



A guide to commercial property law from



## TENANT'S LEASE RENEWAL APPLICATION MUST BE CONSIDERED BY INSOLVENT LANDLORD

### SPRING 2010 IN BRIEF

#### FLOOR AREA VAT CLAIM SUCCEEDS

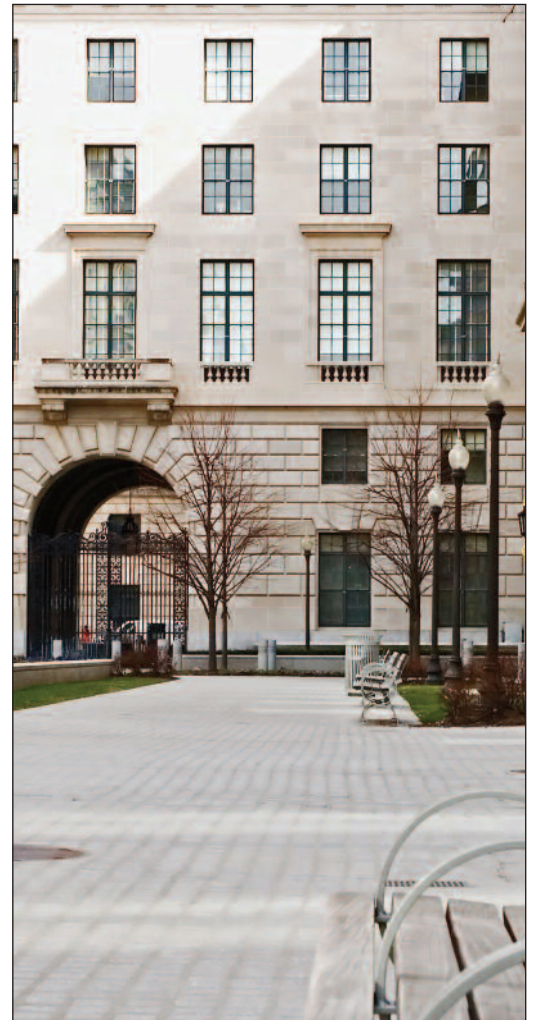
A recent case concerning the apportionment of VAT on commercial property expenses brought a welcome result for the owners when HM Revenue and Customs were forced to accept an apportionment based on the relative areas of floor space used for exempt and taxable activities at a London club, rather than on the proportion of VAT-exempt turnover to total turnover.

#### THE DEVIL IS IN THE DETAIL

Extra-statutory concessions are interpreted strictly by the courts, as a recent case shows. A property owner who opted to tax a property for VAT was denied the right to reclaim VAT incurred previously under the extra-statutory concession which allows this. The property owner was already VAT registered and the concession applies only when registration is effected in order to make the option to tax.

**Under the Landlord and Tenant Act 1954 (LTA), a tenant normally has the right to renewal of a lease on commercial premises unless the landlord requires occupation of the premises for its own purposes, which may include the purpose of redeveloping the site.**

In a recent case, a tenant sought renewal of its lease in the normal way from an insolvent landlord. The application was opposed by the administrator of the insolvent landlord, who wished to buy time so he could put together a scheme for redevelopment that would satisfy the demands of the LTA. The administrator relied on the Insolvency Act 1986, which provides that 'a legal process' cannot be taken against a company in administration without the consent of the administrator or the permission of the court. The administrator has the duty to try to rescue a company as a going concern or, if that is not possible, to achieve a better result for the creditors of the company than would be likely if the company were wound up. If either of these cannot be achieved, then the administrator's duty is to realise property for distribution to preferential creditors. In this case, the administration was, in effect, for the benefit of the insolvent company's bank. There was no likelihood that the landlord company could continue as a going concern. In the view of the court, the tenant's application for a new lease would not affect the interests of the creditors of the company, nor could it affect a distribution to the bank. The tenant's right to have its application heard



promptly was also in point.

