Falcon Chambers

Winter 2016

Newsletter

IN THIS EDITION:

CHAMBERS UK BAR AWARDS 2015 WINNER

Chambers UK Real Estate Set of the Year 2015

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From the editor: Stephen Jourdan QC

The current edition of the Legal 500 says of us:

> "Falcon Chambers is 'the pre-eminent set for property litigation', which 'places more emphasis on this area than any other chambers'. 'There is little need to go anywhere else on a property matter' as there is a raft of 'star silks' and 'a good collection of strong juniors'.

We are delighted that Caroline Shea has just been appointed Queen's Counsel, so that our "raft of star silks" is becoming more of an aircraft carrier; we will have 11 silks and 28 juniors.

The last 6 months have seen members of Falcon Chambers busy at all levels, from the First-tier Tribunal to the Supreme Court. The Case Round Up below summarises 18 decisions in which we have been involved.

In the next few months we have two more Supreme Court cases coming up. In *Loose v Lynn Shellfish Ltd*, which will be heard in February, the Supreme Court will examine the doctrines of accretion and prescription. Guy Fetherstonhaugh QC, Philip Sissons and Charles Harpum act for the appellant. In March, the Court will hear *McDonald v McDonald*, raising the question of whether a tenant under an assured shorthold tenancy, where the landlord is not a public authority, can rely on a human rights defence to a possession claim. Ciara Fairley and I act for the respondents.

The cases which end up with decisions by the courts and tribunals are, of course, the tip of the iceberg. With most cases in which we are involved, our advice assists in avoiding a dispute or achieving a settlement. However, both avoiding disputes and achieving settlements requires real expertise in fighting the case should that be necessary and, as the decisions summarised in the Case Round Up show, we have plenty of that.

This edition includes several thought provoking articles on a diverse range of topics. Nathaniel Duckworth presents a powerful critique of the current state of the law on relief against forfeiture. Catherine Taskis examines the tricky question of upwards notices to quit by a person who is both the landlord and the tenant under an agricultural tenancy. Anthony Tanney looks at claims against guarantors for the costs of recovering possession against the tenant. Martin Dray discusses fraudulent dispositions of registered land, identifying a number of important points to bear in mind. Barry Denyer-Green explains problems that can be created on a compulsory purchase where one group company occupies property belonging to another, without a lease.

We hope you find this newsletter useful. If you have any comments on it, please let us know.

We would like to thank Toby Boncey and Tricia Hemans for editing this newsletter, and the last edition. The editorships will now pass to our new tenants, James Tipler and Julia Petrenko.

Case Round Up

Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited [2015] UKSC 72: On 2 December 2015, the Supreme Court delivered judgment in Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited [2015] UKSC 72. This is set to be the leading authority on (i) implied terms, (ii) break clauses and (iii) apportionment of rent payable in advance. **Guy Fetherstonhaugh QC** and **Kester Lees** acted for the Appellant and **Nicholas Dowding QC** and **Mark Sefton** acted for the Respondents

Airport Industrial GP Ltd v Heathrow Airport Ltd and AP16 Ltd [2015] EWHC 3753 (Ch): Mr Justice Morgan held that Heathrow Airport Ltd (HAL) was entitled to an order for specific performance compelling AP16 Ltd, a company in the Arora group, to build a car park on AP16's land for use by the claimants and their tenant of a catering base at the airport. The Judge held that, notwithstanding that AP16 would not be in breach of its obligation to provide parking spaces until 23 October 2016, the court could order it to take steps before that date arrived with a view to achieving compliance with its obligations at a later date. **Jonathan Gaunt QC** and **Nathaniel Duckworth** represented the claimants; **Timothy Fancourt QC** represented Heathrow Airport Ltd, and **Kirk Reynolds QC** and **Adam Rosenthal** represented AP16 Ltd.

Dickinson & Anr v UK Acorn Finance [2015] EWCA Civ 1194: On 25 November 2015, the Court of Appeal handed down judgment in Dickinson v UK Acorn Finance. The Court of Appeal upheld the High Court decisions of District Judge Smith and HHJ Hodge QC that a claim brought by borrowers against a lender under the Financial Services and Markets Act 2000 was an abuse of the court's process and should be struck out. **Gary Cowen** acted for the successful party in the High Court and **Stephen Jourdan QC** acted for them in the Court of Appeal.

Page v Convoy Investments Limited [2015] EWCA Civ 1061: The case considers the question, infrequently encountered in the law reports but often encountered in practice, of what, precisely, a servient owner may do on land subject to a right of way to control access and egress. The Court of Appeal decided that (1) The absence of a T mark on the relevant plan could be remedied by construction (*Ali v Lane* [2007] 1 P&CR 26 considered); and (2) at the time of the conveyance there were no usable gates. The appropriate question involved a comparison between the position with the given gates installed and in operation, and the previous position without gates in place (*West v Sharp* (2000) 79 P. & C.R. 327 applied). **Charles Harpum** appeared for the appellant and **Philip Sissons** for the respondent.

36 Harrington Gardens Headlease Ltd v Cadogan Holdings Ltd: **Mark Sefton** appeared for the landlord and **Stephen Jourdan QC** for the tenant in a dispute arising under s.48(3) of the Leasehold Reform, Housing and Urban Development Act 1993. Judgment was delivered on 23 October 2015 by Mr Recorder Murray Rosen QC.

Rawlings v Chapman & Others [2015] EWHC 3160 (Ch): HHJ Cooke QC, sitting as a Deputy Judge of the Chancery Division held that a Claimant will need very convincing facts in order to establish an estoppel against the estate of a deceased based on promises allegedly made more than twenty years earlier. **Caroline Shea** appeared for the successful defendants.

Young v Sing 2015: **Wayne Clark** successfully brought a claim on behalf of a claimant beneficial co-owner of a property against her co-beneficiary for an occupational rent, where the defendant had ousted the claimant from the property.

West End investments (Cowell Group) Limited -v- Birchlea Ltd: **Anthony Radevsky** appeared in the appeal relating to material overhangs under the Leasehold Reform Act 1967. The case usefully summarised the applicable principles and considered the impact of the fact that a wall between two properties was designated a party wall under the relevant leases, and that this meant that there was an overhang of a width of one brick between the relevant premises.

