

## FROM COVENTRY VIEW

### Law and Business – Here be Dragons

At **David Lee Solicitors** I advise clients on a range of litigation-based topics, and not just housing and landlord-and-tenant. Most of them are small businesses of one sort or another. And I've been horrified by how little they know about really basic bits of law, despite having lived here for so many years. As one of my principals said when I was a trainee in London:

*You don't need to know exactly where the mines are. We've got people who can tell you that. But you DO need to know that you're in a minefield.*

I thought that Dragons would be better for the title, but the meaning's the same. If you don't know there might be a problem you go blundering on until it blows up in your face. Or has you for lunch.

Lawyers aren't needed by most businesses every day. They get called in when the owners reckon they have a legal problem. So it's the businesses which need to know what can be a problem and what is basically harmless. They need to learn a little law in the same way that you learn a little first aid – enough to deal with the minor cuts and bruises you get every day, but also enough to know that somebody with excruciating pain in the chest radiating down the arms is beyond a sit-down and a nice cup of tea, and needs urgent help from the paramedics.

And it doesn't help if they believe various myths, fairy stories and legends. Like the Four Humours of ancient Greek medicine, beliefs that chest pains are caused by an excess of black bile and are cured by applications of poultices of lettuce leaves, or whatever, aren't just ineffective, they are downright harmful and prevent or at any rate delay proper treatment being given. Possibly until it's too late.

#### COVENTRY MAN'S BASIC GUIDE

So here are a few points that have come to me, in no particular order.

##### Leases

Business Leases are always tricky. A lot depends on what isn't there (which you can't see) as well as what is (which you can). You are tying up large amounts of money for long periods of time, and if you get things wrong you may be risking the entire business. ALWAYS take advice on these. If the lawyer misses something you can sue him. If you do, and you are far more likely to do so, you don't have this option. And do note the key dates etc for break clauses, payment of rent, service of notices and so on. They really matter.

Residential leases are slightly easier. If it is a long lease (eg 99 years) you will both need lawyers as it's conveyancing and any mortgagees will insist on it, apart from anything else. If it is a short AST lease then a landlord needs at the least to get a standard lease from a reputable source (eg one of the landlords' organisations) and read it carefully. A tenant may

get away without paid advice, but again reading things through and asking questions (preferably in writing) is vital.

#### KEY POINTS

- If you are served with any sort of formal notice take advice. It is probably important, and undoubtedly has a time-limit for a response.
- If you want to serve a formal notice take advice too, at least the first time. There are often prescribed forms, and if you don't use them, or don't fill them in properly they probably won't be valid.
- If you are the tenant, or one of the tenants, then you are liable for ALL the rent for the WHOLE term of the lease. So are the other tenants going to pay their share? Are any sub-tenants too, because you're liable for their rent as well. And do you want to stay there for as long as that?
- If you are the landlord do remember that the most reliable tenants can go bankrupt/get wound up, or die, and you may have void periods. And that guarantors aren't always entirely reliable either.
- Most tenants with business leases can renew them when they expire. Unless this right has been excluded, which it often is. And there are a lot of important time limits and notices involved with this area. Beware.

#### Contracts

Business contracts don't have to be in writing but really ought to be. It is so much easier to prove things 2 years later if you can produce a copy. Especially if your salesman doesn't work for you any more. So confirm everything by email or letter and for heaven's sake keep copies. Do remember though that you can make an oral contract, over the phone or in a meeting, so be careful what you say. Keep a note.

#### KEY POINTS

- It's well worth while having standard terms of business that set out your normal conditions in an organised way. They can cover things like time for payment, limitation of risk to say invoice price, time for complaints, agreement to variations, interest on arrears, choice of law, arbitration clause and so on. Get this prepared by a lawyer – he'll get it right. And the cost is quite small in the scheme of things.
- If the other party sends you their terms look at them and consider if there is anything that you can't agree. Can you inspect the goods in 48 hours? If there are specifications are they correct? Do you agree the day work rates?
- Be very careful if the contract says it is an ENTIRE CONTRACT and that the parties haven't relied on any pre-contract representations. This means that you have to get all of the terms in it, and that the letter from their managing director that says that the coating has been approved by the MoD, when it hasn't, can't normally be relied on. So you may be stuck. Unless you get this put into a schedule somewhere.
- If it's a big valuable contract GET ADVICE. The time to negotiate things is before you sign up, not afterwards.

- Although the courts can vary contracts if they are on one party's standard terms and are unreasonable, they can only do so in some limited ways, and their general attitude is that it is up to businesses to drive their own bargains, so they aren't enthusiastic.
- Besides, litigation is expensive and risky. A good contract will settle things from the outset.

## **Insolvency**

All businesses ought to know something about this.

### **KEY POINTS**

- If somebody goes bankrupt, or if a company is wound up or goes into administration it is very unlikely to be able to pay its debts in full, especially its unsecured debts.
- Accounts get out of date very quickly. If a potential customer's or supplier's latest accounts are 2 years old they may not mean very much at all.
- There are rules to prevent a debtor off-loading their assets on a spouse or a friend, but they don't work every time, so just because X has a villa in Tuscany doesn't mean he'll still have it in 6 months when he goes bust.
- And nothing ever seems to hold its value when the Trustee sells it. Especially business debts that are down in the accounts as Debtors. These are frequently worthless.
- People and businesses go bust because of cash-flow, not long-term profitability. You may be on course to make £5m when you sell the plant in 3 years' time, but if the bank insist on getting their £500k back now you've got a serious problem.
- And every time a large business fails there are lots of smaller suppliers, sometimes even including the lawyers, who will have to write off invoices that previously looked fine, and which they were relying on to pay their own way.

## **Other Areas**

A business has a lot of bits of knowledge to cover as well as its core business – tax, planning, environmental protection, health and safety, employment, immigration and the rest. These need to be dealt with. And the owners may have family law issues following the break-up of a marriage which can really mess up a family-owned business. Or the plans for the future generation are spoiled by a badly-drafted will, or indeed no will at all.

Plan ahead. Have a will. Keep records. And take advice.

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