Since it could not be shown that a scheme for redevelopment of the premises existed at the date of the hearing of the application for the new lease, that application had to be heard and it was up to the court hearing it to impose such terms on the lease as were appropriate in the circumstances.

# Commercial Property **ACT NOW**

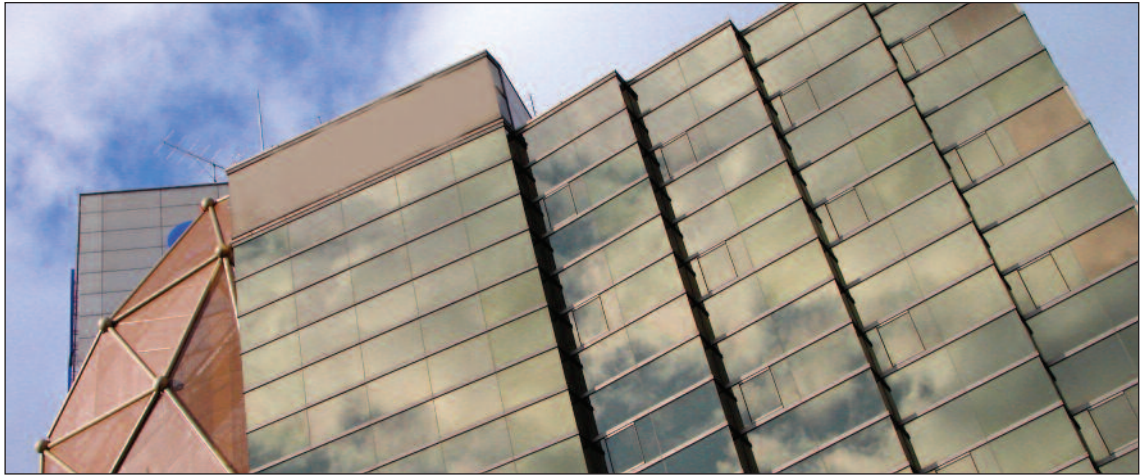
## IN BRIEF

### PLANNING CONSENT

#### WORDING CRITICAL

The wording of a planning consent is critical. In a recent case, a quarrying company was refused permission to continue to extract limestone because the original planning consent had been for the extraction of fluorspar (and other stated minerals, which did not include limestone)...and 'any other minerals which are won in the course of working these minerals'. Extraction of fluorspar had to be the primary purpose.

## LANDLORD CANNOT GIVE BETTER TITLE THAN IT HAS



**The rule that a landlord cannot grant a tenant a better title to a property than the landlord itself possesses was confirmed in a recent decision, even though the result seemed to be somewhat unfair to the tenant.**

The tenant had signed a 20-year lease with the landlord. However, the landlord did not actually own the let premises, but occupied them under licence.

After the 'leases' had been granted, the ownership of the land was transferred and the new owner wished to take possession of the property so that it could undertake a scheme of development. The tenant made strenuous efforts to prove that the landlord's title to the property amounted to a lease by operation of law, if not by wording, but failed in its attempt.

If you are considering leasing premises, it is important to understand the exact nature of the title held by the landlord or an unpleasant surprise may await you.

**Contact us for advice on all commercial property matters.**

## LANDLORD PAYS PRICE FOR FAILING TO INFORM TENANT

**A landlord who conceals or misrepresents facts can be ordered to pay a departing commercial tenant compensation for a loss sustained by the tenant that arises from having to vacate the premises.**

The Court of Appeal considered a case in which a landlord had opposed a tenant's application for a new lease on the ground that it wanted vacant possession of the premises to refurbish them. The tenant's offer of an increased rent was rejected. It then sought new premises, signing a new lease in

November 2006. By this time, however, the landlord had changed its mind, but had not told the tenant.

The Court ruled that the landlord's conduct could give rise to a misrepresentation or concealment and it had to inform the tenant of changes in circumstances. The landlord's notice to the tenant that it was seeking possession was either a continuing representation or one which became false.

**We can help you ensure you comply with your obligations as a landlord or tenant.**

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