Sinclair Gardens Investments (Kensington) Limited v Ray [2015] EWCA Civ 1231: the First Tier Tribunal and the Upper Tribunal had both adjusted the default Sportelli deferment rate due to the location of the properties, by taking into account the decision in *Zuckerman v Trustees of the Calthorpe Estate* [2009] UKUT 235 (LC), no other evidence being called by the tenant's valuer. The Court of Appeal decided that non-guidance decisions of the Upper Tribunal can be admitted as evidence. **Oliver Radley-Gardner** appeared for the appellant landlord.

Case Round Up (continued)

Jewelcraft v Pressland [2015] EWCA Civ 1111: the Court of Appeal decided that a purpose built shop and flat was a "house" for the purposes of the Leasehold Reform Act 1967. There was no basis for distinguishing premises based on their external appearance or internal layout. **Stephen Jourdan QC** appeared as lead counsel for the tenant and **Anthony Radevsky** appeared for the landlord.

Creative Foundation v Dreamland Leisure Ltd [2015] EWHC 2556 (Ch): a tenant removed and sold a valuable mural by the street-artist known as Banksy which had been spray painted on the wall of the demised premises. Arnold J held that the tenant had converted the bricks and mortar since, on severance from the building, title reverted to the landlord and, in removing the mural, the tenant had not been complying with its repairing covenants. **Adam Rosenthal** appeared for the claimant.

Safin v Badrig [2015] EWCA Civ 739: the Court of Appeal held that, even though the substantive matters in dispute had been dealt with by means of a consent order, the court retained a residual discretion to extend time for compliance with any conditions for relief from forfeiture under CPR r3.2. **Stephen Jourdan QC** and **Nathaniel Duckworth** appeared for the Appellant. **Jonathan Gaunt QC** appeared for the Respondent.

K/S Habro Gatwick v Scottish & Newcastle Ltd [2015] EWHC 2084 (Ch): **Timothy Fancourt QC** acted for S&N, the original lessee of an hotel in a case concerning fixed charges within the meaning of s17 of the Landlord and Tenant (Covenants) Act 1995.

Royal Mail Estates Limited v Maples Teesdale [2015] EWHC 1890 (Ch): **Stephen Jourdan QC** appeared in two cases, over the course of which summary judgment was awarded against a defendant who had contracted on behalf of a company yet to be incorporated. The defendant was personally liable on the contract as a result of s36C of the Companies Act, despite a statement in the contract that is was personal to the intended company (which did not amount to an "agreement to the contrary" for the purpose of s36C).

Trustees of Bath Recreation Ground v Sparrow [2015] UKUT 0420 (TCC): **Greville Healey** appeared for the Third Respondent in a case concerning the alienability of land held on a charitable trust.

Freifeld v West Kensington Court Ltd [2015] EWCA Civ 806: The head lessee deliberately unlawfully sub-let a restaurant, having decided not to seek the landlord's consent. The first instance judge found that the breach was cynical and hence the head lessee faced a "vertiginous climb" to get relief. The head lease was worth between £1 million and £2 million, and the landlord would obtain a substantial windfall. The head lessee proposed that relief be granted conditional on a sale of the lease within six months. The Court of Appeal decided that: (1) relief could still be granted even where a breach had been deliberate, and a landlord should not be entitled to keep a windfall where there was no lasting damage to him; and (2) a tenant's conduct was a relevant consideration but the Court had to consider whether depriving even the wilfully breaching tenant of a valuable asset was proportionate. **Caroline Shea** appeared for the successful appellant.

Parmar & Ors v Upton [2015] EWCA Civ 795: **Jonathan Gaunt QC** appeared for the successful Respondent in a boundary dispute and trespass claim, involving the application of the hedge and ditch rule.

Burrows v Ward [2015] EWHC 2287 (Ch): **Oliver Radley-Gardner** appeared for the Claimants in this claim for breach of contract (a restriction on disposals in a development agreement) and Wrotham Park damages.

Relief from forfeiture revisited: Magnic, Safin and Freifeld

By Nathaniel Duckworth

Like London buses, cases on particular property law issues often come in threes. In 2015, it was the turn of relief from forfeiture the principles of which were considered by the Court of Appeal on no less than three occasions in *Magnic v Ul-Hassan and anor* [2015] EWCA Civ 224, *Safin (Fursecroft) Limited v Badrig* [2015] EWCA Civ 739 and *Freifeld v West Kensington Court Limited* [2015] EWCA Civ 806. Although the decisions have not effected any seismic shift in the approach to applications for relief from forfeiture, they have yielded a number of useful principles.

The Principles (Re?-)Established By the Court of Appeal

The principles we can distil from the above cases are as follows:

1. First, the principle that a proviso for re-entry is merely security for the tenant's performance of the tenant's covenants and is not intended to confer a windfall on the landlord falls to be applied in all cases. It applies in favour of:

   (i) A tenant who is applying for a second or even third grant of relief in respect of the same breach *(Magnic and Safin);*

   (ii) A tenant who, with his eyes open and the benefit of legal advice, had consented to the original terms of relief (as distinct from having them imposed) and it even seemingly applies in circumstances where the consent order expressly provides that there should be no extensions *(Safin).*

   (iii) A tenant whose original breach was the product of a conscious and cynical decision, rather than inadvertence or force majeure *(Freifeld).*

2. Secondly, not only does the 'no windfall' principle fall to be applied, with equal vigour, in such cases, it is, as our trio of decisions demonstrate, likely to be dispositive of the application in the tenant's favour – even in cases where the tenant has behaved badly.

3. But, thirdly, where the tenant's breach is wilful and longstanding, relief should not be granted "without some security that the future would be different" so as to "restore the parties to their previous contractual relationship" *(Freifeld).* Orders for relief on terms that the tenant then sells the lease to a (hopefully better behaved) tenant may now become more common in such cases.

4. Fourthly, even relief on terms is not guaranteed. Both Safin and Freifeld contain warnings that the Court's decision to rescue the particular tenant under consideration "should not be misinterpreted as conferring carte blanche on tenants to disregard their covenants, wherever there is value in their leasehold interest that will be lost by an unrelieved forfeiture" *(Freifeld, per Briggs LJ).*

Are we where we should be?

Our trio of cases will make gloomy reading for landlords. They have long known that, in the 'plain vanilla' case, the tenant gets relief provided he remedies he breach in reasonably short order. But equally the authorities from *Chandless-Chandless v Nicholson*[1] in 1942 to *Freifeld* in 2015 are replete with tantalising warnings that the Court will not ride to the rescue of a tenant who has been slack or casual about the performance of the covenants in the lease or the conditions of the original grant of relief.

