



This series of articles highlights 3 of the most interesting property law cases decided in the past month. 2025 begins with deemed service, what is a 'building', and early resolution of a complex possession action.

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Khan v D'Aubigny [2025] EWCA Civ 11

Summary

The Court of Appeal dismissed a second appeal, finding that certain documents had been deemed served under a contractual provision, albeit not by statute.

The appeal arose out of a possession claim based on s.21 Housing Act 1988. The tenant denied the validity of the notice served on her, asserting she had not received the prerequisites of a gas safety record, EPC certificate and 'How to Rent' guide, which the landlord said had been posted to her.

One of the landlord's arguments was based on s.7 Interpretation Act 1978, which provides for deemed service of documents *'Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used)'*. The statutes in question here did use words such as 'give', but did not make express mention of post.

The Court of Appeal concluded that s.7 did not operate, so there was no statutory deemed service. However, there was deemed service under a provision of the tenancy agreement which applied to *'notice[s] sent to the Tenant under or in connection with this agreement'*. The documents in question were all 'notices', and were sent 'in connection with' the tenancy agreement.

Why it's important

The Court of Appeal's determination that s.7 does not apply to statutes which do not mention service by post will be of relevance to numerous statutory regimes.

The conclusion that documents such as EPC certificates may be 'notices' for the purpose of deeming clauses is also likely to be broadly applied, similarly-worded deeming clauses being common and receipt of such documents often being an issue in residential possession claims. Nugee LJ, with whom the other members of the Court agreed, did not provide a single definition of 'notice', but the judgment does identify a number of relevant factors which could be applied in other contexts.

The decision leaves open, however (the point not having been argued below), the question of whether it is possible for landlords and tenants to contract out of the



statutory obligation to provide documents such as gas safety records to their tenants; that remains for future determination.

SGL 1 Limited v FSV Freeholders Limited [2025] EWHC 3 (Ch)

Summary

The High Court determined that notices served under the Landlord and Tenant Act 1987 were invalid, there being only one 'building' which had been severed into two notices for the purposes of offering the tenants the right of first refusal.

The case concerned four residential blocks, known as A, B, C and E, in one residential development. When the freehold had been sold, two notices had been served under s.5 of the Act: one in respect of block A, and another in respect of blocks B, C and E.

HHJ Hodge KC weighed up numerous factors, such as the visual appearance of the buildings, the extent to which they had separate services and utilities, and the history and construction of the development. Ultimately, he considered the most significant factor to be the parking spaces, accessed via a shared access and situated in front of blocks B and C but demised to leaseholders in block A. Overall, the four blocks constituted one 'building' for the purposes of the Act, and so the notices were invalid.

Why it's important

The Act does not expressly deal with the common situation of multiple residential blocks sharing appurtenant land in an estate, and there is a relative dearth of authority on the topic. This decision is accordingly a valuable instance of the Court's approach and will be instructive for any practitioners concerned with drafting s.5 notices.

The judge was bound by (and neither party sought to challenge) the decision in *Long Acre Securities Ltd v Karet*, which established that a 'building' can include more than one single integrated structure and that the correct approach is the weighing of various factors in the balance, as the judge did here. However, the judge did express some doubt about the correctness of that decision; possibly it will be the subject of future challenge.

Together Commercial Finance Ltd v Fay of London Ltd [2025] EWHC 12 (Ch).

Summary



The High Court determined that a claim for possession was not disputed on grounds which appeared to be substantial, and made a possession order.

The question arose in the context of an application by a tenant company to amend its pleading and to add an additional defendant (Ms P, the occupier of the flat) in a possession claim brought by a mortgagee. The tenant company sought to assert that Ms P had an overriding interest binding on the lender as a result of proprietary estoppel or a common intention constructive trust; the result would be that the mortgage would be a regulated mortgage granted by an unregulated entity, and as a consequence, unenforceable subject to the court's discretion.

Notwithstanding the relatively convoluted legal and factual background to the matter, the application failed for two main reasons: the intention for the flat to be used as a family home for Ms P and her family had no bearing on its beneficial ownership, and on the particular terms of the lease in question, occupation by Ms P otherwise than as a nominee of the company would have rendered the lease liable to forfeiture. Other arguments based on the tenant company being party to the common understanding said to give rise to an equity were unsupported by evidence.

Accordingly, the applications fell to be dismissed, and in the absence of any other defence, a possession order made.

Why it's important

This case is a useful reminder of the importance of adducing sufficient evidence to demonstrate the likelihood of a possible legal analysis, and of careful legal analysis of the requirements of a claim to a beneficial interest, even at an early stage of proceedings. In this case, notwithstanding the factual complexity, detailed engagement with the legal consequences of the assertions made, together with an assessment of the evidence thus far presented, enabled the possession claim to be resolved without a trial.

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