



Case No: M80LS041

IN THE COUNTY COURT AT LEEDS
BUSINESS AND PROPERTY WORK

Business and Property Courts in Leeds, Fourth Floor,
West Gate, 6 Grace Street, Leeds LS1 2RP

Date: 20/03/2026

Before :

DISTRICT JUDGE BOND

Between :

PARK CAKES LIMITED

Claimant

- and -

**(1) CATERPILLAR PROPERTY LIMITED
(2) CATERPILLAR PROPERTY HOLDINGS
LIMITED**

Defendants

Mr James Andrews-Tipler (instructed by **Womble Bond Dickinson (UK) LLP**) for the
Claimant

Mr Faisal Sadiq (instructed by **Fladgate LLP**) for the **Defendants**

Hearing date: 19 February 2026

Approved Judgment

This judgment was handed down remotely at 10.00am on 20 March 2026 by circulation to the parties or their representatives by e-mail.

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DISTRICT JUDGE BOND

District Judge Bond :

1. The issue in this case is whether a business tenancy containing a tenant's option to renew has the protection of Part II of the Landlord and Tenant Act 1954.
2. The Claimant, Park Cakes Limited, holds leases of two premises owned by the Defendants, Caterpillar Property Limited and Caterpillar Property Holdings Limited. The contractual terms are due to expire by effluxion of time on 13 June 2027.
3. Clause 7.2 of each lease contains an option to renew in substantially the same terms. Relevantly it provides:

“7.2 Option to Renew

7.2.1 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. For convenience, I will refer in this judgment to the leases as though they are one.
5. It is common ground that the Claimant occupies the premises for the purposes of its business such that the qualifying ground in section 23(1) of the Act is met. The issue is whether, notwithstanding that fact, Part II of the Act does not apply by reason of section 28.
6. 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.”
7. The Defendants contend that the Claimant's option to renew is an agreement for the grant of a future tenancy within the meaning of that section. Further, that because the option is contained in the lease itself, section 28 operates to completely disapply Part II of the Act so that it never did, and never can, apply to the lease.
8. Mr Andrews-Tipler appeared for the Claimant. Mr Sadiq appeared for the Defendants. I am very grateful to them both for their thorough preparation of the case and their admirably crafted written and oral submissions.
9. Mr Sadiq compellingly argues that a tenant with the benefit of an option has a contractual right to renew which is at least as beneficial, if not more so, than the

statutory right. A tenant who has bargained for and acquired such a right is not within the class of persons the Act was designed to protect, namely tenants with no such rights. Section 28 tells us that this must be so, because it provides for a tenant with the benefit of an agreement for the grant of a future tenancy to lose his statutory rights, subject only to a limited statutory continuation between the end of the current lease and the agreed commencement date of the new lease.

10. There is a straightforward reason why I do not think that an option is an agreement for the grant of a future tenancy within the meaning of section 28.
11. The question must be approached as at the time of the grant of the option. One must ask what each party agreed to at that time.
12. An option imposes no immediate obligation on either party to do anything.
13. From the outset, the landlord is subject to a contingent obligation to grant a tenancy in the terms provided for by the option agreement.
14. It is a peculiar form of contingency because, unlike most conditions precedent, its performance is at the election of the tenant in his absolute discretion. If, and only if, it is exercised strictly in accordance with its terms does an option then take effect as a bilateral agreement that creates reciprocal rights for and obligations on both parties. See *Megarry & Wade, The Law of Real Property* (10th ed.) at 14-012. On the grant of the option the landlord agrees to grant a future tenancy on specified terms, albeit on the proviso that the conditions for the exercise of the option are fulfilled at the relevant time.
15. On the taking of the option, the tenant agrees to the terms of the future tenancy but, in contrast to the landlord, not to the grant of a future tenancy. The tenant is expressly declining to commit to the same and is keeping his options open.
16. The parties are not at this time agreed on the grant of a future tenancy. The true agreement between the parties to an option is an agreement for the right to require the grant of a new tenancy, exercisable by the tenant, on agreed terms upon the fulfilment of specified conditions. That is not the same thing as an agreement for the grant of that future tenancy.
17. The first moment when it can objectively be said that both the landlord and the tenant are agreed that there will be a grant of a future tenancy is when the option is exercised. Mr Andrews-Tipler accepted that when a binding bilateral agreement arises this is sufficient to constitute an agreement for the purposes of section 28. I agree.
18. Unless there is anything in the Act or the authorities to lead me to conclude otherwise, it seems to me that the parties reach an agreement for the purposes of section 28 when the option is exercised and not when the option is granted.

