the parties would have agreed had it been suggested to them.
- The lease should be considered in the context of the common law and statutory authorities on apportionment of rents, which provide that rents payable in advance cannot be apportioned. Against that background, it would be wrong to attribute to the landlord and tenant an intention that the tenant should be entitled to recoup "overpaid" sums in what was a full lease that had been professionally drafted and negotiated between experienced operators.
- The anomalies in the working of the lease that the tenant sought to invoke to support its case for an implied term did not establish that the lease was either unworkable or that the result was commercially or otherwise absurd.

Marks and Spencer plc – v – (1) BNP Paribas Securities Services Trust Company (Jersey) Limited (2) BNP Paribas Securities Services Trust Company Limited [2015] UKSC 72

RECOVERING ARREARS
FROM A FORMER TENANT OR GUARANTOR – PART 1

The importance of following the section 17 procedure

A former tenant or guarantor cannot be held liable for "fixed charges" owed by the current tenant of a lease unless, the landlord has served the former tenant or guarantor with a notice pursuant to section 17 of the Landlord and Tenant (Covenants) Act 1995 ("**Act**") within six months of when the fixed charge became due.

If a landlord misses the deadline for serving a section 17 notice the former tenant/guarantor cannot be held liable for the fixed charges.

WHAT ARE FIXED CHARGES?

The Act defines "fixed charges" as including:

- rent
- service charges
- any amount payable under a tenant covenant of the tenancy providing for the payment of a liquidated sum in the event of a failure to comply with any such covenant.

WHO CAN A LANDLORD RECOVER FIXED CHARGES FROM?

If the tenancy was entered into **before 1 January 1996** the landlord can serve a section 17 notice on:	If the tenancy was entered into **after 31 December 1995** (otherwise than by completion of a binding arrangement concluded before 1 January 1996) the landlord can serve a section 17 notice on:
▪ the original tenant;	▪ a former tenant who remains liable under an authorised guarantee agreement;
▪ any subsequent tenants who have on assignment given the landlord a direct covenant; or	▪ a former tenant who has not been released because the assignment was an excluded assignment; or
▪ any former tenant or former guarantor who has not been expressly released.	▪ a guarantor who remains liable under its guarantee.

K/S HABRO-GATWICK V SCOTTISH & NEWCASTLE LTD [2015] EWHC 2084 (CH)

This recent case highlighted the key provisions of the Act in which the landlord, K/S Habro-Gatwick, sought to recover fixed charges from a former tenant, Scottish & Newcastle Limited ("**SNL**"). SNL in turn sought an indemnity from GLH Hotels Ltd who was the guarantor of the first assignee of the lease.

SNL were granted two leases of The Chequers Hotel in Horley for a term of 99 years from 1968. The leases were both subsequently disclaimed by the liquidator to a successor to SNL, Menzies, in December 2013. The disclaimer however did not affect SNL's liability as a former tenant under the leases.

SNL admitted liability for the rent and insurance rent, however they did not accept liability for the costs of securing the hotel or for business rates.

INSURANCE

When Menzies' lease was disclaimed the insurance cover which was in place terminated. The landlord, therefore took up insurance with Aviva. As the hotel was empty, Aviva imposed a number of conditions on the policy, including 24 hour security and a requirement that the electricity supply to the hotel should be turned off. The electricity supply was however, reinstated to enable the security team to operate effectively. The Landlord claimed the cost of the security and the electricity from SNL

The judge considered the lease (which provided that if the tenant failed to insure, the landlord was entitled to put insurance in place as he saw fit) and ruled that the landlord was able to recover the security costs as "expenses incurred" in insuring the hotel, as required by the lease.

The judge also overrode SNL's arguments that the section 17 notices were not in the prescribed form (as required by the Act). The judge ruled that the landlord's approach of attaching copies of the security company's invoices to the notices meant that the notices met the requirements of the regulations (as they were substantially in the same form as those prescribed by the regulations).

The judge did however, disallow the landlord's claim for the electricity costs as a "step too remote" for those requirements.

RATES

The landlord had been paying business rates and sought reimbursement from SNL. The landlord had not served SNL with section 17 notices relating to these charges. SNL claimed that they were therefore not liable for the business rates.

The judge disagreed and ruled that whilst the rates did not constitute a "fixed charge" under section 17(6) of the Act as they were not due under a tenant covenant, they were due as damages arising from SNL's default of the tenant covenant to pay rates.

INDEMNITY

The court ruled that SNL were entitled to an indemnity from the party that had guaranteed Menzies obligations.

