Neves SOLICITORS **Business Update — Winter 2015**

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 may be 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, Neves can guide you in the legal techniques needed to make contracts electronically. It can also ensure that your website complies with the law.

Also 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: business@nevesllp.co.uk

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Will Aid Month At Neves

Throughout November Neves took part in the Will Aid Scheme. Celebrating its 26th year running, Will Aid is a special partnership between the legal profession and nine of the UK's best-loved charities. Every November, participating solicitors waive their fee for writing a basic Will. Instead, clients are invited to make a donation to Will Aid. Each year, thousands of people use the Will Aid scheme helping to raise valuable funds for charities such as Age UK, NSPCC and British Red Cross.

A huge thank you to Lesley Paton, Jennifer Duckett, Paul Ashby, Paula Cummins, Pauline Howe and Priya Patel for all their hard work on this very worthwhile scheme.

What our clients say

"Our case was very complicated running for nearly two years. Throughout we received the most reliable advice and support. We always felt in control with our point of view being taken into account every step of the way. I would not hesitate in recommending Neves and have already done so. Neves won our case for us which proves their knowledge, skills and experience are a must for anyone who requires proper expert advice."
A satisfied client of Peter Kelly, James Harvey and Elizabeth McGlone.

"Having worked as a lawyer in the City, I believe that Stewart really does explode the myth that you have to appoint a city lawyer to get top quality advice and service".
A satisfied client of Stewart Matthews

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The Legal 500 UNITED KINGDOM LEADING FIRM 2014

Landlord Has Limited Nuisance of Tenant

When a tenant causes a nuisance to other tenants or to people nearby, the tenant is obviously the person responsible for the nuisance.

However, can the landlord also be held liable since the landlord allowed the tenant to be in the position to create a nuisance in the first place?

That was the question before the Supreme Court after a couple brought an action against the landlord of property let to the Suffolk Tigers speedway team, which is based at Mildenhall in Suffolk.

The couple found that their peace was disturbed by the speedway and the motocross track adjacent. However, they also sued the landlords. The various actions were eventually decided, apart from the question as to whether the landlords were liable to the couple. This issue went to be determined by the Supreme Court.

The Court ruled in the landlords' favour.

For a landlord to be liable, it had either to be directly involved in the commission of the act(s) which caused the nuisance or to be regarded as having authorised the commission of the nuisance by the letting of the property.

It is not enough that the landlord did nothing to prevent the nuisance from happening. There has to be direct involvement. Accordingly, there would have to be a virtual certainty of the nuisance resulting from letting the property before the landlord could be held responsible.

Rugby Sponsorship Claim Failure

In an important decision for corporate sponsors and those who benefit from their financial help, a fishing company which stumped up £1.2 million in support of its cash-strapped local rugby club has suffered defeat in its legal campaign to deduct that sum from its profits assessable to Corporation Tax.

Over a three-year period, Interfish Limited had entered into a sponsorship deal which provided vital financial assistance to Plymouth Albion Rugby Football Club, which was in severe financial difficulties and badly needed funds for, amongst other things, improving its squad of players.

The main benefit to Interfish was greater public visibility for its business. It was also hoped that the exposure would make it easier for the company to obtain bank funding for expansion and that those involved with the club would 'look favourably upon the company in ways that would assist its trade'.

Interfish cited Section 74(1) of the Income and Corporation Taxes Act 1988 in its bid to write off the cost of sponsoring the club against its tax liabilities under the heading of 'advertising and marketing'. However, the deduction was refused by HM Revenue and Customs in a decision which was subsequently upheld by the First-tier and Upper Tribunals.

In dismissing the company's challenge to those decisions, the Court of Appeal noted that the payments had also been motivated by a desire to improve the financial position of the rugby club. As the money had not been paid out exclusively for the purposes of the company's own trade, it was not tax deductible.

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Holiday Pay Ruling

Following the ruling of the Employment Appeal Tribunal (EAT) that employers should include 'non-guaranteed' overtime that is routinely worked when calculating an employee's holiday pay, the Government has announced that it is setting up a taskforce to assess the possible impact of the decision.

The EAT held that Article 7 of the EU Working Time Directive (WTD) should be interpreted so that payments for overtime which employees are required to work but which their employer is not obliged to offer them do count as 'normal remuneration' for the purposes of calculating holiday pay taken under Regulation 13 of the Working Time Regulations 1998 (WTR).

