

The Lyndum Review

Changes at our Offices

You may have seen in the press or heard that we are closing our office on Hayling Island.

Michael Dalton says that the decision to close the Hayling Island office was the most difficult decision he has had to take in almost thirty years of business but that the increasing costs of running a small solicitors practice were escalating to such an extent that to maintain the office at Hayling Island was no longer viable. In many respects, the “final straw” came from the increased cost of professional indemnity insurance for solicitors which was introduced on 1st October this year. In that regard, it is a fact that “hundreds of small firms are at risk because of the spiraling costs of their indemnity insurance “(The Times,

Thursday 8th October 2009). Rather than take that risk the Partners took the decision to close the office on Hayling Island and move to and deliver all our services to our clients from our offices here in Petersfield.

Having said all of this, we are hoping to set up a weekly clinic on Hayling Island where we can continue to meet with our clients and customers on a regular basis and in the meantime, we intend to continue to deliver and provide a high quality legal service, to the residents of Hayling Island, from our offices in Petersfield.

Following the closure of the Hayling office, the firm will continue to deliver its core range of services from our office in Petersfield. Whilst the closing of the Hayling office is regrettable, Michael Dalton says, "This will cut costs significantly and help put us in the best possible position to deliver the services our clients and customers demand. It will help to make Daltons Solicitors a firm that is fit for the future, that can live within its means and that can continue to provide an outstanding service to its clients and customers”.

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Letting Agent's Commission Terms Unfair

Unclear language in a letting agent's standard terms and conditions has led to a contract being set aside by the High Court.

The case concerned the estate agent Foxtons, which provides a lettings service to private landlords under a standard form of agreement. The Office of Fair Trading (OFT) had applied to the Court for orders against Foxtons for what the OFT deemed to be unfair terms in agreements between the estate agents and various landlords. The terms in question related to renewal commissions.

Foxtons hoped to rely on regulations

passed in 1999 relating to unfair terms in consumer contracts. These stipulate that where a term is in ‘plain intelligible language’, the assessment of fairness of a term shall not relate to the price or remuneration as against the goods or services supplied in exchange.

The Court held, however, that the relevant terms for renewal commission within the old version of Foxtons’ contract had not been drafted in plain and intelligible language and so the obligation to pay renewal commission under the relevant terms of the agreement did not escape a fairness test under the regulations.

As far as the actual fairness of the terms was concerned, the Court considered

it unlikely that the typical private landlord would expect a repeat bill in year two of a letting and beyond unless the point was spelled out in some way. It was felt that Foxtons had not used a fair and adequate method of bringing the renewal commission clause to the attention of the landlords.

Under the circumstances, the renewal commission clauses of Foxtons’ old standard terms and conditions were held to be unfair.

Paul O’Flynn says, “This case illustrates the importance of drafting all consumer agreements in clear and precise terms.” We can advise you on any property or contract matter. Contact Paul O’Flynn. paulo@daltons-law.co.uk

Divorce – Future Pension Not Taken Into Account

A recent, bitterly contested ‘big money’ divorce case shows how reluctant the courts are to upset financial settlements on the basis of contingencies and reinforces the point that bad behaviour is not a basis for changing the division of the assets.

It involved, as do so many high profile cases, a man who was successful in the City and his wife. The couple had lived together for five years before they married in 2003, but the marriage broke down in 2005. The couple had one child.

Both parties tried to keep secrets from the other. The husband failed to disclose that he would be the beneficiary of a ‘lucrative’ pension plan in 2023 and the wife failed to disclose that she had become pregnant by another man, with whom she had a relationship that could be described as cohabiting.

In late 2006, the husband was ordered to pay his wife £7,500 per month in maintenance and the family assets were apportioned. When she discovered that her husband was to benefit from the pension, the wife sought to obtain an increase in the maintenance payable for her and their child. The husband sought to resist her sharing in any wealth which he had created after their separation.

The outcome of the case was that the judge ordered some changes to the maintenance payments and the division of assets. However, the important points relate to the changes he could have made and did not.

With regard to the pension, he concluded that since it could not be touched before 2023, it would not in his view be fair to require the husband to share, in whatever proportion, the value of this fund with his ex-wife.

On the matter of the wife being deprived of a share in the post-separation

earnings, the judge concluded that, ‘I do not accept that such contributions by a wife to the family after the end of the marital partnership can generally be said to warrant a conclusion that a proportion of the husband’s future income continues to be attributable to the wife’s domestic contribution and thus a fruit of the marital partnership.’ He therefore denied the claim that she should share in the increase in assets between their separation and divorce. Interestingly, he remitted for negotiation whether the revised maintenance payments should be set in Pounds Sterling or (as the wife now lives in Ireland) in Euros.

Neither was the judge swayed by the wife’s commencement of a new relationship nor was the possibility of financial support from her family, who are wealthy, a factor which affected his decision.