KEY POINTS

- Landlords need to be vigilant to ensure that they do not miss the opportunity to recover fixed charges from former tenants/guarantors – the six month rule!
- If you are serving a section 17 notice ensure that it is in the prescribed form – if it is not there is a risk that the notice may be invalid. Set out the charges in detail with an explanation of when the charges became due. Whilst attaching invoices to the section 17 notices in this case was sufficient, it may not be in every case.
- Former tenants/guarantors need to be aware that section 17 notices may not always be required and that they could therefore still be on the hook for sums due pursuant to a lease many years later.

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RECOVERING ARREARS

FROM A FORMER TENANT OR GUARANTOR – PART II

Landlords should use the section 17 procedure – though there are limited exceptions

In this article we look at the importance of landlords using the section 17 procedure to preserve their cause of action against former tenants and guarantors. In addition former tenants and guarantors should investigate any claim made against them as they may be able to avoid liability altogether.

Service of a notice under section 17 of the Landlord and Tenant (Covenants) Act 1995 remains fundamental to the success of a landlord's cause of action for the recovery of liquidated sums due under a lease from a former tenant who remains liable in a lease. However, a court may validly uphold a consent order under which such a tenant agrees to pay rent arrears, even though the absence of a section 17 notice, and it follows no cause of action.

In *Lee v Sommer* [2015] EWHC 3889 (Ch), Sommer granted leases of a restaurant and an adjacent yard to Mr Lee. Later, Mr Lee sold the business and assigned the leases to DRWY Limited. Mr Lee entered an authorised guarantee agreement with Sommer, guaranteeing DRWY's obligations under the leases.

After a while, DRWY could no longer fulfil its obligations under the leases. Rent arrears of over £38,000 built up. DRWY was soon dissolved and the Treasury Solicitor, on behalf of the Crown, disclaimed the leases. Sommer sought to recover the unpaid rent by issuing a claim against Mr Lee but failed to serve Mr Lee with a section 17 notice. This failure would have given the original tenant a complete defence to the claim but it failed to raise this point.

The parties then entered into a consent order under which Mr Lee agreed to pay the outstanding arrears (along with interest and the landlord's costs), which was approved by the court.

When Mr Lee instructed new solicitors he became aware of the absence of a section 17 notice and brought proceedings against Sommer alleging that the consent order was void. He argued that:

1. the court did not have authority to enter judgment and uphold the consent order in the absence of a valid section 17 notice given the lack of any cause of action;
2. and the consent order was invalidated by section 25 of the 1995 Act which provides that any "agreement relating to a tenancy" having the effect of undermining the operation of that Act and in particular the protection it affords to former tenants, will be void.

The trial judge ruled in favour of Sommer, upholding the consent order:

1. The obligation to prove service of a section 17 notice was required for the landlord to have any cause of action but the court still had jurisdiction to dispense with proceedings by consent order agreed between the parties – even if there was no basis for those proceedings.
2. The order was not void under section 25 of the 1995 Act because it was not "an agreement relating to a tenancy" having the effect of undermining the operation of that Act. The consent order was a genuine compromise between the parties to settle the claim (even though it had no basis) and as such, was too far removed from the tenancy.

Mr Lee appealed, submitting that the service of a section 17 notice was not merely "an element" of Sommer's cause of action but instead, a jurisdictional requirement and the consent order clearly sought to contract out of section 17 of the 1995 Act and should therefore be void. However, the High Court was not impressed by these arguments and ruled once more in favour of Sommer. It concluded that section 17 did not refer to the court's jurisdiction but rather to Mr Lee's liability upon receiving notice under that section.

The court ruled that whilst a section 17 notice was still necessary for Sommer's action to succeed, this alone did not mean such a notice was also required before the court could uphold an agreement aimed at settling a dispute relating to it. In other words nothing in the 1995 Act deprived the parties of the ability to reach a genuine compromise of their liabilities under the AGA and, as such, the court was not deprived of jurisdiction to uphold such an agreement by a mere failure to comply with section 17.

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RISING CONSTRUCTION **COSTS**

INTRODUCTION

With political stability now assured following the 2015 general election, growth in the construction sector is set to continue. Following a rise in prices of 10-13 per cent from the lows of 2010, AECOM'S 2015 London Contractors' Survey estimates that construction cost inflation has risen by a further ten per cent during 2015, with predicted increases of seven per cent in 2016. This article considers why construction prices are rising and how employers can mitigate these costs.

WHY ARE PRICES RISING?

The prime reason why prices are rising is the lack of supply in the market. Skilled labour has always been the industry's biggest constraint and with demand increasing, this can only continue. Skilled construction workers have found themselves in a strong bargaining position, which is reflected in the rate of wages growth in the construction sector.

