Neutral Citation Number: [2018] EWHC 122 (Ch)

Case No: PT-2017-000004

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30th January 2018

Before :

MR JUSTICE FANCOURT

- -

Between :

(1) SACKVILLE UK PROPERTY SELECT II (GP) No.1 LIMITED **(2) SACKVILLE UK PROPERTY SELECT II NOMINEE (1) LIMITED**	**Claimants**
- and -	
(1) ROBERTSON TAYLOR INSURANCE BROKERS LIMITED **(2) INTEGRO INSURANCE BROKERS LIMITED**	**Defendants**

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Mark Wonnacott QC & Nicholas Trompeter (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Claimants**
Damian Falkowski (instructed by **Duane Morris**) for the **Defendants**

Hearing dates: 17 January 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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BEFORE MR JUSTICE FANCOURT

Mr Justice Fancourt:

1. This is another case about the validity of a notice purporting to exercise a break option in a lease. The Claimants are the landlords and the Second Defendant ("Integro") is the tenant. The First Defendant ("Robertson") is the former tenant.

2. The Claimants issued a Part 8 claim seeking a declaration that the lease will not determine pursuant to the break option and then issued an application on 13 November 2017 for summary judgment. Although the Defendants' acknowledgment of service suggested that a Part 8 claim was inappropriate because of disputes of fact and impending Part 20 proceedings, in the event the Defendants did not argue that the application should be dismissed for those reasons.

3. The issues raised in the claim are questions of law based on either undisputed facts or facts that the Claimants are willing to assume in the Defendants' favour for the purposes of this application. The Court would be in no better position to decide the disputed matters after a trial.

The factual background

4. The lease in issue was granted by the Claimants to Robertson on 14 March 2013 for a term of 10 years from that date at an annual rent of £219,575.03 subject to review ("the Lease"). The demised property is part ground and first floor, America House, 2 America Square, London EC3 ("the Premises"). The Claimants were identified in the Lease as "the Landlord" and Robertson was identified as "the Tenant".

5. Clause 1.2.1 of the Lease provides:

> "The expressions "Landlord" and "Tenant" shall include their respective successors in title, "Tenant" shall include the personal representatives of the Tenant and any person in whom this Lease may from time to time be vested by whatever means…"

6. Clause 1.2.5 states that any reference to "the Lease" is deemed to be a reference to the Lease and any deed, agreement or other document supplemental or collateral thereto, or entered into pursuant to the terms of the Lease.

7. The alienation covenant by the Tenant allows assignment of the whole of the Premises with the prior written consent of the Landlord, subject to various conditions and terms, in reasonably standard form.

8. The break option is contained in clause 6.10 of the Lease as follows (so far as material):

> "The Tenant may terminate this lease on 14th March 2018 (the "Termination Date") by giving to the Landlord not less than nine months' prior written notice of such termination expiring on the Termination Date and if such notice is given and the Tenant shall:

> 6.10.1.1 up to and including the Termination Date have paid the annual rent reserved by clause 2.1 due under this Lease; and
>
> 6.10.1.2 on the Termination Date give vacant possession of the Premises;
>
> then on the Termination Date this lease shall absolutely terminate and be of no further effect…"

9. Shortly after the grant of the Lease, it was duly registered at the Land Registry under title number AGL281940 with Robertson named as proprietor with title absolute.

10. Following an acquisition of the business of Robertson by the Integro Group, Robertson applied for and was granted licence to assign the Lease to Integro. Licence was granted in a formal deed made on 23rd March 2017 ("the Licence"). The Licence recited that Robertson was the registered proprietor of the Lease, identified the registered title number and contained a covenant on the part of Integro to apply to register the assignment of the Lease at the Land Registry within ten business days of the completion of the assignment.

11. By deed made on 29th March 2017, Robertson assigned the residue of the Lease to Integro ("the Assignment"). The Assignment was signed by the same director on behalf of each of Robertson and Integro. It was in a form appropriate for an unregistered lease, not in Land Registry Form TR1.

12. Notice of the Assignment (with a certified copy thereof) was given by Integro to the Landlord on 20th April 2017.

13. The notice of assignment stated that rent demands and correspondence should be sent in future to Integro.

14. By letter dated 2nd May 2017, Integro's then solicitors, EC3 Legal, sent to the Landlord a formal notice purporting to exercise the break option. The covering letter enclosing the notice stated that EC3 Legal acted for Integro "being the Tenant under the Lease" and said that "Our Client now serves Notice to determine the Lease".