The purpose and policy of Part II of the Act

19. The purpose of Part II is contained in the preamble:

“to enable tenants occupying property for business, professional or certain other purposes to obtain new tenancies in certain cases”.

20. The leading case of *O’May v City of London Real Property Co. Ltd* [1983] 2 AC 726 concerned an unopposed renewal of a business tenancy. The landlord was seeking to impose on the tenant terms in the new lease which were significantly more onerous in comparison with the current lease.
21. It is authority for the following propositions:
 - (1) The 1954 Act is amongst a class of statutes adopted by our society which, “[*limit*] the freedom of contract in certain areas either for general political and social reasons of policy, or in order to protect a class of persons who were in a less strong negotiating position from those with whom they had to negotiate” per Lord Hailsham at 739E.
 - (2) The general purpose and policy of Part II of the Act is, “to provide security of tenure for those tenants who had established themselves in business in leasehold premises so that they could continue to carry on their business there”: per Lord Wilberforce at 747B (see also Lord Hailsham at 740G-741A).
 - (3) That is, “the principal, indeed the only objective” of this part of the Act: per Lord Wilberforce at 747B.
 - (4) The protection intended to be, and indeed, afforded to tenants is limited to that which is, “necessary to enable them to continue their business”: per Lord Wilberforce at 747C.
 - (5) The effect of Part II of the 1954 Act is thus, “to limit the grounds on which the landlord of business tenancies might recover possession at the end of a contractual tenancy and to substitute for the landlord’s freedom of action a right on the part of the business tenant to secure a new lease, or in certain other cases, to claim compensation for the loss of his security of tenure”: per Lord Hailsham at 739G-H.
22. Part II of the Act applies without discrimination. No inquiry is required, or permitted, into whether the tenant is, as a matter of fact, in a less strong negotiating position.
23. *O’May* was concerned with the, “comparatively weak negotiating position of a **sitting tenant** requiring renewal, particularly in conditions of scarcity” (emphasis added): per Lord Hailsham at 740G-H.
24. In this case, however, we are concerned with the position of the parties when the option was granted. At that time the Claimant had no current tenancy and suffered none of the vulnerabilities of the sitting tenant. I shall return to the significance of this later.
25. I agree with Mr Sadiq that the protection afforded by the Act is limited. The parties’ freedom to contract is left largely intact. The primary objective is the renewal of business tenancies for current tenants to enable those tenants to continue their businesses at the demised premises. This is backed by a statutory continuation of the current tenancy pending the grant of the renewal lease.

26. Mr Sadiq observes that a tenant-only option to renew is capable of achieving the same essential goal as the Act: it gives the tenant the right to require the landlord to grant a new tenancy (to which Part II of the Act would apply), but he is not bound to take one.
27. He submits that a tenant does not need to avail himself of the procedure for renewal under Part II of the Act if the parties have already agreed to the renewal of the lease. The policy of the Act respects the parties' freedom to contract by limiting its intervention with that freedom to only that which is necessary to fulfil its purpose.
28. In my judgement it is broadly right to say that an option can achieve contractually what Parliament has set out to do by statute. An option provides a contractual right of renewal and the contractual mechanism for exercising the right. The question is whether a tenant-only option to renew shares the characteristics of an agreement for the grant of a new tenancy under section 28.

The characteristics of an agreement under section 28

29. The characteristics of an agreement under section 28, read in light of the general purpose and policy of Part II of the Act, are as follows.
30. By section 69(2) the agreement must be in writing:

“References in this Act to an agreement between the landlord and the tenant... shall be construed as references to an agreement in writing between them.”
31. By authority, any such agreement must be legally enforceable:

“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.” (emphasis added)

See *R. J. Stratton Limited v Wallis Tomlin & Company Limited* [1986] 1 E.G.L.R. 104 at 106 per May LJ.