But that threat, although commonly issued, is scarcely ever carried out. All three of our trio of cases involved applications made by tenants who, to varying degrees, had been guilty of slackness in the performance of the covenants in the lease and/or the conditions of their first grant of relief. But all three were nevertheless indulged by the Court.

If one limits the scope of the enquiry to the merits of the particular case, most would regard the result in Magnic and Freifeld as being 'right' and, although perhaps more likely to divide opinions, the decision in Safin is at the very least defensible. But what about the bigger picture? The landlord's forfeiture claim in Magnic took seven years to conclude. The substantive forfeiture claim in Safin is four and a half years, with six substantive hearings. The burden of a fully-contested forfeiture claim on the parties themselves and, perhaps more importantly, on finite judicial resources is really quite considerable.

Although doubtless some of that is a result of the ingenuity of the parties and their advisers, part is also due to judicial optimism that a tenant is, indeed, truly repentant. The trouble with giving a tenant, in an individual case, as many lives as the proverbial cat is that other tenants (and their legal advisers) come to expect that they will be afforded the same degree of judicial latitude. If there were to be a stiffening of judicial resolve and a correspondingly reduction in the opportunities afforded to the tenant to remedy his default, would there then be flurry of cases in which valuable leasehold interests were lost or would tenants, faced with this harsher environment, just get their house in order that much quicker?

The problem that a Judge, who would otherwise be minded to take a firmer approach, faces is that there is venerable line of authority which is to the effect that a forfeiture clause is intended to do no more than provide the landlord with "security for the performance of the tenant's covenants"[2] such that equity "leans against forfeiture"[3] . The net result of applying those principles is that, whereas in other related property contexts (e.g. development contracts and contracts for the sale of land) termination clauses 'do exactly what they say on the tin', a forfeiture clause is not what it seems: it is a contractual sheep in wolf's clothing.

It is appropriate, in this context, to remind ourselves that the principles with which we are now concerned were forged at a time when the legal landscape looked very different to the one in which

forfeiture claims are fought out today. Statements of these principles can found in reported cases from the 16th century [4] , but their roots plainly extend even further back than that.

Prior to the enactment of the Conveyancing Act 1881, which contained the precursor to the modern-day section 146 of the Law of Property Act 1925, there was no requirement for the landlord to serve a preliminary notice before effective re-entry: a right of re-entry, once acquired, could be exercised peaceably (i.e. without a court order) and without further warning to the tenant. In those circumstances, one can well understand why equity developed principles designed to protect tenants from a swiftly administered coup de grâce by their landlord.

Even by the time those principles were restated in the early 20th century cases[5], to which modern Judges still refer, the only limit on the landlord's ability to exercise a right of re-entry was the requirement, under the Conveyancing Act 1881, to serve a warning notice prior to forfeiting for something other than non-payment of rent.

But, if we fast forward to the modern day, we find that the obstacles in the way of an effective forfeiture of a lease have multiplied in both number and severity. So, for example, if a landlord wishes to forfeit a residential long lease for breach of a user covenant, he will need to:

(i) serve a (Pre-Action Protocol compliant) letter before action and await the tenant's response;

(ii) issue proceedings, in the First-tier Tribunal, to obtain a determination, under section 168 of the Commonhold and Leasehold Reform Act 2002, that the breach has occurred;

(iii) wait a further five weeks and then serve a section 146 notice[6];

(iv) allow a reasonable time for the tenant to comply with the section 146 notice to elapse;

(v) issue and prosecute court proceedings to obtain an order for possession;

(vi) resist any application for relief made before he actually recovers possession;

(vii) resist one or more fresh applications to extend time or otherwise vary the terms of the previous orders for relief.

Even before one gets to step (vii), that process will, in most cases, have taken literally years to navigate. At each stage, the tenant will, ex hypothesi, have received a clear warning that he must remedy his breach, on pain of losing his lease, and then failed to heed it. If equity were to look, with fresh eyes, on a 21st century tenant who has arrived at step (vi) without having remedied his breach and/or failed to comply timeously with the conditions attached to a first order for relief so as to reach step (vii), one wonders whether she would adopt such a benevolent approach? Equity's desire to achieve fairness between the parties would surely need to take into account that the distance that the battle-weary landlord must now travel before achieving a forfeiture. If a tenant has repeatedly failed to heed the warnings which must now be given to him, equity might decently decide to harden her heart. There is no maxim that 'equity does not suffer fools lightly', but perhaps there should be.

One possible distinction which is not currently, but might yet be, drawn is as between residential tenants on the one hand and commercial tenants on the other. Whilst a degree of mollycoddling may still be appropriate where one is concerned to ensure that Mrs Bloggins is not deprived of her home, it is perhaps harder to see why a plc tenant should not expect to lose its lease if it does not abide by its terms.

A distinction could also be drawn between first time applicants for relief on the one hand and tenants who come to Court, cap in hand, for a second time. As a matter of principle, rather than authority, there would seem to be real force in the proposition that whereas, at the first time of asking, the 'no windfall' principle operates almost irresistibly in favour of the tenant, the second application for relief should be fought out on a more equal footing.

In all three of our cases, the landlord sought skip around the 'no windfall' principle, by having recourse to the acknowledged, but elusive, exceptions to it (viz. the slack or wilful tenant).
But, at least to my knowledge, no-one has taken aim at the principle itself. A brave landlord might yet invite the Court to reconsider whether a principle drawn from legal antiquity continues to have a proper place in the modern legal landscape. As I have endeavoured to demonstrate, there are reasons, of both practice and principle, why a brave judge might take up that invitation.

The Government may yet beat us to the punch. The Law Commission presented its report "Termination of Tenancies for Tenant Default"[7] – in which it advocated the abolition of the law of forfeiture in favour of a new statutory scheme – as long ago as 2006. Very little has happened since then. But, the Government has recently promised to respond to the Law Commission's recommendations "as soon as practicable in 2015"[8]. But a similar promise was made, but not fulfilled, in the previous year. At any rate, it is safe to assume that the law of forfeiture will remain with us for a little time yet. There is still time to knock it into shape before we usher it out the door.