15. The notice itself was in the following terms (so far as material):

> "To: [The Landlord].
>
> From: INTEGRO INSURANCE BROKERS LIMITED whose registered office is 100 Leadenhall Street, London, EC3A 3BP (**Tenant)**.
>
> Premises: …
>
> We EC3\LEGAL LLP of 4th Floor, 106 Leadenhall Street, London EC3A 4AA for and on behalf of the Tenant **GIVE YOU NOTICE** that the Tenant intends to terminate the term of the lease on the 14th March 2018 in accordance with clause 6 of the Lease…"

16. The notice was signed "EC3 Legal", identified as the "solicitors for and on behalf of INTEGRO INSURANCE BROKERS LIMITED".

17. On about 17 May 2017, the Landlord's agents sent to Integro at the demised premises a demand for rent and service charge payable on 24th June 2017.

18. Integro did not comply with its covenant in the Licence to apply for registration within ten business days of completion of the Assignment. It only did so shortly before 7 July 2017. Integro was registered as proprietor of the Lease at the Land Registry with effect from 7 July 2017.

19. By letter dated 27 June 2017, the Landlord's solicitors contended that the break notice was invalid as it had been served on behalf of someone who at the time was not the Tenant, just the beneficial owner of the Lease. The letter stated that the Lease would therefore continue until its contractual term date of 13 March 2023.

The evidence

20. Witness statements on behalf of the Defendants were made by Matthew White, a solicitor at EC3 Legal, and John Owens, a managing principal of Integro, who at the time of the break notice was a director of both Integro and Robertson.

21. Mr White explains that with effect from 11 December 2015 Robertson was a wholly owned subsidiary of a holding company in the Integro Group and that Integro was also a subsidiary of that holding company. He explains that in his dealings with the Landlord's solicitors in relation to the Licence they understood and accepted that he was acting both for Robertson and for Integro and were aware of the group relationship.

22. Mr White states that on 18th April 2017 Mr Owens of Integro instructed him to give notice to terminate the Lease:

> "John Owens did not instruct me to serve the break notice on behalf of either Integro Insurance Brokers Limited or Robertson Taylor Insurance Brokers Limited. All John Owens wanted was for the break notice to be served by whichever company was entitled to serve the break notice."

He then explains that:

> "I served the Break Notice in the name of Integro Insurance Brokers Limited as I had assumed wrongly the Lease was not registered at the Land Registry and that by the assignment of the lease the legal tenant was Integro Insurance Brokers Limited. I had received the Landlord's licence to assign the Lease to Integro Insurance Brokers Limited and had given notice of the assignment to the Landlord's solicitors. I did not consider there was any question as to who the tenant was."

23. Mr White then states that he considers that it was obvious to the Landlord that the notice was a mistake and that the Landlord was aware that he acted for Robertson and Integro and therefore had authority to serve the break notice in the name of whichever party was suitable. He says he served the break notice in the name of Integro because that was who he thought the legal tenant was.

24. Mr Owens states in his witness statement:

> "I believe that Integro had the necessary authority of Robertson Taylor in respect of service of the notice, given my various roles as described, the fact that Claire and I made the decision, and indeed her own roles, which included being the sole director of Robertson Taylor and chief financial officer of Integro. This being so, when Mr White was acting, our overall intent as a group was clear and he was aware that he was acting in the interests of Integro and Robertson Taylor: our instructions were to effect a termination of the Lease by the service of a break notice."

The Claimants accept that on this Part 24 application they must proceed on the assumed basis of the Defendants' evidence that, by virtue of group arrangements, Mr White in fact had authority to act and serve any necessary notice on behalf of Robertson and Integro, not just Integro.

The issues

25. The first question is: by whom, in the circumstances, should the break notice have been given?

26. The Landlord says: by Robertson, on the basis that Integro at the time was only an equitable assignee, with title to the lease remaining vested in Robertson pending registration of Integro. By virtue of s.27(1) of the Land Registration Act 2002, a disposition of a registered estate does not operate at law until the disposition is completed by registration. This did not happen until 7th July 2017.

27. A similar situation arose in Pye v Stodday Land Limited [2016] 4 WLR 168, where the landlord transferred part of its reversion and before it had been registered the transferee served on the tenant notice to quit. Norris J. held that the notice to quit should have been served by the transferor and so it was invalid.

