Falcon Chambers

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: variation of long leases, an unusual injunction situation, and Nelsonian blindness in dishonest assistance.

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Eastern Pyramid Group Corporation SA v Spire House RTM Company Ltd [2025] UKUT 292 (LC)

Summary

The Upper Tribunal dismissed an appeal against the FTT's determination to vary leases under s.38 Landlord and Tenant Act 1987.

The case concerned a residential building which contained, as part of its structure, the spire of a Victorian church. The spire required urgent and expensive repairs. The respondent RTM company wished to undertake works, but, having no assets of its own, was required to raise funds from leaseholders. The long leases of the flats in the building did contain provision for a reserve fund and for other contributions from leaseholders, but the existing reserve fund was depleted, and the leases capped the amounts recoverable in such a way that it would take many years either to build up sufficient funds to finance the works or to repay any funding that might be obtained from another source.

At first instance, the RTM company was successful in an application under s.38 to vary the service charge provisions in the leases so as to allow higher interim charges. The Upper Tribunal dismissed the landlord's appeal.

Why it's important

This is the first appellate decision regarding s.38 of the 1987 Act, and accordingly the guidance it provides will be of significance to all practitioners contemplating applications under it. Specifically, it provides useful commentary as to the meaning of whether a lease 'fails to make satisfactory provision' for certain matters. It also confirms that although the fact that the RTM company has no other assets is a relevant factor, the personal wealth of RTM members is irrelevant; although potentially they could have funded the works, they were under no obligation to do so, and as a result the lease provisions were unsatisfactory.

Gotti v Perrett [2025] EWCA Civ 1168

Summary

The Court of Appeal determined that orders for costs and damages could be made against the applicant for an interim injunction, even though no claim form had been issued and no cross-undertaking in damages given.

The appellant had applied for, and obtained, an interim injunction against the respondent. Unusually, when granting the injunction, the court did not give any directions or obtain an undertaking as to the issuing of a claim form, nor did it require the applicant to give a cross-undertaking in damages. There were also a number of jurisdictional and other procedural issues with the relief sought, leading the appellant later to accept that his own application had been 'deeply misconceived'.

When the injunction was discharged, the Respondent sought both costs and damages. The appellant argued, unsuccessfully at first instance and on first appeal, that the court had no jurisdiction to make such orders against him by reason of the absence of a claim form, the lack of any undertakings, and the other jurisdictional problems with the injunction.

The Court of Appeal dismissed the second appeal, endorsing the description of the appellant's argument as 'an affront to common sense'.

Why it's important

The particular facts of this case, and the confluence of procedural and jurisdictional irregularities, are unusual, but the decision itself is of wider significance for its determination that an application for a pre-action injunction is nevertheless 'proceedings' for the purposes of engaging key parts of the CPR, including those which enable the court to make orders about costs; that may be of relevance in the case of any other injunction which, for whatever reason, is not accompanied by the usual undertakings.

Grosvenor Property Developers Ltd v Portner Law Ltd [2025] EWHC 2362 (Ch)

Summary

The High Court determined that a solicitor had acted dishonestly in his conduct with respect to a number of property transactions.

The claimant was a company incorporated to convert a hotel into student accommodation. Funds it had obtained from investors were fraudulently

misappropriated by its directors. The defendant was a firm of solicitors, which had acted, via a partner, on various property purchase transactions for the directors. It was common ground that if the firm had merely been negligent, the claimant would not have a cause of action; the claim was a claim for an account, founded on an allegation that the firm dishonestly assisted the directors to breach their fiduciary duties. The firm defended the claim for dishonest assistance on the basis that the partner had at most been negligent, but not dishonest.

The High Court upheld the claim, finding that the solicitor had been guilty of 'blind eye' dishonesty because although he was aware of the steps that he should have taken to verify the source of the funds being used by the clients in the purchase, he failed to follow up on inquiries without a credible reason to do so, and repeatedly turned a blind eye to obvious causes for concern. The judge said that his explanation that these matters were "overlooked" was not credible, bearing in mind he was an experienced solicitor and a partner, and he had made untrue statements in the certificate for title sent to a lender on one transaction.

Why it's important

This case provides helpful clarification of the appropriate test: namely, whether an honest solicitor with the skills and experience of the partner would have acted in the way that he did. The Court said that an experienced solicitor will not be honest if they persistently fail to carry out basic money laundering checks on clients, even if there is no particular reason for suspicion, because it is well known that the purpose of these checks is to identify attempts to use the firm for dishonest or unlawful purposes.

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