Ultraworth Ltd v. General Accident Fire and Life Assurance Corporation plc

[2000] 2 E.G.L.R. 115

Richard Havery Q.C. (sitting as a deputy judge)

Technology and Construction Court

C–296 The claimant was the assignee-landlord and the defendant the assignee-tenant of a full repairing and insuring lease of a five-storey office building granted in 1973. With regard to the terminal dilapidations it was common ground that the building was not in the state of repair required by the covenant but the parties disagreed as to the tenant's liability for the combined heating and air-conditioning system. The system in question encompassed 150 units that drew and returned water from and to the heating and cooling apparatus located on the roof of the building. The system was of a type that was no longer manufactured. The landlord argued that the tenant's covenant could only be performed by substantially replacing the entire system at an estimated cost of £420,000 but the tenant countered that the units could be reconditioned at a figure not exceeding £100,000. At the expiry of the lease in July 1998 the landlord marketed the property and sold it in March 1999 to a developer for £1 million. The developer subsequently obtained planning permission to convert all but the ground floor of the building into residential flats. In the light of the disposal the tenant argued that even the figure of £100,000 was irrecoverable, as the disrepair had not caused a diminution in the value of the reversion within section 18 of the Landlord and Tenant Act 1927.

HELD:
(1) The landlord had not suffered any loss.
(2) The landlord had correctly contended that the required works were works of repair as distinct from renewal. Repair could consist of renewal of parts. The court should consider (i) the nature, extent and cost of the proposed remedial works, (ii) the value of the building and its expected life span. It was always a question of degree; *Holding and Management Ltd v. Property Holding and Investment Trust plc* [1990] (Digest).
(3) The landlord had failed to establish that the tenant's proposed works were futile. In this context it was sufficient if the repaired system worked substantially as well as the original system. The decisions in *Elmcroft Development Ltd v. Tankersley-Sawyer* [1984] (Digest) and *Stent v. Monmouth District Council* [1987] (Digest) would be distinguished as there was no requirement that the repaired system should require as little maintenance as the proposed new system.
(4) Even if the system had been repaired: (i) the property would not have attracted a potential occupier or investor; (ii) no higher price would have been obtained from B Ltd, whose scheme required a different system altogether. In those circumstances, no loss had been proved.

Text Cross Reference: 3–04; 4–03; 4–10; 4–12; 11–05

Cross-reference to other digested cases.

The following digested cases were cited in this judgment:
Elmcroft Developments Ltd v. Tankersley-Sawyer [1984] – distinguished. C–085
Holding & Management Ltd v. Property Holdings Investment Trust plc [1990] – applied. C–135
McDougall v. Easington District Council [1989] – considered. C–183
Post Office v. Aquarius Properties Ltd [1985] – considered. C–234
Stent v. Monmouth District Council [1987] – distinguished. C–279

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