32. Mr Sadiq submits that I am not bound by *Stratton* to conclude that an agreement for the purposes of section 28 must be enforceable by both parties. It is sufficient if it is enforceable by the tenant against the landlord. That is because the court in *Stratton* was concerned with a different issue, which did not turn on whether both parties were bound by the agreement.
33. Mr Sadiq also impresses upon me as important in this context the choice by the parliamentary draftsman of the word ‘agreement’ and not ‘contract’ in section 28.
34. An option, he says, is in substance an agreement between the parties for the grant of a new lease. The only difference between an option and an agreement for a new lease is that the tenant can walk away from the new lease if it wishes to by refusing to exercise the option.
35. Mr Sadiq urges upon me that what is important for the purposes of the statute is that it is within the tenant's gift to require the landlord to grant a new tenancy. In that regard

there is a direct correlation between the tenant's position under the Act and his position as the beneficiary of an option.

36. *Stratton* was an unfortunate case. It concerned a tenant's application for a new lease. The landlord did not oppose the grant of a new lease. Both parties instructed surveyors to negotiate on the disputed terms. The surveyors reached an accord in correspondence at a time when the formalities now required by section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 did not apply.
37. It was held that the correspondence constituted an agreement within the meaning of section 28. The effect of the section was to continue the current tenancy until the intended commencement date of the new term, but otherwise to disapply Part II of the Act to the current tenancy.
38. That mattered because receivers were appointed. They sold the landlord's reversion to a third party. The agreement for lease had not been registered as an estate contract and the buyer took free of it.
39. The result was that the tenant lost the protection of the Act by reason of section 28, and then found itself unable to enforce the agreement for lease against its new landlord.
40. I agree with Mr Sadiq that the facts of that case are readily distinguishable. I am not bound to conclude that an agreement for the purposes of section 28 must be binding on both parties. Nevertheless, I do so find.
41. Dispositions of interests in land are a species of dealings which Parliament has decreed must be attended by certain formalities to be enforceable at law. I do not understand Mr Sadiq to suggest otherwise. His point is that it is sufficient that the agreement is enforceable by the tenant; it does not also need to be enforceable by the landlord.
42. That line of argument is based upon the false premise that an option gives the tenant an immediately enforceable right to the grant of a new tenancy at a time when the landlord has no reciprocal enforceable right against the tenant to accept a grant. That is not correct.
43. An option when granted, but before it is exercised, gives the tenant a bundle of contractual rights against the landlord, at a time when the tenant has no reciprocal obligations. None of those rights, however, is an enforceable right to the grant of a new tenancy.
44. The tenant only acquires an enforceable right to a new tenancy when the option is fully exercised. Prior to that time, the tenant has the benefit of contractual rights which, *if exercised*, are capable of giving rise to the right to the grant of a new tenancy.
45. On the other side of the transaction, the option places the landlord under an immediate reciprocal and continuing obligation to ensure that he will be able to grant a new tenancy *if* the option is exercised. Prior to its exercise, the landlord is not under an enforceable obligation to grant a new tenancy.

46. When the option is exercised, everything changes. But it does not bring about a situation in which the tenant has an enforceable right to the grant of a new tenancy and the landlord has no reciprocal right against the tenant.
47. On exercise the landlord comes under an enforceable obligation to grant the new tenancy. At the very same time the tenant comes under a reciprocal obligation, enforceable by the landlord, to take the tenancy.
48. Once the option has been exercised, both parties are respectively bound to grant and accept a new tenancy. At no time prior to the exercise of the option is either party bound to do that.
49. It can be seen, therefore, that there is no point in time at which the landlord can be compelled to grant a new tenancy to the tenant but the tenant cannot be compelled to accept the grant.
50. Accordingly, I do not think that there is a valid distinction to be drawn between an 'agreement' and a 'contract' for these purposes.

