Street V Mountford Example

"The right to occupy land in return for payment is consistent with the grant of a lease or a contractual licence, however, the consequences of the two alternatives are very different"(1) The reason for this difference is because under the Land Registration Act 1925, only a lease is a legal interest in land and is capable of registration. This affords the lessee a substantial number of rights including the ability to assign the interest. In contrast, a licence is essentially merely a personal right and can be revoked by a licensor much more easily than determining a lease.

Licensees are also not protected by the Rent Act 1977 and this means that lessees have a much more secure security of tenure. It is essential to establish the courts interpretation as to whether a lease or a licence has been granted as it can avoid potential costly disputes in the future.

Law prior to Street v Mountford

In the case of Lynes v Snaith [1989] 1 QB 486 that courts decided that the fact that the defendant had exclusive possession of the property concerned, was indicative of the presence of a lease and not merely a licence. The case

of Facchini a Bryson [1952] 1 T.L.R. 1386 restated this position and held that, “provided the other essential characteristics of a lease were present, the grant of exclusive possession determined conclusively that the occupier was a tenant.” This remained the legal position pertaining to leases until the mid-Nineteenth century, when the courts proceeded down a different route. There were a series of legislative changes in the mid 1970’s that resulted in the position of lessees being much strengthened in comparison to their licensee counterparts.

As a result landlords, devised a method of bypassing the legislation by ensuring that they only granted licensees over their property.

Landlords created a device called a “non-exclusive occupation agreement” to avoid providing there tenants with the increased protection of the new legislation. These agreements essentially were a statement by the tenant that they were not entitled to exclusive possession of the property concerned and they agreed to share the property with any persons whom the landlord decided to place there.

Surprisingly, the courts upheld one of these agreements in the case of Somma v Hazlehurst and Savelli [1978] 1 WLR 1014. It was stated in the judgment of this case by Cumming-Bruce L. J. that, “We can see no reason why an ordinary landlord…should not be able to grant a licence to occupy an ordinary house.

If that is what both he and the licensee intended and if they can frame any written agreement in such a way as to demonstrate that it is not really an agreement for a lease…”

Principles Established

In the case of Street v Mountford (1985) A. C. 809, it was established that the deciding factor in determining whether a lease or a licence was created was the circumstances underlying the agreement and not either the content of the agreement itself or the intention of the parties concerned. Lord Templeman commented in his judgment that, “where the only circumstances are that residential accommodation is offered with exclusive possession for a term at a rent, the result is a tenancy”. Three hallmarks of a lease were enunciated in this case

and they were as previously mentioned: exclusive possession of the property, for a fixed or periodic time and at a rent.

If these conditions were present, regardless of the content of the agreement between parties, the result was a tenancy. However, the presence of exclusive possession in the arrangement will be the deciding factor. This is the essential characteristic to determine whether a tenancy has been granted.

The substance of the transaction as a whole must be examined to uncover if the occupier concerned has an actual right to exclusive possession. Assuming the occupier has exclusive possession, he will be presumed to be a tenant in the absence of any factors to the contrary.

The most important thing to take from the Templeman judgment is that "...the test (used to establish whether a lease or a licence existed) was one of fact not form" It should be borne in mind that this case did not completely sideline the parties' intention when they entered into the transaction. "The intention of the parties is important in deciding whether or not they intended to enter into legal relations, or whether the transaction was a mere family arrangement or an act of friendship or generosity. This distinction as raised in Facchini v Bryson [1952] 1 TLR 1386 is still equally applicable to modern agreements, as it is one of the fundamental requirements of contract law and without it, no contract can exist.

How law has developed subsequently

There has been a large number of important cases in this area, that have clarified the legal position as regards to the distinction between leases and licences as expressed in Street v Mountford. The payment of rent has been held to not be an essential characteristic of a valid enforceable lease. Since common law and the definition of a lease in the Law of Property Act 1925, does not state that a lease has to be for a particular rent, it follows that this should not be held as an essential component, that could prevent an arrangement being defined as a tenancy.

This approach was demonstrated by the case of Ashburn Anstalt v Arnold [1989] Ch 1. In this situation the courts

decided that an agreement involving a business occupying a premises rent-free but paying outgoings was a lease and not a licence.

Another matter to be considered in this case was that of uncertainty of duration. Fox LJ stated in his judgment that the arrangement, “could be brought to an end by both parties in circumstances which are free form uncertainty, in relation to the duration of a term that the parties do not know where they stand. Put another way, the court does not know what to enforce. That is not the position here.”

Another interesting case is Stribling v Wickham [1989] 211 HLR 381.

In this situation there were several factors the court took into consideration when deciding that the arrangement was a licence and not a lease. The most influential factor, was that the three occupants were each individually responsible for the payment of their proportion of the rent. The other consideration the court reviewed was how the occupation of the residents was terminable. The fact that the landlord, or any one of the residents was able to end the occupation, by giving the other party twenty-eight days notice was viewed as significant to the outcome of the case. The case of Ogwr BC v Dykes [1989] 1 WLR 295 has demonstrated that in certain situations exclusive possession is not sufficient to create a tenancy.