28. In that case, the notice was a Case B notice under the Agricultural Holdings Act 1986. Such a notice must also satisfy the requirements for a common law notice to quit. Here, the break notice is a contractual notice required by the terms of the break option in clause 6.10 of the Lease. This requires not less than 9 months' prior written notice to be given to the Landlord by the Tenant. As defined in clause 1.2.1, "Tenant" includes the successors in title of Robertson and any person in whom the Lease may from time to time be vested by whatever means. Until Integro was registered, the Lease – which is a legal term of years – remained vested in Robertson, and Integro did not yet have title to the Lease. The Lease was held by Robertson on trust for Integro. As a matter of interpretation of the break option, therefore, Integro does not

appear to be "the Tenant" at the date of service of the break notice and so the notice must be served by Robertson.

29. The Defendants advanced a number of arguments to the contrary. These included: Integro was the beneficial owner, which was sufficient; the Lease falls to be interpreted together with the Licence and the Assignment, which means that "Tenant" includes Integro; the Landlord and Tenant (Covenants) Act 1995 has the effect that the equitable assignee is entitled to exercise the option; reliance on s.24 of the Land Registration Act 2002, and estoppel. Of these points, the most promising argument seemed to me to be that, against the background of the Act of 1995 and its effect, "the Tenant" in the Lease should be read as including an equitable assignee who is solely beneficially entitled to the Lease.

30. Under the Act of 1995, as from an assignment of a "new tenancy" the assignee becomes bound by the tenant covenants of the tenancy and entitled to the benefit of the landlord covenants (s.3(2)). The benefit and burden of all landlord and tenant covenants of a tenancy are annexed to each and every part of the premises demised by the tenancy and the reversion in them (s.3(1)). A "tenancy" includes an agreement for a tenancy and so includes an equitable lease, and "assignment" includes an equitable assignment (s.28(1)). Thus, after the Assignment was executed in favour of Integro, Integro was entitled to the benefit of the landlord covenants and subject to the burden of the tenant covenants of the Lease.

31. Mr Wonnacott QC, acting for the Claimants with Mr Trompeter, submitted that the break option was to be treated as a landlord covenant of the Lease, as in effect an agreement to treat the Lease as terminated on the specified date in the event that a valid notice is given by the Tenant. But he argued that where the assignment is equitable the benefit and burden of the covenants only passes in equity and not at law. This, he argues, means that upon an equitable assignment the former tenant is not released from liability under s.5 of the Act but is entitled to be indemnified by the assignee. Similarly, therefore, an equitable assignment would not entitle Integro to enforce a landlord covenant or to exercise the break option in its name.

32. I am not persuaded by this line of reasoning. The Act of 1995 does not distinguish between the effect of an assignment and an "equitable assignment". Both have the effect of releasing an assignor tenant from the tenant covenants and transferring the benefit of the landlord covenants to the assignee as from the assignment. Since "tenancy" is defined as including an agreement for a tenancy, the definition of "assignment" as including an "equitable assignment" must extend the Act's reach to an assignment that is not yet effective at law, e.g. a specifically enforceable agreement to assign or an unregistered or formally defective assignment.

33. However, a break option confers a unilateral right on the grantee and only a contingent obligation on the grantor. The obligation of the Landlord, which is a "landlord covenant" for the purposes of the Act, is the obligation to treat the Lease as terminated with effect from the specified date <u>if</u> a valid break notice is served. But the obligation is only triggered if the condition is satisfied. In my judgment, Integro obtained the benefit of the Landlord's obligation in clause 6.10 on the date of the Assignment and Robertson was released from the tenant covenants with effect from the same date, but the Landlord's obligation to treat the Lease as ending on 14 March 2018 depends on "the Tenant" giving appropriate notice. So the relevant question is

whether the definition of "the Tenant" includes a person who as equitable assignee is entitled to the benefit of the landlord covenants.

34. In my judgment, although the Lease created a new tenancy to which the provisions of the Act of 1995 apply, the Act does not vary the meaning of the condition in the break option. Integro was not on 2 May 2017 the "successor in title" of Robertson within the meaning of clause 1.2.1 of the Lease. Title to the legal term of years remained with Robertson. Nor was the Lease "vested" in Integro, even though Integro by statute had the benefit of the landlord covenants of the Lease. On the contrary, the Lease remained vested in Robertson but Robertson held the Lease on trust for Integro.