[1] [1942] 2 KB 321: "Lessees must not think for one moment that they are entitled to be slack or casual about the performance of terms.
If they are so and then endeavour to get further indulgence from the court, the court will know how to deal with them…" per Greene MR.
[2] *Sir Harry Peachy v The Duke of Somerset* 93 E.R. 626; (1720) 1 Str. 447.
[3] Goodwright D Walter Davids (1778) Cowp 803.
[4] See the authorities referred to in the preceding two footnotes.
[5] e.g. *Hyman v Rose* [1912] AC 623 (referred to in Freifeld) and *Dendy v Evans* [1910] 1 KB 263.
[6] That being the combined effect of sections 168(3) and 169(2) of the 2002 Act.
[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/272363/6946.pdf
[8] Paragraph 104 of the 2015 Report on the implementation of Law Commission Proposals: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410228/report-on-implementation-of-law-commission-proposals.pdf

Land-owning agricultural tenants: Notices to quit

By Catherine Taskis

In the context of agricultural tenancies – more, perhaps, than in any other context – it frequently occurs that a landlord is also a joint tenant. A landowner may, for example, as a member of a farming partnership, let his land to himself and his partners. A landowner who did so prior to 1 September 1995 would have created a tenancy, in favour of himself and those others, protected by the Agricultural Holdings Act 1986.

On the face of it, a landlord in this position would find himself caught, as landlord, by the full force of the security bestowed on tenants by the 1986 Act. This protection may not, however, be all that it seems.

A landlord who is also, with others, a tenant, may give a notice to quit to his fellow tenants unfettered by his dual position as landlord and tenant. In any other tenancy, a 1986 Act tenant served with such notice would be able to give a valid counter-notice to the notice to quit. The problem for a tenant (or tenants) whose joint tenant is also the landlord giving the notice, however, is that any such counter-notice must be given by ALL the tenants: if a counter-notice is signed by only one of two joint tenants, it is ineffective. Thus a tenant in this situation is potentially deprived of the benefit of the effect of the 1986 Act.

Here, though, the courts have stepped in. The issue arose in *Featherstone v. Staples* [1986] 2 ALL ER 461. In that case, the notice under consideration was a tenants counter-notice pursuant to s.2(1)(b) of the Agricultural Holdings (Notices to Quit) Act 1977, served in response to a landlord's notice to quit. If valid, the counter-notice would have had the effect of rendering the notice to quit inoperative without the consent of the Agricultural Land Tribunal (ALT). However, the validity of the counter-notice was disputed on the ground that it was served by only two of three joint tenants. The third joint tenant, a company wholly owned by the landlord, had not consented to service of the counter-notice.

The Court of Appeal restated the general principle that at common law, if there is to be a renewal of a periodic tenancy held by joint tenants at the end of one of its periods, then all tenants must concur. Noting that the substantial effect of a valid counter-notice under the 1977 Act is (unless the ALT consent to the operation of the notice to quit) to renew the tenancy, it stated the view that it was unlikely that the legislature would have intended that a valid counter-notice under that Act could be served without the concurrence of all the joint tenants. The court acknowledged, however, that the special feature of the case before it was that there, the joint tenants included a company controlled by the landlord. Should this affect the interpretation of the statutory provision?

On this question, Slade LJ acknowledged the opposing arguments as to the proper meaning of the word 'tenant' in this part of the 1977 Act. However, he found it unnecessary to express a concluded view on the question of construction. Even assuming that the word 'tenant' in this context meant all the joint tenants, he nevertheless was of the view that the counter-notice served by two of the three tenants "must be treated as having been served with the authority of the third tenant, the company, even though that authority was not in fact given".

In reaching this conclusion the judge considered a term of the partnership agreement entered between the three joint tenants: by which it had been agreed that no partner could serve a counter-notice without the consent of the (landlord controlled) company. The two joint tenants who had served the counter-notice contended that this restrictive condition was invalid and unenforceable, raising an issue of the public policy.

Slade LJ regarded the issue of public policy as a difficult one. He admitted to feeling some sympathy with a the contention "that a landlord who chooses to grant a tenancy to a farming partnership of which he is a member should not be forced into the position of having to submit to a continuation of the tenancy for an indefinite period even after the dissolution of the partnership, and that public policy does not require the discharge of his co-tenants from their contractual obligations under a restrictive condition such as this." Nevertheless, he considered it clear that, absent a partnership agreement, such a condition was 'an open, not to say brazen' attempt to get round the provisions of the agricultural holdings legislation. The fact that here, the three tenants had entered a partnership did not affect that. He concluded that:

> "if a landowner chooses to grant other persons a tenancy of agricultural land (whether or not including himself as a tenant), public policy (affirmatively) requires that those other tenants should have authority, or be treated as having authority, to serve an effective counter-notice under s.2(1) of the 1977 Act on behalf of all the tenants without his concurrence, and thus (negatively) requires the avoidance of any contractual condition, whether express or implied and whether contained in the tenancy agreement itself or in a partnership agreement or elsewhere, which purports to deny those other tenants such authority. I might add that any contrary decision of this court would be likely to open the door to widespread evasion of the 1977 Act to the detriment of the security of tenure which Parliament clearly intended to confer on agricultural tenants…".

So the court held that (irrespective of the correct construction of the term 'the tenant' in the statute) public policy justified the conclusion that the ability to serve a counter-notice under the relevant section lay with the joint tenants other than the landlord (and that any provision to the contrary would be void). In particular, the effect of the invalidity of the counter-notice would have been to avoid the security of tenure that the 1986 Act bestowed on agricultural tenants.

That authority is a considerable obstacle to a landlord, who is also a tenant, seeking to determine a 1986 Act tenancy by service of a landlord's notice to quit. But that is not the end of the matter. An agricultural tenancy protected by the 1986 Act may not only be terminated by a notice to quit served by the landlord upon the tenant, but also by a notice to quit served by the tenant upon the landlord. Can the land owning tenant who cannot as landlord terminate the tenancy, in the light of Featherstone, instead do so as tenant?

I would tentatively suggest the answer is yes.

The starting point is the same principle with which the Court of Appeal started in Featherstone. As a general rule, all joint tenants are required to join in an act that extends or terminates a joint interest outside its original term. Thus (as was the case with the counter-notice in Featherstone), a notice to be given in respect of a jointly held interest will be valid only if served by, or at least with the authority of, all of the joint owners.

However, notices to quit served to determine a periodic tenancy are an exception to this general rule. In Hammersmith *LBC v. Monk* [1992] 1 AC 478, the House of Lords upheld a long line of authority to the effect that, unless the terms of the tenancy agreement provide otherwise, a notice to quit given by one joint tenant without the concurrence of any other joint tenant is effective to determine a periodic tenancy.