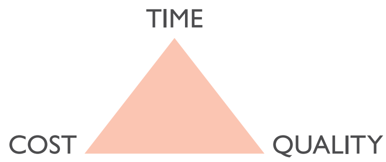
MARKET TRENDS

Although construction input price growth is moderating after two years of strong growth, this moderation is not reflected in the growth of tender prices as many contractors are increasing their margins. Contractors are also increasing their tender sums to reflect the risk of insolvency which is still present at all levels of the market.

There has also been a decrease in single stage tendering; whether the employer is following a negotiated or two stage process, it is clear that contractors are unwilling to take on all of the risk that they would have done previously. Contractors are also refusing to commit to a price until a later stage and when they do, there is a premium on that price.

The increased demand for skilled labour means that contractors are stretched to their limits. Employers may therefore not be receiving the undivided attention of a contractor's best team. Additionally, contractors are showing an unwillingness to tender. AECOM's report has found that contractors are refusing to submit tenders on up to 50 per cent of projects offered to them, with some of the main contractors only considering 25 per cent of opportunities presented to them. With a potentially weaker team and a price that is not market tested to the maximum degree, employers can no longer be sure that they are getting the value they were once accustomed to.

THE BALANCE OF THE PROJECT MANAGEMENT TRIANGLE



Received wisdom is that one can only ever manage two of the three parameters at any one time. As construction costs are unlikely to start decreasing any time soon and as increased demand is compromising quality, only one factor of the project management triangle remains properly controllable; time. Further, with costs rising quarter on quarter, it is logical that the quicker the project can commence, the lower the outturn cost of the project will be.

FOCUS ON PROGRAMME

One way to fast track procurement, is by using early works contracts with smaller contractors or remediation specialists ahead of finalising the requirements and getting the main contractor on site.

Alternatively, a two stage process can be used to bring the main contractor on site to do the early works whilst also helping to finalise the requirements. This will involve the contractor and supply chain early.

Furthermore, construction management is becoming more popular as employers are realising that it is no longer possible to obtain all of the quality and risk benefits of a design and build contract that were once possible. A construction manager will be paid his fee regardless, meaning he has no interest in growing the project cost and can share the employer's objectives. Further, his experience and assistance can be utilised from an early point in the project.

OTHER WAYS TO MITIGATE THE EFFECTS OF RISING CONSTRUCTION COSTS

In addition to fast tracking procurement, there are other ways in which employers can try to mitigate the effect of rising costs.

- **Avoid variations**

  It has already been established that contractors are in a strong bargaining position due to a lack of supply in the market. This position is further strengthened should any mid-project variations arise. Avoiding a late change of mind will avoid paying inflated and unnecessary extra costs.

- **Value Engineering and shared savings**

  Value Engineering with shared savings may be a way of reducing costs as it provides the contractor with the motivation to seek savings in the works.

CONCLUSION

With a constrained supply of workers in the market, contractors are able to focus on higher margin work and lower risk projects. As contractors are becoming increasingly selective over which projects they bid for, it is paramount that employers consider how best to balance the need to attract quality contractors whilst also mitigating their costs.

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SUPREME COURT TURNS DOWN **SHOUTS FOR A PENALTY**

In this article we look at the importance of ensuring, where possible, that both parties take appropriately specialist legal advice when entering into the contract, and that onerous clauses are proportionate to the interests they are included to protect.

Those who regularly enter into contracts with third party service providers in relation to their property interests may well be familiar with the concept of the penalty clause: a clause that puts an onerous obligation on a party in the event it breaches the contract, with the aim of deterring breach, can be held to be an unenforceable penalty clause. Typically, these would arise where the clause provided for payment of a fixed sum of money on breach, akin to a fine, that did not constitute a genuine pre-estimate of the damages likely to flow from the breach. The Supreme Court has now reconsidered the test for what constitutes a penalty clause. In the in the joined appeals of *Cavendish Square Holding CV v Makdessi and ParkingEye Ltd v Beavis* [2015] UKSC 67, it described the law relating to penalty clauses as "*an ancient haphazardly constructed edifice which has not weathered well*". They expressed the view that, had the law not already existed, it would not have been invented today.

Rather than abolishing the law of penalties, the Supreme Court has revised the test for what constitutes a penalty, and provided a strong indication that, in circumstances where there is equality of bargaining power and the parties have both been advised professionally, the courts should be reluctant to decline to enforce a clause on the ground that it is as penalty. As a result of the decision, there will also be more scope for arguing the wider commercial justifications for clauses that previously would have been considered to be penalties because they were primarily a deterrent to breach, rather than a genuine pre-estimate of damages.