However, the EAT went on to find that this decision only applies to the 20 days' annual leave entitlement guaranteed under the WTD, not the additional eight days entitlement granted under Regulation 13A of the WTR, and claims for unlawful deductions from holiday pay will be subject to the three-month limitation period for bringing claims as laid down by the Employment Rights Act 1996. This will limit any retrospective liability on the part of employers, particularly as the EAT ruled that additional leave under Regulation 13A should be 'the last to be agreed upon during the course of a leave year'.

Recognising the importance of the issues in these cases, the EAT granted the parties leave to appeal to the Court of Appeal on all points on which they lost, but doubted whether an appeal against its main finding as regards guaranteed overtime and normal remuneration would succeed. Of particular interest will be the Court's view as regards the limitation period for bringing a claim in this context.

In the light of the EAT's decision, Business Secretary Vince Cable said, "Government will review the judgment in detail as a matter of urgency. To properly understand the financial exposure employers face, we have set up a taskforce of representatives from government and business to discuss how we can limit the impact on business. The group will convene shortly to discuss the judgment."

Final Written Warning

A recent case (McMillan v Airedale NHS Foundation Trust) serves as a reminder that employers who fail to adhere to disciplinary procedures that form part of an employee's contract of employment lay themselves open to a claim for damages for breach of contract.

A hospital consultant was given a final written warning after a finding of misconduct was made against her. She hotly disputed the finding and there followed a procedural tangle which took more than three years and consideration by four judges to finally sort out.

The consultant was accused of giving inconsistent accounts relating to an incident in which a woman suffered complications in the course of successfully giving birth by Caesarean section. An internal disciplinary panel found the consultant guilty of misconduct and issued her with the final written warning.

She countered by making numerous criticisms of that decision, and the panel which considered her appeal decided to treat the matter as a complete rehearing. The consultant was informed that, if the appeal went against her, the panel would have complete discretion to impose a fresh sanction, which might include the termination of her employment.

The misconduct finding was upheld and the appeal panel adjourned to consider the appropriate sanction. However, in the interim, the consultant purported to withdraw her appeal and launched legal proceedings. A judge subsequently granted her an injunction, which forbade the appeal panel from reconvening.

In dismissing a challenge to that order by the consultant's NHS Trust employer, the Court of Appeal found that, on a correct reading of her employment contract, the appeal panel had no power to increase her sanction beyond that of a final written warning. Any more severe sanction would have amounted to a breach of her employment contract and the injunction had thus been rightly granted.

Employment Law *If you need help or assistance contact our team.* Email: **disputes@nevesllp.co.uk**

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What is a 'Residential Unit'? High Court Rules

A couple who made £13 million by selling their land for residential development are in line for a further very substantial sum after the High Court interpreted in their favour a contractual term which entitled them to additional payments, depending on the outcome of the planning process.

As well as the initial purchase price, which was agreed at the height of the housing boom, the couple were entitled under the terms of the sale contract to 'overage' payments from the developer, the amounts of which would be determined by the number of residential units for which planning permission was ultimately granted.

In those circumstances, an issue arose as to whether 60 flats within a care home built on the land were 'units of residential accommodation' within the meaning of the contract. The developer argued that the flats, which enjoyed communal facilities including a café, lounge and hairdressing salon, should be viewed as an integral part of a single residential institution.

However, in preferring the couple's arguments, the Court found that, on a correct analysis of the planning permission, the development which it had permitted and the 'ordinary English meaning' of the contract, each of the 60 flats was a residential unit on which overage was payable by the developer.

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Unlawful Intent Does Not Prevent Recovery of Debt

Although, as a general rule, an illegal contract is unenforceable, a City broker who offered to supply insider information to a friend for £620,000 but then reneged on the promise has been ordered to repay the money.

The broker claimed to have access to contacts at very high levels in the Royal Bank of Scotland (RBS) and the ability to obtain highly confidential information likely to affect the price of RBS shares. RBS was 'rescued' by the Government in 2008.

The payment was made and the intention was to use the information gained regarding the Government's intentions towards RBS to place bets on the movement in the price of RBS shares, using a spread-betting account. It was agreed by both parties that the proposed scheme was unlawful.

In the event, nothing came of the proposal and the broker agreed to return the other man's money. When this did not happen, court action was taken to recover it.

Could the claimant recover the money bearing in mind that the proposed agreement was unlawful? The established legal principle is that a contract that is unlawful cannot be enforced. However, in this case the contract had not been performed and, indeed, could not be performed owing to reasons beyond the control of either of the parties to it.

The Court of Appeal concluded that since no part of the illegal purpose had actually taken place, the money should be returned.

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