Spiro v Glencrown Properties Ltd [1991] Ch. 537

51. In that connexion it is necessary to consider what is said in *Spiro v Glencrown Properties Ltd* [1991] Ch. 537, for it might be thought that that case should lead me to the opposite conclusion.
52. *Spiro* concerned an option to purchase. The option was duly exercised by the service of a notice. The agreement for the option complied with section 2 of the 1989 Act. The notice exercising the option did not. The question was whether, for the purposes of section 2, the relevant contract was created by the agreement for the option, or whether it was created by the exercise of the option.
53. Hoffman J. said this:

“Apart from authority, it seems to me plain enough that section 2 was intended to apply to the agreement which created the option and not to the notice by which it was exercised. Section 2, which replaced section 40 of the Law of Property Act 1925, was intended to prevent disputes over whether the parties had entered into a binding agreement or over what terms they had agreed. It prescribes the formalities for recording their mutual consent. But only the grant of the option depends upon consent. The exercise of the option is a unilateral act. It would destroy the very purpose of the option if the purchaser had to obtain the vendor’s countersignature to the notice by which it was exercised. The only way in which the concept of an option to buy land could survive section 2 would be if the purchaser ensured that the vendor not only signed the agreement by which the option was granted but also at the same time provided him with a countersigned form to use if he decided to exercise it. There seems no conceivable reason why the legislature should have required this additional formality.”

54. After reviewing the authorities Hoffman J concluded:
- “In my judgment there is nothing in the authorities which prevents me from giving section 2 of the Act of 1989 the meaning which I consider to have been the clear intention of the legislature. On the contrary, the purposive approach taken in cases like *Mulholland* [1949] 1 All E.R. 460 encourages me to adopt a similar approach to section 2. And the plain purpose of section 2 was, as I have said, to prescribe the formalities for recording the consent of the parties. It follows that in my view the grant of the option was the only “contract for the sale or other disposition of an interest in land” within the meaning of the section and the contract duly complied with the statutory requirements.”
55. With the benefit of that analysis it is not difficult to understand why the relevant contract is the agreement for the option for the purposes of section 2. The option is the, and the only, source of the terms of sale. It is those terms, and the parties’ consent to them, which section 2 requires to be set down in signed writing.
56. Section 28 of the 1954 Act performs an entirely different function. It is described aptly by the editors of *Hill and Redman, Law of Landlord and Tenant* at B[495]-[500]:
- “This section makes the common-sense provision that where the parties agree all the terms of a new tenancy of premises comprising or including the holding, the current tenancy continues to the commencement date of the new tenancy and no longer. If the tenant has an enforceable agreement for a new lease he does not need any further protection from the Act.”
57. Section 2 is concerned with the formalities required to create an enforceable agreement. Section 28, in contrast, is concerned with what happens after an enforceable agreement has been entered into. The rationale in *Spiro* is not transferable to this case.
58. What *Spiro* does tell us is that section 28 must be construed in light of the purpose of Part II of the Act.

Construction of section 28 in light of the purpose of Part II of the Act

59. The scheme of the Act provides for the tenant’s right of possession under the current tenancy to be contiguous with the right of possession under the new tenancy by the mechanism of a statutory continuation of the current tenancy.
60. Section 28 disapplies Part II only when an enforceable agreement for the grant of a future tenancy is in place. On a natural reading the section is referring to what lawyers commonly call an agreement for lease. An agreement for lease is specifically enforceable. It creates an equitable lease.
61. When an enforceable agreement for a future tenancy is created, the tenant acquires a right of possession under the equitable lease, irrespective of whether the agreement is completed at the commencement date. The tenant’s right of possession under the current tenancy is continued until the commencement date by section 28, and a new

right of possession arises immediately thereafter under the new tenancy, or under the equitable lease pending completion. That section 28 would contemplate contiguous rights of possession is consistent with the general scheme of the Act.

