

Covenants Not Exclusive

A recent case shows the folly of making assumptions about lease terms and, more particularly, of the pitfalls that can occur if the drafting of a lease is done without sufficient care.

A lease contained two covenants relating to the condition of a let property after the tenant had ceased to occupy it. The first specified that the tenant would remove various fixtures and make the premises good. The second specified that the tenant would fit out the premises in accordance with a specification contained as a schedule to the lease.

The tenant believed the two covenants to be inconsistent and mutually exclusive and sought to have the first covenant deemed to be void for uncertainty. The Court of Appeal decided that the clauses were not inconsistent and where any apparent inconsistency applied, the clause specifying the fitting out of the premises would take precedence.