1980/10

Royal Court (Inferior Number)

Before: Sir Herbert Frank Cobbold Ereaut, Bailiff
Jurat Raymond Helleur Le Cornu
Jurat Maxwell Gordon Lucas

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Between James Sharples Plaintiff,

and

Bruce Hepburn de la Mare Defendant

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1st April, 1980

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In this action, the plaintiff alleges that the defendant, his former landlord, acted in breach of the terms of the agreement and also in breach of the terms of his common law obligations as landlord, in the following four manners, and I take the allegations in the order in which they appear in the Order of Justice. Firstly, the plaintiff alleges that the defendant failed to provide the plaintiff with a garden, which by implication contained in clause 5(g) of the lease he was bound to do. The plaintiff was given an area with gravel chippings but he claims he was promised a garden with earth or soil. The defendant agrees that he did originally promise to put in such a garden but later changed his mind. Paragraph 1 of the agreement which states quite expressly what was included in the lease, does not mention a garden. The only reference to a garden is in paragraph 5(g), which imposes a duty on the plaintiff to keep the garden in a good state of cultivation and free from weeds. We accept that paragraph 5(g) was part of a standard form of conditions which, in our view, inadvertently crept into the agreement. It had no significance and imposed no duty in fact, because there was, in fact, no garden. Paragraph 5(g) cannot possibly in law override paragraph 1, which is the paragraph which states what is included in the lease. Paragraph 1 does not include a garden and therefore it is quite clear, in law, that no garden was included in the lease. As the plaintiff took possession of the flat before he received the agreement, he could have complained that the written agreement was not in accordance with his verbal agreement with the defendant, but on his own admission, he did not complain to the defendant about what he now says was an omission, the omission of a garden, and it is clearly now too late for him to make that complaint, and so we dismiss the plaintiff's claim under this head, which is paragraph 3(a) of his Order of Justice.

Paragraph 3(b) which relates to the parking area was withdrawn by the plaintiff during the hearing.

Paragraph 3(c) alleges that the defendant failed to keep the property water tight and in good state of structural repair as specified that he should in paragraph 6 of the lease. Parts of the interior of the flat were undoubtedly extremely damp. It appears that the plaintiff had moved into a new building as soon as it had been built and in the walls of that building there was still a lot of moisture at the time that the defendant moved in, which is of course very common. But the evidence of the defendant and Mr. Hamon and Mr. Reed all satisfies us that the property was water tight and that the exterior was in a proper state of structural repair. The damp was clearly due, on the evidence we have heard, to condensation and not in any way from water coming in from outside, nor from rising damp, and therefore there is no evidence whatsoever that the defendant failed to keep the premises water tight or failed to keep the exterior of the premises in a good state of decoration and repair, and therefore we dismiss that claim.

And that leaves paragraph (d) of the Order of Justice in which the plaintiff alleges that the defendant permitted his servants or agents to have access to the premises without the authority and in the absence of the plaintiff. On two occasions at least, possibly on three, agents or servants of the defendant entered the flat while the plaintiff and his wife were absent. They probably did so with a duplicate key which had been lent to them by the defendant. We are satisfied that the person who entered was either the builder or the builder's servant and that the builder or his servant did so in order to inspect the state of the interior of the premises as a result of complaints of dampness which had been made to the defendant by the plaintiff and to carry out remedial works in the flat. Now our attention was directed to clause 5(m) of the agreement which requires the tenant to permit the landlord on giving forty-eight hours notice to enter upon and examine the condition of the premises. We agree with Mr. Mourant that that clause is not applicable in this case. That clause clearly applies where the landlord wishes for his own purposes to view the interior of the flat. In this case, the builder entered in response to the plaintiff's own complaint. We agree that there was implied consent to the defendant to arrange for the builder to enter to inspect the cause of the complaint made by the plaintiff and do what he could to remedy those complaints. We agree that it would have been better if the builder had entered whilst the plaintiff or his wife was there. We know from the defendant's evidence that the plaintiff and his wife were often out, but we are not sure that the defendant took all reasonable steps to contact the plaintiff before authorising the builder to enter. It may be that he did not take all reasonable steps. On the other hand, the purpose of entry was, as we are quite sure, for the benefit of the plaintiff and

