

HEADS OF AGREEMENTS, LETTERS OF INTENT, LEASE PROPOSALS, AGREEMENTS TO LEASE ETC

A heads of agreement, letter of intent, lease proposal, or agreement to lease (“lease agreements”) are agreements providing for a relationship between a Landlord and Tenant for the lease of premises either not immediately available for use or are not yet in existence. They can also be a type of holding arrangement so the property is secured by a tenant and not continued to be advertised for rent.

It is not always easy to determine whether the parties are bound to these lease agreements despite them being signed, and there having been an exchange of correspondence and negotiations. This is emphasised when there is a lack of clarity in the terms of the lease agreement.

ARE HEADS OF AGREEMENTS, LETTERS OF INTENT, LEASE PROPOSALS, AGREEMENT TO LEASES ETC ENFORCEABLE

Often lease agreements lack sufficient detail as to whether the parties intend to be bound by the agreement or whether it is a mere agreement to agree at a later stage. Often lease agreements can be void for uncertainty as a result of the lack of clarity in drafting. The wording of lease agreements needs careful consideration to determine the general nature of the agreement, for example, does it require further good faith negotiation to enter into a subsequent agreement or will the documents themselves stand as the agreement.

The courts in these types of matters look to whether the parties have evinced an intention to create legal relations and whether they have demonstrated sufficient consensus on all of the essential elements to warrant a finding that a concluded agreement was reached between them.

Broadly speaking, there are four categories into which the result of contractual negotiations might fall. These can be summarised as:-

1. The parties intend to be bound at once by the lease agreement although they will later re-state the terms in more precisely in a lease
2. The parties consider that the lease agreement is only to come into force when a condition precedent is fulfilled, such as the exchange of a lease or the performance of certain works
3. The parties have merely agreed to agree, or
4. The parties have made a provisional contract intending to be bound by it but assuming that in due course a lease will be made between them containing both the agreed terms and further terms which they will both agree on.

Many disputes regarding the above situations have been before the courts. Whether a lease agreement, whether a heads of agreement, letter of intent, lease proposal, or agreement to lease, falls into the above categories is determined based on certainty in the lease on a case by case basis.

Careful drafting is therefore vital in order to minimise risk that a court will find these documents to be vague and lacking in certainty so as to be enforceable.

The meaning of the agreement must be considered objectively often having regard to material outside the lease such as communication and negotiations. Courts endeavour to uphold the validity of the lease agreement however will not do so where in effect the court is asked to spell out the terms of the agreement which the parties themselves fail to agree. They will not reach conclusions that would change the lease agreement.

CONCLUSION

Views will differ about the classifications of the provisions of these types of agreements and whether the court can or cannot enforce them. This emphasises the necessity of obtaining expert legal advice before entering into any lease agreement.

Before entering into any lease agreement such as a heads of agreement, letter of intent, lease proposal, or agreement to lease you should contact Tony Pattinson of Ferguson Cannon to obtain expert legal advice. Tony will ensure that your interests are protected and that your desired contractual position is maintained. Obtaining this expert legal advice will ensure that your matter does not result in a dispute or before the courts, saving you valuable time and money.