35. Integro argued that in view of clause 1.2.5 of the Lease, "this Lease" in clause 1.2.1 is a reference to the Licence and the Assignment as well as to the Lease itself, and so, by virtue of being the assignee of the Lease under the Assignment, the Lease was vested in Integro. Linguistically, that may be the effect of combining clauses 1.2.1 and 1.2.5 of the Lease, but the deemed reference to supplemental or collateral documents does not provide the answer to what "the Tenant" means in clause 6.10. What it does imply is that when the Lease terminates, obligations contained in supplemental or collateral documents relating to the Lease also terminate, subject to their express terms. Where clause 1.2.1 refers to the person in whom the Lease is vested, it is referring to the term of years created by the Lease, to which obligations and rights in the Lease itself or in supplemental or collateral documents are annexed. But that does not assist in answering the critical question of who is "the Tenant".

36. The Defendants then relied on section 24 of the Act of 2002. This provides:

> "A person is entitled to exercise owner's powers in relation a registered estate or charge if he is-
>
> (a) The registered proprietor, or (b) entitled to be registered as the proprietor."

By section 23(1) of that Act, "owner's powers" in relation to a registered estate consist of:

> "(a) Power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a mortgage by demise or sub-demise, and
>
> (b) Power to charge the estate at law with the payment of money."

37. In the Pye v Stodday Land case, Norris J. was faced with a similar argument, namely that because the assignee of part of the reversion was entitled to be registered as proprietor he was entitled by virtue of those statutory provisions to serve a notice to quit, being a disposition of a kind permitted by the general law in relation to a registered estate in land. That argument was rejected on the basis that where a registrable disposition takes effect in equity only until registered, the powers of disposition under the general law are necessarily limited: see para 37. Section 24 therefore does not give an equitable transferee power to do what only a legal proprietor can do, save where the Act otherwise provides (see, e.g., s.23(1)(b)).

38. In this case, however, Integro was not seeking to make a disposition of a kind permitted by the general law. It was seeking to exercise a contractual right under clause 6.10 of the Lease. That is not the kind of disposition permitted by the general law to which sections 23 and 24 of the Act of 2002 relate. Even if that distinction is wrong and section 24(1)(a) applies here, I would nevertheless follow the conclusion of Norris J. on the point, since I am not persuaded that it is wrong.

39. Although the Defendants asserted in their evidence an intention to rely on estoppel by convention, this was highly optimistic and, in argument, Mr Falkowski did not pursue the point. There was no shared understanding, which crossed the line between the Landlord and Integro, to the effect that Integro was the legal owner of the Lease regardless of the registration of its title.

40. Accordingly, the answer to the first question is that the break notice should have been given on 2nd May 2017 by Robertson.

41. The next question is whether in law the break notice was given by or on behalf of Robertson.

42. The Landlord says that it plainly was not: the notice was served by EC3 Legal, expressly on behalf of Integro as assignee of the Lease. The Landlord contends that any argument that the notice could be treated or understood as given on behalf of Robertson is defeated by two matters independently:

    (1) There was no intention on the part of Mr White, or Mr Owens on behalf Integro, to give the notice on behalf of Robertson;

    (2) Any reasonable recipient of the notice in the position of the Claimants would not conclude that the notice must have been given on behalf of Robertson rather than Integro.

43. In relation to the first point the Defendants contend that, as a matter of law, if EC3 Legal had authority in fact to serve a notice on behalf of Robertson it matters not that they had no actual intention to give the notice to the Landlord in that behalf. Alternatively, the Defendants contend that it is arguable that Integro, acting by Mr Owens, intended the notice to be served on behalf of Robertson because he intended that a valid notice should be given.

44. In effect, the Tenant is therefore arguing that Robertson was an unidentified principal of EC3 Legal or an undisclosed principal of Integro.

45. Mr White, on his own evidence, clearly intended to serve notice on behalf of Integro only. Mr Owens' evidence was that he wanted a notice to be served to break the Lease and, in effect, he left it to Mr White to decide what was needed and do it. Mr Owens instructed Mr White to serve the appropriate notice to break the Lease. He does not say that he intended the notice to be given on behalf of Robertson and Integro.

46. In my judgment, before an unidentified or undisclosed principal can take the benefit of an agent's act as his own it must be established that the agent intended to bind the principal; that is to say, to do the act on behalf of the principal. This is most clearly established by two decisions in 1993: National Oilwell (UK) Ltd v Davy Offshore

Limited [1993] 2 Lloyds Rep. 582 (Colman J.) & Siu Yin Kwan v Easter Insurance Co Ltd [1994] 2 A.C. 199 (Privy Council).