The rationale underlying this principle is that a periodic tenancy continues only so long as it is the will of both parties that it should continue, and there is a notional renewal of the term at the end of each period that requires the consent of all the parties.

So the general rule is clear: one only of two or more joint tenants is entitled to serve notice to determine a periodic tenancy and the co-owners cannot properly object to this. Is the position any different if, as here, the tenant serving the notice is also, or is connected to, the landlord?

It has been suggested that in this context, as in the case of the tenant's counter-notice in Featherstone, public policy would step in. If public policy is sufficient to prevent a landlord from avoiding the effect of the 1986 Act by not joining in a tenant's counter-notice, would it not also prevent a landlord from doing so by permitting that landlord, as tenant, to serve a tenant's notice to quit?

In my view however, the situations are significantly different. In Featherstone the (counter-)notice under consideration was one that operated under statute specifically to enable tenants to avoid the consequences of a notice to quit. To enable one of a number of joint tenants effectively to prevent the implementation of this right by refusing to consent to service of the notice would be to deprive the statutory provision of any effect. By contrast, the ability of the parties to a periodic tenancy to serve a common law notice to quit arises from the fundamental nature of that tenancy, which is intended to continue beyond the initial term only if and so long as all parties are willing that it should do so. Upholding the common law principle does not directly undermine any particular statutory provision in the 1986 Act. Quite the reverse: the scheme of the 1986 Act operates to convey security on a tenant in the event of a landlord's notice to quit, and does not interfere to prevent a tenant serving such a notice.

In Featherstone the application of public policy considerations led the court to hold that the joint tenants other than the landlord should be treated as having authority to serve an effective counter-notice under s.2(1) of the 1977 Act. Although the issue was not dealt with as one of statutory construction, it was a statutory provision that the court was operating on, in accordance with the perceived will of Parliament. To apply similar considerations in the case of a tenant's notice to quit would require a court to find a way to override the operation of a long standing common law rule: more difficult as a matter of mechanics, and with potentially far reaching implications.

This argument has been made successfully, entitling a dual landlord/tenant to possession on the basis of a tenant's notice to quit, in the county court. Whether the same conclusion would be reached at any higher level remains to be seen.

Re-Imbursement Of Landlord's Costs Of Pursuing A Forfeiture

By Anthony Tanney

One of the enduring pleasures (or, for some, vexations) of landlord and tenant practice is the frequency with which commonplace problems can lead to all sorts of juristic entanglements.

An example will illustrate.

Most modern leases contain a tenant's covenant in essentially the following terms:

> "to pay to the Landlord all proper costs (including legal costs) reasonably incurred by the Landlord in any proceedings under sections 146 and 147 of the Law of Property Act 1925 or in contemplation thereof or in connection with any action taken by the Landlord for the Tenant to remedy any breaches of the terms of this Lease".

In *Forcelux v. Binnie* [2010] HLR 20, the Court of Appeal held that such a covenant entitled a landlord to recover its costs of preparing and serving a s.146 notice, as well as the landlord's costs of its forfeiture proceedings (including the tenant's counterclaim for relief).

Suppose, then, that a landlord of commercial premises takes forfeiture proceedings against its tenant for breach of covenant, having first served a s.146 notice. After a lengthy trial, the court makes an order for possession, but grants the tenant relief from forfeiture, on condition that the breach is put right, and that the tenant pays the landlord's costs of the litigation. The tenant then fails to comply with the conditions for relief, and, shortly thereafter, goes into liquidation.

The landlord duly recovers possession of the premises. But what of the landlord's litigation costs?

Let's say that the lease contains a *Forcelux*- style tenant's covenant to reimburse costs, and also that the tenant's director joined in the lease as guarantor. That being so, surely all's well for the landlord?

Well, perhaps. It is important to remember that the guarantor's covenant exists only in respect of the tenant's obligations in the lease. In other words the guarantor does not guarantee the performance by the tenant of the conditions to which the grant of relief was made subject, nor does he guarantee the tenant's compliance with the costs order made by the court.

What's more, forfeiture brings an end to the lease – and to all of the covenants contained it in. And a landlord with a valid forfeiture claim exercises its right to forfeit by issuing possession proceedings, and serving them on the tenant.

This gives rise to a potential problem. Under the usual wording of the tenant's covenant to pay costs, liability under the covenant is unlikely to arise before the landlord has *actually incurred* the costs in question. But in our example, most of the landlord's costs will have been incurred *after* issue and service of the forfeiture claim. If the lease was forfeited when proceedings were *served*, then, in respect of most of the landlord's costs, the covenant to reimburse will have ceased to exist *before* the tenant's (or guarantor's) liability accrued.

At this point, the landlord may find itself having to confront two apparently conflicting lines of authority – including decisions of the Court of Appeal and House of Lords.

In the landlord's favour is a series of decisions to the effect that by issuing and serving proceedings, the landlord irrevocably *elects* to forfeit the lease. But whether the lease is *actually forfeit* depends on the outcome of the landlord's claim (together with the outcome of any claim by the tenant for relief). On this approach, the lease – and the tenant's covenant to reimburse costs – still exists at the point the costs in question are incurred by the landlord.

In the tenant's favour is a line of authority to the effect that where the landlord has a valid claim, the issue and service of the landlord's proceedings *itself* effects a forfeiture. The court's order for possession merely confirms the forfeiture – and the forfeiture itself may be retrospectively "undone" by the grant of relief to the tenant (who is entitled to remain in possession in the meantime). On this basis, the covenant to reimburse ceases to exist before the accrual of liability in respect of most of the costs.

The decisions in the landlord's favour include: *Dendy v. Evans* [1910] 1 KB 263; *Driscoll v. Church Commisioners for England* [1957] QB 330; *City of Westminster v. Ainis* (1975) 29 P&CR 469; *Meadows v. Clerical Medical and General Life Ass.* [1981] Ch 70; *Peninsular Maritime v. Padseal* (1981) 259 EG 860; *Ivory Gate Ltd v. Spetale* (1998) 77 P&CR 141; and *Mount Cook Land v. Media Business Centre Limited* [2004] 2 P&CR 25. In the tenant's corner are (among others): *Jones v. Carter* (1846) 15 M&W 718; *Serjeant v. Nash Field & Co* [1903] 2 KB 304; *Canas Property Co Ltd v. K&L Television Services Ltd* [1970] 2 QB 304; *Associated Dairies v. Harrison* (1994) P&CR 91; and *Billson v. Residential Departments* [1992] 1 AC 494.

