Cox Cooper Ltd
Solicitors

Spring 2018

Your quarterly bulletin on legal news and views from Cox Cooper Solicitors

Commercial Law UPDATE

GDPR – ICO Launches Awareness Campaign for Micro-Businesses

The EU General Data Protection Regulation (GDPR) replaces the Data Protection Act 1998 and comes into force on 25 May 2018. The new law gives individuals more control over how their data is used, shared and stored and requires organisations to be more accountable and transparent about how they use it.

The GDPR will be enforced by the Information Commissioner's Office (ICO), which has produced a wealth of guidance to help organisations comply with their new obligations – see https://bit.ly/2A10ayF.

Recognising that micro-businesses face particular challenges in preparing for the introduction of the GDPR, the ICO has launched an awareness campaign specifically aimed at those employing fewer than ten people. This includes an introduction to what the GDPR entails with regard to protecting people's personal data (see https://bit.ly/2pTq8iV) and an eight-step guide to compliance (see https://bit.ly/2IPqZdb).

The ICO also notes that many sector and industry groups are geared up to help micro-businesses implement the GDPR and can be a good starting point for industry-specific advice.

Please contact us if you would like individual advice on GDPR compliance.

Incomplete Partnership Arrangements Lead to Court Appearance

When new partners are being introduced into a partnership, it is wise to finalise the arrangements quickly in case the partners fall out. Any lack of formality in the business arrangements can lead to trouble, as a recent case shows.

The case concerned two GPs who were in practice together. They decided to invite three other doctors to join their practice and requested their solicitors to prepare a new partnership agreement.

While the terms of that agreement were being finalised, the two partners fell out, which led to one of them being effectively barred from the practice. He then applied for an injunction which would allow him to return. The other partner then issued a notice dissolving the old partnership and claimed that a new partnership (a 'partnership at will', because its terms had not yet been agreed) had been commenced with the new partners.

The excluded partner claimed that the new partnership was not yet in existence and the notice terminating the old partnership was therefore invalid. The new partners had not yet legally joined the partnership.

The remaining doctor and the new partners argued that the old partnership had been dissolved and that they had created a new partnership which excluded the other doctor.

The dispute ended up in court, where it was decided that the partnership between the original partners had been validly dissolved and a new partnership (the terms of which had not yet been finalised) was in existence between the remaining doctor and the new partners. They had never intended to retain the original agreement, and in any event it was possible for them to dissolve the existing partnership, without the excluded partner's consent, and set up a new one.

The case illustrates the importance in similar circumstances of putting documentation in place quickly. Where new partners are invited to join an existing partnership and are working in that capacity before the partnership agreement is finalised, there is a good chance that the court may conclude that a partnership at will has commenced.

For advice on any partnership issue or the creation or review of a partnership agreement, contact us.

Copyright Law Still Applies on the Web

The idea that the Internet is a free-for-all is nothing more than a persistent myth and the consequences of publishing copyright material online without permission can be severe. In one case, a television news broadcaster found itself in hot water after publishing a love poem on its website, to the chagrin of the poem's author.

The author had attracted media interest after penning what was billed as the longest love poem ever written. One of the broadcaster's reporters arranged an interview with him and persuaded him to send her a copy of the poem. It appeared on the broadcaster's website for just over 24 hours before it was taken down following the author's complaint. He responded by launching a claim for damages for alleged infringement of his copyright.

The broadcaster admitted that the author owned the copyright in the poem but denied infringement on various grounds. However, in refusing to strike out the author's claim, the High Court was not satisfied that it amounted to an abuse of process or that the litigation had been conducted in an improper manner. The ruling opened the way for the author to pursue his case to trial.

In such cases, an out-of-court settlement is the most likely result, but the situation could have been avoided entirely had the copyright owner's permission been obtained in advance of publication.

If you are considering quoting anyone else's material or using an image found on the Internet, it is important to ensure that you have the right to do so. Many intellectual property rights are jealously guarded.

Investor Wins Compensation from Finance Professionals Who Let Him Down

Investors inevitably take risks, but they are entitled to expect that finance professionals in charge of their portfolios will follow their instructions and manage their exposure to risk in line with them. That certainly did not happen in one High Court case in which a successful businessman's seven-figure investment shrank by more than half over a five-year period.

The businessman had invested £1.5 million in a portfolio run by a finance company in 2009. By the time he removed his funds in 2014, his investment was worth only £681,443. He launched proceedings against the company, alleging breach of contract, breach of statutory duty and negligence, claims that were denied by the advisers.

In upholding his claim, the Court found that he had chosen to invest in a medium-risk portfolio but that the finance company had breached its mandate by placing much of his money in higher-risk assets. The company had also breached its contractual obligation to operate a stop-loss policy by which it should have automatically sold any investment that made a loss of 5 per cent.

The businessman was entitled to be compensated for his capital loss. However, the Court rejected his claim for further damages to reflect the growth that his portfolio would have achieved had it been invested in accordance with his instructions. He knew that his portfolio might not prosper, even if properly managed, and an award under that head would have the effect of removing any risk in the investment.

The final settlement will be the outcome of negotiations between the two sides.

If you have suffered a loss because you relied on negligent advice given by professionals or because they failed to follow your instructions, contact us for advice on how to seek recompense.