THE PENALTY PRINCIPLE

Broadly speaking, as the law stood prior to the *Cavendish* decision, a clause in a contract designed more to deter a party from breaching the contract than to act as a genuine pre-estimate of damages likely to flow from a breach would be held to be a penalty clause and unenforceable. The construction of the clause depended on the terms of the contract and the circumstances at the time it was entered into. Clauses providing for extravagantly large payments in comparison with the greatest loss that could arise, or clauses that could operate on a number of different breaches of varying severity, were liable to be considered penalties. The principles were laid down in the House of Lords case of *Dunlop Pneumatic Tyre Company Ltd v New Garage and Motor Company Limited* [1915] AC 79, and prior to the Cavendish decision they had altered little since that time. The emphasis was very much on the purpose of the clause. Though parties sought to persuade the courts that certain clauses were justifiable on grounds that they protected legitimate commercial interests in the contractual relationship, if the overriding purpose of the clauses was to deter breach the courts tended to rule that they were penalties.

THE TWO APPEALS

The recent decision of the Supreme Court relates to appeals in two distinct cases, very different in their facts but joined together to allow a long-overdue consideration at Supreme Court level of the law of penalties in both the consumer and commercial contexts.

The *ParkingEye* case related to an £85 charge for exceeding the maximum two hour stay at a car park in Chelmsford. The case is outside the focus of this article, as it concerned the law of penalties in a consumer context. Suffice to say that Mr Beavis, who must have found it a somewhat surreal experience to hear his challenge to an £85 parking charge contested in the Supreme Court in front of no fewer than 7 Justices, lost because the Court ruled that the car park operator was protecting a legitimate interest by charging people a flat rate of £85 for over-staying the two hour limit by an indeterminate period of time, and there was no evidence that the charge was excessive by reference to other UK car parks. The Court also ruled that the charge did not infringe the Unfair Terms in Consumer Contracts Regulations 1999.

The *Cavendish* case concerned a share purchase agreement, whereby Cavendish purchased a 60 per cent stake in the largest media and advertising business in the Middle East from its founders, Messrs Makdessi and Ghoussoub, who retained the remaining 40 per cent. The agreement provided for staged payments of amounts that were to be calculated by reference to the ongoing profitability of the business. The amount of these payments was to a large extent dependent on goodwill, which in turn relied on the pivotal role played by Mr Makdessi in developing client and employee relationships. The agreement therefore contained a clause prohibiting him from competing with the business. If he did so, he would become a 'Defaulting Shareholder'. It was two of the clauses dealing with the consequences of becoming a Defaulting Shareholder that gave rise to the penalty dispute. The first of these, clause 5.1 of the agreement, provided that a Defaulting Shareholder should not be entitled to receive the goodwill-dependent payments. The second, clause 5.6, allowed Cavendish to require the Defaulting Shareholder to sell all of his shares at a price calculated on the basis of a net asset valuation only, with no account taken of goodwill.

Mr Makdessi became a Defaulting Shareholder. He challenged clauses 5.1 and 5.6 on the basis that they were unenforceable penalty clauses that deprived him of his shares and his right to payments without any of the value attributed to the business goodwill that he was largely responsible for. Neither clause was a 'classic' penalty candidate, in that it provided for the payment of a fixed sum upon the occurrence of a breach, or breaches of the contract. The Court of Appeal nevertheless ruled that both clauses were penal, and Cavendish challenged this decision on three grounds: either (1) that the law of penalties should be abolished as an outdated restriction on the freedom of contract; (2) that it should not apply to clauses such as these; or (3) that, on the facts, neither of the clauses was penal.

The Supreme Court ruled that Cavendish succeeded on ground (3). Given the circumstances, the clauses were not penal. The following factors were relevant to the Court's decision:

- The clauses had been negotiated between well-advised, commercial parties, and this raised a presumption that they were to be taken to have understood what they were agreeing to as regards the consequences of breach.
- Too much emphasis has been placed on the principles set out in the *Dunlop* case. These were intended to be guidelines, not hard and fast rules.
- A clause that seeks to deter breach so as to protect a legitimate interest will not necessarily be a penalty clause, as long as its effect is not punitive.
- The effect will be punitive if it is grossly disproportionate and/or unconscionable in comparison to the innocent party's interest in enforcing the contract.
- Compensation for breach is not the only legitimate interest. Wider commercial concerns can be taken into account.

The Court reaffirmed that the law of penalties should only apply to 'secondary' obligations in contracts. Typically, these are obligations that only take effect to provide for a remedy in the event of breach of a primary obligation, but the distinction between primary and secondary obligations is not always clear.