62. I have already explained why the grant of an option does not, without more, give the tenant an enforceable right to a grant of a new tenancy, and why an enforceable agreement can only mean enforceable by both parties. The operation of section 28, set against the general purpose and policy of the Act, also confirms why that must be so.
63. Contrary to that, Mr Sadiq argues that a tenant with the benefit of an option, and who is at the mercy of its terms, is in much the same position as a tenant under the Act. The Act does not guarantee a renewal tenancy, even if the tenant is prima facie entitled to one. If a section 25 notice is served a tenant who fails to respond in time will lose the statutory right to renew. Mr Sadiq contends that there is a degree of risk inherent in the Act, and that a tenant with an option is in no more precarious a position. What matters is that in both cases it is the tenant who has the unilateral power to compel a grant. That, he says, is enough.
64. It is not enough. An option provides the contractual machinery which, if operated correctly, will produce the grant of a new lease.
65. Neither section 28, nor any other provision of the Act, disapplies the statutory machinery because there exists contractual machinery for renewal. Parliament could have legislated for an exclusion. It did not do so.
66. It is no answer to say that under the Act the tenant is at risk of losing the right to renew for failure to follow the legislative procedure. That procedure has been settled by Parliament as appropriate to impose on all tenants irrespective of their actual vulnerabilities or levels of sophistication. Parliament has balanced the interests of both parties and prescribed for the circumstances in which the right to renew may be lost.
67. It is not consistent with the purpose and policy of the Act for the parties to be at liberty to agree an alternative procedure for the renewal of the lease to the exclusion of the statutory right, which may or may not result in a new tenancy, and may result in the loss of the right to renew outside of the circumstances prescribed by Parliament.
68. The Act evinces an intention to curtail the parties' freedom in that respect for the reasons already given and those about to follow.

The position of prospective tenants and contracting out of the Act

69. In the case of a 'baked-in' option (to borrow an expression from Mr Andrews-Tipler), the Act is concerned with the position of a prospective tenant contemplating entering into, on the Defendants' case, an unprotected tenancy, and not with a sitting tenant.
70. The further provisions of the Act are instructive as to the attitude of Parliament to prospective tenants.
71. We begin with section 38. It is an anti-avoidance provision, rendering void agreements which purport to prevent a tenant from exercising his rights under the Act. Parliament

considers that prospective tenants are vulnerable to their rights being stripped away without the intervention of statute.

72. However, this is not an absolute prohibition. Consistent with its respect for contractual freedom, the Act does provide a means by which the prospective landlord and tenant may contract out of Part II of the Act altogether.
73. To do so certain conditions must be met. They are now found in section 38A, which was introduced in 2004. That section requires, in essence, the prospective landlord to serve a notice on the prospective tenant in a prescribed form informing him of the statutory rights that he is giving up, and for the prospective tenant to sign a declaration that he has understood the same (which must be a sworn statutory declaration if less than 14 days' notice is given).
74. It follows from the general purpose and policy of the Act to protect sitting tenants, that any prospective tenant contemplating giving up that protection should do so on a fully informed basis. It is implicit that the Act perceives that not only sitting tenants, but also prospective tenants, may be in a comparatively weaker negotiating position. The reasons for that are obvious.
75. A prospective landlord is possessed of land that it does not want or need for its own occupation, and prospective business tenants conversely want and need premises from which to conduct their businesses. Further, a prospective tenant's freedom of choice typically will be constrained by a number of factors, chief among which are the need for premises with permission for the relevant class of use required for his business, and for premises in a particular locality by reference to the location of the tenant's workers, customers, or both.
76. If the Defendants are right about the effect of section 28 in this case, the option operated in substance to contract out of the Act. Yet, the Defendants were not required to give the Claimant any warnings about the rights it was giving up, and the Claimant was not required to give a declaration confirming its understanding of what it was doing. That runs contrary to the policy considerations evinced by section 38A.
77. I agree with Mr Andrews-Tipler that the obvious way to give a 'baked-in' option absolute primacy, consistent with the terms and policy of the Act, is to couple it with an agreement to contract out which complies with section 38A.
78. That also provides the answer to the objection raised by Mr Sadiq, that landlords will be less amenable to granting options to renew because the commercial risk falls entirely on the landlord. A landlord asking the tenant to shoulder some of the commercial risk need only comply with section 38A.

