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

Neves achieves Legal 500 ranking!

Neves Solicitors LLP is delighted to announce that it is now recognised for its legal expertise in Legal 500. The firm sees this as a reflection of its growth and development in recent years and this achievement is solely attributed to the outstanding feedback received from clients in both individual and business legal services

Neves has received specific accolades to its employment and family law department.

Since the opening of its Milton Keynes office in 2009, both departments have continued to go from strength to strength. The ranking in Legal 500 demonstrates that Neves combines comprehensive and pragmatic legal advice with outstanding client service.

We would like to say a big thank you to all those that have and continue to use Neves for legal matters. Also a big thank you to all that work at Neves for helping achieve this milestone.

Neves Christmas Appeal

In previous years we have donated to charities at Christmas, rather than sending Christmas cards. This year we plan to do the same.

Neves will be making a donation to Shelterbox a charity helping those who need it most following the earthquake in the Philippines.

The relief Shelterbox send is in the form of a large green plastic box containing a family tent, bedding, a stove, cooking utensils, a water purification kit and much more, sufficient to look after an extended family of 10 people. In the past 2 years the charity has sent 50,000 boxes to various locations around the world where families have lost their homes.

Each box costs £595 which includes the cost of shipping. Neves plan to raise enough money to send four boxes to the Philippines.

To find out more visit www.shelterbox.org

Contact Us

Harpenden
Tollgate House
69-71 High Street
Harpenden
Hertfordshire AL5 4ET
T: 01582 715234

Luton
8 George Street West
Luton
Bedfordshire
LU1 2DA
T: 01582 725311

Milton Keynes
Kingsbridge House
702 South Seventh Street
Milton Keynes
MK9 2PZ
T: 01908 304560

Northampton
Independent House
Units 1 & 2 Wilks Walk
Grange Park
Northampton NN4 5DW
T: 01604 814500

E: business@nevesllp.co.uk W: www.nevesllp.co.uk

Neves SOLICITORS

Business Update
Winter 2013

The importance of removing old data

A recent case serves as a reminder to organisations that handle personal data of the importance of following appropriate procedures when the need arises to destroy information held on computers that are no longer required.

Under the Data Protection Act 1998, a data controller is required to ensure that 'appropriate technical and organisational measures' are taken 'against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data'. This is the seventh of eight data protection principles outlined in the Act.

Where an organisation outsources the processing of personal data, the data controller must choose a data processor that provides sufficient guarantees in respect of the security measures governing the processing to be carried out and take reasonable steps to ensure compliance with those measures. In such circumstances, the data controller is not considered to have complied with the seventh principle unless the processing is carried out under a written contract, the data processor is to act only on instructions from the data controller and the contract requires the data processor to comply with obligations that are equivalent to those imposed on a data controller by the seventh principle.

Although it had an existing arrangement for data destruction services with an approved contractor, NHS Surrey decided to use the services of a company that offered to do the work for free on the basis that it could then profit from the sale of the unwanted devices. There was no contract in place, although the company did offer written assurances that the data would be destroyed.

A member of the public who bought a second-hand computer in an online auction subsequently informed NHS Surrey that the device contained confidential medical information. On investigation, NHS Surrey found that many of the files contained confidential sensitive personal data including patient records relating to approximately 900 adults and 2,000 children. The hard drive's serial number was checked against the destruction certificate and was identified as one of a batch of machines dealt with by the new company. Further investigations uncovered three more computers that had been sold in the same auction and which still contained confidential sensitive personal data.

The Information Commissioner's Office said that it was one of the most serious data protection breaches it had witnessed and issued NHS Surrey with a £200,000 fine.

Contract Determines Deposit Status

When a contract is terminated and a deposit has been paid, what is the status of the deposit? A recent case has clarified the law in this area.

In a dispute between two shipping companies, the High Court ruled that if a contract is terminated because of a breach by the buyer, before it has been completed, the buyer's deposit on the contract may be forfeited.

However, if the deposit is a down payment on the whole – i.e. payment of a proportion of the whole contract price – then it may be recoverable, at least in part, depending on the extent to which the other party has fulfilled their side of the contract.

If the deposit is an 'earnest of his performance' – i.e. a payment made in advance to secure the benefit of the contract, but not part of the contract price per se – then the other party will be entitled to retain it.

It is the wording of the contract that will decide the issue.

If you need advice or guidance on a similar issue contact us on 0844 6300012

Stewart Matthews
Partner
Head of Company and Commercial
stewart.matthews@nevesllp.co.uk

Simeon Clipstone
Partner
Head of Commercial Property
simeon.clipstone@nevesllp.co.uk

Inside this issue:

Property fails Inheritance Tax Test

Hot upon the heels of a tax case in which it was ruled that a residential lettings business could constitute a 'business' for Inheritance Tax (IHT) purposes comes a ruling by the First-tier Tribunal (FTT) that letting out office space was not a trade for the purposes of qualifying for IHT 'business property relief' (BPR).

BPR excludes the value of qualifying property from the 'taxable estate' of the deceased and applies (with limitations) when the property concerned is used for carrying on a business. BPR is not available where the business concerned is 'mainly' one of dealing in land or making or holding investments.

In the case in point, the argument involved BPR on the shares of a family company which owned a commercial building divided into units which it let to tenants for different periods of time – normally

ranging between one and five years. The shares were held by a family trust.

The argument that the operation of the business constituted a trade rather than an investment included the fact that the trustees actively managed the property concerned and provided (or allowed on site) services not normally supplied by landlords operating properties as investments, including a café, a gallery, meeting rooms, bicycle parking, a gym, conference rooms, a mail room and Wi-Fi.

The FTT also heard that the 'extra' services generated only £30,000 of the total annual income, which was in excess of £2 million. It concluded that when the range of services provided was looked at closely, the conclusion was that they were primarily concerned with increasing the investment return from the building.

