



In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: timing of relief from forfeiture applications, reasonableness and service charges, and applications to amend.

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Mentmore Golf Investments Ltd v Gaymer [2025] EWHC 2604 (Ch)

Summary

The High Court determined that an application for relief from forfeiture made by a mortgagee had been properly made in circumstances where it was made after the making of a possession order, but before its execution.

The proceedings concerned a protracted dispute about a golf course. The landlord obtained a possession order against its tenant. The mortgagee and the tenant each made applications for relief from forfeiture. The possession order was then executed.

The High Court determined that the application was valid, having been made while the landlord was still 'proceeding' for the purposes of s.146 Law of Property Act 1946. However, the existence of the possession order (which the mortgagee had not applied to set aside) was a factor to which the court might have regard when exercising its discretion whether or not to grant relief. The Court also determined that there was no procedural requirement that the application for relief by the mortgagee be brought in the landlord's action.

Notwithstanding the technical permissibility of the application, the court concluded that on the particular facts that the application constituted an abuse of process.

Why it's important

This case provides clarity as to the time when and procedure by which an application for relief from forfeiture can be made. It will be of particular interest to mortgagees, because the Court accepted that there might be valid commercial reasons why a mortgagee would want to defer making an application for relief until after the conclusion of contested proceedings between the landlord and tenant. In such circumstances, the judge suggested that the mortgagee should record its reasons for deferring making the application, and should review that



decision as the litigation between the landlord and tenant progressed, particularly if adverse costs orders or unless orders are made against the tenant. .

Bradley v Abacus Land 4 Ltd [2025] EWCA Civ 1308

Summary

The Court of Appeal considered an application under section 27A of the Landlord and Tenant Act 1985 for a determination that service charges payable by the leaseholders should not include all of the costs of running a gym in the block.

The leaseholders' leases entitled the landlord to include in the service charges "such costs.....which the landlord (acting reasonably) designates as being a Residential Service Charge Item".

The gym was originally for the exclusive use of the leaseholders, and the costs were paid by them through the service charge. The gym was then let on a lease to a tenant, and the leaseholders' use of the gym restricted. The leaseholders argued that the landlord was not acting reasonably in including the entirety of the gym costs in the service charge given they no longer had exclusive use.

Overtaking the decision of the Upper Tribunal, the Court of Appeal determined that the landlord had been entitled to recover the costs of the gym in this way.

Why it's important

This decision provides significant clarity on the scope of the FtT's jurisdiction when reviewing decisions under clauses of this nature. The test – likely to be positively received by landlords – is not whether the decision the landlord has made is in the FtT's own view reasonable or fair, but rather whether it is within the scope of decisions open to a reasonable landlord. A decision should only be overturned by the FtT where it is a decision that no reasonable landlord could reach.

Eurasian Natural Resources Corporation Ltd v Dechert LLP [2025] EWCA Civ 1307

Summary

The Court of Appeal allowed an appeal against an order refusing permission to amend.

The litigation arose out of a criminal investigation by the Serious Fraud Office into the claimant company. The company alleged that the investigation was wrongful and that as a result it had suffered losses, including by way of increased borrowing



costs. Following a trial on liability, the company sought to amend its pleading to give further details of its borrowing cost losses, including amendments to reflect its belated realisation that some of those losses had been incurred by its subsidiaries.

The judge refused permission to amend. One of the key reasons given was the impact of the subsidiaries' documents not being subject to a litigation hold. The Court of Appeal allowed the appeal. The judgment emphasises the importance of approaching the question of the balance of injustice on amendment applications in stages.

The first stage was to consider the nature, extent and timing of the amendments proposed. The Court clarified the correct approach to applications to amend in the context in the context of split trials. The Court applied ordinary principles, concluding that it was a "late" amendment because it could have been made earlier, but since it was made at an early stage of the quantum phase, before decisions about disclosure had been made, that lateness would more readily be excused.

The second stage was to consider whether there was evidence that permitting the amendments would cause injustice to the defendants that would outweigh the substantial injustice to the claimant if the amendments were not permitted. The Court of Appeal said that the Judge was wrong to require the claimant to show that there was no possibility that relevant documents had ceased to be available as a result of the delay in seeking permission to amend, and that this risk should not have been allowed to outweigh the certainty of injustice to the claimant if permission to amend were not given.

Why it's important

The judgment confirms that a failure to place a "litigation hold" on documents is not *per se* sufficiently prejudicial to the other party that permission to amend must be refused.

From a practical perspective, it is worth noting that the Judge at first instance indicated that he was surprised that he was not provided with evidence about whether the subsidiaries' documents were still available. Had this been explored in the evidence more fully, neither the Judge nor the Court of Appeal would have needed to speculate about the extent of the prejudice that the defendant would suffer if permission to appeal were granted. Such evidence might assist an application of this nature to go more smoothly in future cases.

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