

Litigation & Dispute Resolution

Decision Affecting Landlords and Guarantors

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The High Court has just delivered its Judgement in the case of: Reox Holdings Plc, Plaintiff and David Cullen and Simon Davidson, Defendants

The decision is of great significance in relation to landlord and tenant law. It also has inevitable consequences for the banking community and those involved in the insolvency profession.

In summary, a lease was granted in 2007 in relation to an industrial unit in Carlow. The tenant company subsequently went into both receivership and liquidation. The lease contained a guarantee expressed in the form of many other guarantees of its type.

The liquidator of the tenant disclaimed the lease.

The landlord resorted to the provisions of the guarantee.

The guarantor agreed to enter into a new lease.

The High Court case was commenced by the guarantor who sought a declaration that the changes brought about by Section 132 of the Land and Conveyancing Law Reform Act 2009 applied to the new lease.

The 2009 Act was "commenced" on 28 February 2010.

Section 132 of the 2009 Act provides for rent review clauses to be construed as providing that the rent may be reviewed upwards or downwards or remain the same.

The High Court decided that the guarantor in this particular case is entitled to a declaration that Section 132 of the 2009 Act applies to any new lease entered into after 28 February 2010 by the guarantor with the landlord resulting from the exercise of the provisions of the guarantee contained in the lease. Therefore, the rent, when reviewed, can be upwards or downwards (or remain the same).

COMMENT: this decision is of major significance. It clarifies doubts as to whether or not the provisions of Section 132 of the 2009 Act would apply in circumstances where a guarantor is called upon to enter into a new lease.

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