Neutral Citation Number: [2026] EWCA Civ 575

Case No: CA-2026-000909

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT LEEDS
District Judge Bond
M80LS041

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/05/2026

Before :

LORD JUSTICE LEWISON
LADY JUSTICE ASPLIN
and
LADY JUSTICE ELISABETH LAING

- -

Between :

(1) CATERPILLAR PROPERTY LIMITED	
(2) CATERPILLAR PROPERTY HOLDINGS LIMITED	**Appellants**
- and -	
PARK CAKES LIMITED	**Respondent**

- -
- -

Faisel Sadiq and Philip Marriott (instructed by **Fladgate LLP**) for the **Appellants**
James Andrews-Tipler (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Respondent**

Hearing date: 08/05/2026

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Approved Judgment

This judgment was handed down remotely at 11.00am on 13/05/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lewison LJ:

Introduction

1. A lease of a factory contains a tenant's option to renew, which the tenant has not exercised. Does the existence of that option mean that the lease is excluded from the protection of Part II of the Landlord and Tenant Act 1954? In a very impressive judgment, DJ Bond, sitting in the County Court at Leeds, held that it did not; and that the tenant was entitled to the protection of Part II of the 1954 Act.

2. DJ Bond gave the landlord permission to appeal; and the appeal was accepted in this court by Andrews LJ pursuant to CPR Rule 52.23. Having heard Mr Sadiq on behalf of the landlord we announced our decision to dismiss the appeal. These are my reasons for joining in that decision.

The facts

3. On 14 June 2007 the Appellants granted leases of two factories, one in Bolton and the other in Oldham, to Park Cakes Ltd. Park Cakes Ltd occupies the factories for its cake-making business. The two leases were in identical terms. Each lease created a term of 20 years from 14 June 2007. Each lease also contained a tenant's option to renew in clause 7.2. Clause 7.2.1 provided:

> "If the Tenant wishes to take a further lease of the Premises from the end of the Term and at any time after the end of the 17th year of the Term gives to the Landlord not less than 12 months' notice of that wish then provided that the Tenant has paid the Yearly Rent up to the end of the Term prior to the end of the Term the Landlord shall grant a further lease of the Premises for a term of 10 years commencing on the day following the last day of the Term on the same terms and conditions as these except as to the Initial Rent and this option for a further lease provided that the Landlord acting reasonably may update the form of lease to take account of changes in the law and new Acts (the "Renewal Lease")."

4. Clauses 7.2.2 and 7.2.3 dealt with the ascertainment of the rent to be paid under the Renewal Lease (in effect by indexation). It is common ground that the rent that would be produced by the application of those clauses would be higher than the prevailing market rent. Hence the tenant wishes to exercise the right to request a new tenancy under Part II of the 1954 Act.

5. The landlords' position is that the tenant is not entitled to the protection of Part II of the 1954 Act. That protection is excluded by section 28 of the Act.

Part II of the 1954 Act

6. What follows is a brief and simplified outline of Part II of the 1954 Act. The broad aim of Part II of the 1954 Act, as stated in the long title is:

> "to enable tenants occupying property for business, professional or certain other purposes to obtain new tenancies in certain cases"

7. Subject to certain exceptions, Part II of the 1954 Act applies:

> "to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes."

8. Where Part II of the 1954 Act applies, the tenancy will not come to an end unless terminated in accordance with the provisions of the Act. Either the landlord or the tenant is entitled to apply to the court for an order for the grant of a new tenancy once notice has been given under the Act. The landlord is entitled to oppose the grant of a new tenancy on one or more of the grounds stated in section 30. Those grounds include:

> "(a) where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;
>
> (b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;"

9. If the landlord does not oppose the grant, or if the grounds of opposition fail, the tenant is entitled to the grant of a new tenancy on terms determined, in the absence of agreement, by the court. Those terms will include an obligation to pay the market rental value of the property comprised in the new tenancy, determined in accordance with section 34.

10. Section 28 provides:

> "Where the landlord and tenant agree for the grant to the tenant of a future tenancy of the holding, or of the holding with other land, on terms and from a date specified in the agreement, the current tenancy shall continue until that date but no longer, and shall not be a tenancy to which this Part of this Act applies."

11. An "agreement" is a reference to "an agreement in writing between them": section 69 (2).

The landlord's argument

12. The landlord recognises that an option is a contract in a class of its own (what in Latin is called *sui generis*). It has some characteristics of an irrevocable offer, and some characteristics of a conditional contract. From the grantee's perspective it is more like an irrevocable offer; but from the grantor's perspective it is more like a conditional

contract: *Spiro v Glencrown Properties Ltd* [1991] Ch 537. In order to decide whether an option is an "agreement" in the sense required by section 28, the court must adopt a purposive interpretation.

13. The purpose of Part II of the 1954 Act is to enable tenants to continue to carry on their businesses. They are entitled to no further protection; no protection for instance by way of rent control or other modification of contractual terms: *O'May v City of London Real Property Co Ltd* [1983] 2 AC 726, 747 (Lord Wilberforce). Moreover, Part II of the 1954 Act is peppered with references to agreement between the parties, which shows that Parliament did not wish unduly to restrict the freedom of contract of commercial parties. The purpose underlying section 28 is that in a case in which the tenant has an enforceable right to a new lease, he has no need of the statutory right of renewal under the Act. Where the tenant has an option to renew, he is in an advantageous position, because exercise of the option will prevent the landlord from relying on any grounds of opposition to the grant of a new lease which might otherwise have been available under section 30 (1).

