

MOUNT EDEN V FOLIA ([2003] NPC 95) CONSENT TO SUBLET AND THE NEED FOR SPEED



This case, heard in the Chancery Division of the High Court in July 2003, highlights the need for landlords to respond quickly where they receive a request for consent to a sub letting or assignment. It confirms that landlords who fail to do so may lose the right to object to a potential sub lessee even if they have reasonable grounds for doing so. It also raises the possibility of punitive claims for damages against Landlords who delay unreasonably.

The Law

Where a landlord's consent is required before premises can be assigned or sub let, the Landlord and Tenant Act 1988 provides that consent may not be withheld without reasonable grounds. The Act also provides that the landlords must respond within a reasonable time, providing the tenants with written notice of their decision and specifying any conditions attached.

The Facts

In Mount Eden v Folia the tenants applied for consent to sub let and the landlords were notified by fax of the need for urgency in their response. Nonetheless, the landlords took a period of approximately three weeks to respond, indicating that consent was refused. The tenants claimed that consent was unreasonably refused, and they were entitled as a result to proceed with the subletting without consent. The landlords applied to the court for an order restraining them from doing so. The tenants counterclaimed for an order that consent be given, or in the alternative a declaration that they were entitled to proceed without consent. In the alternative, punitive damages were claimed for breach of statutory duty.

The Decision

The court decided that:

- In each case, it was a question of fact as to what constituted a reasonable time for a response to a request for consent.
- The landlords had not responded within a reasonable time. They had made a decision 3 weeks before informing the tenant of this.
- Landlords were precluded from relying on grounds for refusal communicated after a reasonable time, whether those grounds were good, or not.
- As this was a claim for breach of statutory duty, it was possible for the tenants to claim exemplary or punitive damages .

This Newsflash is issued by the Leisure and Property Management Law Group should you have any queries arising from it please contact

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