47. The essential facts of the National Oilwell case were a claim by a manufacturer for the price of a well head and a counterclaim by the purchaser for defective work and delay. The manufacturer's defence to the counterclaim was that the purchaser had taken out all risks insurance for his and the manufacturer's benefit, which covered the loss in fact suffered. The purchaser claimed that he did not intend to act for the manufacturer but only for other sub-contractors in taking out the insurance. Colman J. held that the manufacturer could establish privity of contract with the insurers by either proving that they were undisclosed or unnamed principals of the purchaser or that they were entitled to and did ratify the policy, but that in both cases it was necessary for them to establish that at the time of taking out the policy the purchaser intended to effect insurance on behalf of the manufacturer:

> "The result of these authorities is, in my judgment as follows:
>
> (1) Where at the time when the contract of insurance was made the principal assured or other contracting party had expressed or implied actual authority to enter into that contract so as to bind some other party as co-assured and intended so to bind that party, the latter may sue on the policy as the undisclosed principal and co-assured regardless of whether the policy described a class of co-assured of which he was or became a member.
>
> (2) Where at the time when the contract of insurance was made the principal assured or other contracting party had no actual authority to bind the other party to he contract of insurance, but the policy is express to insure not only the principal assured but also a class of others who are not identified in that policy, a party who at the time when the policy was effected could have been ascertained to qualify as a member of that class can ratify and sue on the policy as co-assured if at that time it was intended by the principal assured or other contracting party to create privity of contract with the insurers on behalf of that particular party.
>
> (3) Evidence as to whether any particular case the principal assured or other contracting party did have the requisite intention may be provided by the terms of the policy itself, by the terms of any contract between the principal assured or other contracting party and the alleged co-assure or by any other admissible material showing what was subjectively intended by the principal assured." (pp.596-7)

48. In the Siu Yin Kwan case, the question was whether an insurance policy excluded the right of an undisclosed principal to sue on it. Lord Lloyd of Berwick gave the advice of the Board and stated the general law as follows:

> "For present purposes the law can be summarised shortly: (1) an undisclosed principal may sue and be sued on a contract made by an agent acting on his behalf, acting within the scope of his actual authority. (2) In entering into the contract, the agent must intend to act on the principal behalf. (3) The agent of an undisclosed principal may also sue and be sued on the contract. (4) Any defence which the third party may have against the agent is available against his principal. (5) The terms of the contact may, expressly or by implication, exclude the principal's right to sue and his liability to be sued. The contact itself, or the circumstances surrounding the contract, may show that the agent is the true and only principal." (p.207D)

49. Accordingly, for Integro to claim that the break notice was served on behalf of Robertson as well as on behalf of Integro, the Defendants must be able to show that either Mr White or Integro itself intended the notice to be given in that behalf. Mr White plainly did not. Mr Owens' evidence is that he intended the Lease to be terminated and that he instructed Mr White to serve a valid notice. In my judgment, Mr Owens' understandable desire to break the Lease by serving a valid notice is not to be equated with an intention that the notice be served on behalf of Robertson (or Robertson and Integro). He delegated the question of what notice was needed (and who was to give it) to Mr White. In those circumstances, there is no arguable case on the evidence before me that either Integro or Mr White intended the break notice to be served on behalf of Robertson. That is fatal to any argument that the notice can be deemed to have been given on behalf of Robertson.

50. Even if that conclusion is wrong and the notice was arguably intended to be given on behalf of Robertson as well as on behalf of Integro, the notice (given in the name of Integro) was not valid unless a reasonable person in position of the Landlord would on receiving the notice, understand that when it stated "Integro" it meant to say "Robertson": Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] A.C. 749; Lemmerbell Ltd v Britannia LAS Direct Ltd [1998] 3 EGLR 67: Havant International Holdings Ltd v Lionsgate (H) Investment Ltd [2000] L&TR 297.

51. The Defendants argue, in this regard, that the reasonable recipient of the notice would have understood the following from the factual context:

(1) The Landlord knew that EC3 Legal was acting for both Robertson and Integro;

(2) Both companies had the same address on the Licence;

(3) The same director signed for both companies in the Licence and the Assignment;

(4) The Landlord had seen that the Assignment was not in form TR1, as would have been appropriate for the transfer of a registered lease.

52. In those circumstances, it is contended that the reasonable recipient would have realised that the Assignment was not in the correct form to transfer the legal estate in the Lease; that therefore the Lease would have remained vested in Robertson, and that

when the break notice stated that it was served on behalf of Integro it would reasonably have been understood as referring instead to Robertson.

