

Landlord and Tenant – Virtual Assignments

February 2009



Virtual Assignments found to be in breach of alienation provisions in Lease

Patricia Cronin, Associate, explains the implications of a recent first instance decision in relation to virtual assignments. (February 2009)

Virtual Assignments are sometimes used as a way of passing the economic benefits and burdens of a lease or any underlease to a virtual assignee in a situation where, for example, a landlord's consent has not yet been obtained. Whilst virtual assignments have always come with a health warning, a recent case heard at first instance in the High Court has held that by entering into such a virtual assignment, the tenant had breached the standard form of alienation covenant not to part with or share possession of the premises.

While it remains to be seen what will happen on any appeal there is no doubt that this case will be welcomed by landlords who have concerns that virtual assignments circumvent aspects of the landlord and tenant relationship. In particular this is often the case where the landlord has doubts about the strength of the virtual assignee's covenant.

The outcome of the above decision means we are less likely to see virtual assignments taking place and more likely to be insisting upon all the necessary elements to be in place, including any landlord consents, to enable a legal assignment of the tenant's interest to proceed without the concerns brought by a virtual assignment.

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