Environmental Failures Bring Ban

The dangers of failing to adhere to environmental law are not just that fines or prosecutions may result. The directors of companies that fail to meet their environmental obligations can also be banned from acting as directors.

In December, two directors of a waste management company that went bust were banned from acting as directors of a company for seven and nine years respectively – primarily for failing to meet their responsibilities under the Environmental Protection Act 1990, which had resulted in the risk of serious pollution.

Environmental law has real teeth and those who fail to comply can face very substantial penalties. For advice on the law relating to your business, contact us.

Court of Appeal Uses Real World Valuation Principles

An empty office block in Blackpool was given a rateable value (RV) of £490,000 by the local valuation officer, who made the valuation based on the expected rent for which the building could be let. The valuation was based on an assumed demand for a similar property.

The property market in Blackpool being saturated, the owner of the building considered that there was little chance of finding a tenant for it at all, so was unsurprisingly unhappy with the valuation. On appeal to the Valuation Tribunal, the RV was reduced to £1 and that in turn was appealed by the valuation officer to the Upper Tribunal, which restored the original valuation.

The next step was a hearing before the Court of Appeal. The Court restored the £1 valuation, concluding that in the absence of any evidence of any demand for the office block, there could be no legitimacy in a valuation which required an assumed demand to be hypothesised.

If you are having problems with officialdom, we may be able to assist you to achieve a better outcome.

Seeking to Waive Dividends?

For a person who has no need of the income from a family company, a dividend waiver, which allows other shareholders to receive dividends but not the person who has executed the waiver, can be a useful device.

However, the use of dividend waivers can present difficulties unless the process is correctly managed and the potential issues are given full consideration. They should never be put in place without professional advice.

One little-known aspect of creating dividend waivers is that because they are a 'one-sided' agreement (there is no consideration for the waiver), to be valid they must be executed as a deed. However, the drafting, preparation and execution of a deed is a 'reserved activity' under the Legal Services Act 2007 and whilst solicitors are authorised to carry out this work, many professional tax and accounting advisers are not.

The Chartered Institute of Taxation has recently advised its members that if they carry on such activity they must be authorised to do so under the Act, unless they are exempt.

To ensure your company's affairs comply fully with the law, contact us.

Refusal to Cooperate Spells Trouble

Being made bankrupt is never a welcome experience, but failing to comply with reasonable requests of the Official Receiver can make matters even worse.

Once a person is made bankrupt, they are required to deliver a statement of affairs within 21 days and to hand over to the Official Receiver all relevant books, records and papers in their possession.

In a recent case, a man had failed to provide the Official Receiver with the information requested after he had been adjudged bankrupt. His non-cooperation was total, leading the Official Receiver's representative to give evidence that he 'has not provided any information in writing or orally about his assets and liabilities, and…has not complied with any obligation that would enable the Official Receiver to investigate his conduct or financial position'.

After he had been given several chances to put matters right, the case returned to court where the judge concluded that there was nothing in his 'evidence or the documents before the court which is capable of constituting reasonable excuse for failure to comply with the obligations'.

The man was found guilty of contempt of court, and his punishment was an immediate term of imprisonment of eight months.

If you find yourself or your company in significant financial difficulties, taking early advice is important. Waiting until a crisis point is reached will rarely lead to the most satisfactory outcome. Simply burying your head in the sand is never the best course of action to take.

E-Signature Consultation

Under the Law Commissions Act 1965, the Law Commission is required to submit programmes of law reform to the Lord Chancellor.

The latest topics put forward for consideration include a review of the use of e-signatures. These are becoming increasingly common as they allow documents to be signed and executed very quickly and the electronic version is then available for storage.

However, although their use is commonplace, legislation does not specifically deal with them, leading to the possibility that a claim could be made that an e-signature is not valid. The Commission has therefore selected the topic for its 13th Programme of Law Reform in order to give their use the required certainty.

Tenants to be Given Right to Sue Landlords Who Fail to Keep Premises Fit for Human Habitation

A proposal is under consideration by the Government to give tenants the right to sue landlords that provide accommodation which is unfit for human habitation or becomes so during the tenancy.

The proposal will apply to tenancies of seven years or less and will make it an implied term in the lease that the let premises must be fit for human habitation and will be kept so by the landlord. The requirement will include all the let areas, including common areas.

If the landlord fails to comply, the tenant(s) will be able to sue for compensation or require the landlord to put right any defects.

Landlords are already required to keep the premises they let safe. The changes will be introduced in a new Fitness for Human Habitation and Liability for Housing Standards Bill.

In Principle Planning Permission

One of the bugbears of UK planning law has always been that a lot of work has to be done before a planning application can be considered because an outline planning application must first be made, except for certain proposed brownfield developments. The process can also involve considerable expense.

However, that is set to change. From 1 June 2018, it will be possible to submit an 'in principle' planning application for small developments (ten or fewer dwellings on a site of one hectare or less and involving 1,000 square metres or less of floor space) that consist mainly of housing, with only a limited amount of detail (such as the maximum and minimum number of housing units) being required to be supplied.

On clearing that hurdle, an application for technical details consent must be made. This must be granted before the development can proceed.

It is not clear what the requirement that the application has to be mainly for housing means and no doubt the courts will, over time, provide guidance. The planning authority will be required to give a decision on the in principle application within five weeks, which should also help speed up the process.

There are, however, certain limitations on when the new procedure may be used.

For advice on any planning law matter, contact us.

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