In reaching this decision, the judge commented, ‘Sadly this has been an application, both during its gestation in documentation and its investigation in oral evidence, where both ... have undoubtedly (and sometimes deliberately) reprocessed elements of the history for perceived tactical advantage.’

Rebecca Hawkins says, “Financial settlements on divorce depend on many factors, but the bad behaviour of one or both of the parties is seldom if ever one of them.” For advice contact Rebecca Hawkins at rebeccat@daltons-law.co.uk or Michael Wilson at michaelw@daltons-law.co.uk

Merry Christmas!

Everybody at Daltons Solicitors wishes all our readers a very merry Christmas and a happy New Year. We wish you all the best for a brilliant 2010!

Failed Property 'Try On' May Be a Crime

An appearance in the criminal court may await a property owner who tries to be too clever with his local planning department.

The property owner submitted a planning application to build a barn to store hay. This was granted on the condition that use was limited to the storage of hay or some other agricultural purpose. When the building was constructed, it looked, from the outside, like a hay barn. However, internally it was fitted out as a house. The owner moved into the property, using it as a home from August 2002 onwards. In 2006, he applied for a certificate of lawful use on the ground that the property had been used for four years as a dwelling. Such applications can be made when the owner can show that the property has been occupied in breach of planning control for the required period of time. The appropriate time limit is four years where there is a breach of operational development or change of use of a building to use as a single dwelling.

The council refused to grant the certificate of lawful use. The property owner appealed the decision and the building inspector upheld the appeal. The council then appealed that decision.

In court, it was accepted that the property owner had intended to deceive the council from the outset regarding

the true use of the building. This, as it turned out, may have been an unwise admission, as the court suggested that the property owner might have committed a criminal offence by obtaining planning permission by deception. If the offence of deception were proved, then the profit from the crime could be subject to confiscation under the Proceeds of Crime Act 2002.

The court ruled that the certificate should not be granted. Firstly, the construction of the building was not unlawful. It had planning permission and was capable of being used for the allowed purpose. There was therefore no breach of operational development. Secondly, there was no change of use to a dwelling. It has always been used as a dwelling. Accordingly a certificate of lawful use could only be correctly applied for after ten years and the council had until August 2012 to issue an enforcement notice. In the circumstances, the council was unlikely to miss the opportunity to make an example of the property owner.

Michael Dalton says, "In this case, the property owner was well and truly 'hoist with his own petard.' Had he remained in residence beyond August 2012, he would

most likely have succeeded, although the question of unpaid council tax on the property would have caused disquiet to the council. Any resolution of the situation is likely to prove expensive. It is always better to get it right first time and be safe rather than sorry." For advice contact michaeld@daltons-law.co.uk

Who at Daltons Solicitors can help you:

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Judge Uses Discretion in Contact Proceedings Case

In litigation, it is common for the court to order the production of documents from the parties to the case. Failing to comply with such orders is unwise, as the court has the power to strike out (i.e. refuse to hear) a case unless the documents are produced. It will issue an 'unless order', which in simple terms states that unless the requested material is produced, the case will be struck out.

There are several criteria the court will apply when considering an application for relief against an unless order.

These include considering whether the administration of justice will be served, whether the failure to supply the requested information is intentional and the extent to which the person has complied with other requests, orders etc.

In a recent case, the ex-husband of a woman failed to comply with an order of the court to produce documents and information relating to a property dispute. He applied for relief against the unless order and the case reached the Court of Appeal. One of the arguments employed was that striking out his claim because of non-compliance with the order would breach his human rights under Article 6 of the European Convention on Human Rights. His appeal was rejected.

Michael Wilson says, "When disclosure of documents is required by the court, the demand must be treated seriously. Ultimately, failing to comply with the court's rulings can result in your case simply being rejected." For advice on litigation matters contact Michael Wilson. michaelw@daltons-law.co.uk

Making the Boundaries Clear

Paul O'Flynn says that boundary disputes may often seem trivial – unless, that is, you become embroiled in one yourself, in which case they tend to assume gargantuan proportions. Unfortunately, they are also depressingly common. This is due to the fact that boundaries in England have not always been precisely defined.

Since mid-October 2003, it has been possible, on payment of a small fee, to file a precise plan with the Land Registry to show exactly where your boundary lies. Unless you have obtained the agreement of the adjacent landowners in advance, you also normally have to serve a notice on them that this has been done.

If they do not object, within twenty days, the application to register the boundary will usually succeed and the plan will be accepted as showing the true boundary, with your title documents amended accordingly if necessary.

Needless to say, there are limitations to this. For example, third party rights must not be infringed. There is also a right for the owners of adjoining land to object to the plan.

For more information on boundary registration or disputes, contact Paul O'Flynn for advice as soon as possible: paulo@daltons-law.co.uk

*Your past, present & future:
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