

Judgment has recently been handed down by the Court of Appeal in the case of *Capitol Park Leeds and Capitol Park Barnsley Limited v Global Radio Services Limited*.

The case concerned a commercial building in Capitol Park in Leeds, which was demised under a lease dated 4 March 2002 for a term from 12 November 2001 to 11 November 2025. The lease was assigned in 2014 to Global Radio Services Limited (“Global Radio”).

The lease contained a tenant’s break option with a right to terminate on 12 November 2009 or 12 November 2017, subject to various conditions. One of these conditions was that Global Radio had to provide “vacant possession of the Premises to the Landlord on the relevant Tenant’s Break Date.” The Premises were defined in the lease as including “all fixtures and fittings at the Premises whenever fixed.”

On 15 February 2017, Global Radio served notice to bring the lease to an end on 12 November 2017. Prior to the break date, it stripped the premises of items such as ceiling tiles, floor finishes, fan coil units, ventilation duct work, pipework, office lighting, radiators and sub mains cables. These items formed part of the original base build specification and so were landlord fixtures or parts of the building.

The landlord argued that the break was not effective as vacant possession was not given as Global Radio had stripped the premises of these items. At first instance, the Deputy Judge agreed, stating that the premises had been left in a “dysfunctional and unoccupiable” state and that there was a substantial impediment to the Landlord occupying the premises. The lease would consequently run until 2025.

Global Radio appealed.

In the Court of Appeal, Lord Justice Newey held that the relevant condition was not concerned with the physical state of the premises but whether the landlord was obtaining it free of “people, chattels and interests.” There was no condition to the break that required Global Radio to comply with the covenants in the lease or that referred to the repair or condition of the premises.

The appeal was successful and the Court of Appeal overturned the Deputy Judge’s decision. The Court found that the repair and yield up covenants in the lease provided the landlord with adequate remedy if the premises had not been left in the correct state of repair. The break option only required Global Radio to return the premises free of people, chattels and interests. Accordingly, the break clause had been validly exercised and the lease terminated.

Comments

It is interesting that the Deputy Judge at first instance found that the premises could not be occupied in its current state (relying upon *Cumberland Consolidated Holdings Ltd v Ireland* [1946] KB 264) as there was a substantial impediment to possession, presumably because the premises could not be occupied without items such as the pipework and fan coils.

This case can be contrasted with the case of *Riverside Park Ltd v NHS Property Services Ltd* [2016] EWHC 1313, in which demountable partitioning was left behind in the premises (held to be chattels), which prevented vacant possession from being given. In that case, the tenant had left the items behind rather than remove them.

This case will be welcomed by tenants for providing some further clarity on what is required; however, it does show that tenants should seek prompt advice as to break option conditions. Conditions can often be tricky and require a full analysis of what items may be left in situ, particularly in the case of alterations. Some landlords may be willing to agree in advance with tenants which items can be removed.

It is worth noting that the RICS Code for Leasing Business Premises (February 2020) does advise that break options should be conditional only on the main rent having been paid and occupation being given up (free of any interests). This recognises the difficulty in complying with conditions as to vacant possession or compliance with other covenants.

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