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: two Supreme Court decisions, on whether merger occurs when a declaratory judgment in made and the reasonable belief that needs to be shown when an adverse possession claim is made, and an important Electronic Communications Code case relating to grounds of opposition.

Our readers may also be interested in this summary of *MVL Properties (2017) Ltd v The Leadmill Ltd* [2025] EWHC 349 (Ch), concerning the relevance of human rights where a landlord seeks to take back business premises for its own occupation and carry on a similar business to that of the tenant.

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Nasir v Zavarco Plc [2025] UKSC 5

Summary

The Supreme Court established that the doctrine of merger does not extend to declaratory judgments.

A dispute arose between the appellant (an individual) and the respondent (a company) as to whether the respondent was entitled to forfeit the appellant's shares. The respondent sought and obtained declaratory relief, and proceeded to forfeit the shares. Under the respondent's articles of association, forfeited shares remained payable. The respondent commenced separate proceedings, seeking payment. The appellant argued – successfully at first instance, but unsuccessfully on first and second appeal – that the doctrine of merger (by which a cause of action merges in a judgment) extends to declaratory judgments, so the cause of action had been extinguished.

The Supreme Court dismissed the appeal.

Why it's important

As Lord Hodge's leading judgment (with which the other members of the panel agreed) recognises, the question of whether the doctrine of merger applies to declaratory relief was a novel one; the historical authorities all concern what was termed a 'coercive judgment', meaning one which involved judgment for a sum of money or return of property. This case therefore brings helpful clarity to the law.

The decision expressly leaves open, however, the question of whether the doctrine of merger extends to final injunctions, so as to preclude a subsequent claim for damages arising from the same facts; where an injunction is sought, practitioners should therefore be wary of not including a claim for damages in the initial action.

Falcon Chambers

Vodafone Limited v Icon Tower Infrastructure Limited and AP Wireless II (UK) Limited [2025] UKUT 00058 (LC)

Summary

The Upper Tribunal determined preliminary issues in a case concerning termination of code agreements under Part 5 of the Code.

The site provider, Icon, (which was also a code operator whose business was the provision of mobile communications sites) sought to determine Vodafone's code agreement on the basis of grounds (a), (c) and (d) in paragraph 31(4) of the Code (substantial breaches, redevelopment, and that the paragraph 21 test for the imposition of an agreement was not met).

The case concerned a field containing three mast towers. One of the mast towers had been recently constructed by Icon, pursuant to a permission that required the demolition of Vodafone's mast. Icon's case regarding redevelopment was based on this, and its case on the paragraph 21 test was that the availability of its alternative mast meant that there was no sufficient public interest in maintaining the existing Vodafone mast. The argument regarding substantial breaches was that it was a breach of the alienation provisions for Vodafone to have allowed Cornerstone to control the site.

The Upper Tribunal held that none of the termination grounds were established and determined that the operator, Vodafone, would be entitled to a new agreement. Specifically, the Tribunal determined:

(a) On an analysis of the terms of the agreement between Cornerstone and Vodafone, Cornerstone was acting as Vodafone's agent, so there had been no breach of the alienation provision;
(b) The planning requirement was insufficient to render the demolition of the Vodafone mast part of the development of the Icon mast (which had in any event already been carried out), and the demolition works were not alone redevelopment.
(c) Vodafone were able to satisfy the public benefit test because the prejudice to Icon was capable of being compensated in money, and Vodafone would not be able to operate from the Icon mast at a Code rent.

Why it's important

There have not been many cases about the termination provisions in Part 5 of the Code so far. This lengthy and detailed decision of the Chamber President, Mr Justice Edwin Johnson, and Mrs Diane Martin, will be required reading for all practitioners concerned with termination cases. It contains a wealth of guidance,

much of which will be applicable outside the relatively unusual factual scenario at issue in this case.

Key points to note include the following:

1. The Tribunal indicated that it would consider a single, but continuing, breach of covenant enough to trigger ground (a). It was less clear that a single, once and for all, breach would do so.
2. 'Neighbouring land', for development purposes, does not have to be immediately adjacent to the code agreement site; what is a sufficient degree of proximity is a question of facts.
3. Works of demolition alone do not constitute 'redevelopment'.
4. It is implicit within a claim for termination on the basis of redevelopment that the intention is to commence the work within a reasonable time of the code agreement coming to an end.
5. Works which have already been carried out cannot be relied on as a redevelopment that the site provider intends to carry out.
6. When considering the public benefit test, whilst the general availability of alternative sites is not to be taken into account, the specific availability of an alternative site being offered by the site provider may be something the Tribunal might take into account.

Brown v Ridley [2025] UKSC 7

Summary

The Supreme Court determined that a person making an application for adverse possession under Schedule 6 of the Land Registration Act 2002 can establish the third condition in paragraph 5(4)(c) if he can show that he reasonably believed that the land belonged to him for any ten years during the period of adverse possession.

Why it's important

The Supreme Court said that the Court of Appeal was wrong, in *Zarb v Parry* [2012] 1 WLR 1240, to suggest that the said reasonable belief had to subsist until very shortly before the application was made. No doubt people who have refrained from making claims in reliance on that decision will wish to re-examine their position.

However, it is not all good news for squatters. If a squatter ceases to be in adverse possession for some reason other than eviction by the owner, for example if a permission is given, it seems that the squatter may lose his right to claim

immediately, because the Supreme Court suggested that the "de minimis" principle might not apply at all.

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