The claim that BPR was available therefore failed.

Gail Donaldson
Head of Private Client
Wills, Probates and Trusts
E:Gaildonaldson@nevesllp.co.uk

Jane Joseph
Partner
Commercial & Residential Property
E:Jane.Joseph@nevesllp.co.uk

Motorway services rating dispute

The oil company owner of a motorway service area has achieved a very significant reduction in its non-domestic rates after the Upper Tribunal (UT) accepted that the petrol filling station that forms an integral part of it should nevertheless be viewed as a separate 'hereditament' (a legal term for a land holding) from the motel, restaurant and other facilities provided on the site.

The owner of the freehold of the service area had leased most of the site – but not the petrol station – to a catering company. A valuation officer argued that the entirety of the service area should be seen as a coherent whole and given a single rateable value, whereas the oil company argued that the petrol station should be entered separately in the rating list.

The issue was of substantial financial importance in that it was agreed that the service area, if valued as a whole, would have a rateable value almost £150,000 greater than the petrol station and the remainder of the service area if

valued separately. The view of the valuation officer was preferred by the Valuation Tribunal for England.

The UT acknowledged that the whole of the service area was accessed by a single route from the motorway and that the owner had entered into a deed with the Secretary of State for Transport by which it undertook, amongst other things, to maintain fuel facilities as well as free picnic and toilet facilities and to make available a fixed number of car parking spaces. The catering company tenant had also taken on the day-to-day running of the petrol station as the owner's agent.

However, in upholding the owner's appeal, the UT ruled that the petrol station was a separate hereditament in that the owner had not leased it to the tenant and had retained 'paramount occupation' of the site and control over the way in which it was operated. The petrol station was geographically separate from the rest of the service area and, although both owner and tenant were occupiers of the site, the owner's supervision of the petrol filling business was comparatively detailed and strict.

Neves SOLICITORS Business Update—Winter 2013

This is not just a keyword, this is an M&S keyword

A case concerning the use of a competitor's name in 'keyword' marketing for Internet searches has now been decided and the ruling has implications for those who use such practices.

The dispute involved Marks & Spencer (M&S) and Interflora. M&S had used 'Interflora' as a keyword in its Internet marketing, with the result that users who Googled 'Interflora' would see M&S near the top of their search results.

The case went to the Court of Justice of the European Union (CJEU) for a ruling on the application of the law on the use of a rival's trade mark in keywords before being passed back to the High Court for judgment.

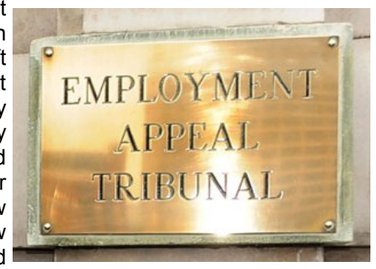
In the light of the CJEU's ruling, the Court ruled that the way in which Interflora trades, which involves all members trading under their own names, and the fact that the company also has commercial relationships with a number of other substantial organisations meant that it was reasonable to assume that it would not be clear to a 'well informed and reasonably observant' user of the Internet that M&S is in fact a competitor of Interflora.

The result is that M&S will have to pay damages (to be assessed later) to Interflora in respect of the latter's lost profits.

When Misconduct is Uncovered in the Workplace

In Vignakumar v Churchill Group Limited, the Employment Appeal Tribunal (EAT) has shed light on the correct approach to cases where evidence of misconduct is uncovered subsequent to dismissal and ruled that it was open to the Employment Tribunal (ET) to find that a fair dismissal was likely to have taken place at a later date and to reduce the level of the compensation award accordingly.

Mr Vignakumar began working as a shift engineer at the Churchill Hotel in the West End of London in May 1993. In 1998, he agreed to a new shift pattern that included some night working, although he mostly worked during the day, only working at night when he provided cover for the absence of other engineers who did work the new shift pattern. In 2010, a new Director of Engineering attempted to enforce the 1998 terms and required Mr Vignakumar to work the rotating shift pattern. He went off sick with work-related stress on 16 November 2010 and never returned to work.



Mr Vignakumar presented expert medical evidence that working night shifts was likely to harm his mental health and was dismissed in April 2011 on purported lack of capability grounds. His claims of unfair dismissal and disability discrimination were upheld by the ET. His compensation was reduced by 65 per cent, however, after his former employer presented evidence, which had only come to light after his dismissal, that Mr Vignakumar had been working for himself whilst on sick leave.

In dismissing Mr Vignakumar's appeal, the EAT rejected his plea that the ET had misdirected itself in law when it ruled that, in reaching its conclusion, it had been unnecessary to make a firm finding as to whether there had in fact been gross misconduct on his part. On the basis that the employer had reasonable grounds for believing him guilty of such misconduct, the ET was entitled to find that the likelihood was that he would have been fairly dismissed after a further period of time. Arguments that the ET's decision was perverse or inadequately reasoned were also rejected.

The employer had cross-appealed on the basis that Mr Vignakumar should have been awarded nothing for his future loss from the date on which, according to the ET's findings of fact, he would probably have been fairly dismissed. Rejecting that argument, the EAT found that there was nothing to preclude the ET from making an award on a percentage basis if it was satisfied that it was more likely than not that Mr Vignakumar would have been fairly dismissed at some point in the future.

If you need advice or guidance on a similar issue contact us on 0844 6300012

Peter Kelly
Partner
Head of Employment Law and Disputes
Peter.Kelly@nevesllp.co.uk

Elizabeth McGlone
Solicitor
Employment Law
Elizabeth.McGlone@nevesllp.co.uk

Don't get our monthly newsletter? Subscribe online at www.nevesllp.co.uk