In the *Ivory Gate* case – perhaps the most helpful to the landlord – the Court of Appeal felt able to limit the apparent breadth of certain remarks in *Billson* – a House of Lords authority favouring the tenant.

But in *Ivory Gate*, the Court was not apparently referred to its earlier, binding decision in *Serjeant v. Nash Field* – which, in the tenant's favour, appears strongly on point. It is hard to see how the Court in *Ivory Gate* could have arrived at its interpretation of *Billson* had it been aware of the *Serjeant v. Nash Field* decision. In addition, *Serjeant* does not appear to have been cited in a number of the other decisions tending in the landlord's favour. Potentially, therefore, the authorities favour the tenant (or its guarantor). But the matter cannot be said to be clear, and there is ample scope for debate, to put it mildly.

The present problem did not arise on the facts in *Forcelux*. But our hypothetical example is by no means a far-fetched one. Further judicial contribution to the debate might therefore be expected, at some future time. In the meantime, those drafting new leases might do well to tighten up the wording of *Forcelux*-style clauses, to head off problems of the present kind - be they pleasures or vexations.

Compensation: Protecting Trading Companies

By Barry Denyer-Green

A compulsory purchase practice never lacks interest. Whether it is managing the unreasonable expectations of claimants for compensation, or advising an acquiring authority as to the limitations of statutory powers to permit them to do want they want to do, it is all good fun. One of the common issues of the moment concerns the compulsory acquisition of leases, particularly business leases.

Crossrail 2 is beginning to throw up problems for landowners and tenants, as does HS2, and now is the time, as with any proposed scheme involving compulsory acquisition, to consider landownership and tenure issues. Too often the freehold, or a lease in land, is held by ABC Holdings Ltd, and the occupier is ABC Trading Ltd. If the trading company has no lease from the holding company, and this is really quite common, it has no compensatable interest, and any claim for compensation in due course, following a compulsory acquisition, may be severely limited to that allowed under s.37 of the Land Compensation Act 1973. That could be very serious to the trading company if the costs of relocation, the loss of profits or any close down of the business are high. Whilst such heads of claim are in principle allowed, regard is had to the reasonable expectation of how long the tenant might have remained in occupation, and where there is no lease, such expectation can be difficult to prove and may well be a lot less than the term of any lease that the tenant could otherwise be holding. Now is the time to ensure that such holding companies have suitable leases that will preserve future compensation claims. It is unlikely that the grant of any necessary lease at this stage will fall to be disregarded for compensation purposes under s.4 of the Acquisition of Land Act 1981, although that might not be the case once statutory powers are enacted.

In all cases of trading or other companies or individuals holding leases, the leases should be carefully considered. It was held in *Bishopsgate Space Management Ltd v London Underground* [2004] 2 EGLR 175 that, for compensation purposes, it had to be assumed that the landlord would recover possession at the earliest date permitted under the date whether or not the evidence showed that it was unlikely that the landlord would want to recover such early possession. This decision is relevant to leases with short terms, leases subject to early determination clauses, and contracted out leases. The effect of the decision can mean that where early possession could lawfully be obtained by the landlord, it cannot be assumed that the tenant could have continued in possession beyond that earliest date, and therefore it cannot be assumed that a business tenant could have continued to earn profits at the premises beyond the date when possession could first be obtained by the landlord. As a claim for loss of profits in the future is dependent on the ability to continue in occupation, in the absence of compulsory acquisition, the Bishopsgate case can mean that a business tenant, who had every reasonable expectation of remaining in occupation well beyond the date that the landlord could theoretically have recovered possession, may not be adequately compensated.

But the position can be remedied if steps are taken to change the tenurial arrangements as early as possible.

Of shoes .. and ships .. and sealing-wax

Where one of two parents travels abroad with a child, many countries now require a form of consent from the non-travelling parent. Apparently some 20-30 intending parent travellers are turned away at Gatwick Airport every day for lack of the requisite consent form. One particular country requires the Commissioner of Oaths to seal his authentication. Where do you find a stick of sealing wax over the Christmas break? One of our barristers, entitled to act as a commissioner of oaths, reports that Harry Potter's sealing wax, the only wax he was able to find, does a lousy job, although apparently the immigration officer was impressed!

Land Registration: Are There Cracks In The Mirror?

By Martin Dray

Land registration has been with us for over 150 years now[9]. Any glitches and uncertainties have long ago been resolved. Dream on. The great beauty of registered title is that you can always rely on the register. If only. As the welcome decision in *Swift 1st Ltd v Chief Land Registrar* [2015] EWCA Civ 330 shows, there is much still being worked out in the 21st century.

An essential concept underlying the Land Registration Act 2002 is not registration of title but, more fundamentally, title by registration. Chinks aside (e.g. transmissions on death and insolvency), the register is supposed to be an accurate and reliable reflection of the ownership of land at any given time. It is registration, rather than the quality of prior dispositions, that creates and constitutes the proprietor's title. What is on the register counts.

That is the theory. What of the reality? In particular, how does the notion of a state guarantee of title operate in cases of fraud and forgery?

Take a typical scenario. B is a registered proprietor. A fraudster, C, steals B's identity and purportedly disposes of the land to an innocent third party, D. That dealing may take the form of an outright transfer or the grant of a lesser interest, e.g. a charge. Either way, if the fraud is not detected at the outset, the disponee, D, may well be (and let us assume is) registered as proprietor of the land or charge, as the case may be. What rights does D obtain courtesy of registration?

Going back to basics, at common law in an unregistered land context D would of course obtain nothing. The forged transfer by C (masquerading as B) would not pass ownership to D, for it would not bind the true owner, B, in whom the title would remain. That being so, D would have nothing to pass on in the future: nemo dat quod non habet. B would be unaffected by the fraud. D, in contrast, would be left out of pocket, the victim of C's dishonesty.

In registered land it is all different. Or is it?

You might reasonably think so. Registration vests title. So say sections 11(3), 12(3) & 58(1) of the 2002 Act. The last of these could hardly be clearer: "If, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration." Hence in the example B would seemingly lose effective ownership the land to D. Of course, this would be subject to any entitlement of B to seek rectification of the register under Sch.4 and, in turn, for B (if unsuccessful in that regard) or D (if B prevailed) to claim an indemnity under Sch.8.