CONCLUSION

The old question of whether a clause requiring the payment of a specified sum in the event of breach constitutes a genuine pre-estimate of damages will now only be relevant if the sole interest the clause is seeking to protect is a right to payment in the event of breach. To determine whether or not a clause constitutes an unenforceable penalty, the courts will now carry out a balancing exercise, considering the innocent party's legitimate commercial interests in the wider contractual context and setting them against the impact of the clause in question on the party in breach. If the legitimate interests are not outweighed, the clause will not be a penalty. It will weigh substantially in favour of the innocent party if the clause was negotiated between well-advised, commercially sophisticated parties.

A number of questions arise. One relates to the distinction between primary and secondary obligations. Of equal interest will be how the courts weigh up what constitutes the legitimate interest of the innocent party, and how they balance that with the detriment to the party in breach. No doubt these will be considered by the courts in due course.

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BANKSY MURAL SET TO RETURN TO FOLKESTONE

Art has long been used to enliven the civic realm and to stimulate and intrigue residents and visitors. But the installation of art in urban spaces can pose knotty legal issues. This summer saw two London boroughs tussling over Henry Moore's *Draped Seated Woman* (commonly known *as Old Flo*) as one of them looked at raising £20m by selling the sculpture. Now, an attempt to regenerate Folkestone by the promotion of creativity and the arts has ended up in the High Court.

ART BUFF COMES … AND GOES

The Creative Foundation organises the Folkestone Triennial. As part of the 2014 event, the external flank wall of an amusement arcade in the town was spray-painted with a mural, *Art Buff.* The work was attributed to the famous street artist known only as Banksy. Neither the owner of the arcade nor its tenant, Dreamland, consented to *Art Buff* being painted on the wall. There was huge media interest in Art Buff, which experts reckon to be worth over £300,000. Local graffiti artists also added their contributions to Art Buff before the local authority stepped in and covered the mural with Perspex.

Later, Dreamland severed and removed *Art Buff* from the wall of its arcade. The story galloped on: the mural was shipped to New York for sale and exhibited in Miami; the widow of the owner of Dreamland contended that the net proceeds of sale of *Art Buff* would be given to the local hospice; and the UK Culture Minister demanded that Art Buff should be returned to Folkestone.

ART BUFF TO COME BACK…

The Foundation took an assignment of the landlord's rights to *Art Buff* as a first step towards its goal of getting the work displayed again in Folkestone. *Art Buff* is presently in New York for safe-keeping pending the resolution of all legal issues. But now the Foundation has obtained a High Court judgment against Dreamland for the return of *Art Buff.*

Dreamland's lease was fairly standard. It obliged the tenant to repair the arcade and to paint the exterior parts making good all external rendering where necessary every four years. The judge felt that the presence of *Art Buff* on the arcade's wall could put the arcade out of repair: there is appeal court authority, *Post Office v Aquarius Properties Limited* [1987] 1 All ER 1055, CA, which makes it clear that a repairing obligation in a lease only operates once the let property is out of repair. A tenant may decide how it wishes to perform its repairing obligations but it would need to show that the use of a significantly invasive method was as objectively reasonable as other appropriate methods. Against this background, Dreamland failed to show that it was either obliged or entitled to remove *Art Buff* from the arcade in order to comply with its repairing obligations under its lease.

Dreamland also contended that, once *Art Buff* had been removed from the arcade in compliance with its repairing obligations under its lease, it became its property by virtue of an implied term in the lease. Such term would address the issue of what happens to parts of the arcade which Dreamland had to replace or remove in order to comply with those obligations. The parties agreed that such parts, once removed, were chattels. In most cases (though not this one), such chattels would have little or no value. The judge ruled that a term stating that any such chattel of substantial value belonged to the landlord should be implied into Dreamland's lease:

- the landlord owned the property but Dreamland only had a tenancy of it;
- the fact that Dreamland had, it contended, removed *Art Buff* from the arcade whilst performing its repairing obligations in the lease did not confer ownership of *Art Buff*; and
- the arrival of *Art Buff* on the arcade's flank wall would lead to one party getting a windfall but here that party should be the landlord (he relied on a Victorian case in which a tenant building a gas works uncovered a valuable 2,000 year old wooden boat under the surface of the land – the boat was ruled to be the landlord's property).

PROBABLY…

The decision was a summary judgment and did not follow a full trial of the issues. The Foundation showed that Dreamland had no realistic prospect of success at trial which is all it needed to do. However, it is possible that Dreamland may appeal on a point of law.

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