

Number 03

Business Tenancies: whether proposals in Tenant's notice to renew a 1954 Act Lease are required to be genuine

PROPERTY DISPUTE

The Court of Appeal has recently held¹ that a Tenant's state of mind at the time the S26 request for a new tenancy is served is irrelevant as there is no express statutory requirement in the Act requiring any particular intention actually to take a new Lease on the part of the tenant.

The facts

Sun Alliance was the freehold owner of business premises whilst Thales Tracs were the Tenant of the premises holding two leases which were due to expire in December 1998. Prior to the service of any notices the Landlord indicated to the Tenant in correspondence that it would oppose any application made by the Tenant for a new tenancy on the grounds that it intended to redevelop the site.

Towards the end of the Tenancy the Tenant served two section 26 notices requesting new tenancies. Prior to this the Tenant had exchanged contracts for the purchase of a new site. The Landlord then decided not to go ahead with the redevelopment and offered the Tenant a new lease.

The Landlord subsequently brought an action for the cost of repairs at which point the Tenant issued a counter claim for compensation under section s37 of the Act. The Judge held that a Tenant's application for a new Lease had to be a genuine proposal so that discussions for a new tenancy could progress or an application be made to the court. He held that the Tenant's request for a new tenancy here misrepresented its intentions as it did not intend to take a new Lease and in the circumstances it was not entitled to statutory rateable value compensation.

Court of Appeal

Thales Tracs appealed to the Court of Appeal and on the 10 May 2001 the Appeal was allowed.

It was held that the Judge had been wrong in concluding that Section 26 and 37 required an enquiry into the Tenant's mind to ascertain his intention at the time the request for a new tenancy was made. Where the Act had required 'intention' this was expressly stated, and it was not a requirement of S.26 that the Tenant intended to take the new Lease.

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¹ Sun Life Assurance plc v Thales Tracs & Anor

Comment

Tenants who have no intention of taking a new tenancy may serve a S26 notice in any event. This may entitle the Tenant to compensation if the Landlord opposes the application on one of the statutory grounds on which compensation is payable. Tenants who do not actually require a new lease should remember to serve a Section 27 notice at least three months before the tenancy would come to an end by effluxion of time or alternatively before or after the last contractual day of the tenancy giving three months notice expiring on a rent day.

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PROPERTY DISPUTE

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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