53. I reject this argument. Although it is true that the Assignment was in a form appropriate for an unregistered lease, there is no basis for suggesting that this of itself would have made the transfer to Integro unregistrable. Indeed, the transfer to Integro was later registered by the Land Registry. (It is not in evidence whether Integro completed a pro forma TR1 to send together with the Assignment or simply wrote a letter giving the missing details – which were the title number of the property and confirmation that the transfer was not for money or anything that had a monetary value.) In my judgment, it is going much too far to say that a reasonable person in the position of the Landlord, receiving the break notice, would have realised that it was meant to be served on behalf of Robertson because the Assignment had not been made in form TR1 and so Integro would not be registered as proprietor.

54. The reasonable recipient would, however, have been aware that Integro had covenanted in the Licence to apply to register the Assignment at the Land Registry within ten business days of the date of completion of the Assignment. It would have assumed that Integro had complied with that obligation, sending whatever further documents were necessary and appropriate, and that Integro would therefore be registered as proprietor as from the date on which the application was received by the Land Registry. That would have made Integro the right person to give the break notice. Further, in the notice of assignment, Integro's solicitors had instructed the Claimants to send all future rent demands to Integro. The Landlord would therefore have been treating Integro for all purposes as the Tenant under the Lease. In my judgment, the reasonable recipient in those circumstances would be most unlikely to understand that the notice was meant to have been served by Robertson and that the name of Integro was a mistake.

55. Mr. Falkowski relied heavily on the decision of the Court of Appeal in Lay v Ackerman [2004] EWCA Civ 184; [2005] 1 EGLR 139. That case concerned the validity of a counter notice served by a landlord under section 45 of the Leasehold Reform, Housing and Urban Development Act 1993. The solicitors for the landlord wrongly gave the counter-notice in the name of Trustees of the Portman Collateral Settlements rather than the Trustees of the Portman Family Settled Estates. Neuberger LJ distinguished the case of Morrow v Nadeem [1986] 1WLR 1381 (notice given pursuant to section 25 of the Landlord and Tenant Act 1954) and held that the counter-notice was valid because it left a reasonable recipient in no doubt that it had been served on behalf of the correct landlord, even though the landlord was incorrectly named. On the facts of that case, it was clear to the tenant that the Portman Estates' solicitors acted for all emanations and trustees representing those Estates and that they were responding to the tenant's notice of claim. Mr. Falkowski seeks to rely on the factual similarity with this case and urges upon me the same conclusion, namely that the reasonable recipient would have understood that the break notice was served on behalf of the correct tenant, namely Robertson.

56. The decision in Lay v Ackerman followed a careful consideration of the statutory function performed by a counter-notice under section 45 of the Act of 1993. The Court of Appeal was able to hold that, in context, as long as it was clear that the counter-notice came from the landlord the misnomer was irrelevant. Here, I am concerned not with a statutory counter-notice but with a notice exercising an option, which according to its

terms must be served by "the Tenant" to be effective. It is also the case that, for reasons that I have given, the reasonable recipient would have had no reason to think that anyone other than Integro was the tenant. The distinction between the two different situations emerges in para 62 of the judgment of Neuberger LJ:

> "In my judgment, if it had been clear that the solicitors in [Lemmerbell –v- Britannia LAS Direct] were indeed serving the notice on behalf of the actual tenant, whoever it was, then it would have been a good notice. After all, the purpose of the break notice in Lemmerbell was not to identify the tenant to the landlord, but to communicate to the landlord an intention on behalf of the tenant, and no-one other than the tenant, an unequivocal desire to determine the lease in accordance with its terms. Once a person other than the actual tenant was identified in the notice as the person on whose behalf the notice was served, the notice could only be valid if it could be shown that, despite the mis-identification, a reasonable person in the position of the landlord could have been in no doubt but that the notice was served on behalf of the person that was the tenant. For the reasons given, the Court of Appeal held that a reasonable landlord could have been in such doubt."

57. For the reasons that I have given, the reasonable recipient of Integro's notice would have been in little doubt but that the notice was given on behalf of Integro. A reasonable recipient would not have assumed that "Integro" was a mistake for "Robertson". Accordingly, for this reason too, the Tenant cannot establish that the break notice was served on behalf of Robertson.

58. The Landlord's case is therefore correct in law and, there being no other reason for a trial to take place, the Landlord is entitled to summary judgment for the declaration that it seeks.