Circularity

79. Mr Andrews-Tipler submits that the Defendants' argument fails on a literal reading of section 28 in any event. If the effect of this 'baked-in' option is to exclude Part II of the Act altogether, from the inception of the lease, it stands to reason, he says, that section 28 cannot be relied upon for that exclusion.

80. Section 28 is itself within Part II and thus, Mr Andrews-Tipler submits, that section can only be engaged if Part II applied to the current tenancy at some time earlier than the agreement for the grant of the future tenancy was entered into.
81. Mr Sadiq points out that section 28, after providing for the current tenancy to continue until the date agreed for the commencement of the new term, goes on to state that, “*the current tenancy shall...not be a tenancy to which this Part of this Act applies.*” It does not, as Mr Sadiq points out, state that, “*the current tenancy...shall cease to be a tenancy to which this Part of this Act applies.*”
82. Take this perhaps improbable but perfectly possible scenario. The owner of an industrial park is in occupation of several units for the purposes of its own business. It no longer has any use for one of its units, which is now standing vacant, and in 5 years’ time will no longer have any use for the adjacent unit. The landowner enters into negotiations with a prospective tenant who is established in business and is looking for premises on a long-term basis with the opportunity to expand. He is prepared to take a tenancy of the vacant unit provided that the landowner agrees to grant him a tenancy of the adjacent unit after he has ceased to use it. The parties enter into back-to-back enforceable agreements for lease. The first is for a lease of the vacant unit commencing in 3 months’ time for a term of 5 years. The second is for a lease of the original unit and the adjacent unit commencing in 5 years and 3 months’ time, with completion not due to take place until some time in the future. The first agreement is duly completed and a lease is executed. At the time the lease comes into being, the second agreement for lease is in existence but has not yet completed.
83. There is an agreement for the grant of a future tenancy of the holding with other land on terms and from a specified date. It is an agreement that is enforceable by both parties. Is it right to say that the second agreement for lease cannot be an agreement for the grant of a future tenancy within section 28 because it was in existence at the commencement of the tenancy?
84. Whilst I was initially attracted by the Claimant’s submissions on this issue when faced with an option and its *sui generis* characteristics, the force of those submissions is somewhat diluted if the same question is asked in the face of conventional agreement for lease, enforceable against and binding upon both parties.
85. Ultimately it is not necessary to decide the point in this case and I prefer to express no view on it.

Other authorities

86. I should deal briefly with the additional authorities referred to by Mr Andrews-Tipler, but from which I did not derive any assistance.
87. In *Bowes-Lyon v Green* [1963] AC 420 at 440 Lord Cohen was concerned with an esoteric point which saw him dismiss the notion that for an agreement to fall within section 28 it must comprise only contractual rights and obligations, and must not create an estate in land. That is consistent with *Stratton*’s requirement for enforceability, but that is about as much as can be drawn from it.

88. *Michael Chipperfield v Shell U.K. Ltd* (1981) 42 P&CR 136 at 138 *per* O'Connor LJ is relied upon for a general statement of uncontroversial principles which add nothing to the issue in this case.
89. In *Shelley v United Artists Corporation Ltd* (1990) 60 P&CR 241 the court was concerned with identifying the competent landlord in connection with a sub-tenant's application for a new lease. The intermediate landlord had an option to renew, which it had exercised. It was argued for the sub-tenant that following the exercise of the option there was an agreement for the grant of a future tenancy within the meaning of section 28. The point was not actually decided because, even if it was correct, it did not mean that the intermediate landlord was the competent landlord. Further, the Claimant has accepted in this case that, upon the exercise of the option and the coming into being of an enforceable bilateral agreement for lease, there is an agreement for the grant of a future tenancy within the meaning of section 28. This case is of no assistance either.

Conclusion

90. To conclude, the option in clause 7.2 of the leases is not an agreement for the grant of a new tenancy within the meaning of section 28 of Part II of the Landlord and Tenant Act 1954.
91. The Claimant is entitled to declarations accordingly.