in accordance with the plaintiff's request to attend to the alleged damage and we are also satisfied that no damage was caused by the builder or his agent when he entered. The matters which have been suggested to us are not damage and furthermore, we take into account also the fact that the plaintiff, on his own admission, did not complain to the defendant about what he says he now feels was an unauthorised entry, although, in fact, he must have realised and now agrees he should have realised that the person who was entering was somebody connected with the defendant and therefore a complaint could have been made to the defendant. It does appear that the plaintiff had no qualms about complaining to the defendant on other matters, but he has told us that, for the reasons he gave us, he decided not to complain to the defendant about what he now says was an unauthorised entry, and as I have said, because we are satisfied that there was no actual damage and because it was a bona fide entry connected with trying to do something for the plaintiff, we dismiss this claim also.

So the situation is that we have dismissed all the claims of the plaintiff. That takes us, therefore, to the counterclaim put in by the defendant, which is a counterclaim firstly for the cost of cleaning and redecorating number Malvern Court, in the sum of £335.81, which in fact was the bill submitted by Mr. Hamon, which was in accordance with Mr. Hamon's estimate, and secondly, the counterclaim asking for damages resulting from the plaintiff's breach of contract referred to in paragraph 8 thereof. The plaintiff was under an obligation under clause 5(d) at all times to keep the interior of the premises and the appurtenances thereof, including the doors, windows, and other glass fixtures, fittings, fastenings, wires, waste water drain and other sanitary and water apparatus therein and the painting, papering and decoration thereof in good and substantial repair and condition throughout the said term, and we interpret that as meaning that the plaintiff had a duty to do all that was reasonable to offset the effects of the damp which undoubtedly had come through, that is to say, to wipe up the moisture and to take such steps as he could to reduce the condensation. Furthermore 5(e) requires the plaintiff in the last year of the said term howsoever determined, and those words are important, to paint in a proper and workmanlike manner all the inside wood, iron, and other parts heretofore or usually painted with two good coats of paint of suitable quality etc., and that must mean that there was an obligation on the plaintiff before he left to paint the interior, to comply with that condition. In addition, clause 5(o) requires the plaintiff to give up possession of the premises in as good order and condition as it was when he entered into possession thereof, fair wear and tear and damage by fire excepted.

Therefore the plaintiff had a duty to keep the interior of the premises in a good state of decoration during the period of the lease. He had a duty to paint the premises within twelve months before leaving and he had a duty to give up the premises in good order as they were, fair wear and tear excepted.

We do not think that the plaintiff carried out his duty during the tenancy to deal with, as much as he could, the effect of the damp, which undoubtedly caused some discolouration to the decoration. He had a duty to have the premises painted before he left and he did not carry out that duty, and he undoubtedly left certain parts of the premises in a dirty condition as well as leaving behind certain items which were certainly not required by the defendant.

In those circumstances, therefore, having carefully looked at Mr. Hamon's bill, we think that Mr. Hamon's bill does no more than cover those obligations which it was upon the plaintiff to carry out, and therefore we think that the plaintiff is liable to pay damages in the amount of that bill which is £335.81. We do not think however, that there should be any further award for damages resulting from the leaving behind of material, items of furniture - we think that those can properly be included in the £335.81. There remain the set off which is contained in the letter of Mr. Sharples, in which he says he left behind in the flat, furniture, carpets and various household utensils worth at least £150. In fact he admitted that he abandoned those items and therefore he is not entitled, inlaw, now to claim the value of them or any worth at all. In actual fact, we have heard from the defendant and we accept that he derived no oenefit from them and therefore there is no set off.

Therefore what we find is that under the ccunterclaim, Mr. Sharples, the plaintiff, is liable to pay the defendant the sum of £335.81.