



# ASSIGNING A LEASE FROM TENANT TO GUARANTOR

**Peter Williams**  
June 2016

**SHOOSMITHS**

[www.shoosmiths.co.uk](http://www.shoosmiths.co.uk)

# ASSIGNING A LEASE FROM TENANT TO GUARANTOR

- Landlord and Tenant (Covenants) Act 1995
- House of Fraser case\*\* (2011) –
  - CA held that a guarantor cannot give a valid repeat guarantee
  - Lord Neuberger mused that perhaps a lease cannot be assigned from T to G
- Section 24(2) requires G to be released on assignment of lease to the same extent as T
- Section 25: any agreement that has the effect of frustrating the operation of the Act is void

\*\* K/S Victoria Street v House of Fraser (Stores Management) Ltd [2011] EWCA Civ 904

# ASSIGNING A LEASE FROM TENANT TO GUARANTOR

- EMI Group Ltd v O&H Q1 Ltd [2016] EWHC 529 (Ch)
- New tenancy (lease granted after 1995)
- Lease had been assigned from T's administrator to G (with landlord's consent)
- G had underlet the property to a group company
- G now claimed it was not liable for rent arrears

# ASSIGNING A LEASE FROM TENANT TO GUARANTOR



# ASSIGNING A LEASE FROM TENANT TO GUARANTOR

- Court held that Lord Neuberger had been correct
- Assignment of lease from T to G breaches section 25
- Assignment is VOID
- Apparently pointless litigation – surely G remains liable under the guarantee if it is not the tenant
- Will there be an appeal ? If so, what will the CA decide ?



# WHAT ARE THE CONSEQUENCES?

- Who is the tenant now ?
- What if an assignee has been registered as proprietor at the Land Registry ?
- Can assignee recover rent paid in error ?
- Can landlord pursue original tenant for the rent ?
- Has there been a breach of covenant against parting with possession ?
- Can landlord forfeit the lease ?
- Does the assignee enjoy protection under the 1954 Act ?

# ASSIGNMENTS INVOLVING JOINT TENANTS

- What about assignments from A to A&B, or from A&B to A&C ?
  - not yet considered by any court
  - uncertainty is already causing transactions to be restructured



# WHERE ARE THE DANGERS?

- Assigning or acquiring a lease
- Landlord being asked for licence to assign
- Due diligence on an acquisition
- Preparing certificate of title
- Company reorganisations
- Lease negotiation – tenants should not accept covenant to prevent assignment from T to G (in case there is a successful appeal)
- Underletting – does the landlord have title to the lease?





# WHAT IS THE SOLUTION?

- Each occurrence will need to be considered individually
- Depends on the parties' intentions
- One solution is to grant a new lease directly to the guarantor
  - expensive in terms of SDLT
- Solutions involving a series of assignments seem to run into section 25 difficulties

# QUESTIONS