14. Both an option to renew and a contract for a new lease give the tenant a right to call for a new lease. The landlord cannot put it out of its power to comply with the terms of the option, once properly exercised. The tenant therefore has an enforceable agreement for a new lease. Having regard to the policy of Part II of the 1954 Act, that qualifies the option as an agreement for the purposes of section 28. Accordingly, the tenancy is not one to which Part II of the 1954 Act applies.

Why the landlord's argument is wrong

15. The grant of an option imposes no obligation on the grantee; and an obligation on the grantor which is contingent on the successful exercise of the option. Almost invariably one contingency on which the option is exercisable will be the giving of notice by the grantee to the grantor. But there may be other conditions which must be fulfilled before the option can be validly exercised. In this case, for example, not only must the tenant give 12 months' notice to the landlord, but it must also have "paid the Yearly Rent up to the end of the Term prior to the end of the Term". Other forms of option may be contingent on full performance of covenants. Any such condition must be strictly complied with. Even trivial breaches may preclude successful exercise of the option: see, for example, *Finch v Underwood* (1876) 2 Ch D 310. Other forms of option may be contingent on the actions of third parties (for example, if planning permission is granted for a particular use or development). It is therefore mistaken, in my opinion, to characterise all options to renew as amounting to an effective entitlement to the grant of a new lease.

16. In the present case, therefore, the tenant may not successfully claim a new lease if it fails to pay the rent up to the end of the term, whereas the statutory ground of opposition requires *persistent* delay in payment of rent. If the option is conditional on performance of covenants, even a trivial breach of a repairing covenant will preclude successful exercise of the option, whereas the statutory ground of opposition generally requires substantial breaches. The tenant's position under the option will, in many cases, be more precarious than its position under Part II of the 1954 Act.

17. Mr Sadiq accepted, in the course of his oral submissions, that there may be conditions attached to an option which are so difficult to fulfil as to prevent such an option from

being an "agreement" for the purposes of section 28. But that, he said, was not this case because the only substantive condition (apart from giving notice) was payment of the rent.

18. Section 28 requires that "the landlord and tenant agree for the grant to the tenant of a future tenancy of the holding". Although a written option agreement is, no doubt, an "agreement", the question remains: what is it "for"? At the stage when the option is granted, the tenant has not entered into a binding commitment to take a new lease. It cannot therefore be said that the tenant has "agree[d] for the grant" of a new tenancy. As Lord Diplock put it in *Sudbrook Trading Estate Ltd v Eggleton* [1983] 1 AC 444, 477:

> "In modern terminology, it [i.e. an option] is to be classified as a unilateral or "if" contract. Although it creates from the outset a right on the part of the lessees, which they will be entitled, but not bound, to exercise against the lessors at a future date, it does not give rise to any legal obligations on the part of either party unless and until the lessees give notice in writing to the lessors, within the stipulated period, of their desire to purchase the freehold reversion to the lease. The giving of such notice, however, converts the "if" contract into a synallagmatic or bilateral contract, which creates mutual legal rights and obligations on the part of both lessors and lessees."

19. The District Judge quite rightly drew attention to the change brought about by the exercise of an option. As she correctly reasoned at [44] to [48] the tenant only acquires an enforceable right to a new tenancy when the option is fully exercised. Before then, the tenant has the benefit of contractual rights which, if exercised, are capable of giving rise to the right to a new tenancy. The landlord has a continuing obligation to ensure that it will be able to grant the new tenancy if the option is exercised; but before it is exercised the landlord has no obligation to grant the tenancy. When the option is exercised, everything changes. At that time both parties come under reciprocal obligations, the one to grant and the other to take the new tenancy. At no time prior to the exercise of the option is either party under such an obligation. In my judgment, the District Judge's reasoning is succinct, clear and correct.

20. That section 28 requires a binding and enforceable commitment by both parties is supported by the decision of this court in *RJ Stratton Ltd v Wallis Tomlin & Co Ltd* [1986] 1 EGLR 104. In that case May LJ said:

> "In my opinion an agreement as referred to in section 28 and section 69 of the Landlord and Tenant Act 1954 is an agreement, that is to say a binding contractual arrangement enforceable by the parties at law."

21. The District Judge quoted this observation and emphasised, quite correctly in my opinion, that what it envisaged was an obligation that was mutually enforceable by each of the parties. In the same case Lloyd LJ said that there was a "binding agreement for the grant of a new lease" and that "accordingly" section 28 applied.

22. In addition, the landlord's argument is that Part II of the 1954 Act never applied to the tenancy. But even on the most benevolent view, the tenant could not exercise the option before the end of the 17th year of the term. Thus, the landlord's argument entails the proposition that, even though the tenant cannot (yet) exercise the option, he has nevertheless agreed for the grant of a future tenancy. In my opinion that is a conclusion that Parliament is very unlikely to have contemplated. Put shortly, unless and until the tenant has successfully exercised the option there is nothing that the tenant can enforce.

23. Finally, since the purpose of Part II of the 1954 Act is to give protection to business tenants, the correct perspective from which to analyse the legal nature of an option is that of the tenant. And as we have seen, from the tenant's perspective the option is best regarded as analogous to an irrevocable offer rather than a conditional contract.

Result

24. It is for those reasons that I joined in the decision to dismiss the appeal. It is a pity that, so far as I am aware, the District Judge's impeccable judgment is not available either on BAILII or on the National Archives site. If it had been I would simply have endorsed her reasoning. As Mummery LJ said in *Re Portsmouth City FC Ltd* [2013] EWCA Civ 916, [2013] Bus LR 1152 at [38]:

> "If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it."

Asplin LJ:

25. I agree with Lord Justice Lewison's reasons for dismissing the appeal. I should add that I too found DJ Bond's judgment very impressive.

Elisabeth Laing LJ:

26. I agree with both judgments.