



Hotel Case Highlights The Need For Effective Estate Management

London Tara Hotel Ltd v Kensington Close Hotel Ltd involved a dispute between two neighbouring hotels over the use of a private road which is owned by the London Tara Hotel. In 1973 the London Tara Hotel granted a licence allowing use of the road to the then owner of the Kensington Close Hotel for a sum of £1 per annum "if demanded". That licence was expressed to continue from year-to-year unless terminated by four weeks notice.

In 2007 the owners of the London Tara Hotel sought to terminate those rights and they issued proceedings to obtain an injunction to prevent the Kensington Close Hotel from using the road for dropping off passengers from coaches.

However, the court ruled against the London Tara Hotel, holding that the Kensington Close Hotel had a permanent right of way over the land by virtue of an easement that had arisen by prescription.

Discussion

A prescriptive easement arises when the right has been utilised without force, without secrecy and without permission from the party owner whose land is affected for at least 20 years.

The London Tara Hotel thought they were protected from prescriptive easements arising because they had granted a licence allowing the private road to be used, thereby making it impossible for the Kensington Close Hotel to use the road without permission.

Using a licence to prevent a third party from acquiring easements over land is common. How then did the Kensington Close Hotel manage to secure a permanent right of way over the land?

The licence in 1973 was personal to the then owner of the Kensington Close Hotel. Since then the hotel has changed hands a number of times as a result of corporate mergers and acquisitions. The court held that as soon as the Kensington Close Hotel changed hands the licence became irrelevant as there was then different person using the private road who the personal licence did not apply to. They were therefore using the road without force, without secrecy and most importantly, without permission.

Unfortunately for the owners of the London Tara Hotel, changes in ownership of businesses are often not apparent, especially if the use of that land remains the same. There was nothing to suggest that the identity of the owner of the Kensington Close Hotel had changed. As unfair as it sounds, the court ruled that this would not prevent prescriptive easements arising.

How can you protect yourself?

The case highlights the fact that landowners need to be vigilant to prevent a third party from obtaining rights over their land. Becoming burdened with rights, such as easements, can decrease the value of the land that is subject to the right.

A periodic review of any rights affecting your land should be conducted. The case shows that it is important to check the conditions of the licence as even apparently authorised use of the land could be outside the terms of the licence.

You should act promptly to take positive action when their land is being used without permission or where the use exceeds or is otherwise outside of the licence terms.

You should ensure that the terms of the licence are adhered too. Had the London Tara Hotel demanded the £1 per annum payment the case would probably have been very different as this may have created a new agreement with the new owners of the Kensington Close Hotel.

This case serves as a reminder that effective estate management is essential in preventing a third party from acquiring unwanted rights over your land. If you have any concerns about your land please contact **Caroline Bowler** (caroline.bowler@actons.co.uk) or another member of the Dispute Resolution team on **0115 9 100 200**.

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