Neves SOLICITORS Business Update—Spring 2014

Business Start Ups

Neves Small Business team can assist your business by helping draft your terms and conditions of trading, partnership/shareholder agreement or agency agreement, or by providing you with a contract of employment for any staff you may engage, or by collecting unpaid debts. Perhaps you maybe considering renting business premises in which case we will review the terms of the lease and advise you accordingly.

If you offer services over the Internet, the firm can guide you in the legal techniques needed to make contracts electronically. It can also ensure that your Website complies with the Law.

If you purchase goods or services over the Internet, our experts can advise you on your contractual rights and obligations.

Business start ups, make sure you are getting the right legal advice from the very start contact: info@nevesllp.co.uk

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Congratulations Trevor

The Partners at Neves are pleased to announce as of the 1st of April Trevor Kidd will become an Associate at Neves. Trevor joined the firm in September 2007 and during his time at our Harpenden office he has helped build a wealth of satisfied clients. We would like to thank Trevor for his continued dedication and commitment to the firm over the years and wish him the best of luck in his new role at Neves!

What Our Clients Say About Us

"The service provided was of a good standard and I felt they were trustworthy"

"Thanks you for this, you always make it very easy to understand, I have had no hesitations in recommending your services to all my relevant connections"

"Very polite, helpful, friendly service , with excellent value for money".

Neves SOLICITORS

"We very much appreciate the manner in which the business transactions were conducted, efficient and pleasant."

"Highly organised and efficient. The best solicitors that I have dealt with in the Luton area."

"Trustworthy, reliable, extremely high attention to detail. Very friendly like a family-run business".

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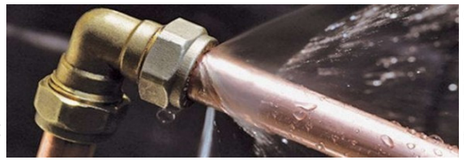
Spring 2014

The LEGAL 500 UNITED KINGDOM LEADING FIRM 2013

Preparation Is Everything



Rushing into litigation with insufficient preparation and without taking advice can have unfortunate consequences. This simple fact was demonstrated when the owners of a restaurant, who claimed that their business had been blighted by, amongst other things, a leaking pipe, had their hope for compensation dashed by the High Court.

The owners of the Caribbean-themed restaurant argued that the dripping pipe had caused water ingress and left a persistent 'slimy pool' of water at the side of the premises. They also claimed that their business had been damaged by works carried out on the footpaths and highway outside the restaurant and by the planting of trees which were said to have obscured the premises from passing trade.

The Court found that the proceedings showed 'every sign of having been prepared hastily', without sufficient thought, and noted that more than one of the organisations claimed against had been misidentified. The original particulars of claim were 'short and inadequate', necessitating a number of attempts to improve on them by amendment.

The Court found that the owners' claim against a property management company stood no reasonable prospect of success and had rightly been struck out at an early stage. Even following substantial amendment, their claims against the relevant local authority in respect of the leaking pipe, tree planting and other matters were not supportable in law or in fact and were dismissed. The owners' claim against a construction company that had carried out excavation works in the restaurant's vicinity also did not disclose an 'arguable cause of action' and their belated application to join a water company as a fresh defendant to the proceedings was also dismissed.

Legal proceedings must be considered carefully and prepared with great care. Failure to take and act on proper advice will almost inevitably lead to a suboptimal outcome.

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Landlord Who Allowed Lease To Run On Loses Claim For Possession

When an assured shorthold tenancy (AST) reaches the end of its term and the tenant continues to occupy the premises, a new tenancy is created. This has implications for landlords who have ASTs expiring which were entered into before 6 April 2007, the date on which the Government introduced tenancy deposit protection.

In this circumstance, the deposit paid by the tenant under the original lease may have to be dealt with under the rules that came into effect on that date, which require such deposits to be protected by a tenancy deposit scheme (TDS).

One of the downsides of not dealing correctly with a deposit to which the TDS rules apply is that it may not then be possible to serve a valid possession notice on the tenant.

The Court of Appeal recently heard a case in which a pre-2007 tenancy, under which a deposit was paid by the tenant, was simply allowed to 'run on' by the landlord after it expired in 2008. The landlord did not transfer into a recognised TDS the deposit that had been paid by the tenant.

When the landlord sought possession of the property in 2011, the tenant resisted its attempts, arguing that its failure to protect the deposit on the expiry of the original tenancy invalidated its claim.

The Court agreed. A new tenancy had been created in 2008 and the landlord's possession notice was therefore invalid because of non-compliance with the TDS rules.

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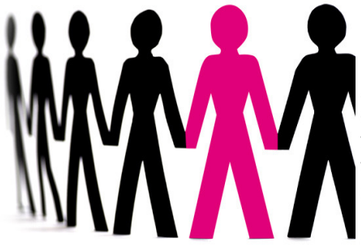
There Is Only So Much A Reasonable Employer Can Do

In rejecting a former delivery driver's claims of disability discrimination and unfair dismissal following an accident at work, the Court of Appeal has emphasised that there is a limit to what a reasonable employer can be expected to do to ensure fair treatment of its staff (JJ Food Service Limited v Zulhayir).



