

Legal alert

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Deutsche Bank v Sentrum Hayes [2017]: A recent warning for tenants when surrendering their lease

This recent case is a reminder of the surrender trap for tenants created by the cryptically-worded section 100 of the Law of Property Act 1925. If a landlord's interest is mortgaged then generally the landlord's lender's consent will be required before the landlord can accept a surrender of a lease. If the lender's consent is not obtained then a purported surrender by the tenant to its landlord will be ineffective.

Deutsche Bank was the tenant under a lease, with a significant annual rent of £2.6 million per annum. They no longer required the premises. They had underlet the property to Sentrum Hayes at a rent which matched the headlease rent. Subsequently, the freehold interest was transferred to Hayes Freehold a company within the same group as Sentrum Hayes, with the help of a loan of over £25 million from the Co-Operative Bank secured by a charge against the freehold. Clauses in the debenture prevented the landlord from entering into transactions to sell, lease, transfer or dispose of any secured assets, without the prior written consent of the lender (which meant that section 100 applied).

Hayes Freehold (the landlord), Deutsche Bank (the Tenant) and Sentrum Hayes (the undertenant) then all agreed simultaneously to surrender the underlease and headlease and to release each other from their respective obligations. However, the Co-Op did not consent to the surrender of the headlease. The absence of consent meant the surrender of the headlease was ineffective and so Deutsche Bank as tenant was still liable to pay the head rent, despite it having released its undertenant Sentrum from their obligations in the underlease.

Deutsche tried to mitigate its position by seeking a declaration that the surrender of the underlease was also ineffective so it could retain the underlease rental income. The claim was dismissed by the High Court on the basis that there was nothing to suggest that the parties had intended the surrender of one lease to be dependent on the surrender of the other. Moreover, there was no impediment to Deutsche Bank accepting a surrender of the underlease, because Deutsche's interest was not charged.

The undertenant, Sentrum Hayes' interest was also charged to Co-op but section 100 does not apply to the surrender of a tenant's charged interest to its landlord. In other words the consent of the tenant's lender is not required under section 100 to a surrender of the tenant's leasehold interest, and section 100 does not extend to a tenant handing back a lease to its landlord. The Co-Op could potentially pursue Sentrum Hayes for a breach of covenant contained in the debenture, but this had no impact on the validity of the surrender of the underlease to Deutsche Bank.

Points to Note

- 1) The court refused to imply into the surrender of the underlease a condition precedent that the release would only take place if the headlease was also surrendered.
- 2) When acting on a surrender a tenant's solicitor should investigate the landlord's title. If the landlord has a mortgage and the mortgagee's consent is required for the surrender, that consent must be obtained. This is a key point for the tenant to check.