But until this year such a simple belief would have been wrong. Straightforward application of the 'statutory magic' of registration was denied by *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] Ch 216, CA (a case under the 1925 Act) in which it had been held that a fraudulent transfer of land only transfers the legal estate on registration, leaving the original proprietor (the defrauded owner) with a beneficial interest in the land. On this footing registration is a hollow prize, conferring title to a shell which is devoid of substantive content. The resultant separation between legal and equitable ownership in this context had been confirmed in *Fitzwilliam v Richall Holdings Services Ltd* [2013] 1 P&CR 19. It followed that, despite D's registration, B (as beneficiary under a bare trust) could call on D (as trustee) for a transfer of the legal estate under the rule in *Saunders v Vautier* (1841) 41 ER 482. The result: despite the statutory provisions, registration in such a case would ultimately count for nothing; its value was illusory.

To add insult to injury from D's perspective, prima facie, because of B's retention of beneficial ownership, if the register were later altered in B's favour under Sch.4, D would not suffer prejudice and so: (a) the case would not be one of rectification (as defined in Sch.4); (b) D would not be entitled to an indemnity under Sch.8 (since an indemnity is the corollary of rectification, not simple alteration).

Malory therefore seemed to drive a coach and horses through the integrity of the scheme and structure of modern land registration.

Thankfully, Swift 1st has put paid to that heresy. The Court of Appeal determined that Malory was decided per incuriam and is wrong. It is now clear that the 2002 Act does not depart from the usual rule that legal and beneficial ownership are, without more, indissoluble. Registration does confer meaningful title; although always potentially defeasible by alteration under Sch.4, it is not wholly vitiated by infirmities in prior transfers. The integrity of the register has been restored. The register is indeed a complete record of enforceable estates and interests (except overriding interests).

Therefore, in the example, D would, on registration, acquire true and full ownership, subject only to B's right to seek alteration under Sch.4 (which right is, Swift 1st confirms, capable of existing as an overriding interest, if coupled with actual occupation: Sch.3, para.2).

Swift 1st also helpfully explains how the indemnity provisions in Sch.8 operate in such a case, assuming alteration is granted in favour of B. It scotches the argument (based on Chowood's Registered Land, Re [1933] Ch. 574) that D will suffer no loss in the event of rectification which gives effect to an overriding interest (i.e. where B has remained in actual occupation) on the basis that D's registration has always been subject to B's right to have the forged disposition set aside. Rejecting

[9] The first attempt at a system of land registration was made by the Land Registry Act 1862.

this argument, the Court of Appeal held that the Chowood 'no loss' principle is directly inconsistent with the express deeming provision in Sch.8, para.1(2)(b) which provides that "the proprietor of a registered estate or charge claiming is good faith under a forged disposition is, where the register is rectified, to be regarded as having suffered loss by reason of such rectification as if the disposition had not been forged." This deeming provision prevails.

Consequently, the transfer to D, although forged and invalid of itself, is nevertheless (once registered) treated as having been effective for the purposes of conferring a right to an indemnity. The erstwhile registered proprietor, B, may have an overriding interest but, when it comes to an indemnity for D, the Sch.8 deeming provision trumps that and provides that the loss consequent on rectification is to be regarded as prejudicial to D's title notwithstanding that the underlying disposition was void.

This is good news for those innocents caught up in a web of deceit which later falls to be untangled, although less good news for the budget of HMLR. It is, however, a reflection of the belatedly acknowledged principle that registration confers substantive and material rights on a proprietor.

There remain, though, important (and some unresolved) points to bear in mind:

(1) Prevention is better than cure. It may be impossible to stop all fraud at the point of disposition but one should give oneself the best chance at limiting its reach (i.e. preventing its registration). Ensuring that one's address for service is up-to-date with HMLR (noting that one can have 3 addresses, including email notification) is surely a must.

(2) Signing up to HMLR's property alert service to receive updates of activity in relation to monitored properties is also recommended: **https://propertyalert.landregistry.gov.uk.**

(3) Likewise, in cases where the client is a company or an individual not resident in the subject property, take full advantage of the ability to request the entry of restriction (using forms RQ or RQ(Co)) in the following terms: "No disposition of the registered estate … is to be registered without a certificate signed by a conveyancer that that conveyancer is satisfied that the person/company who executed the document submitted for registration as disponor is the same person/company as the proprietor …". It's free.

(4) The law may yet change! The Law Commission is currently conducting a review into the workings of the 2002 Act. The Court of Appeal said that its decision that, for the purposes of claiming an indemnity, para.1(2)(b) prevails over the Chowood principle was not an easy one to reach and the point deserves to be considered further. Watch this space.

(5) The limits of para.1(2)(b) have yet to be tested but should be appreciated. A transfer may be void for reasons other than forgery, e.g. non est factum; mistake; lack of capacity; ultra vires. In such situations an indemnity claimant might run into difficulty if the erstwhile (restored) proprietor's rights were an overriding interest.

(6) Even where para.1(2)(b) applies, an indemnity can be denied or reduced in the event of a lack of proper care: Sch.8, para.5. It is always necessary to consider if the claimant has exercised due diligence.

All in all, there is still much to play for…

Recent News

Silk Appointment

Chambers is delighted to announce that **Caroline Shea** has been appointed QC in the 2016 competition.

Caroline is ranked as a Leading Junior in both Real Estate Litigation and Agriculture and Rural Affairs. She is recognised as "highly intelligent", "easy to deal with", "very good with clients", and "clever but personable, … not as common a mixture as perhaps it should be", and as having "an enviable knowledge of complex areas of law and is a formidable advocate", according to recent directories. She is a Fellow of the Chartered Institute of Arbitrators, and in 2013 was invited to become a member of ARBRIX.

Caroline's practice ranges over all areas of landlord and tenant, real property, agriculture and associated areas, where she is known for her uncompromising advocacy and commitment. Her caseload involves diverse property related issues including trusts, proprietary estoppel, easements, restrictive covenants, rent reviews, rectification, dilapidations, contractual interpretation, overage clauses, break clauses, and consent issues.

