

## DeVARGA COMMENTARY – JULY 2014

### “They’re Back and There May Be One on a Street Near You”

If there are two certainties they are that landlords seek to maximise their income and tenants to minimise it. For the last 6 to 7 years the advantage has been with the tenant. The market is starting to turn and in the future the advantage is going to be swinging to the landlord. And so we enter the exciting world of rent reviews and, inevitably, their impact on value.

We know that value holds a direct relationship to rental and so, in order to enhance value (or otherwise!), you need to look at your Leases, not only as a property investor but also as a lender. My view is, the success or failure (depending upon your perspective) in rent reviews lies in the Lease, more so than the evidence in the market.

In the Lease you will find ‘the teeth’ to arm yourself to take the best advantage – again, irrespective of your position.

You need to look at repairing obligations, alienation provisions and user clauses, but ‘The Daddy’ of them, the X-factor of all Leases and their impact on rent reviews, is the rent review clause.

Legislation is accelerating at a rate where the literal interpretation of the rent review clause and the meaning of one or two words can have a profound affect on rental.

Words which spring to mind are ‘upward only rent reviews’. I have recently seen some Leases where there are upward and downward rent reviews and so, as a lender, you need to consider the possibility of rents dropping during the course of your loan. You need to consider this question at the onset – before you send out the draft Lease. How do you determine the rental where the parties are at loggerheads? Do you use an Arbitrator; do you use an Expert? What powers do you give an Expert? Always remember DeVarga’s ‘law of property’ – for every action there is an equal and opposite reaction. These are the sort of questions which you should be focusing your mind on, even before you put your property to the market for rental purposes.

So the moral of this newsletter is, read your Lease; keep copies of agreements made during negotiations and if by chance there is a rent review on a street near you and yours is pending, read the Lease. Keep an eye out for those magic words “time is of the essence”. As Hollywood might say – Spooky!

**Matthew S Martin FRICS FCI Arb**

#### ***Stop Press***

***I am indebted to Paul Greatholder of Russell-Cooke Solicitors who has produced an excellent article entitled ‘Commercial Rent Arrears Recovery Replaces Distress’. On 6<sup>th</sup> April 2014, CRAR (Commercial Rent Arrears Recovery) came into play on recovery of unpaid rents. Paul’s article lists seven matters that landlords need to consider in future rental recovery by distress. Watch the seven day deadline.***