In this situation, the occupiers had in fact been granted exclusive possession of the property, however it was granted this by the local authority, pursuant to their statutory duties. It was held that the statutory duty under which the local authority was operating was sufficient to rebut the presumption that a tenancy had been created.

The situation relating to a multiple occupancy agreement was looked at by the courts in AG Securities v Vaughan [1990] 1 AC 417. This case involved a landlord who had granted four people, four separate agreements to occupy a property, which he owned. The result would be, they collectively would have exclusive use of the property.

The court decided that the four agreements were independent of one another and that the right of exclusive occupation was not conferred on any one person. Situations of this kind can generate complex legal issues and

determining the issue of exclusive possession is more difficult in arrangements of this kind. “In the context of multiple or shared occupation, legal characterisation of the arrangement is not a simple choice between licence and tenancy: the occupiers may be licensees; they may be joint tenants of the whole property; or they may be parallel tenants, each occupier having a tenancy of a separate part of the property.”

The courts held in Westminster City Council v Clarke [1992] 2 AC 288 that in situations where a local authority is under an obligation to provide support for a particular individual, the treatment of the arrangement needs to be viewed in light of these obligations. In this case the court was not prepared to infer that a lease had been created in favour of the defendant, because of his homeless background and the fact that the local authority had provided him with exclusive possession of the property out of a statutory obligation. A similar situation existed in the case of Camden LBC v Shortlife Community Housing Ltd [1992] 90 LRG 358 and the result was also the same in this case.

In Gray v Taylor [1998] 1 WLR 1093 the Court of Appeal held that in a situation involving a almshouse, despite the fact that exclusive possession had been granted, no tenancy had been created.

It was held in Mikeover Limited v Brady [1989] 3 ALL ER 618, that “two identical agreements which conferred on the occupiers the joint right of exclusive occupation did not create a joint tenancy because the obligation of each licensee to pay part only of the rent was genuinely intended to be entirely independent of the obligation of the other licensee” This case shows the courts reluctance in certain situations to infer a tenancy unless it is clearly apparent that one exists when all the circumstances of the agreement are analysed. The one factor that has been confirmed throughout the last twenty years, is the necessity of exclusive possession for a lease to come into existence.

The case of Dellneed Ltd v Chin [1986] 53 172 is just one example of the courts upholding this defining principle.

Conclusion

The law surrounding the differentiation between leases and licences has been in a constant state of flux for the past hundred years, but there does now seem to be broad agreement as to precisely what will constitute a lease and what will not. The effect of the Rent Act 1977 and various amending legislation, on persons involved in residential arrangements for accommodation has been markedly reduced since the introduction of the Assured Tenancy and the Assured Shorthold Tenancy by the Housing Act 1988. This has had the effect of reducing the previously strong rights of tenants, especially involving security of tenure. There are however many tenancies that were created prior to the Housing Act 1988 and those will still be afforded the protection of the previous legislation.

The effect of the current legal stance on the difference between the creation of leases and licences is still of great importance to businesses and it is an area that has been constantly litigated over since the Templeman judgment.

Footnotes

1. Land Law: Text and Materials (2nd Edition) – Nigel P. Gravells (Sweet and Maxwell, 1999) p361
2. Land Law: Text and Materials (2nd Edition) – Nigel P. Gravells (Sweet and Maxwell, 1999) p363
3. Somma v Hazlehurst and Savelli [1978] 1 WLR 1014 at 1024-25
4. Street v Mountford [1985] AC 809 at 426
5. Megarry and Wade – The Law of Real Property (7th Edition) – Charles Harpum, Stuart Bridge and Martin Dixon (Sweet and Maxwell, 2008) p737
6. Ashburn Anstalt v Arnold [1989] Ch 1 at 716
7. Land Law: Text and Materials (2nd Edition) – Nigel P. Gravells (Sweet and Maxwell, 1999) p385
8. Land Law: Text and Materials (2nd Edition) – Nigel P. Gravells (Sweet and Maxwell, 1999) p385

Bibliography

1. Cheshire and Burn's Modern Law of Real Property (17th Edition) – E.

H. Burn and J. Cartright (Oxford University Press, 2006)

- Megarry and Wade – The Law of Real Property (7th Edition) – Charles Harpum, Stuart Bridge and Martin Dixon (Sweet and Maxwell, 2008)
- Land Law: Text and Materials (2nd Edition) – Nigel P. Gravells (Sweet and Maxwell, 1999) Landlord and Tenant (3rd Edition) – Mark Pawlowski and James Brown (Oxford University Press, 2005)
- www.lexisnexis.co.uk www.lawtel.co.uk