She has recently been involved in cases concerning proprietary estoppel (*Rawlings v Chapman & Ors* [2015] EWHC 3160 (Ch)), forfeiture and relief (*Freifeld & Anor v West Kensington Court Ltd* [2015] EWCA Civ 806 (a leading Court of Appeal decision on the relief jurisdiction)), prescription (*Winterburn v Bennett* [2015] UKUT 59 (TCC)), rights of way (*Zieleniewski v Scheyd & Anor* [2012] EWCA Civ 247) and break notices (I*ntergraph v Wolfson Microelectronics* [2012] EWHC 1862 (Ch)).

As well as having lectured widely to professional associations and conferences throughout England and Wales, Caroline is a founding author of Burton on Appeals, a co-author of the Falcon Chambers publication on the Law and Practice of Charging Orders, and is a regular contributor to Practical Law on agricultural matters.

New Tenants

Falcon Chambers is delighted to announce two new junior tenants, James Tipler and Julia Petrenko, have joined Chambers.

Julia Petrenko

During pupillage, Julia was supervised by Oliver Radley- Gardner, Adam Rosenthal, Edward Peters and Emily Windsor. Julia has experience of the full range of Chambers work, but also gained specific experience in telecommunications matters, right to manage disputes and agricultural matters. She assisted in *Balogun v Boyes Sutton & Perry* [2015] EWHC 275 (QB), a case concerning conveyancing negligence, causation and scope of duty.

Julia obtained an MA in Law from the University of Cambridge, Emmanuel College and then a BCL from University of Oxford, Mansfield College. She was a Lord Denning Scholar and obtained the Hardwick Entrance Award from Lincoln's Inn. Prior to commencing pupillage, Julia was the Judicial Assistant to Lady Justice Arden in the Court of Appeal (Civil Division), and also taught Land Law at Peterhouse College, University of Cambridge. In 2013, she was awarded the J.P. Warner Scholarship by Lincoln's Inn pursuant to which she spent three months working in Advocate General Sharpston's Chambers, at the Court of Justice of the European Union.

Julia is fluent in Russian.

James Tipler

James undertook pupillage under the supervision of Nathaniel Duckworth, Edward Peters, Adam Rosenthal and Joseph Ollech. As a pupil he gained experience of a wide range of disputes concerning (amongst others) the 1954 Act, adverse possession, leasehold enfranchisement, development agreements, possession proceedings, easements, boundaries, restrictive covenants, land registration, trusts of land, proprietary estoppel and professional negligence. He was also involved in the important reported cases of *Safin (Fursecroft) Ltd v Badrig's Estate* [2015] EWCA Civ 739 and *A2 Dominion Homes Ltd v Prince Evans Solicitors* [2015] EWHC 2490 (Ch).

James attended Christ's College University of Cambridge, obtaining a First Class MA in law, and attended the Université de Poitiers where he obtained a diploma in French Legal Studies. He secured a Major Exhibition Award from the Inner Temple for his BPTC before commencing pupillage. Also prior to pupillage James worked as a Research Assistant for the Law Commission with the Property Family and Trust Law team. He worked on the Rights to Light project and assisted with the development of policy and preparation of the Commission's final report on the subject. He also worked on the analysis of proposals for and formulation of the Commission's 12th Programme of law reform projects.

James is fluent in French.

Recent News

2015 Enfranchisement and Right to Manage Awards

Falcon Chambers are pleased to announce that they have won the Enfranchisement and Right to Manage Award 2015 for Chambers of the Year. Anthony Radevsky (co-author of Hague) was Highly Commended in the Barrister of the Year Category.

Dates for your Diary

In-House Seminars for property professionals of up to 5 years pqe:-

2nd March	Enfranchisement – Jamie Sutherland & Julia Petrenko
5th April	Service Charges Workshop – Joseph Ollech & Tricia Hemans
3rd May	Forfeiture – Ciara Fairley & James Tipler
15th June	Implied Terms, Break Clauses and Rent Apportionment – Kester Lees & Toby Boncey

Booking details will be sent out and will be available on the website in due course however if you wish to book your place now please or would like further details please e-mail seminars@falcon-chambers.com

Chambers will be on the SS Great Britain in Bristol 19th May 2016 for a Symposium on all things Agricultural. Register your interest at AdminStaff@falcon-chambers.com

Chambers will be represented at MIPIM this year and will be entertaining guests on board the MV Aldora. Please get in touch with Steve Francis if you would like to meet-up with the team that will be in Cannes. steve@falcon-chambers.com

Native title in Australia

Last September and October, Jamie Sutherland completed a placement working in native title law in Australia, funded by a scholarship awarded by the Inns of Court Pegasus Trust.

Native title law recognises the traditional rights held over land by Aboriginal peoples and Torres Strait Islanders. When Australia was first colonised, the continent was considered to be terra nullius, or 'land belonging to no-one'. In its 1992 decision in *Mabo v Queensland* (No. 2), the High Court of Australia rejected the doctrine of terra nullius and held that indigenous peoples' rights over land could, in some circumstances, have continued since colonisation and be recognised by modern Australian common law. The Australian Parliament passed the Native Title Act 1993 ("the NTA 1993"), which governs native title claims, the following year.

For a native title claim to succeed under section 223 of the NTA 1993, an indigenous claim group must show that the rights which they claim are possessed under their own traditional laws and customs and that, by those laws and customs, they have a connection to the land over which the rights are claimed. This requires proof that their traditional laws and customs, and their connection to the land, have continued since European settlement. Where native title is recognised, the rights can extend from what an English property lawyer would recognise as easements or profits, up to a right to exclusive possession.

Jamie worked for the claim groups on two native title claims, alongside Australian barristers, and lawyers and anthropologists from native title representative bodies established under the NTA 1993. The claims related to areas of land in the Pilbara region in north-west Western Australia, which is rich in iron ore. The State of Western Australia was a respondent to both claims. In one claim, brought by the Yindjibarndi people, the chief issue between the parties was whether the claim group have exclusive possession rights: if so, they would be entitled to significant compensation from Fortescue Metals Group, which carries on mining operations in the claim area and was a respondent to the claim.

Native title claims are heard by the Federal Court of Australia and, while Jamie spent most of his placement working in Perth, with a week at a chambers in Sydney, he also spent several weeks in the Pilbara, attending on-country Federal Court hearings of Aboriginal evidence in each of the claims. During his placement, he researched and advised on various issues, including the admissibility of expert evidence and the question of whether native title rights had been extinguished by the previous grant of pastoral leases over the claim area. He also assisted in proceedings related to the Yindjibarndi claim in the Supreme Court of Western Australia, under the Corporations (Aboriginal and Torres Strait Islander) Act 2006.

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