James v Hutton and J Cook & Sons Ltd

[1950] 1 K.B. 9

Lord Goddard C.J., Tucker and Singleton L.J.J.

Court of Appeal

By a lease dated December 12, 1934 the plaintiff let a shop to the first defendant for 21 years with the lease containing: (i) a full repair covenant; and (ii) a covenant that the lessee would not during the term make or permit to be made any substantial addition, deviation or alteration to or in the demised premises without the consent and approval of the plaintiff and would submit plans for approval by the plaintiff (and superior landlords). On December 13, 1934 the plaintiff granted to the first defendant a licence for the alteration of the existing shop front and the erection of a shop front which differed materially from that in existence at the commencement of the lease. The licence contained a provision that at the expiration or sooner determination of the lease the lessee would reimburse the plaintiff the cost of the reinstatement and the making good by her of the demised premises including the cost of removing the additions and alterations made by virtue of the licence and of restoring the premises to the same state as they were then in and as if the several works and alterations authorised had not been made, provided that the liability of the lessee should not be greater than the cost of the reinstatement actually carried out by the lessor. The first defendant did not carry out any works and, in 1936, assigned the lease to the second defendant. In August 1936 the plaintiff granted a licence to the second defendant to execute certain alterations which were of the same description as the first licence. The second licence contained a covenant by the lessee to restore the premises to the same state as they were in before the alterations and works had been executed or, at the option of the plaintiff, to the same state as they were in before the principal licence was granted and as if the several works and alterations thereby, or by the principal licence, authorised had not been made. The works amounting to the erection of a new shop front were carried out. In May 1940 notice was given by the second defendant to determine the lease but in June 1940 the premises were requisitioned by the War Department. In 1941 the plaintiff commenced proceedings seeking, *inter alia*, a declaration that the lease could not be determined as the lessee had failed to put the premises into a proper state of repair. The claim was settled but in June 1946 the plaintiff served notice on the second defendant that, under the terms of the second licence, they were required to restore the premises to the same state as they were before the principal licence had been granted and as if the works and alterations authorised by both licences had not been made. **C–146.2**

HELD: (1) The measure of damages at common law applicable to the breach of covenant to restore the premises to the condition in which they were before the licence was granted was the amount of damage actually suffered and not the cost of restoration.

(2) There was no analogy between the circumstances of this case and that of a breach of covenant to deliver up premises in repair where the measure of damage at common law was the amount which the landlord proved to be fully and reasonably necessary in order to put the premises into that state of repair; *Morgan v Hardy* (1886) 17 QBD 770 and *Joyner v Weeks* [1891] (Digest).

(3) In the circumstances of the case the actual damage suffered was merely nominal.

Text Cross Reference: 7–11.

Cross-reference to other digested cases.

The following digested cases were cited in this judgment:
Joyner v Weeks [1891] – considered. C–153
Matthey v Curling [1922] – considered. C–193

This decision has since been cited in the following digested cases:
None.