Mr Zulhayir was employed by JJ Food Service Limited as a delivery driver. Following an accident at work in January 2005, he was absent on long-term sickness absence. There was no dispute that he was incapable of returning to his former duties by reason of back injuries suffered in the accident. However, his employer had offered him suitable alternative work in an office environment, had met its statutory sick pay obligations and had arranged for him to be monitored by injury management consultants, who eventually lost track of him after he was evicted from his home and did not leave a forwarding address.

The Employment Tribunal (ET) dismissed Mr Zulhayir's disability discrimination claim on the basis that his employer had made reasonable adjustments by offering him work of which he would be capable. His unfair dismissal claim was also rejected because the ET found that his employer had done all that was reasonably required of it in consulting him and staying in touch with him until he 'disappeared off its radar'. Mr Zulhayir's appeal against the ET's decision was subsequently upheld by the Employment Appeal Tribunal (EAT), which ruled that the dismissal of his claims had been 'perverse' and remitted his case to the ET for calculation of the compensation due to him.

In allowing the employer's appeal against that decision, the Court of Appeal accepted its argument that the ET's original conclusion had been 'entirely permissible in fact and law, in no manner perverse and that the EAT was not entitled to interfere with it'. The Court found that, once it was established that suitable alternative employment had been offered to Mr Zulhayir following his accident, that was sufficient to defeat his disability discrimination claim.

The Court also rejected Mr Zulhayir's unfair dismissal claim, noting that he had for months ceased all contact with his employer and had not indicated any willingness to return to work in any capacity. In the light of his prolonged silence, his employer had been entitled to wonder whether he wished to continue in its employment. It had nevertheless waited more than three years before informing him that it no longer wished to employ him, and that repudiation of his employment contract had been accepted by Mr Zulhayir.

If you need advice or guidance on a issues regarding Litigation or Employment contact us on 0844 6300012

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The Prescription Act 1832 Not Finders Keepers After All

When land has been used by someone who has no legal entitlement to use it for 20 years without interruption, an 'easement' can arise under the Prescription Act 1832. In principle, an easement gives the legal right to continue the use indefinitely. For an easement to arise, the use must be open (not secret), without force and without the permission of the owner of the land. A lease cannot therefore create an easement.

It is therefore not uncommon for legal rights of use of land to arise without any intent, as a recent case illustrates. It involved a local council which allowed, for a period of more than 20 years, the parking of cars on its land. Despite the fact that the title to the land had subsequently been passed to a new owner, and on his death to his wife, and that a subsequent lease had been agreed over the land in 2004, the earlier use for car parking for more than 20 years was sufficient to create an easement over the land and this passed with the title to it.

An argument by the council that the use of the land had effectively 'ousted' it from its own property was also rejected. The court ruled that the council could have used the land for other purposes, but it did not.

The message for landowners is clear – if you allow others to occupy your land on a casual basis for a long period, you may lose the right of exclusive use and occupation.

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A Family Partnership

When a family partnership broke up, the lack of precision in clauses of the partnership agreement led to an appearance in the Court of Appeal.

Two farmers took their 19-year-old son into partnership in 1997. In 2009, the son gave three months' notice to terminate the partnership. The deed gave the remaining partners the right to buy out the retiring partner.

A dispute arose between them as to the price to be paid for the retiring partner's share. Should it be based on the current market value of the assets, as the son claimed, or on the value of the assets shown in the partnership accounts, as his parents claimed?

The partnership deed stated that in the event of a termination of the partnership, the 'net value' to be attributed to the assets would be 'agreed between the Partners or their respective successors (as the case may be) or in default of such agreement shall be determined by the partnership accountants'. However, there was no definition of 'net value', which LJ Lewison described as a 'most regrettable' omission.

After an extensive discussion of the role of the accountants and their expertise, the Court of Appeal concluded that the partnership agreement required that on a termination, the actual values of the assets had to be taken into account rather than their 'book values' in the annual accounts.

It was persuasive that the alternative to the buy-out provision in the partnership deed was a winding up of the partnership, when the assets would have been disposed of at their open-market values.

The lesson for any partnership is that the partnership deed needs to be clear as to the definition of terms.

Getting The Valuation Correct

In the context of a bitter building dispute that was characterised by confusion over the identity of one of the contracting parties, the High Court has emphasised that an adjudicator's decision, if made with jurisdiction, is enforceable even if it is shown to be wrong as a matter of fact or law.

A main site contractor had contracted out drainage work to another company. Although negotiations for the subcontract were carried out with one company (company A), whose employees performed the work, a dormant company (company B) was named as the subcontractor on the relevant documents.

On completion of the contract, company B – which was not a subsidiary of company A although they each had one or more shareholders in common – argued that it was owed more than £640,000. The site contractor had originally valued the work done as being worth nearly £364,000, but subsequently lowered its assessment and claimed a repayment of the balance.

The matter was referred to an adjudicator, who valued the work at just over £500,000 and ruled that company B was the correct party to the adjudication.

The contractor was ordered to pay almost £150,000 to company B, that being the adjudicator's overall assessment of the sum due. The contractor claimed that this decision was wrong because company B was a dormant company and did not as a matter of fact do the work.

In ordering enforcement of the adjudicator's decision, the Court noted that it had been agreed that he would have jurisdiction to determine the identity of the parties to the subcontract and it was not now open to the company to challenge his conclusion on that issue, whether right or wrong. The Court entered judgment in favour of company B in the sum of £147,164.66.

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