

clear | compelling | approachable

FITZHUGH v FITZHUGH

James Howlett

Fitzhugh v Fitzhugh

James Howlett instructed by Simon Waterfield of Nelsons solicitors appeared for the successful appellant in the Court of Appeal in the case of Fitzhugh v Fitzhugh, in which judgement was given on 1st June 2012

The case decides a question of property law on which there has been no authority until now. The question is: if A and B ('the Licensor') grant a licence to occupy land to B and C ('the Licensee'), and the licence allows the licensor to give a notice to terminate the licence if the licensee has committed serious breaches of it, can a termination notice be given by licensor A alone if B will not co-operate? At the trial, Mr Justice Morgan decided that it could, but gave the licensee permission to appeal.

Reversing the trial judge's decision, the court of appeal took a robust approach: the licensor was defined by the licence as meaning all of the licensors and there was no room to construe those words as meaning anything else. Neither was there any need to imply a term that one licensor acting alone could give the notice: the test for implying a term is one of necessity and the licence, though clumsy, could work without implying the term. Authorities from the realm of landlord and tenant did not assist in construing this contractual licence.

Such licenses are not infrequently drawn up as part of family arrangements, as happened in this case. The case shows that when drafting licenses to use or occupy land, it is important to make clear and effective provision what should happen if the licensee (or licensor, or that matter) breaches the licence.